Arbitration CAS 2012/A/2904 FK Baník Most v. Asociación Atlética Argentinos Juniors, award of 11 March 2013

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football
Training compensation
Status of the player according to the FIFA Regulations
Training compensation as a solidarity mechanism
Lack of distinction between "signing" and "registration"
Calculation of compensation based on "years", not on "seasons" of training
Starting date of interest

1. **The concept of a "non-amateur" player does not exist under the FIFA Regulations on the Status and Transfer of Players (RSTP). As long as the player has a written contract with a club and receives more than his expenses, albeit a modest amount over a very short period of time, the contract is a professional contract.**

2. **The payment of training compensation is a "solidarity mechanism". The clubs that enjoy the benefit of a trained player, as opposed to having trained the player themselves are intended to pay the compensation to the training club. This is the "solidarity" principle.**

3. **There is no distinction between "signing" and "registration". Players need to be registered with clubs for the clubs to utilize the services of the players. Not all have written contracts, as some are amateur. Some players start with a club and are registered as amateurs, but later are awarded a professional contract, which they "sign"; others arrive at a new club and both "sign" a professional contract and the same is "registered"; and so on. Professional players both sign a written contract in accordance with Article 2 RSTP and the clubs register that in accordance with Article 5 RSTP, so they can use his services in organised football. As such, there is no distinction and both are needed to trigger the payment of training compensation, pursuant to Article 20 and Annex 4 RSTP.**

4. **The express wording of Article 5.2 of Annex 4 RSTP is to "the number of years" of training and not to the number of seasons. Players tend to provide their services, whether playing or training, for the vast majority of a year. At the end of a season, the players, if they are not involved in international duties, will often catch up on their annual holidays, as any employee is entitled to, but are soon back into pre-season training. Further, playing contracts tend not to be for the duration of a season, rather on a yearly, and often multi-yearly basis. Therefore training compensation is not to be reduced because a season is only for a certain number of months a year.**

5. The effect of the appeal procedure through the CAS stays the enforcement of the decision appealed against but not its effects and as such the rate and the start date of interest awarded by the first-instance decision should apply.

I. THE PARTIES

1. FK Baník Most, a.s. ("the Appellant") is a football club with its registered office in Most, Czech Republic. It is a member of the Football Association of the Czech Republic ("the Czech FA") and plays in the Czech 2. Liga.

2. Asociación Atlética Argentinos Juniors ("the Respondent") is a football club with its registered office in Buenos Aires, Argentina. It is a member of the Football Association of Argentina (the "Argentinian FA") and plays in the Primera Division.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced in the present proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in this award only to the submissions and evidence he considers necessary to explain his reasoning.

4. The Argentinian player, E. ("the Player"), was registered with the Respondent from 28 February 2002 until 1 August 2006 as an amateur player. The Player's date of birth is […] 1985.

5. On 28 April 2006, the Player entered into an employment contract with a Czech club, FK Litvinov, for the period 1 May 2006 to 30 June 2008 (the "Litvinov Contract"). The Litvinov Contract stated that the Player was a professional player and provided a salary of EUR 1,000 per month commencing on 1 July 2007. The Contract was not registered with the Czech FA.

6. On 12 July 2006, the Player signed a professional player's contract with the Appellant (the "Contract"). The Contract was registered with the Czech FA on 4 August 2006 who duly registered the Player as a professional, having received the international transfer certificate from the Argentinian FA on 2 August 2006.

7. On 13 June 2007, the Respondent contacted the Appellant requesting training compensation for the Player.

8. On 2 July 2007, the Respondent lodged a claim before FIFA requesting the payment of training compensation from the Appellant in the amount of EUR 140,000.

9. FIFA wrote to the Czech FA on 5 July 2007, 30 January 2008 and 21 February 2008, requesting it to procure a response to the Respondent's claim from the Appellant, or for the Appellant to pay the sums claimed by the Respondent. The Czech FA, in turn, passed these requests onto the Appellant.

10. On 3 March 2008, the Appellant replied to the Czech FA stating *"we would like to ask the club* [the Respondent] *for providing us information about the stint of the player in the club in the time period under compensation request"*. Further that *"we will argue the fulfillment highness of training compensations…"*. This was forwarded to FIFA by the Czech FA on 4 March 2012.

11. On 5 March 2008, FIFA passed the Appellant's request to the Argentinian FA and also questioned the Czech FA about the Player's registration history and the category of the Appellant for training compensation purposes.

12. On 14 March 2008, the Czech FA confirmed to FIFA that the Player had only ever been registered with the Appellant in the Czech Republic and that the Appellant was registered during the 2006/7 season in the 3rd category.

13. On 15 March 2008, the Appellant replied to the Czech FA and notified them of the existence of the Litvinov Contract. This response was forwarded to FIFA by the Czech FA. FIFA forwarded it to the Respondent via the Argentinian FA, on 8 April 2008.

14. On 8 April 2008, the Czech FA provided FIFA with the Player's passport, which showed he was first registered in the Czech Republic by the Appellant.

15. FIFA wrote to the Argentinian FA again on 9 June 2008 chasing for the Respondent's response. On 26 June 2008, the Respondent replied in detail to FIFA via the Argentinian FA.

16. FIFA passed this response onto the Appellant via the Czech FA on 5 September 2008. On 16 September 2008, FIFA wrote again requesting that the Czech FA procured a response to the Respondent's reply from the Appellant. The Czech FA, in turn, passed these requests onto the Appellant.

17. On 30 September 2008, the Czech FA forwarded a copy of the Appellant's response, of the same date, requesting better copies of the Respondent's correspondence.

18. On 25 February 2009, FIFA replied and stated these were the best copies it had and gave the Appellant an opportunity to make any final submissions before passing the file to the FIFA Dispute Resolution Chamber (the "FIFA DRC") to consider.

19. On 10 March 2009, the Appellant responded to FIFA again making reference to the Litvinov Contract and stating that the Player *"did not sign his first professional player's contract with our club"*.

The Appellant repeated its position that the faxes it had received of the Respondent's correspondence were not clear enough.

20. On 25 August 2009, FIFA sent a copy of its file by courier to ensure the Appellant had clear copies of all of the Respondent's correspondence.

21. On 25 August 2009 and again on 23 December 2009, FIFA requested the Czech FA to express its position on the Litvinov Contract. On 11 September 2009, the Czech FA confirmed its previous position, that the first registration of the Player in the Czech Republic was by the Appellant and sent FIFA an up to date passport for the Player confirming this.

22. On 18 March 2010, FIFA forwarded on to the Appellant the final comments it had received from the Respondent and concluded the investigation phase of this matter.

23. On 24 November 2011 the FIFA DRC considered the matter and ruled as follows (the "Appealed Decision"):

"1. The claim of the Claimant, Asociación Atlética Argentinos Juniors, is accepted.

2. The Respondent, FK Banik Most, has to pay to the Claimant, Asociación Atlética Argentinos Juniors the amount of EUR140,000 within 30 days as from the date of notification of this decision.

3. If the aforementioned amount 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 for consideration and a formal decision.

4. The Claimant, Asociación Atlética Argentinos Juniors, is directed to inform the Respondent, FK Banik Most, 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".

24. On 1 December 2011 the Appealed Decision was notified to the Appellant. On 9 December 2011, the Appellant requested the grounds of the decision which it duly received on 2 August 2012.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 22 August 2012, the Appellant lodged its Statement of Appeal with the Court of Arbitration for Sport ("the CAS") submitting the following requests for relief:

"The Appellant is hereby requesting by Statement of Appeal and following by Appeal Brief the relief of CAS, specifically asking CAS to condemn as void the FIFA DRC decision. Costs of arbitration proceedings should be borne by the Respondent in full amount".

26. On 3 September 2012, the Appellant lodged its Appeal Brief with the CAS confirming the above mentioned requests for relief.

27. On 26 September 2012, the Respondent filed its Answer with the CAS with the following requests for relief:

"(1) That the Appeal be deemed duly and timely answered.

(2) That the Appeal be rejected, thereby ratifying in its entirety the resolution passed on November 24th, 2011 sentencing FK Banik Most A.S. to pay Asociación Atlética Argentinos Juniors the amount of €140,000 (one hundred and forty thousand Euros), plus interest to be applied at an annual rate of 5% (five per cent) within 30 days of such date and until full payment.

(3) That the costs of this process be awarded exclusively and entirely FK Banik Most A.S".

28. On 1 October 2012, the CAS Court Office invited the parties to inform the CAS by 8 October 2012 whether they preferred a hearing to be held or for the Sole Arbitrator to issue an award based on the parties' written submissions.

29. On 4 October 2012, the Respondent informed the CAS Court Office of their preference for the matter to be dealt with by way of written submissions.

30. On 8 October 2012, the Appellant informed the CAS Court Office that it preferred for the matter to be dealt with by way of a hearing.

31. On 13 November 2012, the CAS Court Office requested FIFA to make its FIFA DRC file available to the CAS and to the parties. On 20 November 2012, FIFA duly obliged and sent a copy of its file to the CAS Court Office, which in turn sent further copies to the parties.

32. On 14 November 2012, the CAS Court Office informed the parties of the Sole Arbitrator's decision that a hearing would be convened for this matter, but that the Respondent could attend the same via a video conference.

33. On 28 November 2012, the CAS Court Office sent the Order of Procedure to the parties, who both returned the same duly signed by way of agreement.

34. As a number of the exhibits attached to the Appellant's Appeal Brief were not translated into English, the language of this arbitral procedure, the CAS Court Office, by its final letter of 5 December 2012, allowed the Appellant until 21 December 2012 to file translated copies. The Appellant partially did this by a letter dated 20 December 2012. Any exhibits that remained in a language other than English were not considered by the Sole Arbitrator.

35. The CAS Court Office wrote to the parties, and in particular, the Respondent on 22 November, 13 and 19 December 2012 inviting them to name their representatives and witnesses for the hearing. The CAS Court Office extended the invitation on each date to the

Respondent for its representatives and witnesses to attend the hearing via video conferencing. The Respondent failed to respond to any of this correspondence.

IV. THE APPOINTMENT OF THE SOLE ARBITRATOR AND THE HEARING

36. By letter dated 23 October 2012, the CAS informed the parties that Mark A. Hovell, solicitor in Manchester, England, had been appointed the Sole Arbitrator to hear the matter. The parties did not raise any objection to the appointment of the Sole Arbitrator.

37. A hearing was held on 23 January 2013 at the CAS premises in Lausanne, Switzerland. Mr. William Sternheimer, Managing Counsel & Head of Arbitration, was in attendance.

38. The Appellant attended the hearing represented by its President, Mr. Jan Rath, its Executive Director, Mr. Stanislav Salač, and by its advisor, Mr. Petr Fousek. Despite being made aware of the time and place of the hearing by the CAS Court Office, being offered the opportunity to attend by video conference, and signing the Order of Procedure in this matter confirming the time and place of the hearing, the Respondent did not attend.

39. Pursuant to Article R57 of the Code of Sports-related Arbitration Rules (the "CAS Code") if either of the parties is duly summonsed yet fails to appear, the Sole Arbitrator may nevertheless proceed with the hearing. In this instance the Sole Arbitrator determined to proceed.

40. The Player attended the hearing as a witness for the Appellant and was examined by the Sole Arbitrator. The Player, having sworn to tell the truth, explained that he played for the Respondent as an amateur, with no written contract, for around 4 ½ years, finishing at the end of the Argentinian playing season in May 2006. He had met an agent in February 2006 who had promised him a move to play in Italy. When he met him again in March 2006, the opportunity was not in Italy or Spain, but with a 4th Division team in the Czech Republic. The Player had not heard of the country, so looked it up on the internet and discovered more about it, including the fact that only the top 2 Divisions were professional. The agent explained to the Player that he could get scouted from there to the professional leagues and convinced him to sign the Litvinov Contract in April 2006.

41. In mid-June 2006 he flew to the Czech Republic for pre-season training. This started on his second day at that club. At this time the players were just training and practicing amongst themselves, there were no friendly matches played. The players at Litvinov were not professionals, they were all amateurs, however the Player acknowledged his contract with Litvinov was for more than just expenses. He received a total of EUR 300 from Litvinov whilst with them. After around 3 weeks, he was approached by a man from the Appellant who said they were interested in him. The Player admitted he was surprised that he received an approach so soon, but he was happy to join a 1st Division club. He said the President of Litvinov was already aware of the approach and was prepared to let him go to the Appellant. The Player did not know if any fee changed hands. He signed the Contract and terminated the Litvinov Contract on 1 July 2006.

42. The Appellant sought to produce a copy of an invoice it claimed it had received from Litvinov to the CAS file at the hearing, but the Sole Arbitrator refused to accept this late filing of evidence. In accordance with Article R56 of the Code, the Sole Arbitrator noted there were no exceptional circumstances and the Respondent was not present to consent.

43. The Appellant was given the opportunity to present its case, submit its arguments and its representatives were able to answer the questions posed by the Sole Arbitrator. A summary of the submissions is detailed below, including the written submissions of both parties. After the Appellant's final, closing submissions, the hearing was closed and the Sole Arbitrator reserved his detailed decision to this written award. Upon closing the hearing, the Appellant expressly stated that it had no objections in relation to its right to be heard and to have been treated equally in these arbitration proceedings. The Sole Arbitrator heard carefully and took into account in his subsequent deliberation all the evidence (including that from FIFA's file) and the arguments presented by the parties both in their written submissions and at the hearing, even if they have not been summarised in the present award.

V. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

44. In summary, the Appellant submitted the following in support of its requests for relief:

45. The Appellant was not the first club that the Player joined after leaving the Respondent. The Player's first contract after leaving the Respondent was signed with another Czech Club, FK Litvinov. The Litvinov Contract was not registered as the Czech FA's transfer window was closed. The Player agreed to join Litvinov in April 2006, and signed the Litvinov Contract dated 1 May 2006. The window opened again on 1 July 2006, the playing season started 1 August 2006 and the window closed again on 30 August 2006.

46. The Appellant stated that its scouts spotted the Player with FK Litvinov (although at the hearing the Appellant's representatives were unable to recall who the actual scout was). It is a 4th Division team based 15 km from the Appellant. The Player preferred to play for the Appellant, as it was a 1st Division club. There were negotiations between the two Czech clubs and at the hearing the Appellant submitted that it paid the sum of 450 Czech Crowns (approximately EUR 18,000) to FK Litvinov for the Player.

47. The Player and Litvinov mutually terminated the Litvinov Contract to allow the Player to sign the Contract with the Appellant. As the Litvinov Contract had been mutually terminated before the transfer window opened again, there was no need for it to have been registered with the Czech FA and it would not therefore appear in the Player's passport.

48. The Appellant exhibited various documents to its Appeal Brief, in particular: a copy of the Litvinov Contract and the Contract, both in English and signed by the Player. At the hearing,

the Appellant submitted that it was not uncommon for clubs in the 3rd and 4th Divisions in the Czech Republic, where the clubs are largely amateur clubs, to have "non-amateur contracts" with some players. These contracts are not "full" professional contracts, but equally are not amateur contracts, as defined by FIFA. In the Czech Republic, the Appellant submitted there were professional contracts, non-amateur contracts and amateur contracts. The Czech FA's licensing system means 3rd and 4th Division clubs can only offer the latter 2 types of contracts, not professional contracts. The Litvinov Contract was a non-amateur contract (the Player was to receive around EUR 1,000 per month), but under the FIFA Regulations on the Status and Transfer of Players, edition 2005 (the "FIFA Regulations"), this was a professional contract.

49. Article 20 of the FIFA Regulations, states that:

"Training Compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a Professional, and (2) on each transfer of a Professional until the end of his 23rd birthday. The obligation to pay Training Compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning Training Compensation are set out in annex 4 of these regulations".

Therefore the signature of the contract is the prevailing condition, not the registration of that contract.

50. Further, the Appellant sought to rely upon previous FIFA DRC jurisprudence and attached a copy of a decision passed on 17 August 2006, entitled "Club X v Club Y" which stated at paragraph 8:

"that the Claimant's entitlement to receive as well as sue for training compensation…arose in the year 2001 since the amateur player Z signed his first employment contract with the Respondent on 27 July 2001…"

51. At the hearing, the Appellant also sought to rely on previous CAS jurisprudence, in another matter it had been involved in, CAS 2009/A/1781. The Appellant stated that this was exactly the same facts as in this case and that the CAS panel in that case had determined that it was the signing of the professional contract that triggered the obligation to pay training compensation. If there was a conflict between the signing of a professional contract and its registration, this case supported the Appellant's position that it is the signature that triggers the training compensation; i.e. Article 20 of the FIFA Regulations takes precedence over Annex 4 of the Regulations.

52. In the alternative, the Appellant submitted that the amount awarded by the FIFA DRC was misleading. The information from the Player regarding his training with the Respondent was different from the information delivered by the Respondent and used by FIFA; specifically the Player had to pay for his own training costs, e.g. buying training equipment, transport costs, soft drinks costs, medical surgery costs etc. Further, the Player was injured for a significant time and had some periods without training. At the hearing, the Player confirmed he had 4 months when he could not play, due to an ankle injury. For one of those months he was unable to train.

53. At the hearing, the Appellant made submissions as to the costs it incurred to train young players at its own affiliated academy. The Appellant submitted that the academy runs 8 youth teams from Under 12s to Under 19s and trains approximately 250 players at any time. On average it produces 5 professional players a season. As such, within the 250 players there are 40 that will statistically make it as professionals. The total cost for the facility is 5m Czech Crowns a year, so the cost per professional is 125,000 Czech Crowns (or EUR 5,000) per professional. This was far less than the indicative amount of EUR 30,000 applied by the FIFA DRC. As such this was clearly disproportionate.

54. In addition, the Appellant noted that in the Appealed Decision, the FIFA DRC had applied EUR 30,000 a year as the indicative amount of training compensation. The training compensation should be looked at per season and not per year. As the season in the Czech Republic is 8 months long, then only 8/12^{ths} of the EUR 30,000 (i.e. EUR 20,000) should have been applied.

55. Finally, the Appellant submitted that it was not in a good financial position and that if it lost this appeal, then it may be forced to merge with another club.

B. Respondent's Submissions

56. In summary the Respondent submitted the following in its defence:

57. The Player was trained by the Respondent in the seasons of 2002 through to 2006, being the seasons from his 17th birthday to his 21st birthday. The Player played for the Respondent as an amateur during that period and after that, the Player was registered with the Appellant on 4 August 2006 as a professional, as is evidenced by the international transfer certificate and the Player's passport.

58. The Respondent denied the existence of the Litvinov Contract and also questioned the plausibility and a legitimacy of such agreement.

59. The FIFA DRC dismissed the Appellant's allegations in relation to the Litvinov Contract. The Appealed Decision stated that no other documents supporting such facts had been submitted and in addition, the Czech FA confirmed that the first club where the Player was registered as a professional was in fact the Appellant, in accordance with the Player's passport.

60. Further, even if the Litvinov Contract had been genuine, it would be irrelevant for the case and has no legal affect whatsoever on the Respondent.

61. The Appellant was mistaken when stating that the signature of a contract results in the liability to pay training compensation. In fact it would be the registration of the contract before the National Association which is the relevant fact that results in training compensation being payable.

62. In accordance with Article 20 of Annex 4 of the FIFA, Regulations training compensation is due when *"a player is registered for the first time as a professional"*. In this matter the Player was registered for the first time as a professional with the Appellant.

63. Therefore, the Appeal should be rejected because the registration of the Contract is absolute and the signature is legally irrelevant to the applicability of training compensation.

64. In response to the Appellant's alternative argument, the Respondent denied that the training compensation was excessive. The Appellant never raised such allegations before FIFA and the Appellant did not include any evidence in the appeal supporting such allegations. The Respondent referred to previous CAS jurisprudence, CAS 2009/A/1810 & 1811, where that panel determined that the burden of proof has to be met by the party seeking to move away from the indicative amounts set out in the FIFA Regulations and that the Appellant had not discharged such burden of proof.

VI. ADMISSIBILITY

65. According to Article R49 of the CAS Code, the appeal had to be lodged within a certain time limit. Article R49 refers to the time limits set in the statutes and regulations of the federation whose decision is being appealed. The FIFA Statutes contain at Article 67 para. 1 the provision that any appeal from the FIFA DRC is to be made within 21 days of notification of the Appealed Decision. In addition, according to FIFA's Procedural Rules, the Appealed Decision must be the full decision with grounds, which one of the parties needs to have requested within 10 days of the notification of the unmotivated decision of the FIFA DRC.

66. The Sole Arbitrator notes that all time limits in relation to this appeal were satisfied and the Appellant's appeal is admissible.

VII. JURISDICTION OF THE CAS

67. Article R47 of the CAS Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*

68. The CAS recognises its jurisdiction based on Article R47 of the CAS Code and Article 67 of the FIFA Statutes.

69. Article 67 of the FIFA Statutes provides:

"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".

70. Further the jurisdiction of the CAS was confirmed by the signature of the Order of Procedure by the Parties. Therefore, the Sole Arbitrator is satisfied that the requirements set forth in Article R47 of the CAS Code are met, and that the Sole Arbitrator has jurisdiction to decide the present dispute.

VIII. APPLICABLE LAW

71. Article R58 of the Code provides as follows:

"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".

72. The Sole Arbitrator notes that the parties had both referred to the FIFA Regulations but had not referred to any national law.

73. Moreover, Article 66 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".

74. The "Federation" in the sense of Article R58 of the CAS Code, i.e. FIFA, is domiciled in Switzerland, a fact that also requires that Swiss Law be applicable.

75. The Sole Arbitrator determines that the FIFA Regulations are applicable primarily and Swiss law shall be applied in the alternative in the matter at hand.

IX. THE MERITS

76. In the present proceedings, the Sole Arbitrator has to determine the following:

a) Did the Player enter into the Litvinov Contract?

b) If so, was the Litvinov Contract a professional contract?

c) Is the signature of the contract or its registration the trigger for training compensation?

d) If training compensation is due, is there any reason the deviate from the indicative sums used by FIFA?

e) If any sum is due, what is the position regarding interest?

a) Did the Player enter into the Litvinov Contract?

77. The Sole Arbitrator notes the Respondent's concerns as to whether the Litvinov Contract was genuine or not. As the Respondent declined to attend the hearing, the Sole Arbitrator examined the Player extensively on how it was he left Argentina to join a 4th division Czech club. The Sole Arbitrator has no reason to doubt the Player's evidence that he did sign the Litvinov Contract at the end of the 2005/6 playing season in Argentina, came over to the Czech Republic and commenced that contract by starting pre-season training with Litvinov.

b) Was the Litvinov Contract a professional contract?

78. The Sole Arbitrator notes the principle argument of the Appellant was that it was not the first club to award the Player with a professional contract. The Litvinov Contract was, in the Appellant's submissions, a professional contract. Whilst not challenged per se by the Respondent, during the Player's evidence he disclosed that 3rd and 4th division clubs in the Czech leagues were amateur.

79. The Appellant sought to explain to the Sole Arbitrator that under the Czech FA's system there were in fact 3 types of playing contracts – professional, non-amateur and amateur. Under the Czech FA's system, amateur clubs could only offer the latter 2 types of contracts. The Appellant explained that despite being labeled "non-amateur", this type of contract was, pursuant to Article 2 of the FIFA Regulations, a professional contract.

80. The Sole Arbitrator noted the wording of Article 2 of the FIFA Regulations:

> *"1. Players participating in Organised Football are either Amateurs or Professionals.*
>
> *2. 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".*

81. The concept of a "non-amateur" player does not exist under the FIFA Regulations, the applicable regulations to the matter at hand. As such, the Sole Arbitrator determines that as the Player had a written contract with Litvinov and received more than his expenses, albeit a modest amount over a very short period of time, the Litvinov Contract was a professional contract. Further the Sole Arbitrator is satisfied, and the Respondent never challenged the position, that it was the Player's first professional contract.

c) Is the signature of the contract or its registration the trigger for training compensation?

82. The Sole Arbitrator notes that the relevant parts of the FIFA Regulations to help with this question are:

Article 5, which states:

"A player must be registered with an Association to play for a club as either a Professional or Amateur in accordance with Art. 2. Only registered players are eligible to participate in Organised Football…".

Article 20, which states:

"Training Compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a Professional, and (2) on each transfer of a Professional until the end of the Season of his 23rd birthday… The provisions concerning Training Compensation are set out in annex 4 of the Regulations".

Article 3.1 of Annex 4, which states:

"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 player's 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…".

Article 5.4 of Annex 4, which states:

"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".

83. The Sole Arbitrator notes the principle argument of the Appellant is that the Player "signed" his first professional contract with Litvinov, but as it was outside of a transfer window, it was never "registered". It is accepted by the Parties that the first professional contract to be "registered" was the Contract – a fact also evidenced by the Player's passport, produced by the Czech FA. The Appellant's position is that under Article 20 of the FIFA Regulations the obligation to pay training compensation falls upon the club that "signs" the first professional contract with the Player; that was Litvinov, not the Appellant.

84. The Respondent, in its written submissions, pointed to Article 3.1 of Annex 4 of the FIFA Regulations (and indeed throughout Annex 4) which refers to the "registering" of the Player's professional contract as the trigger for training compensation; as such the first club to register a professional contract for the Player was the Appellant.

85. The Sole Arbitrator notes the apparent conflict that exists within the FIFA Regulations between signing and registration. However, in looking further at the explanatory notes that FIFA provide, the Sole Arbitrator was better able to understand the context of the Articles

and Annexes. The payment of training compensation is a "solidarity mechanism". As the footnote to Article 20 explains *"the system encourages the training of young players and creates stronger solidarity among clubs by awarding financial compensation to clubs that have invested in training young players"*. The clubs that enjoy the benefit of a trained player, as opposed to having trained the player itself are intended to pay the compensation to the training club. This is the "solidarity" principle.

86. That said, the Appellant argued that Litvinov should therefore have paid the training compensation and that it paid Litvinov a transfer fee for the Player. The Appellant also argued that the Articles in the FIFA Regulations take precedence over the Annexes. As such it is the signing, not the registration that acts as the trigger. It relied upon DRC and CAS jurisprudence in this regard and in particular CAS 2009/A/1781.

87. The Sole Arbitrator reviewed that award in detail, however fails to see that it sought to tackle exactly the same issue. The dispute in that case was whether the middle club that contracted with the player between the appellant and the respondent had entered into a professional contract with that player or not. That player was registered with the middle club, but as an amateur, when he was receiving a fixed sum of money each month. The principle issue was the labeling of that contract. The difference in the case at hand is the fact that the Litvinov Contract was never registered.

88. The Sole Arbitrator notes that the panel in CAS 2009/A/1781 did consider the apparent inconsistency between "signing" and "registration" at paragraph 8.24 of that award:

"Undeniably, there is an inconsistency in the wording used in RSTP. While Article 20 refers to the signing of the first professional agreement as the trigger for the paying of training compensation, Article 2 para. 1 and Article 3 para. 1 of Annex 4 refer to the first registration as a professional as the trigger element for payment. Nevertheless it is the Sole Arbitrator's view that the articles of the Annex are focused on the procedure for payment and therefore refer to registration, being the easily identifiable element. However, the principle can be found by reading Article 20 together with Article 5 of RSTP. Article 5 requires that the registration will reflect the true status of the player, and thus states clearly that the registration should adhere to the criteria of Article 2. The assumption of the regulations is that a player will indeed be registered in a manner that complies with the criteria contained in Article 2 and therefore, under this assumption, there can be no distinction between the signing of the first professional contract and the registration for the first time as a professional".

89. The Sole Arbitrator notes that the Appellant interpreted this paragraph 8.24 as giving precedence to the Articles in the FIFA Regulations over the Annexes. However, the Sole Arbitrator reads the paragraph as failing to draw a distinction between "signing" and "registration". Indeed, this is a view the Sole Arbitrator shares and one that gives sense to the FIFA Regulations. Players need to be registered with clubs for the clubs to utilize the services of the players. Not all have written contracts, as some are amateur. Some players start with a club and are registered as amateurs, but later are awarded a professional contract, which they "sign"; others arrive at a new club and both "sign" a professional contract and the same is "registered"; and so on. The Sole Arbitrator's view is that professional players both sign a written contract in accordance with Article 2 of the FIFA Regulations and the clubs register

that in accordance with Article 5, so they can utilise his services in organised football. As such, there is no distinction; both are needed to trigger the payment of training compensation, pursuant to Article 20 and Annex 4. As a solidarity mechanism, this makes sense – the club that signs and registers the player, gets to benefit from the training that his previous clubs have provided and therefore should be the club to pay the compensation.

90. Had Litvinov registered the Player, then it would have been liable for the training compensation to the Respondent, which may have determined the level of any subsequent transfer fee, if it only had very limited benefit from the Player. However, it is not disputed that Litvinov never registered the Player, nor that it never utilised the Player's services in organised football, merely in a couple of training sessions.

91. Whilst there have been no accusations of the Appellant in this matter, a club could look to bring a player in from overseas, place him with a friendly amateur club, but on a professional contract, labeled as an amateur contract, before signing and registering the player itself as a professional, in an attempt to avoid paying training compensation. Whilst the amateur club may potentially incur the liability for training compensation, if it never registers the player, then it would argue it has no liability or 2 years could expire before the training club discovers the true nature of the contract with the amateur club and misses its opportunity to claim training compensation. The FIFA Regulations provide a solidarity mechanism which simply rewards clubs for training players and takes that reward from the clubs that benefit from not having to train the players. The FIFA Regulations are best interpreted as making no distinction between signing and registration – they are both components of the same process. As a final comment, the Sole Arbitrator notes the commentary to Article 3.1 of Annex 4 of the FIFA Regulations, which states:

"…Training Compensation is due for the first time when a player signs his first employment contract and thus registers as a professional…"

As such, it is the combination of signing and registration in this matter that gave rise to the obligation on the Appellant to pay training compensation to the Respondent.

d) Is there any reason the deviate from the indicative sums used by FIFA?

92. The Sole Arbitrator notes the three arguments put forward in the alternative by the Appellant: (1) the Player paid himself for a lot of his own training; (2) the indicative amounts used by the FIFA DRC were per year, however, the Player was trained on a season by season basis by the Respondent; and (3) the actual cost to train a professional at the Appellant's level is clearly disproportionate to the indicative amount used in this matter.

93. The Sole Arbitrator notes the relevant parts of the FIFA Regulations to help with this question are:

Article 4.1 of Annex 4, which states:

"In order to calculate the compensation due for training and education costs, Associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio between the number of players who need to be trained to produce one professional player".

Article 5 of Annex 4, which states:

"5.1 As a general rule, to calculate the Training Compensation due to a player's Former Club(s), it is necessary to take the costs that would have been incurred by the New Club if it had trained the player itself.

5.2 Accordingly, the first time a player registers as a Professional, the Training Compensation payable is calculated by taking the training costs of the New Club multiplied by the number of years of training in principle from the Season of the player's 12th birthday to the Season of his 21st birthday. In the case of subsequent transfers, Training Compensation is calculated based on the training costs of the New Club multiplied by the number of years of training with the Former Club.

5.3 To ensure that Training Compensation for very young players is not set at unreasonably high levels, the training costs for players for the Seasons between their 12th and 15th birthday (i.e. four Seasons) shall be based on the training and education costs for category 4 clubs.

5.4 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".

94. Taking the second argument first, the Sole Arbitrator notes that the express wording of Article 5.2 of Annex 4 of the FIFA Regulations is to "the number of years" training and not to the number of seasons. That said, it is the Sole Arbitrator's view that players tend to provide their services, whether playing or training, for the vast majority of a year. At the end of a season, the players, if they are not involved in international duties, will often catch up on their annual holidays, as any employee is entitled to, but are soon back into pre-season training. Further playing contracts tend not to be for the duration of a season, rather on a yearly, and often multi-yearly basis. The Sole Arbitrator does not accept the Appellant's submissions that a season is only for 8 months a year, so any training compensation should be reduced by 2/3rds.

95. The other two arguments brought by the Appellant were challenges to the amount of training compensation that should have been awarded in the matter at hand. The FIFA DRC, and indeed the Sole Arbitrator, could adjust the amount calculated from the indicative amounts (set at EUR 140,000 in the Appealed Decision) if the indicative amounts are clearly disproportionate to the amounts in the matter in hand.

96. The Sole Arbitrator notes that the Appellant made written submissions relating to the expenditure the Player had made himself in relation to his time with the Respondent, but had not produced any evidence, such as receipts, bank statements and the like to support such submissions. Nor did the Player give any testimony on these submissions despite being at the hearing. The Appellant did at the hearing (although it had not raised these submissions before the FIFA DRC) put forward its calculation of the cost to train a professional player from its affiliated academy, however, again, there was no evidence to support these submissions. No list of the names and number of young players at the academy, no details of which went on to be professionals, no accounting information, not even any proof that there was an affiliated academy.

97. The commentary to Article 5.5 of Annex 4 states *"The club alleging the disproportion in the amount of training compensation shall submit all necessary evidence substantiating the demand of review"*. The Sole Arbitrator also notes the established line of CAS jurisprudence which supports this position, including the case submitted by the Respondent as part of its Answer, CAS 2009/A/1810 & 1811. As such, the Sole Arbitrator has not been put in the position where he could review the level of training compensation awarded by the FIFA DRC on either submission made by the Appellant and cannot therefore adjust the amounts awarded.

98. The Sole Arbitrator takes note of the financial position of the Appellant, but this is not a factor that can be applied in this decision.

e) Interest

99. The Sole Arbitrator notes that the Respondent's prayers for relief requested that the Appellant be sentenced to pay it the sum of EUR 140,000 plus interest to be applied at an annual rate of 5% within 30 days of 24 November 2011.

100. The Sole Arbitrator notes the effect of the appeal procedure through the CAS stays the enforcement of the Appealed Decision but not its effects and as such determines that the rate and the start date of interest awarded by the FIFA DRC is to apply in accordance with the decision of the FIFA DRC.

CONCLUSION

101. In the present proceedings, the Sole Arbitrator determines that the Appellant's appeal should be dismissed and that the Appealed Decision be upheld, so that the Appellant is to pay the Respondent training compensation in the sum of EUR 140,000 plus interest to be applied at an annual rate of 5% within 30 days of the date of the decision of the FIFA DRC.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed by FK Baník Most at the Court of Arbitration for Sport on 22 August 2012, against the decision of the FIFA Dispute Resolution Chamber is dismissed.

2. The decision of the FIFA Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

5. All other prayers for relief are dismissed.