**Arbitration CAS 2010/A/2043 Zaglebie Lubin S.A. v. Club Cerro Porteño, award of 30 September 2010**

Panel: Mr Lars Hilliger (Denmark), President; Mrs Maria Zuchowicz (Poland); Mr Javier Parquet Villagra (Paraguay)

*Football*
*Compensation for training*
*Prohibition of issuing rules having retrospective effect*
*Choice of the applicable edition of the FIFA Regulations for the Status and Transfer of Players*
*Grounds for refusing to pay compensation for training*

1. **According to the so-called *"prohibition of issuing rules having retrospective effect"*, as developed by the case law of the Swiss Supreme Court, a rule of law can be given a retrospective effect if this retrospective effect is expressly mentioned in the Statutes which contain the rule, if the retrospective effect is limited in terms of time, if it does not lead to a serious breach of the equality principle, if it is justified by relevant grounds and if it does not infringe vested rights. The transition system set by art. 26 par. 2 of the FIFA Regulations for the Status and Transfer of Players (RSTP) 2005, as amended by the Circular No. 995, is generally applied to formal rules, for instance civil procedural rules, but not to material rules.**

2. **The applicable regulations have to be determined by an analogous application of R58 of the CAS Code. Therefore, the regulations, which the CAS panel deem to be most appropriate apply. These are the regulations, with which the facts in the case at hand have the closest connection. Therefore, even if a player received the majority of his training and education at the time where the RSTP 2001 were still in force, elements triggering the right to claim for training compensation, such as the signature of a contract and the registration of the player as a professional for the first time, that took place after the RSTP 2005 came into force, are to be considered as the key elements of the case, thus supporting for the application of the RSTP 2005.**

3. **It results form the interpretation of art. 3 par. 1 of Annex 4 of the 2005 RSTP that the player passport is to be regarded as a document able to evidence the players' career history. It is however possible and admissible to establish this career history by presenting other documents or evidence. Therefore, the presentation of the player passport is not a condition precedent to the claim for payment of a compensation for training. In the same way, delaying the process of issuing an International Transfer Certificate (ITC), even if sufficiently evidenced, is not a ground to refuse to pay compensation for training, although it could lead to a set-off of the claim for compensation of the damage resulting from the late issuing of the ITC.**

The Appellant, Zaglebie Lubin SA, ("the Appellant") is a football club with its registered office in the city of Lubin in Poland and is a member of the Polish Football Association which in turn is a member of the Fédération Internationale de Football Association (FIFA). The latter is an association established in accordance with Art. 60 ff of the Swiss Civil Code and has its seat in Zurich (Switzerland).

Club Cerro Porteño, ("the Respondent") is a football club with its registered office in the city of Asunción. The Respondent is a member of the Paraguayan Football Association, which in turn is a member of FIFA.

The player F. ("the Player") was born in 1986. According to the Paraguayan Football Association, he has been registered with the Respondent from 1 March 2002 until 10 August 2006, as an amateur player.

By letter to the Paraguayan Football Association dated 27 February 2006, the Respondent requested its national association to withhold the Player's International Transfer Certificate (ITC) until payment by the Appellant of the sum of EUR 120'000 as training compensation.

According to a letter sent from the Polish Football Association to FIFA on 22 June 2009, the Player has been registered as a professional player with the Appellant on 1 July 2006.

The Paraguayan Football Association has been set a deadline by FIFA on 17 August 2006 to issue the Player's ITC, which has been delivered within the above mentioned deadline.

According to the Paraguayan Football Association, the sporting season starts in Paraguay on 1 January and ends on 31 December.

In a letter to FIFA dated 16 December 2008, the Polish Football Association has declared that, for the season 2006, the Appellant was classified as a category III club, in application of the FIFA Regulations concerning the calculation of training compensation. The Appellant did not object to this classification.

According to a breakdown drafted by the General Accountant of the Appellant, the costs borne by the club, in 2007, in relation with the training and education of young players amount to PLN 57'768 for one player, which corresponds to EUR 14'273.70.

On 28 August 2006, the Respondent lodged a claim with FIFA against the Appellant for training compensation in the amount of EUR 120'000.

On 6 August 2009, the FIFA Dispute Resolution Chamber ("the DRC") issued the following decision ("the Decision") on the claim presented by the Respondent:

> *"1. The claim of the Claimant, Cerro Porteño, is accepted.*
>
> *2. The Respondent, Zaglebie Lubin, has to pay to the Claimant, Cerro Porteño, the amount of EUR 120.000,- 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, upon request, to FIFA's Disciplinary Committee so that the necessary disciplinary sanctions may be imposed.*

4. *The Claimant, Cerro Porteño, is directed to inform the Respondent, Zaglebie Lubin, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".*

By fax dated 21 August 2009, the DRC served the Decision to the parties and to their respective national associations.

By fax dated 25 August 2009, the Appellant requested for the grounds of the Decision.

On 22 December 2009, the DRC issued the grounds of the decision passed on 6 August 2009, stating as follows in relevant parts:

*"(…)*

*3. Furthermore, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred, on the one hand, to art. 26 par. I and II of the Regulations on the Status and Transfer of Players (edition 2008) and, on the other hand, to the fact that the present claim was lodged on 28 August 2006 and that the Player was registered with the Respondent on 1st July 2006. In view of the aforementioned, the Dispute Resolution Chamber concluded that the 2005 edition of the Regulations for the Status and Transfer of Players (hereinafter: the Regulations) is applicable to the matter at hand as to the substance.*

*(…)*

*5. Furthermore, the Chamber stated that, as established in art. 1 par. 1 of Annex 4 in combination with art. 2 of Annex 4 of the Regulations, training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when the Player concerned is registered for the first time as a professional, or when a professional is transferred between two clubs of two different Associations, before the end of the season of the Player's 23rd birthday.*

*6. In this respect, the Dispute Resolution Chamber recalled that the Player, born [in] 1986 was registered with the Claimant as from 1st March 2002 until 10 August 2006 as an amateur Player and that the Claimant claimed the payment of an amount of EUR 120.000,-.*

*7. Equally, the members of the Chamber noted that the Respondent contested the Claimant's entitlement to receive training compensation.*

*8. (...) Moreover, the Chamber acknowledged that that the Respondent held that no training compensation was due to the Claimant, since the relevant player passport had not been delivered.*

*(…)*

*10. (…) thus, the Paraguayan Football Association informed FIFA that the Player had been registered from 1st March 2002 until 10 August 2006. In this respect, the Chamber considered that the aforementioned attestation validly replaced the need of a Player passport, since it contained the pertinent information, i.e. the exact registration period of the Player, in an accurate and precise way.*

*(…)*

*12. (…) the Chamber concluded that the effective period of time to be considered in the matter at stake corresponds to the period between 1st March 2002 until at least 30 June 2006, i.e. for a period of 4 sporting seasons and 4 months.*

*(…)*

*13. Turning its attention to the calculation of training compensation, the Chamber referred to art 5 par. 1 and 2 of Annex 4 of the Regulations, which stipulates that, as a general rule, it is necessary to take the costs that would have been incurred by the new club as if it had trained the player itself and thus it is calculated based in the training costs of the new club multiplied by the number of years of training with the former club.*

*14. In continuation, the Chamber took due note that, according to the information provided by the Polish Football Association, the Respondent was a category III club at the time the Player was registered for it on 1st July 2006. Moreover, the Chamber took into account that the indicative training costs for a category 3 club and member of a national association affiliated in the Union des Associations Européennes de Football (UEFA) amounts to EUR 30.000,- per season.*

*15. In this context, the Dispute Resolution Chamber observed that the Respondent contested the amount claimed and considered it as disproportionate.*

*16. Therefore, the Chamber referred to art. 5 par. 4 of Annex of the Regulations, according to which "The Dispute Resolution Chamber may review disputes concerning the amount of Training Compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review".*

*17. Equally, the Chamber referred to the contents of art. 12 par. 3 of the Procedural Rules, which stipulates that any party deriving a right from an alleged fact shall carry the burden of proof and pointed out that the Respondent had not provided FIFA with any substantial documentary evidence establishing that the amount claimed was clearly disproportionate and, consequently, that the Chamber should deviate from the indicative amounts.*

*18. Consequently and taking into account all the above mentioned elements, the Dispute Resolution Chamber decided that the Claimant was entitled to receive training compensation from the Respondent in an amount of EUR 120.000,-".*

By letter dated 11 January 2010, sent by fax to the CAS Court office on 12 January 2010, the Appellant filed its Statement of Appeal against the Decision rendered by the FIFA Dispute Resolution Chamber.

By letter dated 22 January 2010, the Appellant filed its Appeal Brief, together with two exhibits.

On 25 January 2010, the Respondent sent a short letter to the CAS Court Office requesting CAS to confirm the FIFA decision, *"on the grounds that Decision complies in full with the regulatory provisions applicable to the case"*. Besides that, no formal Answer has been filed by the Respondent.

On 29 June 2010, a hearing was held in Lausanne at the premises of the CAS. At the conclusion of the hearing, the parties, after making submissions in support of their respective request for relief, confirmed that they had no objections regarding their right to be heard and confirmed to have been treated equally and fair in the arbitration proceedings.

## LAW

### CAS Jurisdiction

1. The present procedure has been initiated by CAS on 15 January 2010, following a Statement of Appeal filed on 12 January 2010. Consequently, the provisions of the Code of Sports-Related Arbitration, 2010 edition (the "Code"), are applicable, according to art. R67 of the Code.

2. Art. R47 of the Code provides that the Code applies whenever the parties have agreed to refer a Sports-Related dispute to the CAS. Such a dispute may arise out of a contract containing an arbitration clause, or be the subject of a later arbitration agreement. *In casu*, the jurisdiction of CAS is based on art. 63 par. 1 of the FIFA Statutes and is confirmed by the signature of the Order of Procedure dated 3 June 2010, whereby the parties have expressly declared the CAS to have jurisdiction to resolve the dispute. Moreover, in their correspondence with the CAS, the parties have at no time challenged the CAS General Jurisdiction.

3. It follows that the CAS has jurisdiction to decide on the present dispute.

4. The mission of the Panel follows from art. R57 of the Code, according to which the Panel has full power to review the facts and the law of the case. Furthermore, art. R57 of the Code provides that the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

### Admissibility of the Appeal

5. The Statement of Appeal filed by the Appellant was lodged within the deadline provided by art. 63 of the FIFA Statutes, namely 21 days from notification of the Decision. It further complies with the requirements of art. R48 of the Code.

6. It follows that the appeal is admissible.

### The Applicable Law

7. Art. 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 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.

8. Art. 62 para. 2 of the FIFA Statutes 2008, which are in force as from 1st August 2008, provides for the application of the various Regulations of FIFA and, additionally, Swiss law, as well as art. 60 para. 2 of the FIFA Statutes in force before 1st August 2008. In the present matter, the

parties have not chosen the application of any particular law. Therefore, the Rules and Regulations of FIFA apply primarily and the Swiss law applies complementarily.

9. In the present case, the DRC has analysed in the challenged decision which edition of the Regulations on the Status and Transfer of Players should be applicable to the present matter. Referring to art. 26 par. 1 and 2 of the 2008 edition of the above mentioned Regulations, which provides that any case that has been brought to FIFA before the 2008 Regulations come into force shall be assessed according to the previous Regulations, the DRC concluded that the 2005 edition of the Regulations for the Status and Transfer of Players are applicable, as the claim of the Respondent has been lodged on 29 August 2006. In their submissions, the parties did not challenge this conclusion. The parties furthermore referred to the 2005 edition of the Regulations for the Status and Transfer of Players (the "RSTP 2005").

10. It is obvious that the 2008 edition of the Regulations for the Status and Transfer of Players are not applicable to the present case, according to art. 26 par. 1 of the said Regulations. It is however not so obvious that the RSTP 2005 are applicable. In that respect, it is to be stressed that art. 26 RSTP 2005 makes the question of whether the 2001 or the 2005 Regulations apply dependent on when the case was brought before FIFA. If the case was brought before FIFA prior to the entry into force of the RSTP 2005, on 1 July 2005, then the 2001 Regulations apply. For all other cases, art. 26 par. 2 RSTP 2005 provides that the 2005 Regulations prevail. If one were to apply art. 26 par. 2 RSTP 2005 to the present case, the 2005 Regulations would apply.

11. However, by a circular letter No. 995 dated 23 September 2005, FIFA amended the transitional rules provided by art. 26 RSTP 2005. The modified wording of art. 26 par. 2 RSTP 2005 reads as follows:

*"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 2001*

*Any cases not subject to this general rule shall be assessed according to the Regulations that where in force when the contract at the centre of the dispute was signed, or when the disputed facts arose".*

12. The interpretation of art. 26 par. 2, as modified by the circular letter No. 995, can raise problems. In particular, the application of art. 26 par. 2 of the RSTP 2005, as amended by the circular letter No. 995, might violate the so-called *"prohibition of issuing rules having retrospective effect"*. According to this prohibition, as developed by the case law of the Swiss Supreme Court, a rule of law can be given a retrospective effect if this retrospective effect is expressly mentioned in the Statutes which contain the rule, if the retrospective effect is limited in terms of time, if it does not lead to a serious breach of the equality principle, if it is justified by relevant grounds and if it does not infringe vested rights (see decision of the Swiss Supreme Court published in DTF 119 Ia 254, especially p. 258). According to an award rendered by CAS, the transition system set by art. 26 par. 2 RSTP 2005, as amended by the Circular No. 995, is generally applied to formal rules, for instance civil procedural rules, but not to material rules (see CAS

2006/A/1181, par. 7.2.4 and following). In the abovementioned case, it has been considered that it was appropriate to choose for an analogous application of art. R58 of the Code (see CAS 2006/A/1181, par. 7.2.7).

13. In the present case, the Panel notes that the provisions of the 2001 Regulations and the provisions of the 2005 Regulations are similar as regards the training compensation. In the 2001 Regulations, art. 5 of the Regulations Governing the Application of the 2001 Regulations for the Status and Transfer of Players provides that, for the purposes of calculating compensation, the training period starts at the beginning of the season of the Player's 12th birthday, or at a later age, as the case may be, and finishes at the end of the season of his 21st birthday. This provision furthermore provides that compensation for training is due when the Player acquires not amateur Status. Art. 6 of the Regulations Governing the Application of the 2001 Regulations for the Status and Transfer of Players provides, in order to calculate the compensation due for training and education costs, the clubs will be categorized in accordance with their financial investments in training players and that four categories shall be established. According to the circular letter of FIFA No. 826, dated 21 October 2002, the costs of training and education of a young player, for a category III club in Europe, amounts to EUR 30'000. Art. 3 par. 1, 4 and 5 of Annex 4 of the RSTP 2005 set exactly the same rules.

14. In the view of the above mentioned, the Panel considers that there is no material difference between the 2001 and 2005 Regulations, as regards training compensation, so that the question of whether the RSTP 2001 or the RSTP 2005 shall be applicable is theoretical.

15. Furthermore, applying art. R58 of the Code by analogy, the Panel considers that the RSTP 2005 have to be deemed as appropriate and applied to the present case. Even if the Player received the majority of its training and education by the Respondent at the time where the RSTP 2001 were still in force, before 1 July 2005, it is to be considered that the signature of a contract with the Appellant, in July 2006, and the registration of the Player as a professional for the first time, in July 2006, are the elements triggering the right of the Respondent to claim for training compensation. These two elements are to be considered as carrying a strong importance to decide the present matter. These two strong elements obviously took place after the RSTP 2005 came into force. It results from the above mentioned that the RSTP 2005 have in the present case the closest connections with the key elements of the case. Moreover, the amount of the training costs attributed to a category III club has not been modified under the period during which the Player has been trained and educated by the Respondent, so that this period can be regarded as being less important in respect of the applicable Regulations, as the one related to the time of the conclusion of the contract and of the acquisition of the status of professional player. Therefore, the better reasons support for the application of the RSTP 2005 in the present case.

**As to the Merits**

16. The main issues to be resolved by the Panel are:

    a) Is there any ground to deny the payment of Training Compensation to the Respondent?

    b) Shall the amount of Training Compensation to be paid to the Respondent be adjusted or mitigated?

*A. Is there any ground to deny the payment of Training Compensation to the Respondent?*

17. The Appellant submits that the player passport of the Player has never been presented, so that the claim for Training Compensation of the Respondent is not sufficiently evidenced.

18. According to art. 3 par. 1 of Annex 4 of the RSTP 2005, *"when a player is registering as a Professional for the first time, the club for which the player is being registered is responsible for paying Training Compensation within 30 days of registration to every club for which the player was registered (in accordance with the players' career history as provided for in the Player passport) and that has contributed to his training starting from the Season in which he had his 12th birthday"*.

19. In the Panel's view, this provision does not set the presentation of the player passport as a condition precedent to the claim for payment of Training Compensation. It results form the interpretation of the abovementioned art. 3 par. 1 of Annex 4 of the 2005 RSTP that the player passport is to be regarded as a document able to evidence the players' career history. It is however possible and admissible to establish this career history by presenting other documents or evidence.

20. In the present case, the Panel is of the opinion that the document provided by the Paraguayan Football Association is accurate and sufficient. It is in consequence to be deemed that the Player has been registered with the Respondent between 1 March 2002 and 10 August 2006. Moreover, the Appellant has submitted no evidence to the contrary and has not been able to put into question the information provided by the Paraguayan Football Association in that respect.

21. The Appellant also submits that the Respondent has delayed the process of issuing the ITC. Such behaviour, even if sufficiently evidenced, which is not the case, is not a ground to refuse the claim of the Respondent for payment of Training Compensation. First, it is up to National Associations to issue the ITC, so that one can doubt whether a club could carry any responsibility as regards a late issuing. Second, even if a club was found responsible for delaying the process of issuing the ITC, the debtor of the Training Compensation could not object to the claim for payment of Training Compensation on this ground. The debtor club could hardly envisage another remedy than a set-off of a claim for compensation of the damage resulting from the late issuing of the ITC.

22. In the present case, the Appellant did not submit and did not file any evidence that a damage would have been caused by the delay in the process of issuing the ITC.

23. For the above mentioned reasons, the Panel considers that the claim of the Respondent for payment of Training Compensation, according to art. 3 of Annex 4 of the RSTP 2005 is to be admitted.

*B. Is the Training Compensation to be paid to the Respondent to be adjusted or mitigated?*

24. The Appellant submits that its effective costs of training and education of young players are lower than the indicated training costs for a category III club member of a National Association affiliated to the *Union des Associations Européennes de Football*, which have been set by FIFA at EUR 30'000 per season. The Appellant has filed evidence on which it relies to submit that its costs for the training and education of one young player amounted, in 2007, to EUR 14'263,70 per year.

25. The Panel does not consider that the evidence produced by the Appellant is pertinent. First, the documents produced have been drafted by the Appellant club itself, for the present procedure. The Panel can in consequence raise doubts as to the content of these documents. Second, as rightly pointed out by the Respondent, there might be other costs to be taken into account, as regards the training and education costs of young players, than the one mentioned in the documents produced by the Appellant. The calculation made by the Appellant cannot in consequence be admitted as a without any doubt fair and correct estimation of the training and education costs of young players trained by the Appellant.

26. Art. 5 par. 4 of Annex 4 of the RSTP 2005 provides that the DRC may review disputes concerning the amount of Training Compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review. In the view of the above mentioned considerations, the Panel is of the opinion that an amount of EUR 120'000 to be paid to the Respondent, as Training Compensation for the Player F., is not clearly disproportionate. In consequence, there was no ground for the DRC to adjust or mitigate this amount and the Decision issued on 6 August 2009, on the claim of the Respondent, is to be confirmed.

**The Court of Arbitration for Sport rules:**

1. The appeal filed on 12 January 2010 by Zaglebie Lubin SA against the decision issued on 6 August 2009 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision issued on 6 August 2009 by the FIFA Dispute Resolution Chamber is confirmed.

(…).