

**Arbitration CAS 2009/A/1893 Panionios v. Al-Ahly SC, award of 10 August 2010**

Panel: Mr Mark Hovell (United Kingdom), President; Mr Chris Georghiades (Cyprus); Mr Karim Hafez (Egypt)

Football

Training compensation

Conditions for a valid waiver of the claim to training compensation

CAS de novo review and procedural fairness before the FIFA DRC

- 1. Any club signing a new player on a “free” basis should contact the previous club and should thus not rely entirely on the representations of an agent. If the club is looking to sign a player as a free agent, it should get a written waiver signed by that previous club and such waiver should expressly refer to free of training compensation; otherwise the “waiver” relied upon cannot be considered as clear, distinct and unambiguous.**
- 2. CAS panels consider issues of both fact and law *de novo*, pursuant to Article R57 of the Code, and there is ample CAS jurisprudence to the effect that complaints of procedural fairness before the FIFA Dispute Resolution Chamber become redundant.**

Panionios Gimnastikos Syllogos Smirnis Podosferiki Anonimi Eteria (“the Appellant” or “Panionios”) is a Greek football club with its office in Nea Smirni, Greece. It is affiliated to the Hellenic Football Federation and competes in the Super League in Greece.

Al-Ahly Sporting Club (“the Respondent” or “Al-Ahly”) is an Egyptian football club with its office in Cairo, Egypt. It is affiliated to the Egyptian Football Association and competes in the Egyptian Premier League.

The player A. (“the Player”) was born in 1986 and is of Egyptian nationality.

The Player had been trained by the Respondent from 4 October 1998 to 1 August 2005 and had been registered as an amateur.

On 9 August 2005, the Player signed his first professional contract (“the Contract”) with the Appellant which was valid for 2 years and renewable for 3 years.

On 27 February 2006, the Respondent lodged a complaint against the Appellant for non-payment of training compensation for the amount of €400,000 with the Players’ Status Committee (PSC) of Fédération Internationale de Football Association (FIFA).

The Respondent's correspondence with the PSC was through the Egyptian Football Association (EFA). On 20 June 2006, the EFA sent to FIFA a copy of the letter from the Respondent to the EFA enquiring as to the progress of their claim for training compensation dated 8 June 2006. In the EFA's covering letter, it stated that the Player was an amateur and had no written contract with the Respondent.

On 25 May 2007, FIFA, through its Dispute Resolution Chamber (DRC), wrote to the Appellant, through the Hellenic Football Federation (HFF), enclosing the above mentioned correspondence.

On 25 June 2007 the Appellant responded to the DRC and declared that the Player had been a "free agent" when he had signed for the Appellant.

On 29 January 2008 the Respondent in its response to the DRC rejected a number of arguments put forward by the Appellant to support its claim that the Player was a free agent and maintained that it had a right to receive training compensation for the period during which it had trained the Player.

On 5 March 2008 the Appellant wrote again to the DRC and submitted that as the Respondent had terminated the Player's contract releasing him of his obligations, it had renounced its right to receive any training compensation. In addition, the Appellant questioned the Respondent's calculation of the training compensation claimed.

On 13 November 2008 the HFF confirmed that the Appellant was a category 2 club (indicative amount €60,000 per year). The EFA had already (on 12 April 2007) provided the PSC with confirmation of the Player's date of birth, his training years with the Respondent and his nationality.

On 19 February 2009 the DRC passed a decision awarding the Respondent with training compensation in the sum of €268,333 (the "Appealed Decision").

On 23 March 2009 the operative part of the Appealed Decision was notified to the parties.

On 10 June 2009 the grounds of the Appealed Decision were notified to the parties.

In its Statement of Appeal, filed with CAS on 29 June 2009 the Appellant challenged the Appealed Decision requesting "*a complete annulment of the ...challenged FIFA DRC Decision*", submitting the following four reasons:

"The fact that Al-Ahly did consent to A.'s registration with Panionios stating to players managers that they had no claim whatsoever as regards A. (including a claim for training compensation).

The fact that Al-Ahly terminated the contract with A., with no "legal cause", plus the training compensation provision being rendered inapplicable, pursuant to FIFA's Regulations for the status and transfer of players, annex 4, Article 2.

The fact that Al-Ahly failed to produce to Panionios any document pertinent to a request for training compensation within the 18 month deadline provided by FIFA's regulations for the status and transfer of players.

The fact that although Al-Ahly did never produce any evidence/documentation as to the calculation of their claim, FIFA DRC, nevertheless ordered the payment of €268,333 with reference to figures and information

never presented before FIFA DRC and/or Panionios, thus, FIFA DRC violated FIFA procedural rules and although Al-Ahly, having the respective burden of proof, failed to provide any evidence and/or argument as regards the amount of the claim raised, FIFA DRC nevertheless adjudicated an amount that could not be challenged by Panionios, provided that Panionios never had the chance to examine such method of calculation as well as the respective particulars”.

On 18 August 2009, the Respondent filed its Answer, with the following request for relief:

- “1. *Refusal of the Appeal after it was raised after its allowed period of time according to Article 63 paragraph 1 of the FIFA’s Statutes.*
2. *Upholding of the decision taken by FIFA.*
3. *Obligating Panionios NFC to pay all expenses regarding the case”.*

Article R57(2) of the Code provides that the Panel may – after consulting the parties – decide not to hold a hearing if it deems itself sufficiently well informed. The Panel noted the parties initially agreed to dispense with the need for a hearing, but later the Appellant requested a hearing. The Panel sought clarification from the Appellant’s principle witness, the Player’s Agent, as to who gave the purported waiver, but this request was refused. The Panel determined that having given the parties the opportunity to add to their written submissions with further submissions and testimonies it is sufficiently informed to decide the case without holding a hearing. The parties were advised of this decision by letter dated 20 May 2010 and it was also stated in the order of procedure, which was duly signed by the parties.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed between the parties, derives from articles 62 and 63 of the FIFA Statutes (August 2008 edition) as well as Article R47 of the Code.
2. Under Article R57 of the Code, the Panel has the full power to review the facts and the law. The parties confirmed this position by both signing the Order of Procedure in this matter.

Applicable law

3. Article R58 of the Code provides the following:

“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 sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

4. Moreover, article 62 paragraph 2 of the FIFA Statutes provides that the:
“Provisions of the CAS Code of Sport-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
5. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall apply primarily and Swiss Law shall apply subsidiarily.

Admissibility

6. The operative part of the Appealed Decision was notified to the parties on 23 March 2009. The grounds of the Appealed Decision were notified to the parties on 10 June 2009. The Appellant, therefore, had under article 63, paragraph 1 of the FIFA Statutes, until 1 July 2009 to file its Statement of Appeal, which it did so on 29 June 2009. Hence, the Appeal is admissible as it was filed within the stipulated deadlines.
7. The Appeal was filed within the deadline provided by the FIFA Statutes and stated in the Appealed Decision. The Appellant complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fees.

The merits

8. The Panel had to determine the following:
 - (a) *Did the Respondent notify the Appellant of its claim for training compensation within the 18 month deadline?*
 - (b) *Does the Contract give rise to a prima facie claim for training compensation for the Respondent?*
 - (c) *Does Annex 4, Article 2 of FIFA’s Regulations for the Status and Transfer of Players assist the Appellant?*
 - (d) *Should the Appellant have carried out any due diligence regarding the purported waiver before signing the Player?*
 - (e) *Had the Respondent waived its entitlement to training compensation for the Player?*
 - (f) *Did the Respondent satisfy the burden of proof with regard to the level of its claim and/or should the DRC have calculated the amount?*
 - (g) *If so, how much training compensation is due?*
9. The Appellant in its submissions claimed that the Respondent had failed to comply with Article 3.3 of the FIFA Regulations (and the Panel noted those issued by FIFA in December 2004, are applicable in this matter) as it had not made its claim known to the Appellant within 18 months of the Player signing the Contract. The Panel noted that the Respondent first contacted FIFA within 7 months of the date of the Contract and that Article 3.3 requires clubs to *“make themselves known”* but does not state to which body. The Panel felt that raising a complaint to FIFA was

sufficient to discharge that requirement and therefore answers the first question in the affirmative.

10. Article 2 of Annex 4 of the FIFA Regulations states that “*Training compensation is due: (i) when a player is registered for the first time as a professional or (ii) when a Professional is transferred between clubs of two different Associations...before the end of the Season of his 23rd birthday*”.
11. The EFA in their covering letter to the PSC dated 20 June 2006, stated that the Player was an amateur. The Contract is a professional contract, however the Panel noted the Agent’s evidence which stated that the Respondent did not wish to carry on paying the Player’s wages, which indicates he might have been a professional with the Respondent. In either event, as he signed a professional contract with the Appellant and did so before his 23rd birthday, whether he was an amateur player or professional with the Respondent does not change the fact that training compensation is due, on a *prima facie* basis.
12. The Panel notes the Appellant’s submission that the additional section of Article 2 of Annex 4 of the FIFA Regulations, namely that “*Training Compensation is not due: (i) if the Former Club terminates the player’s contract without just cause...*”.
13. The Panel notes that Article 2.2 of the FIFA Regulations states:
“*A Professional is a player who has a written contract with a club and is paid more than the expenses he effectively incurs in return for his footballing activity. All other players are considered as Amateurs*”.
14. As set out in para 11 above, it is not clear whether the Player had a professional contract with the Respondent or not, but the Panel notes it was at the end of the Respondent’s playing season and whatever arrangements there were had expired. The Panel is therefore satisfied that the Contract gives rise to a *prima facie* claim for training compensation for the Respondent.
15. In relation to the questions of due diligence, the Panel notes that the Appellant has confirmed that it relied upon the Player’s Agent’s oral assurances that the Player was “free”; that “free” in this sense meant there was no liability to pay training compensation; and that the Player and the Agents confirmed this by agreeing to a clause to that effect in the Contract and by all signing it.
16. The Panel noted the Appellant’s submissions regarding the lack of any provisions within the Regulations forbidding any club from waiving its claim to training compensation and the lack of any provision stating that any waiver would have to be in writing. However, the Panel was presented with conflicting evidence:
 - (a) For the Appellant, the Player’s Agent stated that he had received an oral waiver from an unnamed representative of the Respondent and that this waiver applied to training compensation too; however, he also stated this was to save the wages of the Player, yet he appears to be an amateur, receiving only expenses;
 - (b) Mr Mpeos’s evidence is only that the Player’s Agent tells him there’s a waiver – he has no direct contact with the Respondent; albeit the Panel notes there was not a transfer agreement between the parties; he does identify Mr Al-Qaeyi as that representative;

- (c) Mr Al-Qaeyi's statement does not actually state whether he does or does not give a waiver; but it says he was speaking to Mr Sweleim, not the Player's Agent himself; but he states he reserved in writing the Respondent's financial rights in relation to the Player and produces a letter to back this up, signed by the Player too; however, the letter is addressed to Kalamarias, another club altogether (despite how this was pleaded by the Respondent to both the DRC and to the CAS, initially; where the Panel felt the Respondent was attempting to mislead both the DRC and the CAS);
- (d) Mr Sweleim did not provide a statement.
17. The Panel noted the position taken in other similar matters such as *CAS 2006/A/1167*, *CAS 2004/A/794* and *CAS 2006/A/1027*. The Panel considered the level of due diligence carried out by the Appellant before signing the Contract. It was felt that as a minimum any club signing a new player on a "free" basis would contact the previous club, as opposed to relying entirely on the representations of an agent; that if they were looking to sign the Player as a free agent, they would get a written waiver signed by that previous club; and that such waiver should expressly refer to free of training compensation. The Panel felt the level of due diligence carried out by the Appellant was insufficient and that the "waiver" relied upon was far from being clear, distinct and unambiguous. The Panel also felt the Appellant's ability to pursue the Agent would be unaffected by this award.
18. In light of the above, the Panel is satisfied that the Respondent did not waive its right to training compensation for the Player and therefore decides that the Respondent is entitled to training compensation.
19. Whilst the Respondent submitted a claim to the DRC for €400,000, the DRC had details of the two parties and which category they were in; including the Player's date of birth and the seasons the Player was trained by the Respondent, which it had received from the EFA. The DRC had also sent all that information to the Appellant via the HFF. The Panel notes the Appellant's claim that it did not see this information and had suffered prejudice as a result, however, it appears from the FIFA file this information was passed to its Federation and the Appellant had seen it all and was able to make submissions to the CAS, so had not been prejudiced. Furthermore, the Panel notes that it considers issues of both fact and law *de novo*, pursuant to Article R57 of the Code, and there is ample CAS jurisprudence to the effect that this makes the Appellant's complaints of procedural fairness before the FIFA DRC redundant (*CAS 94/219*, *CAS 2001/A/354*, *CAS 2004/A/714*).
51. The Panel therefore decides that training compensation is due to the Respondent and (noting the fact that the appellant is a category 2 club) confirms the DRC's calculation of €268,333, as follows:

Season	Birthday during Season	Months trained	€ Euros
1998/99	13th	10	8,333
1999/00	14th	12	10,000
2000/01	15th	12	10,000

2001/02	16th	12	60,000
2002/03	17th	12	60,000
2003/04	18th	12	60,000
2004/05	19th	12	60,000
Total			268,333

52. The Panel therefore dismisses the Appeal.

The Court of Arbitration for Sport rules:

1. The appeal filed by Panionios Gimnastikos Syllogos Smirnis Podosferiki Anonimi Eteria against the decision of the FIFA Dispute Resolution Chamber dated 19 February 2009 is dismissed.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.