Arbitration CAS 2006/A/1150 NK Celik v. NK Hrvatskidragovoljac, award of 13 March 2007

Panel: Mr Hans Nater (Switzerland), Sole Arbitrator

Football
Compensation for training and education
Assignment of claims
Assumption of an obligation

1. **An agreement between a player's agent and this player's new club, according to which the club assigns to the agent all potential claims that it could have towards the player, can in no way affect the claim of the player's former club for compensation for training and education, as the dispute in the compensation for training and education scheme is not between the new club and the player, but between the new club and the former club.**

2. **Pursuant to art. 176 of the Swiss Code of Obligations, the previous obligor is only discharged if the assuming party enters into an agreement with the obligee. As the former club was not a party to the written agreement into which the new club, the player and his agent have entered and according to which the player and his agent assumed the compensation obligations on the part of the new club, the latter is not discharged of its obligations regarding compensation for training and education towards the former club.**

NK Celik ("the Appellant") is a football club and legal entity of the Republic of Bosnia and Herzegovina. It is a member of Football Federation of Bosnia and Herzegovina (FFBH), which in turn is affiliated to FIFA since 1996.

NK Hrvatskidragovoljac ("the Respondent") is a football club and legal entity of the Republic of Croatia. It is a member of Croatian Football Federation (HNS), which in turn is affiliated to FIFA since 1992.

M. ("the Player"), born in 1982, played as a non-professional football player from 20 September 1994 until 11 September 1998 with NK Ivancica Zlatar. From 11 September 1998 until 3 February 2004 he was engaged with the Respondent as a professional football player.

On 9 February 2004, the Player was transferred from the Respondent to the Appellant. The Respondent claimed a compensation for training and education of EUR 132,500 which the Appellant refused to pay.

On 3 September 2004, the Respondent lodged a claim with FIFA. On 27 April 2006, the FIFA's Dispute Resolution Chamber ("DRC") took the following decision ("the Decision"):

> *"1. The claim lodged by the Claimant, NK Hrvatski Dragovoljac, is accepted.*
>
> *2. The Respondent, NK Celik Zenica, shall pay the amount of EUR 132,500.00 to the Claimant, NK Hrvatski Dragovoljac, within 30 days following the date of the communication of the present decision.*
>
> *3. In the event that the due amount is not paid within the stated deadline, an interest rate of 5% p.a. will apply.*
>
> *4. In the event that the above-mentioned amount is not paid within the stated deadline, the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
>
> *5. The Claimant, NK Hrvatski Dragovoljac, is instructed to inform the Respondent, NK Celik Zenica, 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.*
>
> *6. According to art. 60 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)".*

On 15 August 2006, NK Celik filed a statement of appeal with the Court of Arbitration for Sport ("CAS") against the Decision of 27 April 2006.

LAW

CAS Jurisdiction / Respect of the time limit for appeal

1. CAS jurisdiction derives from article 61 para. 1 of the FIFA Statues, which reads:

   "Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".

2. In addition, neither party raised any objection to CAS jurisdiction before or during the hearing. CAS jurisdiction is further confirmed by the order of procedure, which has been duly signed by both parties. Jurisdiction is established accordingly.

3. Per the fax header on exhibit 1 to the statement of appeal, the Appellant received the DRC decision on 28 July 2006 by fax. The Appellant submitted its statement of appeal on 17 August

2006 and therewith observed the time limit set in article 60.1 of the FIFA Statutes. Consequently, the appeal was filed in due time and is admissible.

4. In addition, no party contested the appeal based on a late submission.

Applicable Law

5. Article R58 of the Code provides that the Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the Parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sport-related body which has issued the challenged decision is domiciled.

6. The relevant article 60 para. 2 of the FIFA Statutes reads:

"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

7. By subjecting themselves to the FIFA DRC, the Parties made an explicit choice of law in favour of the FIFA Regulations.

8. Therefore, the Sole Arbitrator shall decide the dispute in accordance with the various FIFA regulations and, additionally, according to Swiss law.

9. It may be noted that the Appellant does not contest the application of the FIFA Regulations.

10. This dispute deals with a transfer made in 2004; the claim was lodged with FIFA on 3 September 2004. The FIFA Regulations for the Status and Transfer of Players (edition 2005) came into force on 1 July 2005. Art. 26 of such Regulations, as amended by the FIFA Circular nr. 955 dated 22 September 2005, reads as follows:

1. Any case that has been brought to FIFA before these Regulations come into force shall be assessed according to the previous regulations.

2. As a general rule, all other cases shall be assessed according to these Regulations, with the exception of the following:

a. Disputes regarding training compensation

b. Disputes regarding the solidarity mechanism

c. Labour disputes relating to contracts signed before 1 September Players' Regulations 2001

Any cases not subject to this general rule shall be assessed according to the regulations that where [sic] *in force when the contract at the center of the dispute was signed, or when the disputed fact arose.*

3. Member Associations shall amend their regulations in accordance with Art. 1 to ensure that they comply with these Regulations and shall submit them to FIFA for approval by 30 June 2007. Notwithstanding this, each Member Association shall implement Art. 1 par. 3 (a) as from 1 July 2005.

11. Therefore, the FIFA Regulations for the Status and Transfer of Players (edition 2005) do not apply. Instead, the FIFA Regulations for the Status and Transfer of Players (edition 2001) are applicable.

12. The proceedings are subject to articles R47 et seq. of the Code, and to the provisions of Chapter 12 of the Swiss Private International Law Act.

13. Article 13 of the Regulations reads:

"A player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, compensation shall be due until the player reaches the age of 23, but the calculation of the amount of compensation shall be based on the years between 12 and the age when it is established that the player actually completed his training".

14. Article 15 of the Regulations reads:

"Compensation shall be paid each time a player changes from one club to another up to the time his training and education is complete, which, as a general rule, occurs when the player reaches 23 years of age".

15. Article 17 of the Regulations reads:

"When a player signs his first contract as a non-amateur, or when a player moves as a non-amateur at the end of his contract but before reaching the age of 23, the amount of compensation shall be limited to compensation for training and education, calculated in accordance with the parameters set out in the Application Regulations".

Training compensation for young players

16. Pursuant to article 13 et seq. of the Regulations, compensation for training and education shall be paid each time a player changes from one club to another up to the age of 23.

17. The Player changed from the Respondent to the Appellant on 3 February 2004 and was just 21 ½ years old at the time. As a consequence, the Respondent is entitled to receive compensation for training and education under articles 13 et seq. of the Regulations.

18. The decision of the DRC reads on page 7, sec. 21:

"[…] the compensation should be calculated based on the costs of the country of the new club applying the category of the club which effectively has formed and educated the player".

19. The DRC's calculation is based upon the category to be applied to the Respondent. The calculation does not mention *"the costs of the country of the new club"*, i.e. of the Appellant. In this respect, the wording of the DRC lacks some clarity. It does not, however, negate *per se* the correctness of the calculation.

20. Furthermore, the Appellant neither filed the "Application of the Regulations" nor FIFA Circular no. 826 as specified in the DRC decision. The Appellant also failed to submit the alleged correct calculation of the compensation.

21. As the Respondent basically is entitled to such compensation and there is no proof of an incorrect calculation by the DRC, the Sole Arbitrator reaches the conclusion that the compensation of EUR 132'500 is justified.

Appellant's objections

22. The Appellant took the position that the Player's agent, Marko Vukadin, and a representative of the Respondent, Stjepan Spajic, entered into a verbal agreement. According to this agreement, the agent acknowledged having paid the amount of USD 10,000 and EUR 1,000 *"for all potential claims which football club 'Hrvatski Dragovoljac' could have against towards the player M."*. Basically, the Appellant submitted that the Parties do not have any claims against each other. The Respondent contested the existence of such verbal agreement.

23. The Appellant filed a written statement by the agent to prove the existence of the alleged verbal agreement. Stjepan Spajic died in 2004 and is therefore not in a position to confirm or deny the existence of a verbal agreement on behalf of the Respondent.

24. According to the alleged verbal agreement, the agent paid a certain amount for all potential claims which the Respondent may have against the Player. This dispute, however, does not deal with a claim of the Respondent against the Player, but with a claim of the Respondent against the Appellant. Therefore, the verbal agreement would in no way affect compensation for training and education, even if it existed.

25. The Appellant further submitted that the Player, his agent, Marko Vukadin, and the Appellant itself had entered into a written agreement on 20 January 2004. They agreed that the Player and his agent had fully taken *"at charge any compensation for training and education"* of the Player and that the compensation in favour of the Respondent *"in fully have been paid by M. and his agent Marko Vukadin"*. As the Respondent was not a party to the agreement, this agreement does not prove that the compensation had been paid nor that the Respondent waived compensation for training and education.

26. The relevant article 3 of the agreement dated 20 January 2004 reads:

"The compensation and compensation claim for training and education of footballers - pursuant to the FIFA Regulations for the status and transfer of football players and to the FIFA statue on use of the said Regulations, as applied herewith to "Hrvatski dragovoljac" from Zagreb having claims against N.K. "Celik" from Zenica through the Croatian Football Federation - are agreed upon to be in full chargeover by M. and the manager Vukadin Marko" (emphasis added).

27. Accordingly, the agreement does in fact fail to confirm that compensation was paid, but rather that the Player and his agent, Marko Vukadin, assumed the compensation obligations on the

part of the Appellant. Consequently, the Appellant would not be the obligor anymore, if the assumption of the compensation obligation was validly concluded.

28. For lack of a FIFA rule regarding the assumption of obligations, Swiss law governs this issue.

29. The relevant articles 176 para. 1 and 176 para. 3 of the Swiss Code of Obligations read:

"[1] The assumption of an obligation in lieu of, and under discharge of, the previous obligor by the party assuming the obligation, is effected by contract of the assuming party with the obligee.

[2] […]

[3] The declaration of acceptance by the obligee may be made expressly, or be implied from the circumstances, and is presumed if the obligee accepts a payment from the assuming party without reservation, or consents to another act by the obligor".

30. Pursuant to article 176 of the Swiss Code of Obligation, the previous obligor is only discharged, if the assuming party enters into an agreement with the obligee.

31. The Appellant as previous obligor failed to prove that the Respondent as obligee accepted the assumption of obligation, either expressly or implicitly. The fact that the Respondent did not sign the agreement dated 20 January 2004 is uncontested. Therefore, the assumption of obligation does not discharge the Appellant of its obligations regarding compensation for training and education.

Conclusion

32. The Respondent is entitled to a compensation of EUR 132,500 to be paid by the Appellant. The appeal is dismissed.

The Court of Arbitration for Sport rules that:

1. The appeal lodged by NK Celik against the decision issued on 27 April 2006 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision issued on 27 April 2006 by the FIFA Dispute Resolution Chamber is confirmed in all aspects.

3. NK Celik is ordered to pay EUR 132,500 (one hundred thirty-two thousand and five hundred Euro) to NK Hrvatski Dragovoljac.

(…).