

# TRAINING COMPENSATION IN FOOTBALL

## Formalism vs Rationale

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## LIST OF ABBREVIATIONS

art.	article
CAS	Court of Arbitration for Sport
ECA	European Club Association
ECJ	European Court of Justice
FIFA	Fédération Internationale de Football Association
FIFA DRC	FIFA Dispute Resolution Chamber
FIFA Regula- tions	FIFA Regulations on the Status and Transfer of Players, edi- tion 2014 (unless expressly specified other edition)
FIFPro	International Federation of Professional Footballers
ibid.	<i>ibidem</i> (at the same place)
ISLJ	International Sports Law Journal
ITC	International Transfer Certificate
No.	number
p./pp.	page/pages
par.	paragraph
TMS	Transfer Matching System
v.	<i>versus</i>
vol.	volume

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CAS 2012/A/2908 or <i>Panionios case</i>	CAS 2012/A/2908 <i>Panionios GSS FC v Paraná Clube</i>
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## INTRODUCTION

Training compensation is an essential part of the existing football system. Being more brain-focused, today's football requires more awareness from the players. They are tacticians for the 90 minutes, being requested to create a space, evaluate the dangers and anticipate the development of the game. This is where the work of youth academies is vital<sup>1</sup>. Some clubs and youth academies have concentrated greatly on training and developing young players, and expect to obtain training compensation from their subsequent transfers. According to 2012 Global transfer market report<sup>2</sup>, overall training compensation due in 2012 amounted to EUR 18 million worldwide.

However, as was evidenced by two recent CAS awards, there are still inconsistencies between the exact wording of the FIFA Regulations and its interpretation by the FIFA DRC and CAS. They relate, in particular, to cases where professional players, before being transferred internationally, were previously loaned to a third club. Unfortunately, due to the ambiguity in how to treat the loan for the purposes of the training compensation, some clubs are either deprived of obtaining what they are entitled to or they are compelled to resort to FIFA and CAS to prove their entitlement. This uncertainty also creates an expectation for the club signing a player that no training compensation is due or only part thereof.

Besides analyses of the FIFA Regulations, their application by the football judicial bodies and possible amendments that must be introduced, this thesis could also serve as a practical guidance for the lawyers of football clubs and private practitioners that deal with training compensation.

## 1. TRAINING COMPENSATION IN GENERAL

### 1.1. OVERVIEW

Training compensation is an important mechanism implemented by FIFA in order to protect the interests of the clubs that have been involved in the training and education of players. This system was implemented as a result of the *Bosman case*, when the compulsory transfer compen-

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<sup>1</sup> *ECA REPORT*, p.152-153.

<sup>2</sup> *TMS REPORT*.

sation between the clubs after expiry of players' contracts was abolished<sup>3</sup>. A new system was designed with the aim of encouraging more and better training of young football players by awarding financial compensation to the clubs which have invested in training young players<sup>4</sup>, simultaneously ensuring that amounts of compensation are not disproportionate and do not hinder the movement of players<sup>5</sup>. Broadly, it consists of two components: training compensation in a narrow sense and a solidarity mechanism<sup>6</sup>.

In spite of attempts to challenge the new regime in the *Bernard case*, ECJ confirmed its compliance with the freedom of movement principle. Although some authors still consider that this new system of training compensation places restrictions on the players' freedom<sup>7</sup>, removing or eliminating transfer fees would deprive many training clubs of the opportunity to be able to fund their development, having no incentive to invest in youth<sup>8</sup>.

FIFA's training compensation model became a good example for other sports associations that adopted similar rules, including basketball, cycling, handball, ice hockey and rugby<sup>9</sup>.

## 1.2. PROVISIONS OF THE FIFA REGULATIONS

The FIFA Regulations govern training compensation only on the international level applying to player transfers between different associations. Pursuant to art. 20 and Annexe 4, training compensation must be paid to a player's training clubs when a player signs his first professional contract and on each of his subsequent transfers as a professional until the end of the season of his 23<sup>rd</sup> birthday. The obligation to pay training compensation exists whether the transfer takes place during or at the end of the player's contract. Compensation is paid for the training and education incurred between 12 and 21, unless it is evident that a player has already terminated his training period before the age of 21<sup>10</sup>.

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<sup>3</sup> *WEGER*, p.236; *WEATHERILL*, p.491.

<sup>4</sup> *BOGAERT*, p.240.

<sup>5</sup> Circular no.769; *WEGER*, p.236.

<sup>6</sup> *ONGARO*, p.72.

<sup>7</sup> *FIFPRO ANALYSES*; cf. *HENDRICKX*.

<sup>8</sup> *EC STUDY*, p.235.

<sup>9</sup> *COMPARATIVE TABLE*.

<sup>10</sup> See CAS 2003/O/527; CAS 2004/A/785; CAS 2006/A/1029; CAS 2011/A/2559; CAS 2011/A/2682; CAS 2013/A/3303.

For the purposes of training compensation, a player loan arrangement is subject to the same rules that apply to the transfer of players, meaning that the club receiving the player on loan is entitled to training compensation for the time the player remained with that club<sup>11</sup>. Although this is clearly stated, the FIFA Regulations omit to clarify the exact club liable to pay the compensation (whether it is a subsequent club or the club who originally made the loan) giving rise to the controversy and uncertainty, discussed herein.

Calculation of the training costs is based on the clubs' categories and their confederation, information of which is published annually by FIFA<sup>12</sup>. As a rule, training compensation derives from the costs that are assumed to be incurred by the new club as if the player was trained there, multiplied by an average "player factor"<sup>13</sup>, having particularities for the training period between 12<sup>th</sup> and 15<sup>th</sup> birthday and for the clubs from EU/EEA countries. In any case FIFA DRC may adjust the amount due if clearly disproportionate<sup>14</sup>.

### 1.3. INTERNAL PROVISIONS OF FOOTBALL ASSOCIATIONS

Article 1 par. 2 of the FIFA Regulations imposes an obligation on each football association to provide a system to reward clubs investing in the training and education of young players. Flexibility of this article allows associations to adopt their own systems<sup>15</sup>, sometimes similar to the international one<sup>16</sup>, sometimes with particularities of its calculation<sup>17</sup>, having due regard to the restrictions imposed by the national law<sup>18</sup>.

Although associations must also incorporate without modification the provisions of art. 10 of the FIFA Regulations regarding player loans, on the whole it appears that only few, if any of

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<sup>11</sup> FIFA Commentary to Article 10, p.32.

<sup>12</sup> Circular no.1418.

<sup>13</sup> For details see *AIKATERINI*, p.38.

<sup>14</sup> See *CAS 2004/A/560*; *CAS 2009/A/1908*; *CAS 2013/A/3303*; DRC no.01142929; DRC no.01141545; DRC no.01131206; DRC no.8122742; DRC no.212132.

<sup>15</sup> *COMPARISON OF JURISDICTIONS*.

<sup>16</sup> *EFFORI*; *RUSSIAN REGULATIONS*; *FRENCH REGULATIONS*; *IRISH REGULATIONS*; *KAZAKH REGULATIONS*; *LITHUANIAN REGULATIONS*; *FAW REGULATIONS*; *SCOTTISH PFL RULES*; *REGULATIONS OF NEW ZEALAND*.

<sup>17</sup> *UKRAINIAN REGULATIONS*; *MAJANI* for Portugal.

<sup>18</sup> *E.g.* in Germany and Belgium; see also *DERUNGS*, p.106; *WEGER*; *BAKKER*.

the associations<sup>19</sup> regulate explicitly when and on which basis clubs that have loaned a player should be remunerated on the national level, leaving this question open. In Belarus a club that signed the player on loan is entitled to receive compensation under the national regulations. Moreover, analysing most of the national regulations, it seems that national associations treat art. 10 of the FIFA Regulation literally, implying that training compensation is due also by the clubs that sign the player on a temporary basis upon such transfer.

## 2. TRAINING COMPENSATION AND TEMPORARY TRANSFERS

### 2.1. OVERVIEW

It may seem that provisions governing transfer compensation are clear enough: when a professional is transferred internationally, FIFA Regulations apply, and when transferred domestically – national regulations of the relevant association apply. However, uncertainty of the FIFA Regulations regarding the player's previous temporary transfer gives rise to a number of legal debates and controversial decisions. Within this context, three main factors must be analysed: entitlement to receive compensation, obligation to pay compensation, and period for which compensation is due.

For the sake of clarity, the concept of the payment of training compensation being due when a player is registered for the first time as a professional is not a subject of this thesis. In such case, all previous clubs are entitled, regardless whether the player transferred on a temporary or permanent basis.

### 2.2. ENTITLEMENT OF THE CLUB TO RECEIVE TRAINING COMPENSATION

The main goal pursued by FIFA in respect of training compensation is to ensure that all clubs that have taken part in player's training and education shall be remunerated<sup>20</sup>, including the clubs that loaned the player<sup>21</sup>. At the same time, FIFA unambiguously vests national associa-

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<sup>19</sup> As exception see *BELARUSIAN REGULATIONS*.

<sup>20</sup> Circular no.769, p.8; FIFA Commentary to Annexe 4, p.115.

<sup>21</sup> FIFA Commentary to Article 10, p.32.

tions with the power to regulate domestic transfers<sup>22</sup>, simultaneously equalling a loan to the permanent transfer<sup>23</sup>.

Although it is clear that a club that loaned a professional player is entitled to receive training compensation, in the light of the above provisions, if a loan occurred between two clubs of the same association, being exclusively a domestic transfer, any training compensation must be paid according to the national regulations.

### 2.3. OBLIGATION TO PAY COMPENSATION

The entitlement of one club to receive training compensation must correspond to the obligation of another to pay it. While within the permanent transfer it is easy to identify the club that bears the responsibility to pay the compensation (being the new club that signs a professional player), temporary transfers might have particularities.

Art. 10 of the FIFA Regulations unambiguously sets forth that a loan is also a transfer: it requires an ITC if the transfer is international<sup>24</sup>, and is subject to the same rules regarding training compensation. Training compensation is due upon a professional's transfer, not a permanent transfer<sup>25</sup>. Consequently, once the club loans the professional player, it must be obliged to pay training compensation to the player's former club. Provided that the loan occurs between the clubs of different associations, it falls under the scope of the FIFA Regulations; otherwise national regulations must apply. For these purposes it does not matter whether the loan is free or not, is for a short period or for a few seasons, or contains an option to sign the player permanently. *(For a better visual understanding please see ANNEX 1)*

What is important, regarding the issue of solidarity payments, is that FIFA explicitly determines an obligation of the club receiving a professional on loan to retain 5% of the loan fee and distribute it to all previous clubs<sup>26</sup>. It would be difficult to understand if such a club should pay only the solidarity contribution, but not pay a training compensation.

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<sup>22</sup> Article 1 par. 2 of the FIFA Regulations; FIFA Commentary to Article 1, p.9.

<sup>23</sup> Article 10 par. 1 of the FIFA Regulations.

<sup>24</sup> Annexe 3, Article 8.3 of the FIFA Regulations.

<sup>25</sup> Annexe 4, Article 2.1(ii) of the FIFA Regulations.

<sup>26</sup> FIFA Commentary to Article 10, p.32.

Nevertheless, according to the FIFA DRC and its established jurisprudence, a club that receives a professional player on loan is exempt from the obligation to pay training compensation to the player's initial club, though being only entitled, "*in principle*", to receive compensation if the player would be transferred to any other third club. (*For comparison, please see ANNEX 2*)

However, on which basis should such a third club pay training compensation to a club or even clubs that some time ago had a player on loan?

In this regard the wording of the FIFA Regulations seems crystal clear and logical. Pursuant to art. 3 par. 1 of Annexe 4, in the case of subsequent transfers of the professional, training compensation will only be owed to his **former club** , and not clubs. FIFA Commentary is even more precise: for every subsequent transfer of the professional player only the **last club** for which the player was registered is entitled to training compensation<sup>27</sup>. As it derives from the definitions of the FIFA Regulations, the **former club** is "*the club that the player is leaving*". A player cannot leave more than one club simultaneously.

Therefore, there is no provision in the FIFA Regulations (neither was there in any previous editions) that obliges a club to pay training compensation to any other than the player's former/last club. It is reasonable to assume that if such an exception would exist, FIFA, as legislator, would draft art. 20 and art. 2 of Annexe 2 respectively, mentioning that training compensation is paid only upon the player's 'permanent transfer', rather than 'transfer' in general, and that the concept of former club also includes a club that previously signed the professional player on a temporary basis.

In light of the above, according to the FIFA Regulations and exact wording of its provisions, the obligation to pay training compensation arises only upon the subsequent international transfer (permanent or temporary) of the professional player and only to the club of his last registration.

#### **2.4. PERIOD FOR WHICH COMPENSATION MUST BE PAID**

The objective of training compensation is to ensure that all clubs that invested in the education and training of young players must be remunerated on *pro rata* basis according to the period the

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<sup>27</sup> FIFA Commentary to Annexe 4, p.115.

player spent with a relevant club<sup>28</sup>. Although it is not difficult to calculate the period when a player was registered for a club, be it temporary or permanent basis, still there are inconsistencies between jurisprudence and wording of the regulations.

Following the provisions of the FIFA Regulations, compensation must be paid after each subsequent transfer of the professional for the period he was registered with his former/last club. (Please see ANNEX 3)

Such an approach corresponds to the established CAS jurisprudence. According to the *Feyenoord case*<sup>29</sup>, the system put in place by the FIFA Regulations divides a player's career into segments. Each period between each professional transfer is a specific and independent segment of time (so called "segmentation"). In this context, when FIFA states that for any subsequent transfer up to the age of 23 training compensation will only be owed to the previous club of the player for the time he was effectively trained by that club, it exclusively refers to the segment of time (a) during which the player was contractually bound to the "previous club" and (b) which is immediately preceding the segment of time for which he is registered with the new club. (For better visual understanding please see ANNEX 4)

What is also important is that the *Feyenoord case* distinguishes international and national transfers, stating that for the later, the system established by the national association shall apply. Even assuming that such a system has not been implemented yet and a former club has not been compensated due to this lack, consequences of this regrettable situation cannot be held against player's new club (*in casu* Feyenoord)<sup>30</sup>.

Such practise unequivocally applies to the permanent transfers: when a player is permanently transferred to a club and after returns back to his initial club, any third club upon subsequent transfer would be obliged to pay compensation only for the last "segment" the player was registered with the initial club. (See ANNEX 4). In other words, the chain of entitlement is broken each time the player is transferred permanently. The main debate existing nowadays is whether "segmentation" and "break of chain of entitlement" apply to the temporary transfers: *Panionios case v. Dundee case*.

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<sup>28</sup> See CAS 2006/A/1029; CAS 2008/A/1705; CAS 2011/A/2559.

<sup>29</sup> See also *Panionios case*, pars.166-167; *Dundee case*, par.114.

<sup>30</sup> *Feyenoord case*, par. 45.

Given that FIFA Regulations treat loans as a transfer and do not expressly exclude the payment of the training compensation for loans, it seems that “segmentation” must be applicable. It is worth mentioning, that sometimes the distinction between a “loan” and a “permanent transfer” is not explicit, and player’s transfer may only be “dressed” as a loan<sup>31</sup>.

### 3. JURISPRUDENCE

#### 3.1. JURISPRUDENCE OF THE FIFA DRC

As was mentioned above, the FIFA DRC has its own interpretation of the FIFA Regulations. On one hand, the aim of art. 10 of the FIFA Regulations is “*to ensure that training clubs which register a player on a loan basis also benefit from the [...] training compensation*”<sup>32</sup>. However, on the other hand, this article cannot be interpreted in a way that a loaning club would lose its entitlement to the compensation for the time before the loan, as the intention of the legislator is that all training clubs shall be rewarded, and in no way does it seek to potentially deprive “*the loan of its essential flexibility*”<sup>33</sup>. In other words, a loan cannot be considered to be a subsequent transfer, triggering the consequences of art. 3 par. 1 of Annexe 4<sup>34</sup>. (See ANNEX 2)

A club that signs a player on a loan basis is also entitled to training compensation from the club that ultimately engages a player on a permanent basis<sup>35</sup>.

The FIFA DRC also acknowledges that a club that signs the player on a loan basis is not the player’s ‘former club’ *stricto sensu*. However, within the framework of loans, the period of time that the player is registered with his initial club and the period he is on loan should be considered as one entire timeframe. Any other interpretation would lead to the situation in which clubs accepting a player on loan would never be entitled to receive training compensation, even if they contribute to the training and education of players<sup>36</sup>. As a consequence, FIFA acknowledged that the FIFA Regulations should not be interpreted literally, but only pursuant to established jurisprudence.

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<sup>31</sup> See CAS 2007/A/1219.

<sup>32</sup> DRC no.891179, par. 17.

<sup>33</sup> DRC no.3121474, par. 13; DRC no.06131263, par. 27; DRC no.07121302, par. 16.

<sup>34</sup> DRC no.910192, par. 17.

<sup>35</sup> DRC no.5101080, par.10; DRC no.78346, par.9.

<sup>36</sup> See DRC no.03141916, par. 14; DRC no. 8122321, par. 15; DRC no.3121474, par. 15; DRC no.911668, par. 15.

But is such approach correct? Would it not be much easier to amend the Regulations respectively? It seems that the FIFA DRC is frequently faced with such cases, arriving at a controversial interpretation. Is it just and fair to assume that clubs must rely on the jurisprudence but not on the wording of the FIFA Regulations? These questions are clearly open to debate.

### 3.2. THE PANIONIOS CASE

In a relatively recent case CAS did not agree with the approach employed by the FIFA DRC and decided that a loan must be considered as a subsequent transfer, as prescribed by the FIFA Regulations.

***Facts.*** A Brazilian player was registered as a professional with *Paraná (Brazil)* when he transferred temporarily to *Iguaçu (Brazil)*. After his return from loan, he played again with *Paraná* and subsequently moved to Europe. As was established by the Panel, after *Paraná* he joined Greek club *Panionios* as a free agent. *Paraná* claimed the training compensation from *Panionios* for the period before and after the player was loaned to *Iguaçu*. According to *Panionios*, training compensation, if any, should be calculated only for the period after the loan as far as the loan to *Iguaçu* was a transfer and it broke the chain of entitlement. (*Please see ANNEX 5*)

***Decision.*** The Panel decided that the accurate interpretation of Annexe 4 art. 3.1 of the FIFA Regulations is that the calculation of the training compensation should be made in respect to the former club only for the period of the last cycle of registration with that club, as derived from ‘segmentation’ principle of *Feyenoord case*<sup>37</sup>. Contrary to what the FIFA DRC is constantly advocating, it is irrelevant whether the initial club (*Paraná*) was or should have been compensated for the period before it loaned the player: it is exclusively an internal domestic issue between two Brazilian clubs involved in a domestic transfer<sup>38</sup>. In the light of art. 10 which, as discussed previously, equates a temporary transfer to a permanent transfer and specifies that such provisions should be adopted without modification by the national associations so that a system of rewarding clubs is implemented, the Panel reached the only possible conclusion: a loan is a transfer and training compensation must be paid by the club that loans the player.

If for any reason the national domestic system does not provide for such a system (despite the clear wording of the FIFA Regulations), this does not mean that the period of training that was

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<sup>37</sup> *Panionios case*, par.166.

<sup>38</sup> *Ibid.*, par.168.

not compensated by the domestic system shall be “transferred” and considered under the international system. Indeed, any other interpretation might lead to an abusive use of a loan or a transfer between clubs that are affiliated to a national federation that has decided not to establish a domestic system. It would lead to a departure from the express FIFA provisions and create a situation whereby clubs could gain double profit<sup>39</sup>.

### 3.3. THE DUNDEE CASE

Approximately half a year after the *Panionios case*, CAS reached an opposite decision in the *Dundee case*, again following the established FIFA jurisprudence of interpreting the FIFA Regulations *contra* their wording.

***Facts.*** Circumstances are very similar to *Panionios case*: An Argentinian player was registered with *Velez Sarsfield (Argentina)* that loaned him to *Atletico Platense (Argentina)*. After coming back from loan, the player shortly moved to *Dundee United (Scotland)*. *Velez Sarsfield* claimed the training compensation from *Dundee United* for the period before and after the loan. Dundee countered that only the period after the loan must be considered in the light of art. 10 of the FIFA Regulations. (Please see ANNEX 6)

***Decision.*** The Panel followed the reasoning of the FIFA DRC and its consistent “well-established jurisprudence” mentioned above<sup>40</sup>. A temporary transfer “cannot be considered as a transfer triggering the consequences enshrined in article 3(1) of Annex 4 to the FIFA Regulations”<sup>41</sup>. Furthermore, emphasis was made on the *rationale* of the training compensation system that is aimed at encouraging the recruitment and training of young players. To agree that the loan would interrupt the training period, could, in the Panel’s option, deter training clubs from loaning players. It frequently occurs that young players are not proficient enough to play for the first team. In order to prepare these players for the first team, or to give these players a chance to train and play to reach the required level, a solution regularly used is to loan the player concerned to another team in order for him to gain experience with another club. However, if the making of such a loan would entail the consequence that the training club would thereby waive its entitlement to training compensation, the training club might decide not to loan the player to an-

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<sup>39</sup> *Ibid.*, par.169, 172.

<sup>40</sup> See DRC no.12121267.

<sup>41</sup> *Dundee case*, par.111.

other club merely in order to secure its entitlement to training compensation. The Panel would regard such a situation as undesirable. Any other interpretation of the FIFA Regulations would potentially deprive young players of the opportunity to gain practical experience in official matches for another club in order to develop footballing skills<sup>42</sup>.

Interestingly, the official CAS website contains only *Panionios case* as the most recent precedent, while the *Dundee case* is not public.

#### 4. UNIFORMITY AND IMPROVEMENT: “TO BE, OR NOT TO BE...”

##### 4.1. FORMALISM V. RATIONALE

It is evident that the above referenced CAS awards contradict each other, both having similar circumstances, but with different approaches and, ultimately, very different outcomes. While *Panionios case* fully “fits” to the wording of the FIFA Regulations and the system of compensation that must be established on the national level, *Dundee case* merely refers to the previous “well-established” jurisprudence and *rationale* of such interpretation that was finally clearly and expressly described therein. Indeed, it is difficult to argue against such conclusions: assumingly, clubs would be reluctant to sign players on loan if it then obliges them to pay a considerable amount of training compensation to the loaning club; from other side, a loaning club would not be interested to waive its entitlement to training compensation only because of loaning the player for free.

Based on a vigorous criticism of the *Panionios case*<sup>43</sup>, it seems that formalism must be sacrificed for the sake of promoting of youth development and ensuring that all clubs should be compensated.

But whether everything should be left unchanged? Does the *Dundee case* and FIFA jurisprudence take into account all other circumstances? In the view of the following drawbacks of the *Dundee* approach, maybe it is more reasonable to keep to *Panionios* formalism?

##### a) Legal certainty

The most important role of any regulations is to ‘regulate’, and in such way that all persons being subject to such regulations unambiguously understand what their provisions imply. The

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<sup>42</sup> *Ibid.*, par.113.

<sup>43</sup> *MONBALIU; THOMAS*.

FIFA DRC constantly acknowledges that in such cases that involve a player loan, the meaning of ‘former club’ and ‘subsequent transfer’ must not be interpreted *stricto sensu*. In other words, it is not enough to read and understand literally the relevant provisions of the FIFA Regulations, as any reasonable persons would expect<sup>44</sup>; such provisions must be interpreted, and interpreted in a way established exclusively by FIFA jurisprudence.

Foremost, as it is well-known, neither FIFA nor CAS complies with the principle of *stare decisis*<sup>45</sup>. Thus, football clubs are not obliged to know all jurisprudence of the FIFA DRC; it should be enough to know and obey the FIFA Regulations. The fact that FIFA handled a considerable number of disputes regarding this issue is a clear proof that many clubs understand FIFA Regulations *stricto sensu*, as they drafted, and not as FIFA interprets them. In addition, many football clubs do not originally “speak” English or any other official FIFA language, thus the study of all jurisprudence is self-limiting.

Furthermore, such uncertainty has considerable impact on the new club: a new club to which a player has been transferred, understanding the FIFA Regulations literally and being assured that all controversies about training compensation had to be decided on a domestic level, would be rather surprised to receive the claim from the club or even clubs, that previously had the player on loan while he was under contract with a former/selling club. Having paid transfer compensation and solidarity contribution, a new/buying club should not reasonably expect to suffer additional expenses.

## b) **Entitlement to receive transfer compensation**

The *Dundee case* clearly outlined the risks that may assumingly arise if clubs that have professional players on a loan basis would be obliged to pay training compensation. But are such considerations one-sided? Even if we consider that a club may waive a right to training compensation for the period before the loan, it is important to remember that after a player’s return from loan such club would still hold federative rights over the player, being able to transfer him permanently. As a rule, a transfer fee includes any training compensation that might be possibly due to the former club (before or after)<sup>46</sup>. Holding the player and ‘selling’ him subse-

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<sup>44</sup> See, e.g. understanding at *EC STUDY*, p.22.

<sup>45</sup> *BERSAGEL*, p.206; *BLACKSHAW*, p.155.

<sup>46</sup> About the waiver in context of training compensation see cf. *WEGER*.

quently, the initial club would not only be remunerated for the training, but even gain a profit. It seems *Dundee case* omitted to analyse another hypothetical situation.

**c) Double compensation or “compensation shopping”**

Concerns raised in the *Panionios case* regarding double compensation are also valid: when one domestic system for training compensation does not provide a mechanism to remunerate the club for the period of training before player’s loan, it does not mean the club from the other system should suffer. For instance, Scottish regulations dictate that training compensation should be paid once a player is registered with a new club<sup>47</sup>, not expressly excluding loans. And in Belarus<sup>48</sup> it is even expressly stated that a club that signed the player on loan is entitled to receive compensation under the national regulations. Thus it is possible that club, depending on its origin, may benefit from the system twice.

“Compensation shopping” (the analogy is taken from the legal concept of “forum ping”<sup>49</sup>), is another dark side of *Dundee* approach. Even assuming the prohibition to claim training compensation twice, a club might be able to choose the rules under which the amount would be higher. Could it be an objective of the FIFA Regulations?

**d) Different types of loans**

It seems that the *Dundee case* considered only free loans, while there are also loans with financial indemnities and loans with the promise of a future permanent transfer<sup>50</sup>. Obviously, the motive of a club that pays for the loan of a player to benefit from the player’s services is rather different from the motive inherent to the club that simply gives a chance to a young player to develop his skills without any expense.

Another issue that must be considered is the distinction between domestic and international loans, which is usually overridden by FIFA. Should it be?

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<sup>47</sup> SCOTTISH PFL RULES.

<sup>48</sup> BELARUSIAN REGULATIONS.

<sup>49</sup> For analogy see FERRARI; BORN.

<sup>50</sup> EC STUDY, p.22.

e) **Time limit to claim compensation**

Training compensation is due only before the end of the season of a player's 23<sup>rd</sup> birthday. According to the FIFA jurisprudence, a club that loaned the player may claim compensation from the third club that ultimately engages the player on a definitive basis. What if such ultimate transfer would occur only after the player's 23<sup>rd</sup> birthday? For example, player was loaned to Club B when he was 18 and came back at 19. After that he was with his initial Club A till 24 and after was definitely transferred to Club C. How in such a situation would Club B, that registered a player on loan, be able to receive training compensation?

f) **Time efficiency**

It is also not clear why a club that loaned the professional must wait for an undefined period of time to receive training compensation from any hypothetical ultimate club, while it could simply receive compensation from the club which loaned the player immediately. It is not infrequent that a club may cease to exist and to receive compensation immediately is crucial. Maybe clubs are also entitled to claim interest for time they were waiting?

4.2. **IS THERE ANY SOLUTION?**

For the sake of clarity, this thesis by no means advocates one of the approaches employed in the *Panionios case* or the *Dundee case* and FIFA DRC jurisprudence over the other. Both of them deserve to exist. Whereas the formalism and logical analyses of the *Panionios case* perfectly match with the exact wording of the FIFA Regulations and do not require additional interpretation, enabling the avoidance of any possible considerations stipulated above. On the other hand, the *Dundee case* motive to facilitate and promote youth development, to avoid possible obstruction for gaining practical experience by young players and to ensure that all clubs are remunerated for the effective time they trained the players, is more than reasonable and understandable.

Nevertheless, it is difficult to agree that ambiguity and opacity of the FIFA Regulations should be left as they exist nowadays. Even having a consistent jurisprudence, FIFA must amend the Regulations respectively and clarify its position worldwide regarding the loans and 'chain entitlement', at least to avoid *Panionios cases* in the future. By doing so, FIFA should also take into consideration possible collision with the national system of compensation, giving due regard to art. 1 and 10 of its Regulations.

## CONCLUSION

According to the exact wording of the FIFA Regulations each club, including the one that loaned the player, is entitled to receive training compensation; obligation of its payment arises only when the professional is transferred internationally, and is due only to the last club where the player was registered; player's new club must pay compensation only for the last period the player was registered with his former club.

Nevertheless, according to the jurisprudence of the FIFA DRC, the club that signed the professional player on a loan basis is only entitled to receive training compensation, but not to pay it to the loaning club: the loan should not be considered as a subsequent transfer, and the term 'former club' must not be interpreted *sticto sensu*.

Although CAS in most of its awards favoured the interpretation of the FIFA DRC<sup>51</sup>, in *Panionios case* the Panel followed the strict wording of the Regulations, pointing out on the possible drawbacks of FIFA DRC's interpretation. Further analyses indicate additional concerns that "established jurisprudence" entails.

Therefore, in order to avoid legal uncertainty, unpredictability and deviation from the exact wording of the FIFA Regulations, relevant amendments should be implemented, having due regard to the national systems for rewarding clubs.

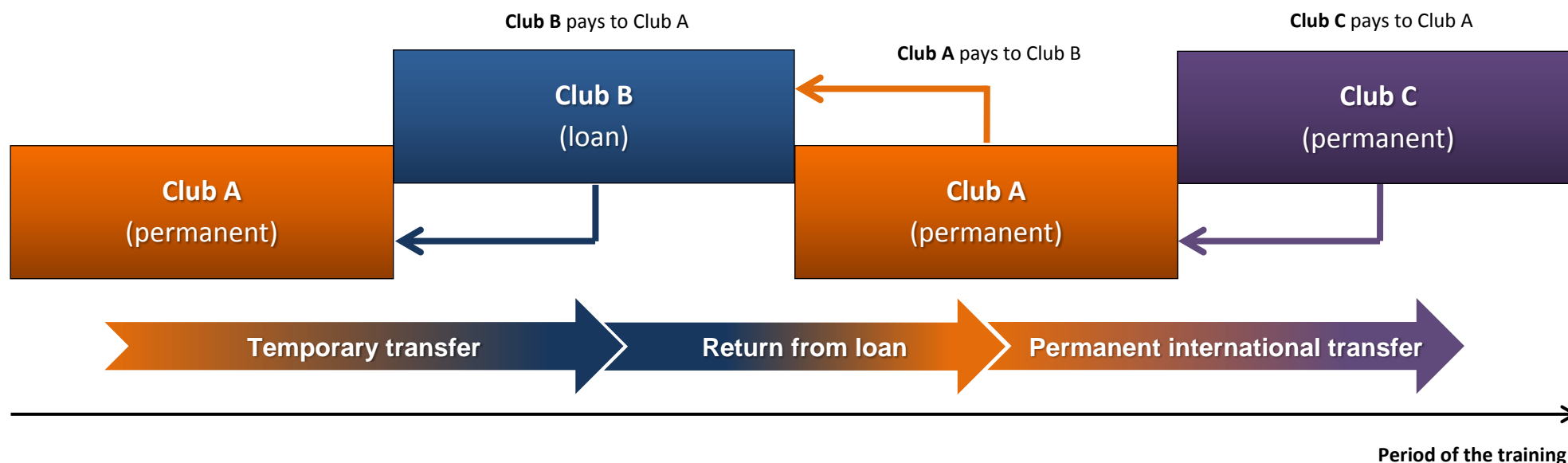
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<sup>51</sup> CAS 2008/A/1705; CAS 2011/A/2559; CAS 2013/A/3119.

## TRAINING COMPENSATION

### System according to the provisions of articles 1, 10, 20 and articles 2 and 3 of Annexe 4 of the FIFA Regulations on the Status and Transfer of Players

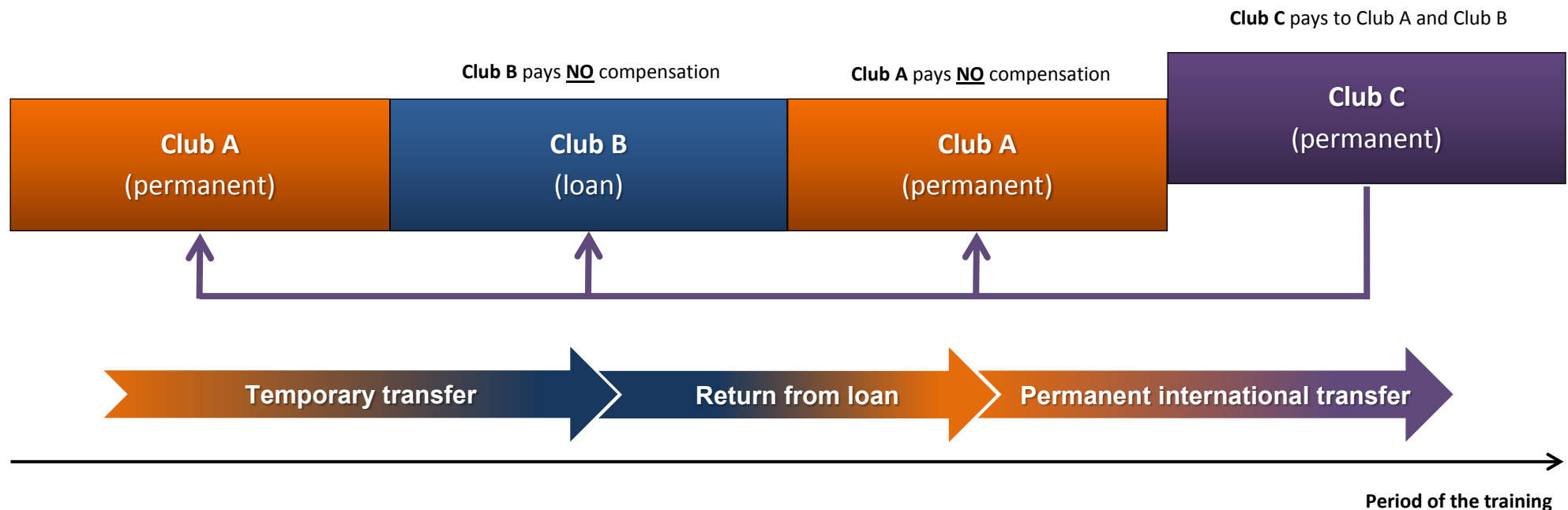
- It is irrelevant whether Club A and Club B are affiliated to the same association. National association must ensure the existence of the system for rewarding clubs that train young players. National association must also include without modification art. 10 of the FIFA Regulations.
- Loan of the professional player is also a transfer, and must trigger the same consequences in relation to the training compensation and solidarity contribution (art. 10).
- Club B pays compensation to Club A, Club A pays compensation to Club B, Club C pays compensation to Club A.
- In any case Club C should not pay training compensation to Club B: there is no subsequent transfer and Club B is not a “last” player’s club.



## TRAINING COMPENSATION

### System according to the FIFA jurisprudence

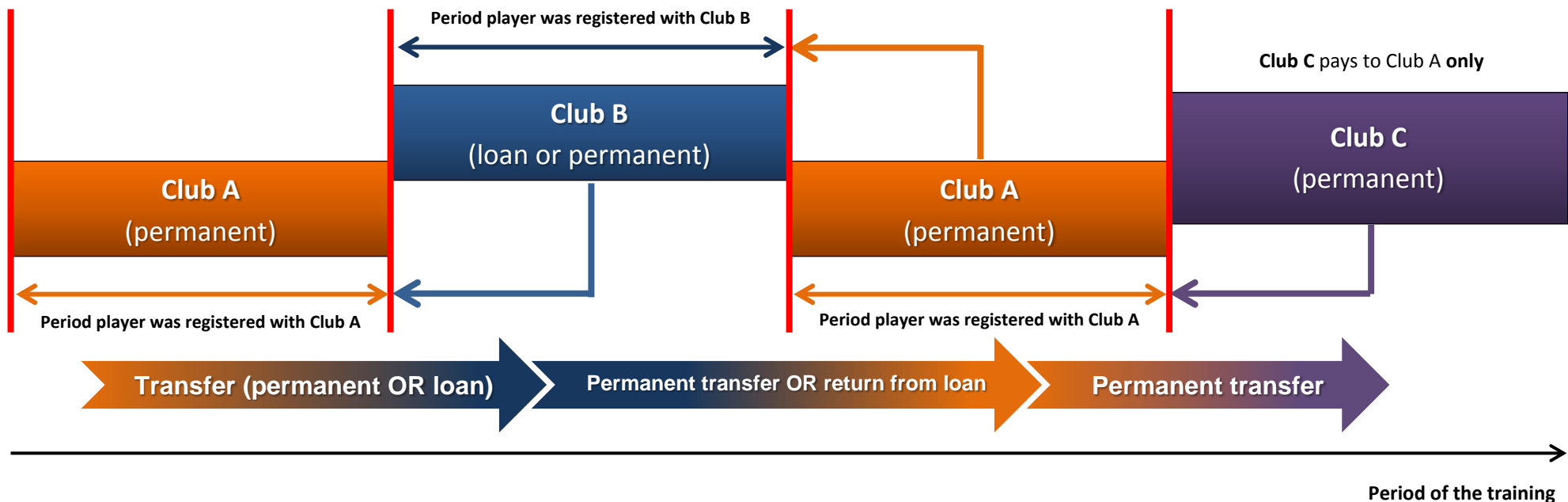
- It is **irrelevant** whether national association ensured the payment of the training compensation from Club B to Club A.
- Although loan of the professional player is also a transfer, and must trigger the same consequences in relation to the training compensation and solidarity contribution, article 10 **must not be interpreted** according to its wording.
- Club B pays **no compensation**. Club C pays compensation to Club A and Club B.
- It is **irrelevant** that no subsequent transfer occurred from Club B to Club C, and that Club B is not player's "last" club. Loan cannot be considered to be a subsequent transfer, triggering the consequences of art. 3 par. 1 of Annexe 4



## TRAINING COMPENSATION

Period for which training compensation is due according to the provisions of articles 1, 10, 20 and article 3 of Annexe 4 of the FIFA Regulations on the Status and Transfer of Players

- Loan of the professional player is **also** a transfer and must trigger the same consequences in relation to the training compensation and solidarity contribution (art. 10).
- Club B pays compensation to Club A, Club A pays compensation to Club B, Club C pays compensation to Club A.
- **Any transfer** (permanent **OR** temporary) of the professional player breaches the chain of entitlement, dividing the period on **segments**.

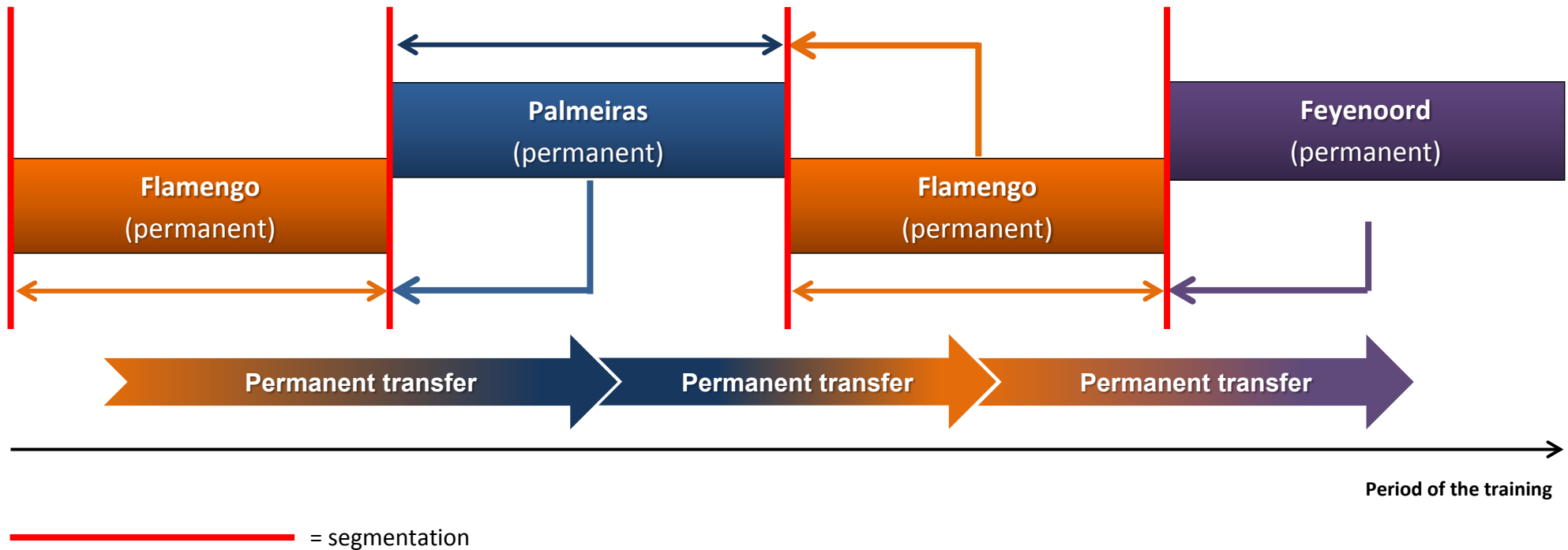


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## TRAINING COMPENSATION

CAS 2007/A/1320-1321 *Feyenoord Rotterdam v. Clube de Regatas do Flamengo*

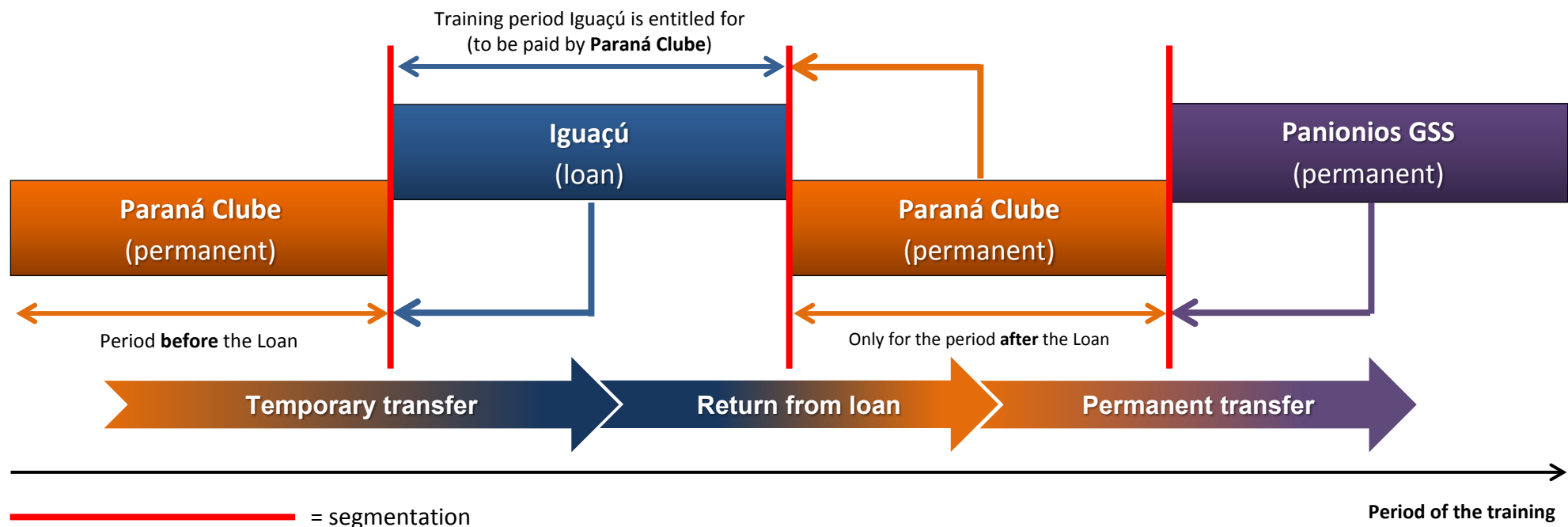
- Permanent transfer of the professional player breaches the chain of entitlement, dividing the period on segments.



## TRAINING COMPENSATION

CAS 2012/A/2908 *Panionios GSS FC v. Paraná Clube*

- **Paraná Clube** should pay **Iguaçu** because there was a subsequent transfer (return from loan) and **Iguaçu** is a “former club”.
- System or training compensation works for national and international transfers and does not depend on the national regulations. Entitlement and calculation of the training compensation between two Brazilian clubs (**Iguaçu** and **Paraná Clube**) should be decided by domestic regulations.
- **Iguaçu** receives training compensation from the “former club” following the subsequent transfer.
- **Panionios** pays only to **Paraná Clube** (former club) and only for the period after return from loan (segmentation applies). Chain of entitlement was broken.
- The principle that clubs investing in training and education of young players shall be rewarded (par. 2 art. 1 of the FIFA Regulations) is respected.
- Any loan is subject to the same rules as permanent transfer, including the provisions on training compensation (article 10 FIFA Regulations).
- Provisions under art. 10 FIFA Regulations are binding at national level and have to be included without modification in the association’s regulations.
- Other interpretation may lead to an abusive use of loan, where national association has failed to establish domestic training compensation, and may create double profit for some clubs, receiving compensation according to both domestic and international regulations.



## TRAINING COMPENSATION

### CAS 2013/A/3119 Dundee United FC v Club Atletico Velez Sarsfield

- **Velez Sarsfield** should NOT pay **Atletico Platense**, though it was a subsequent transfer (return from loan) and **Atletico Platense** is a “former club”
- Nothing about training compensation under the national regulations.
- **Velez Sarsfield** receives training compensation for the period **before** and **after** the loan (segmentation does not apply). Chain of entitlement was not broken.
- Loan is not a subject to the same rules as permanent transfer, disregarding article 10 FIFA Regulations.
- **Dundee** shall pay compensation to **Atletico Platense**. It is irrelevant that a subsequent transfer is absent and **Atletico Platense** is not a “former club”

