

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 10 August 2007,

in the following composition:

Slim Aloulou (Tunisia), Chairman

Michele Colucci (Italy), member

Mick McGuire (England), member

Mario Gallavotti (Italy), member

Mohamed Mecherara (Algeria), member

on a matter between

the club A, X

and

the club B, Y

and

the club C, Z

as Intervening party

regarding the solidarity contribution related to the
transfer of the player D.

I. Facts of the case

1. The football association of X confirmed that the player D, born on 22 February 1982, was registered at the E academy, A' training centre, from 1 February 1994 to 14 August 2003.
2. In 2003, the player was transferred from A to the club C of the country Z.
3. On 23 August 2005, C transferred the player D to the club B of the country Y, for the amount of EUR 900,000.
4. On 27 October 2005, A claimed a share of the solidarity contribution of the transfer compensation.
5. On 7 November 2005, B replied that article 3 of the transfer agreement provided for the fact that C was liable for the solidarity payments and requested A to contact C directly.
6. On 6 January 2006, A adhered to its claim for the relevant proportion of solidarity contribution.
7. On 10 February 2006, B replied that C had agreed to settle the solidarity payments. Moreover, it expressed doubt as to whether the E academy was legally connected with A. Finally, B pointed out that A was not the sole holder of the bank account that A had notified to it and through which the solidarity contribution was to be remitted.
8. On 22 June 2006, A sent in decisions passed by the Dispute Resolution Chamber and the Court of Arbitration for Sport (CAS 2004/A/799) on other cases in which they recognised the E academy as being fully assimilated into A.
9. In a fax dated 6 September 2006, B said it no longer contested E's affiliation to A. However, B insisted on the fact that C had pledged to settle the solidarity payments and that A, having been informed of this in a letter dated 7 November 2005, had not taken any action to contact C. B did not therefore think it owed any money to A. If the Chamber decides the opposite, C has requested that A should let it know a bank account which only A.
10. On 14 March 2007, the parties were informed of the Dispute Resolution Chamber's jurisprudence, which stated that the new club was liable to pay the solidarity contribution, and that, if the amount had already been paid in full, the player's former club was obliged to reimburse the equivalent amount to his new club. The entire file was sent to C.

11. On 21 March 2007, B stated it had contacted C and would pay the amount due to A, once it had received the payment from C.
12. On 11 May 2007, FIFA requested C to comment on the present matter.
13. In a fax dated 4 June 2007, C explained that according to the transfer contract signed with A regarding the player D, it had been agreed that if he was transferred to another club, A would be entitled to 30% of the transfer compensation after deduction of the transfer amount paid by C (i.e. USD 40,000). As the transfer compensation to B amounted to EUR 900,000, C had already paid the amount of EUR 260,250 (30% of EUR 900,000 minus USD 40,000) to A. C asked why it was expected to pay more than it had already paid.
14. On 25 June 2007, A stated that C's argument was unfounded as it was referring to the transfer compensation that had been freely negotiated and not the solidarity contribution following the player's transfer from C to B.
15. B did not comment on C's arguments.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Chamber analysed whether it was competent to deal with the matter at stake. In this respect, it referred to art. 18 par. 2 and 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. The present matter was submitted to FIFA on 27 October 2005, as a consequence the Chamber concluded that the revised Rules Governing Procedures (edition 2005) on matters pending before the decision making bodies of FIFA are applicable on the matter at hand.
2. With regard to the competence of the Chamber, art. 3 par. 1 of the above-mentioned Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of articles 22 to 24 of the current version of the Regulations for the Status and Transfer of Players (edition 2005). In accordance with art. 24 par. 1 in connection with art. 22 (d) of the aforementioned Regulations, the Dispute Resolution Chamber shall adjudicate on disputes between clubs belonging to different Associations related to solidarity mechanism.
3. As a consequence, the Dispute Resolution Chamber is the competent body to decide on the present litigation concerning the distribution of the solidarity contribution claimed by A in connection with the transfer of the professional D during the course of a contract.

4. Subsequently, the members of the Chamber analyzed which edition of the Regulations for the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred to art. 26 par. 1 and 2 of the Regulations for the Status and Transfer of Players (edition 2005) in the modified version in accordance with the FIFA circular no. 995 dated 23 September 2005. Furthermore, it acknowledged that the professional had been registered for his new club in August 2005. Equally the Chamber took note that the claim was lodged at FIFA on 27 October 2005. In view of the aforementioned, the Chamber concluded that the current FIFA Regulations for the Status and Transfer of Players (edition 2005, hereafter: the Regulations) are applicable on the case at hand as to the substance.
5. In continuation, and entering into the substance of the matter, the members of the Chamber started by acknowledging that, as established in the art. 21 and annex 5 of the Regulations, the new club of the player is to distribute 5% of any compensation paid to the previous club to the club(s) involved in the training and education of the player in proportion to the number of years the player has been registered with the relevant clubs between the sporting seasons of his 12th and 23rd birthdays.
6. In the present case, the Chamber outlined that the entire period to be taken into consideration with regard to the solidarity contribution would run from the sporting season 1994, i.e. the sporting season of the player's 12th birthday and the sporting season 2003, i.e. the sporting season of the player's 21st birthday.
7. In continuation, the Chamber duly noted that, on the one hand, B (the player's new club) asserts having agreed in the relevant transfer agreement with C (the player's previous club) that the latter would be responsible to pay the relevant solidarity contribution to A.
8. After examining art. 3 of the transfer agreement concluded between B and C, the Chamber considered that the relevant clause stipulated, in contradiction to art. 21 and annex 5 of the Regulations, that in connection with claims regarding the Chapter VI of the Regulations (training compensation and solidarity mechanism) C *"indemnifies B against any such claims for compensation, up to a maximum of 5% of the transfer fee, and C undertakes to make payment of any such lawful claims"*.
9. On account of the above, the Chamber referred to its well-established jurisprudence applied in similar cases, in accordance with which the player's new club is ordered to remit the relevant proportion(s) of the 5% solidarity contribution to the club(s) involved in the player's training in strict application of art. 21 and annex 5 of the Regulations. At the same time, the player's former club

is ordered to reimburse the same proportion(s) of the 5% of the compensation that it received from the player's new club.

10. As a result and in application of the said jurisprudence, the Dispute Resolution Chamber decided that the argument of B could not be taken into consideration and thus has to be rejected.
11. Furthermore, the Chamber observed that during the present procedure, B firstly doubted as to whether the E academy was legally connected with A, but at the later stage it did not longer contested E's affiliation to A.
12. To that regard, the Chamber remarked at a side note that according to its precedent jurisprudence it has been established that the E academy, which is affiliated to the X football association under the same registration number as A, is considered a training centre of A, and thus one legal entity regarding the entitlement to claim solidarity contribution.
13. Finally, the Chamber noted that B criticized the fact that A did not provide it with the details of a bank account of which it is the sole holder. In this respect, the Chamber stated that this argument does not have any relevant influence on the question of A's entitlement for solidarity contribution.
14. On account of the above considerations, the Chamber concluded that all of B's arguments have to be rejected.
15. Subsequently, the Chamber took note of the fact that, on the other hand, C tacitly confirmed having received the amount of EUR 900,000 from B but considered that it is not responsible to pay solidarity contribution since the relevant transfer agreement with A already entitled the latter to 30% of the compensation received on a transfer of the player D to a third club after deduction of the amount of USD 40,000, i.e. the amount C already paid to A. The Chamber noticed that C hereby *mutatis mutandis* asserted that the relevant solidarity contribution was included in the aforementioned 30% amount.
16. In this context, the Chamber drew its attention to the transfer agreement concluded between A and C in 2003 and noted that the parties had, instead of agreeing on a transfer compensation by means of a lump sum payment, agreed upon the following payments:
 - USD 40,000, payable immediately upon receipt of the international transfer certificate (clause 3 of the agreement),

- USD 10,000, payable at the end of the 2003/04 local league season, provided the player is fielded by C in not less than 80% of the official matches (clause 4 of the agreement) and
 - in case the player would be transferred from C to another club a share of 30% of the amount received by C on the said transfer minus the amount already paid by C to A (clause 5 of the agreement).
17. In this respect, the Chamber concluded that the relevant agreement did not contain any clause which could lead to the assumption that any future solidarity contribution payable in connection with the transfer of the player to a third club, *in casu* B, was already included in the transfer compensation agreed between C and A. Thus, the argument of C had to be rejected.
 18. The Dispute Resolution Chamber then proceeded to the calculation of the relevant solidarity contribution. In this respect, the members of the Chamber referred to art. 1 of annex 5 of the Regulations, which provides the figures for the distribution of the solidarity contribution, according to the time the player was effectively trained by the clubs involved.
 19. In the present case, the Chamber outlined that according to the confirmation of the FIF the period to be taken into consideration (period of registration of the player with the E academy, A' training centre) went from 1 February 1994 to 14 August 2003, during the sporting seasons of the player's 12th and 21st birthday. In this respect, the Chamber concluded that the period of effective training to be taken into account corresponds to eight sporting seasons and 18 months.
 20. Therefore, the Chamber established that, in accordance with the breakdown provided for in art. 1 of annex 5 of the Regulations, A is entitled to receive 75.41% of the 5% of the compensation paid in relation to the transfer of the player D from C to B.
 21. The Chamber noted that according to the transfer contract remitted to the file the player D was transferred for the amount of EUR 900,000.
 22. Based on all of the above, the Dispute Resolution Chamber decided that B must pay to A 75.41% of the 5% of the transfer compensation paid in relation to the transfer of the player D, i.e. EUR 33,934.50 and that C must reimburse the amount of EUR 33,934.50 to B.

III. Decision of the Dispute Resolution Chamber

1. The claim of A is accepted.
2. B has to pay the amount of EUR 33,934.50 to A **within 30 days** as from the date of notification of this decision.
3. If the aforementioned sum is not paid within the aforementioned deadline an interest rate of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.
4. A is directed to inform B directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.
5. C has to reimburse the amount of EUR 33,934.50 to B **within 30 days** of notification of the present decision.
6. If the aforementioned sum is not paid within the aforementioned deadline an interest rate of 5% per year will apply as of expiring of the fixed time limit and the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.
7. B is directed to inform C directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.
8. According to art. 61 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

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Encl. CAS directives