



**Arbitration CAS 2013/A/3303 Bradford City Football Club v. Falkirk Football Club, award of 14 March 2014**

Panel: Mr Lars Hilliger (Denmark), President; Mr Mark Hovell (United Kingdom); Mr Alasdair Bell (United Kingdom)

*Football*

*Training compensation*

*Duration of a football season*

*Conditions for being entitled to receive training compensation*

*Burden of proof regarding the early termination of a player's training*

*Calculation factors related to training compensation*

1. **Due to the apparent disharmony between FIFA's various provisions addressing the duration of a season, there is nothing to prevent a national association from reporting to the FIFA Transfer Matching System (TMS) the duration of a season as 365 days (e.g. 1 July – 30 June), although such a specification is not consistent with the definition of a "season" as set out in the FIFA Regulations on the Status and Transfer of Players (RSTP). It must, for practical reasons, be the individual national associations who decide when the official matches of the national championship should be played. The dates of the first and last official championship match, respectively, in all likelihood will differ from one year to the next, depending, for instance, on whether international championship tournaments are to be played during the summer break.**
2. **A club is entitled to receive training compensation for a transferred player if it did in fact offer said player a new contract with improved terms in accordance FIFA RSTP before the end of the season of his 23<sup>rd</sup> birthday.**
3. **The fact that the training of a player was indeed completed before the player reached the age of 21 should be determined by a case-by-case analysis. The burden of proof lies with the party who derives a right from that fact i.e. the club claiming a reduction of the training compensation to be paid to the training club.**
4. **As established by CAS, various factors are generally included in the assessment of whether a player's training period must be deemed to have been completed before the age of 21. Such factors include the level of talent of the player, whether or not the player is playing regularly with the first team and the value of the player, e.g. reflected in a loan fee achieved for the services of the player. The category to which the clubs belong should also be taken into account to calculate the amount of the training compensation.**

## **1. THE PARTIES**

- 1.1 Bradford City Football Club (the “Appellant”) is a professional English football club affiliated with the English Football Association (the “FA”), which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”).
- 1.2 Falkirk Football Club (the “Respondent”) is a professional Scottish football Club affiliated with the Scottish Football Association (the “SFA”), which in turn is affiliated with FIFA.

## **2. FACTUAL BACKGROUND**

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the “FIFA DRC”) on 23 January 2013 (the “Decision”), the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
- 2.2 The professional football player Mark Stewart (the “Player”) was born on 22 June 1988 and, therefore, turned 23 on 22 June 2011.
- 2.3 According to the SFA, the Player was registered with the Respondent as from 30 January 2006 until 30 June 2011 as a professional. According to the Player’s player passport, he was loaned by the Respondent to another Scottish football club, Stranraer FC, as from 5 November 2007 until 2 January 2008.
- 2.4 According to the SFA, the Respondent belonged to the category II with regard to calculation of potential training compensation during the time the Player was registered with it.
- 2.5 According to the FA, the Player was registered with the Appellant on 5 July 2011.
- 2.6 According to the information contained in the Transfer Matching System (the “TMS”), the Appellant belonged to the category II with regard to calculation of potential training compensation during the time the Player was registered with it.
- 2.7 Following the transfer of the player from the Respondent to the Appellant on 5 July 2011, on 15 March 2012, the Respondent lodged a claim with FIFA against the Appellant claiming payment of training compensation in the amount of EUR 330,000.00.
- 2.8 The Respondent submitted that the Player was below the age of 23 when both the SFA’s 2010/11 season officially finished on 30 May 2011 and the English 2010/11 season officially finished on 28 May 2011. The Player’s employment contract with the Respondent terminated on 30 June 2011 and the Player was therefore below the age of 23 and still under contract with the Respondent at the start of the 2011/2012 season in the Scottish Football League, which, as recorded in TMS, started on 1 June 2011.

- 2.9 The Respondent further indicated that it had offered the Player a new contract with improved terms in October 2010, a consideration which is relevant under Article 6 par. 3 of the Regulations on the Status and Transfer of Players – 2010 edition (the “Regulations”). Furthermore, a “contact extension proposal” had been submitted to the Player, which would have run from the date of the signature until 30 June 2013.
- 2.10 In its answer to FIFA, the Appellant submitted that the Respondent was not entitled to receive any training compensation regarding the Player since the Player in fact transferred to the Appellant after the end of the season of his 23<sup>rd</sup> birthday.
- 2.11 Furthermore, according to the Appellant, since the Player turned 23 on 22 June 2011 and his contract with the Respondent expired 8 days later on 30 June 2011, the Player was registered with the Appellant on 5 July 2011, i.e. at the beginning of the 2011/2012 season, which is the season of the Player’s 24<sup>th</sup> birthday.
- 2.12 The Appellant further submitted that, should any training compensation be awarded, the amount payable should be reduced, one of the reasons being that the Player’s training period was completed by the end of the 2008/2009 season, which was the season in which the Player became an established member of the first team of the Respondent.
- 2.13 Having been asked by FIFA about the duration of its sporting seasons during the period of time the Player was registered with the Respondent, in April 2012, the SFA explained to FIFA as follows:

*“Please note that the Scottish FA does not have a definition of “sporting season” within its articles nor Registration Procedures. Therefore the definition of “season” as prescribed in the FIFA Regulations on the Status and Transfer of Players has been applied when supplying this information.*

*However I would also refer you to the FIFA Transfer Matching System and the Scottish FA’s logged dates for season 2010/2011 (01/08/2010 to 31/05/2011) and season 2011/2012 (01/06/2011 to 31/05/2012).*

<i>Season</i>	<i>Start</i>	<i>End</i>
<i>2005/2006</i>		<i>as from 30 July 2005 until 7 May 2006;</i>
<i>2006/2007</i>		<i>as from 29 July 2006 until 20 May 2007;</i>
<i>2007/2008</i>		<i>as from 4 August 2007 until 22 May 2008;</i>
<i>2008/2009</i>		<i>as from 9 August 2008 until 24 May 2009;</i>
<i>2009/1010</i>		<i>as from 15 August 2009 until 9 May 2010;</i>
<i>2010/2011</i>		<i>as from 7 August 2010 until 22 May 2011”.</i>

- 2.14 In a letter to the Appellant on 6 July 2012, the FA wrote, inter alia, as follows:

*“In England, professional playing contracts are required to expire on 30<sup>th</sup> June; this is the date The FA considers to be the end of a season. As such, for the purpose of determining the season of a player’s 23<sup>rd</sup> birthday,*

*The FA considers this to be a 12 months period between 1<sup>st</sup> July and 30<sup>th</sup> June during which that player attains the age of 23.*

*In Mark Stewart's case, I am told by the Club's solicitors that his contract with Falkirk expired on 30 June 2011 (which is consistent with the position in England). I note that Mark attained the age of 23 eight days before this date, on 22 June 2011. As Mark was registered with Bradford on 5 July 2011, the FA therefore considers that Mark registered with Bradford after the end of the season of his 23<sup>rd</sup> birthday".*

- 2.15 Against the background of these circumstances, the FIFA DRC concluded, inter alia, as follows:
- 2.16 The main issue that needed to be analysed in the present matter is whether or not the season of the Player's 23<sup>rd</sup> birthday had already ended at the time the Player was registered with the Appellant.
- 2.17 According to the information contained in the TMS, the SFA's 2010/2011 season ran as from 1 August 2010 until 31 May 2011 and the 2011/2012 season ran as from 1 June 2011 until 31 May 2012. In this respect, the FIFA DRC referred to Article 1 par. 5 of Annexe 3 of the Regulations, which, inter alia, stipulates that the use of the TMS is a mandatory step for all international transfers of professional male players within the scope of eleven-a-side football. Furthermore, the use of the TMS has been mandatory since 1 October 2010, and, in accordance with Article 6 par. 3 of Annexe 3 of the Regulations, within the scope of proceedings pertaining to the application of the Regulations, FIFA may use any documentation or evidence generated by or contained in the TMS or obtained by FIFA TMS GmbH on the basis of their investigation powers in order to properly assess the issue at stake.
- 2.18 Against this background and once more emphasising that the use of the TMS has been mandatory since 1 October 2010, the FIFA DRC stated that the information contained in the TMS was leading and that it should therefore take into account the objective criteria entered into the TMS by the various stakeholders using the TMS. The FIFA DRC observed that the SFA had indeed entered the start and end dates of its season in the TMS and outlined that such data was also available to the Appellant at the moment it signed and registered the Player. In view of the foregoing and taking into account that the Player was born on 22 June 1988, the FIFA DRC decided that the season of the Player's 23<sup>rd</sup> birthday started on 1 June 2011 and ended on 31 May 2012, and that the 2011/2012 season was therefore the season of the Player's 23<sup>rd</sup> birthday. As a result, at the time the Player was registered with the Appellant, the season of the Player's 23<sup>rd</sup> birthday had not yet ended and, consequently, the FIFA DRC decided that the Appellant was, in principle, liable to pay training compensation to the Respondent.
- 2.19 The FIFA DRC then decided, after having established that the Respondent had complied with Article 6, par. 3 of Annexe 4 of the Regulations, which was not disputed by the Appellant, that the Appellant was liable to pay training compensation to the Respondent in accordance with Article 20 and Annexe 4 of the Regulations.

- 2.20 After considering all the circumstances of the case, the FIFA DRC then decided that it could not be established that the training period of the Player had been completed before the season of his 21<sup>st</sup> birthday, as alleged by the Appellant.
- 2.21 Based on the rules for calculation of training compensation, as included in the FIFA Circular no. 1223 of 29 April 2010, the FIFA DRC finally decided to partially accept the Respondent's claim and decided that the Appellant was liable to pay training compensation to the Respondent in the amount of EUR 250,000.00.
- 2.22 Based on the above, on 23 January 2013, the FIFA DRC in the Decision decided as follows:
- 1. The Claim of the Claimant, Falkirk FC, is partially accepted.*
  - 2. The Respondent, Bradford City FC, has to pay to the Claimant the amount of EUR 250,000 within 30 days as from the date of notification of this decision.*
  - 3. In the event that the aforementioned sum is not paid within the stated time limit, interest of 5% p.a. will fall due as of expiry of the stipulated time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
  - 4. Any further claim lodged by the Claimant is rejected.*
  - 5. The final amount of costs of the proceedings, amounting to CHF 15,000, are to be paid within 30 days as from the date of notification of the present decision as follows:*
    - 5.1 CHF 10,000 by the Respondent to FIFA [...]*
    - 5.2 CHF 5,000 by the Claimant to FIFA [...].*
  - 6. [...]."*

### **3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS**

- 3.1 On 16 August 2013, the Appellant filed a Statement of Appeal against the Decision rendered by the FIFA DRC on 23 January 2013 with the Court of Arbitration for Sport (the "CAS"), in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code")
- 3.2 On 23 August 2013, the Appellant filed its Appeal Brief, in accordance with Article R51 of the CAS Code
- 3.3 On 1 September 2013, the Respondent informed the CAS Court Office that it relied on the findings of the Decision and as such would not file any answer in accordance with Article R55 of the CAS Code.
- 3.4 By letter of 15 October 2013, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, Attorney-at-law, Copenhagen, Denmark (President of the Panel), Mr Mark Hovell, Solicitor, Manchester, United Kingdom

(nominated by the Appellant), and Mr Alasdair Bell, Attorney-at-law, Director of Legal Affairs of UEFA, Nyon, Switzerland, (nominated by the Respondent).

#### **4. HEARING**

- 4.1 A hearing was held on 25 November 2013 in Lausanne, Switzerland. All members of the Panel were present. The Parties did not raise any objections to the constitution of the Panel.
- 4.2 The Appellant was represented at the hearing by its counsel, Mr Simon Csoka QC, its solicitor, Mr Ben Jones and by Mr David Baldwin, its Chief Executive Officer.
- 4.3 The Respondent was represented by its counsel, Mr Simon Catto and by Mr David White, General Manager and Club Secretary.
- 4.4 Mr David Baldwin and Mr Mark Stewart, the latter heard by conference call, confirmed their written witness statements and answered the questions asked by the counsels and by the Panel. No further witnesses were called to testify.
- 4.5 At the end of the hearing, the Parties confirmed that they had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel. After the Parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and arguments presented by the Parties including those elements not expressly summarised in the present Award. Upon closure, the Parties expressly stated that they did not have any objections in respect of their right to be heard and to be treated equally in these arbitration proceedings.

#### **5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL**

- 5.1 Article R47 of the CAS Code states 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 if the parties have concluded a specific arbitration agreement and if 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"*.
- 5.2 With respect to the Decision, the jurisdiction of the CAS derives from Article 67 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction by signing the Order of Procedure.
- 5.3 The Decision was notified to the Appellant on 29 July 2013, and the Appellant's Statement of Appeal was lodged on 16 August 2013, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

5.4 It follows that the CAS has jurisdiction to decide on the appeal of the Decision and that the appeal of the Decision is admissible.

5.5 Under Article R57 of the CAS Code, the Panel has full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the decision appealed against.

## 6. APPLICABLE LAW

6.1 Art. 66 par. 2 of the FIFA Statutes states as follows: *“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”*.

6.2 Article R58 of the CAS Code states 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”*.

6.3 The Panel notes that in the present matter the Parties have not agreed on the application of any specific national law. The applicable law in this case will consequently be the regulations of FIFA and, additionally, Swiss law, due to the fact that FIFA, which issued the challenged decision, is domiciled in Switzerland.

## 7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

7.1 The following outline of the Parties' requests for reliefs and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

### A. *The Appellant*

7.2.1 In its Statement of Appeal of 13 August 2013 and in its Appeal Brief filed on 23 August 2013, the Appellant requested from the CAS the following relief:

- To reverse the Decision with the effect that no training compensation should be paid.
- Alternatively, to reduce the level of training compensation payable because it has been miscalculated and is disproportionate.

7.2.2 In support of its requests for relief, the Appellant submitted as follows:

- a) The key issue of the case is whether or not the Player entered into a contract with the Appellant before the end of the season of his 23<sup>rd</sup> birthday.
- b) Since it is uncontested between the Parties when the Player entered into the said contract the difficulty arises from determining what is meant by *“the end of the season of his 23<sup>rd</sup> birthday”* as stated in Article 20 of the Regulations.
- c) The current version of the FIFA rules concerning training compensation is not clearly drafted and causes confusion and uncertainty.
- d) As such it is, inter alia, not clear what constitutes a season. In the Regulations, a season is defined as *“the period starting with the first official match of the relevant national league championship and ending with the last official match of the relevant national league championship”*.
- e) This definition runs against the European general convention of a 12 month season running from 1 July to 30 June.
- f) There seems to be no consistency in the decisions of the FIFA DRC as to what constitutes a season.
- g) If one is to apply the definition of season as set forth in the Regulations, then most countries’ seasons would run for approximately 10 months meaning that several players’ birthdays would never fall within a football season.
- h) Since according to Annexe 4, par. 1 of the Regulations *“training compensation shall be payable until the end of the season in which the player reaches the age of 23”*, this would mean that training compensation would never fall due for several players.
- i) The purpose of training compensation is to ensure that the club which provided for the training of a young player receives a reward for the investment in the player if such reward is not made through the player’s contribution to the team.
- j) In line with this is the FIFA Circular no. 769, in which it is stated *“As a general rule training compensation is due whenever a player, who is not yet 23: (i) signs his first non-amateur contract with a club different from the club from which he received his training; or (ii) transfers as a non-amateur from one club to another club which he joins in the same capacity”*.
- k) Based on that Circular, it seems that the purpose of the Regulations is to protect the training club until a player reaches the age of 23, which will avoid absurd scenarios.
- l) Before the FIFA DRC, the Appellant relied on the conventional European practice of a football season spanning from 1 July 2011 to 30 June 2012, while the Respondent relied on the SFA’s information in the TMS which provided that the football season in question runs from 1 June 2011 to 31 May 2012.
- m) Despite the express definition in the Regulations, the FIFA DRC in the Decision was concerned with national sporting seasons which amounted to 365 days, which cannot be adopted as an entirely new interpretation since the Regulations actually define what is understood by a season.
- n) The SFA did not have any definition of its own of a sporting season, and even if the FIFA DRC was right in adopting a 12-month season, it is not acceptable that this should

- be the one decided arbitrarily by the SFA in the TMS and which is at variance with all other European football associations.
- o) Therefore, the only purposeful and consistent interpretation of the rules concerning training compensation is that set out in the Circular, i.e. that compensation is payable until a player reaches the age of 23.
  - p) It cannot be acceptable for the FIFA DRC to create a concept known as a “sporting season” when there is no such concept in the Regulations.
  - q) As such – and based on a strict interpretation of the definition of season in the Regulations – the Player was not transferred in the season when he reached the age of 23 because his birthday fell between the last game of the 2010/2011 season and the first game of the 2011/2012 season. Thus, no training compensation is payable to the Respondent.
  - r) In case the CAS should decide that training compensation is in fact payable to the Respondent, the uncertainty of the rules must be taken into account when calculating the amount of compensation payable and therefore the amount decided by the FIFA DRC is disproportionate.
  - s) In the circumstances of this case, the Respondent had the benefit of nearly two years of the Player after the Player reached the age of 21.
  - t) Furthermore, on the basis of the Decision, the Respondent would not have been entitled to any training compensation at all had the Player only been three weeks and two days older. A penalty of EUR 250,000 depending on such vagaries of three weeks and genuine ambiguity of the regulations must on any view be disproportionate.
  - u) Finally, the FIFA DRC was in error when not reducing the amount of training compensation on the basis that the Player’s training ceased before he reached the age of 21, at which time he was already playing on a regular basis on the Respondent’s first team.

## B. *The Respondent*

- 7.3.1 By letter dated 1 September 2013 to the CAS Court Office, the Respondent stated that it would “*respect the decision of the FIFA Tribunal and fully accept their findings*”.
- 7.3.2 The Panel understands this statement as a request to the CAS to reject the appeal and to uphold, in its entirety, the Decision.
- 7.3.3 In support of its claim for training compensation, the Respondent submitted as follows:
  - a) The Player was below the age of 23 when both the SFA’s 2010/11 season officially finished on 30 May 2011 as well as the FA’s official season on 28 May 2011.

- b) The Player's contract with the Respondent terminated on 30 June 2011, i.e. during the 2011/2012 season, and the Player was therefore 23 when still under contract with the Respondent.
- c) Furthermore, the Respondent complied with Article 6, par. 3 of Annexe 4 of the Regulations by offering the Player a new and improved contract, which the Player never accepted, however.
- d) Given these circumstances, the Respondent is entitled to claim training compensation from the Appellant in accordance with the Regulations.

## 8. DISCUSSION ON THE MERITS

8.1 Initially, the Panel notes that the Parties agree that the Player was indeed born on 22 June 1988 and, therefore, he turned 23 on 22 June 2011. It is furthermore undisputed that the Player was registered with the Respondent as from 30 January 2006 until 30 June 2011 as a professional. During this period, and in accordance with the information in the Player's player passport, he was loaned by the Respondent to another Scottish football club, Stranraer FC, as from 5 November 2007 until 2 January 2008. On 5 July 2011 he was registered with the Appellant. Equally undisputed is the information from the Respondent that it had offered the Player a new contract with improved terms in October 2010 in accordance with Article 6 par. 3 of Annexe 4 of the Regulations. Finally, the Parties agree that both clubs belonged to the category II with regard to calculation of potential training compensation at the time the Player was registered with the Respondent.

8.2 Thus, the main issues to be resolved by the Panel are:

- a) Did the transfer of the Player from the Respondent to the Appellant take place before the end of the season of the Player's 23<sup>rd</sup> birthday and, if so, is the Respondent entitled to claim payment of training compensation from the Appellant?
- b) In the event that a) is answered in the affirmative, how shall the amount of training compensation be calculated, including the question whether the Player's training ended before the Player turned 21, and/or whether the amount of compensation decided by the FIFA DRC in the Decision is clearly disproportionate?

*A. Did the transfer of the Player from the Respondent to the Appellant take place before the end of the season of the Player's 23<sup>rd</sup> birthday and, if so, is the Respondent entitled to claim payment of training compensation from the Appellant?*

8.3 The Panel notes initially that the rules on payment of training compensation derive from Article 20 of the Regulations, according to which:

*"Training compensation shall be paid to player's training club(s): (1) when a player signs his first contract as a professional and (2) each time a professional is transferred until the end of the season of his 23<sup>rd</sup> 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 Annexe 4 of these regulations".*

8.4 Annexe 4 of the Regulations reads as follows (in extract):

*Article 1, par. 1: "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 end 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, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training".*

[...]

*Article 2, par. 1: "Training compensation is due when: i. a player is registered for the first time as a professional; or ii. a professional is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the season of his 23<sup>rd</sup> birthday".*

[...]

*Article 3, para 2: "In both of the above cases, the deadline for payment of training compensation is 30 days following the registration of the professional with the new association".*

8.5 Hence, a decisive factor for establishing whether an obligation to pay training compensation has arisen or not is whether the transfer has taken place before the end of the season of the player's 23<sup>rd</sup> birthday.

8.6 The question is then what, under the Regulations in force, should be understood by "the season of the player's 23<sup>rd</sup> birthday"?

8.7 In accordance with the Definitions (point 9) of the Regulations, a season is defined as follows:  
*"Season: the period starting with the first official match of the relevant national league championship and ending with the last official match of the relevant national league championship".*

8.8 The Commentary on the Regulations for the Status and Transfer of Players (concerning the 2005 edition of these regulations, which contains the same definition of a season) provides in footnote 1 on page 5 as follows:

*"The definitions are self-explanatory. Particular attention should, however, be given to the description of season (point 9), since it is different to the "usual" definition. In fact, for the purpose of the Regulations, the season starts with the first official match of the national season and ends with the last one, whereas according to the "usual" definition, a season starts on the day following the end of the previous season, e.g. for the majority of the European leagues, the season starts on 1 July and ends on 30 June of the following year. This difference is mainly required for the application of Chapter IV of the Regulations (Maintenance of contractual stability between professionals and clubs) and will be explained there in detail".*

8.9 However, the Regulations contain various other provisions which may have direct or indirect significance for deciding how to fix the dates when a season starts and ends in relation to the registration of transfers and the calculation of training compensation and solidarity payments.

8.10 For instance, Article 6 of the Regulations contains the following provisions relating to “Registration Periods”:

*“1. Players may only be registered during one of the two annual registration periods fixed by the relevant associations. [...]*

*2. The first registration period shall begin after the completion of the season and shall normally end before the new season starts. This period may not exceed twelve weeks. The second registration period shall normally occur in the middle of the season and may not exceed four weeks. The two registration periods for the season shall be entered into the transfer matching system (TMS) at least 12 months before they come into force (cf. Annexe 3, article 5.1 paragraph 1). FIFA shall determine the dates for any association that fails to communicate them on time”.*

8.11 In regard to the TMS mentioned in Article 6, the following extract appears from Annexe 3 of the Regulations:

*Article 1, par- 1: “The transfer matching system (TMS; cf. point 13 of the Definitions section) is designed to ensure that specific football authorities have details available to them on international player transfers. This will increase the transparency in individual transactions, which will in turn improve the credibility and standing of the entire transfer system.*

*[...]*

*5. The use of TMS is a mandatory step for all international transfers of professional male players within the scope of eleven-a-side football, and any registration of such a player without the use of TMS will be deemed invalid. [...]*”

*Article 2, par. 1: “TMS provides associations and clubs with a web-based data information system designed to administer and monitor international transfers”.*

*Article 3, par. 3.2: “1. Associations are responsible for maintaining their season and registration details as well as those of their clubs (including, in particular, the categorisation of clubs in connection with the training compensation) and agents. [...]*”

*Article 5, par. 5.1: “1. The start and end dates of both registration periods and of the season shall be provided at least 12 months before they come into force. [...]*”

*Article 6, par. 3: “Within the scope of proceedings pertaining to the applications of these regulations, FIFA may use any documentation or evidence generated by or contained in TMS or obtained by FIFA TMS GmbH on the basis of their investigation powers (cf. Annexe 3, article 7 paragraph 4) in order to properly assess the issue at stake”.*

8.12 Finally, Article 7 of the Regulations provides as follows:

*“The registering association is obliged to provide the club with which the player is registered with a player passport containing the relevant details of the player. The player passport shall indicate the club(s) with which*

*the player has been registered since the season of his 12<sup>th</sup> birthday. If a birthday falls between seasons, the player passport shall indicate the club with which he was registered during the season following his birthday”.*

And the commentary associated with Article 7 provides as follows:

*“1. The player passport [...] is meant to assist associations and clubs in tracing the sporting history of the player, as it lists all clubs for which the player was registered as from the season in which he turned 12. This information is crucial when calculating training compensation [...]*

*2. If the birthday falls between two seasons, he will be listed in the player passport for the club for which he was registered in the season following his birthday. In this way, the definition of “season” in point 9 of “Definitions” is fully respected”.*

- 8.13 The Panel notes that the FIFA DRC based its Decision (see paragraphs 2.17 - 2.18 above) on the fact that the use of the TMS has been mandatory since 1 October 2010, and it also appears explicitly from Annexe 3 that FIFA, for the resolution of disputes within the scope of proceedings pertaining to the application of the Regulations, may use any information contained in the TMS.
- 8.14 As the SFA had entered the start and end dates for both the 2010/2011 and 2011/2012 seasons within the reporting deadline, and as the Appellant had therefore had an opportunity to be informed thereof prior to the conclusion of a contract with the Player, it is correct, according to the FIFA DRC, to use the start and end dates reported by the SFA for establishing the seasons in question in connection with the application of the Regulations on training compensation.
- 8.15 The Panel notes initially that there is apparently disharmony between FIFA’s various provisions addressing the duration of a season according to the Regulations in force, which – as in the present case – may raise justified doubt about the application of the Regulations.
- 8.16 For instance, FIFA (see par- 8.8) apparently agrees and understands that a season, according to “the usual definition”, in the majority of the European Leagues starts on the day following the end of the previous season, notwithstanding that this does not correspond to the definition in the Regulations (see par. 8.7).
- 8.17 Similarly, the Panel notes that, in regard to the application of the TMS by the national associations, only recommended guidelines have been established on the duration of a season in connection with registration in the TMS.
- 8.18 Accordingly, there is nothing to prevent a national association from reporting to the TMS the duration of a season as 365 days (e.g. 1 July – 30 June), which, offhand, follows the European convention, although such a specification is not consistent with the definition of a “season” as set out in the Regulations and, moreover, in connection with such a specification of the duration of the season concerned, it will not be possible to specify a registration period which – as requested in Article 6 of Annexe 3 of the Regulations “*shall begin after the completion of the season and shall normally end before the new season starts*”.

- 8.19 The Panel also notes that the SFA apparently, in connection with its TMS registration of the 2011/2012 season, to a considerable extent changed the principles for the fixing of the forthcoming season since the start date of this season was registered as being two months earlier than the preceding season, although the date of the last official match in the preceding season had not been moved accordingly in relation to the earlier season.
- 8.20 The background to this change of principles for the fixing of the season in the TMS has not been communicated to the Panel, which has therefore no evidence or documentation for assessing whether there were any objective grounds for this change or whether it occurred randomly or accidentally.
- 8.21 The Panel notes in that connection that if the SFA had not changed these principles and, consequently, instead had entered for instance 1 August 2011 as the start date of the 2011/2012 season (the same way 1 August 2010 was stated as the start date of the 2010/2011 season), this dispute would probably not have arisen.
- 8.22 The Panel understands that it must, for practical reasons, be the individual national associations who decide when the official matches of the national championship should be played.
- 8.23 In that connection, the Panel also understands that the dates of the first and last official championship match, respectively, in all likelihood will differ from one year to the next, depending, for instance, on whether international championship tournaments are to be played during the summer break.
- 8.24 However, the Panel finds it inexpedient if, without any form of additional regulation by FIFA, it is apparently decisively important for the establishment of rights and duties as far as training compensation is concerned, within which dates a national association chooses to register the duration of a season in the TMS.
- 8.25 The Panel lends weight to the fact, however, that the Appellant - by having examined in advance, in the TMS, the start and end dates of the SFA's 2010/2011 season registered by the SFA - could have become aware that the SFA's 2011/2012 season, according to the TMS, already started on 1 June 2011, and a subsequent transfer of the Player in accordance with these rules could therefore be assumed to take place within the latter season with ensuing financial consequences.
- 8.26 It is emphasised in this connection that the use of the TMS has been mandatory since 1 October 2010, which is why Article 1, par. 5, of Annex 3 of the Regulations reads as follows: *"The use of TMS is a mandatory step for all international transfers of professional male players within the scope of eleven-a-side football, and any registration of such a player without the use of TMS will be deemed invalid. [...]"*.
- 8.27 Moreover, reference is made to Article 6, par. 3, of Annex 3 of the Regulations, which expressly states: *"Within the scope of proceedings pertaining to the applications of these regulations, FIFA*

*may use any documentation or evidence generated by or contained in TMS or obtained by FIFA TMS GmbH on the basis of their investigation powers (cf. Annexe 3, article 7 paragraph 4) in order to properly assess the issue at stake”.*

- 8.28 The Panel further notes that the FA, based on the information and evidence produced during the proceedings, apparently failed to direct the Appellant’s attention to the duration of the 2011/2012 season stated by the SFA in the TMS, but exclusively refers to the European convention regarding the “1/7 – 30/6 season”.
- 8.29 However, as the Appellant cannot rely directly on the FA’s answer in relation to the Respondent, and as the risks arising from the omission to checking the season dates specified in the TMS prior to the transfer of the Player lie with the Appellant, the Panel finds that it is the Appellant who must bear responsibility for such failure.
- 8.30 It has remained undisputed during the proceedings that the start and end dates of the SFA’s 2011/2012 season registered by the SFA in the TMS are 1 June 2011 and 31 May 2012 and it is further undisputed that the Player was registered with the Appellant on 5 July 2011.
- 8.31 As the SFA’s 2011/2012 season, according to the TMS, thus started on 1 June 2011, and as the Player did turn 23 on 22 June 2011, the Panel finds that the Player in fact turned 23 within the SFA’s 2011/2012 season, which means that the Player was indeed transferred to the Appellant before the end of the season of the Player’s 23<sup>rd</sup> birthday.
- 8.32 The Panel emphasizes that this application of the rules is also seen to comply with Article 7 of the Regulations.
- 8.33 Under this Article, if a player’s birthday falls between seasons (taking the definitions from the Regulations), the player passport is required to show the club with which he was registered during the season following his birthday. The season following his birthday on 22 June 2011 was the 2011/12 season. The passport should therefore show he was registered with the Appellant in that season as the season of his 23<sup>rd</sup> birthday. As the commentary says, the passport is “crucial” for calculating training compensation and that this rule ensures the definition of “season” is “fully respected”.
- 8.34 This means, among other things, that even if the Panel had found that this case should be decided by attaching importance to FIFA’s general definition of a season, see par. 8.7, with the effect that the Player would then be assumed to have had his birthday between two seasons, then it would, in the Panel’s view, nonetheless be necessary – based on Article 7 of the Regulations – to conclude that in relation to the rules on training compensation the transfer must be found to have taken place in the same season in which the Player turned 23.
- 8.35 Based on the above, and since it is undisputed between the Parties that the Respondent did in fact offer the Player a new contract with improved terms in October 2010 in accordance with Article 6, par. 3, of Annex 4 of the Regulations, the Panel finds that the conditions set out in the Regulations for being entitled to receive training compensation have been satisfied with

respect to the transfer of the Player from the Respondent to the Appellant, and the Respondent is therefore entitled to claim training compensation from the Appellant.

- 8.36 It is important for the Panel to emphasize, however, that the Panel is aware that, even by applying the above-mentioned principles, situations may occur where doubt resulting from a chance overlap of dates may arise as to whether training compensation is payable in connection with a transfer.
- 8.37 The Panel notes in this connection that such situations can statistically occur for the significant number of young players whose birthdays fall in the months of May, June, July and August, depending on the dates the national associations consider the start and end dates of their seasons.
- 8.38 The Panel therefore calls on FIFA to take steps to ensure that the rules on training compensation and on the TMS set out in the Regulations are specified as soon as possible in order to ensure the unequivocal interpretation of the rules on training compensation, especially with regard to “birthdays in between seasons”.
- B. *In the event that a) is answered in the affirmative, how shall the amount of training compensation be calculated, including the question whether the Player’s training ended before the Player turned 21, and/or whether the amount of compensation decided by the FIFA DRC in the Decision clearly disproportionate?*
- 8.39 As the Panel finds that the Respondent is entitled to receive training compensation, it is for the Panel to decide how the amount of training compensation shall be calculated and if the amount of training compensation decided by the FIFA DRC in the Decision is clearly disproportionate.
- 8.40 It follows from article 1 of Annexe 4 of the Regulations that:  
*“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, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training”.*
- 8.41 As stated under par. 7.2.2.u) above, the Appellant submits that the training period of the Player must be deemed to have been terminated before the Player reached the age of 21. Based on that assumption, any training compensation amount payable to the Respondent, if applicable, must therefore be reduced.
- 8.42 Initially, the Panel states that the question whether the training period for a football player must be deemed to have been terminated before the age of 21 should, in the specific circumstances, be determined by a case-by-case analysis.

- 8.43 The Panel refers to the general legal principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact must carry the burden of proof, proving that the alleged fact is as claimed.
- 8.44 The Panel notes that this is in line with Article 8 of the Swiss Civil Code (“Swiss CC”), which stipulates as follows:  
*“Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact”.*
- 8.45 As a result, the Panel reaffirms the principle established by CAS jurisprudence that *“in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them [...] The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”* (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).
- 8.46 Based on that, the Panel confirms that the burden of proof to demonstrate that the training of the Player was indeed concluded before the player reached the age of 21 lies with the Appellant.
- 8.47 The Appellant submits in support of its allegation that the training of the Player was indeed concluded before the Player reached the age of 21, that the Player did not receive any separate/individual training with the Respondent, but participated in the training with the club’s first team on equal terms with the other first-team players. The Player himself provided evidence by way of a written statement and oral testimony at the hearing, as did Mr Baldwin. The Appellant also provided the CAS with details of the Player’s appearances (as a starting player and substitute) at his various clubs, along with details of goals scored,
- 8.48 As early as September 2006, just after he was 18, the Player made his debut on the Respondent’s first team in a cup match.
- 8.49 After having returned from his stay with Stranraer, the Player made three appearances for the Respondent in the 2007/2008 season.
- 8.50 During the 2008/2009 season, the Player made 27 appearances for the Respondent. According to the Player, this number would have been even higher had he not been injured during the season. The Player also appeared in the Scottish Cup final and in the 2009/10 season, the Player made 20 appearances for the first team, but again suffered a number of injuries.
- 8.51 Against this background, the Appellant submitted that it can therefore be concluded beyond doubt that the Player terminated his training at least in 2008.

- 8.52 The Respondent submits, in reply to this allegation, that most of the Player's 27 appearances for the Respondent during the 2008/2009 season were as a substitute.
- 8.53 Furthermore, the Player did not play very much with the first team in the following season.
- 8.54 The Respondent has a wide array of young players affiliated to its first team, which does not imply, however, that these players have per se terminated their training.
- 8.55 On the contrary, the Respondent often uses such young players on the club's first team to offer them match training, although these players have not, in the opinion of the Respondent, yet terminated their training.
- 8.56 The Appellant has thus failed to prove that the Player completed his training before reaching the age of 21.
- 8.57 The Panel notes initially that the number of the Player's appearances on the Respondent's first team is undisputed between the Parties.
- 8.58 As established by CAS (e.g. CAS 2004/A/594 and in numerous Awards thereafter) various factors are generally included in the assessment of whether a player's training period must be deemed to have been completed before the age of 21, including the level of talent of the player, whether or not the player is playing regularly with the first team and the value of the player, e.g. reflected in a loan fee achieved for the services of the player.
- 8.59 Based on, inter alia, the Player's statement, the Panel takes the view that the Player made his actual breakthrough with the Respondent over the course of the 2008/2009 season, during which he made 27 appearances, including the Scottish Cup final in which he entered the field of play. The Panel notes that previous CAS jurisprudence on this question has differentiated between the number of appearances as a starting member of the first team and a substitute (see CAS 2011/A/2559, where 13 appearances which were mainly as a substitute did not convince that panel that the players training phase was concluded).
- 8.60 The Panel notes that the Player did not make as many appearances with the first team in the following seasons, however, it also notes, at the same time, the Player's confirmation that he was injured during a large part of these seasons and, when he was not injured, he did in fact manage to appear as part of the team line-up on many occasions.
- 8.61 Against the background of these circumstances, the Panel finds that the Appellant has discharged the burden of proof to establish that the Player had terminated his training at the end of the 2008/2009 season just before turning 20, but the Panel does not accept that his training phase had concluded earlier, at the beginning of the 2008/2009 season, as the Appellant had submitted.
- 8.62 The Panel notes that neither of the Parties has raised any objection to the FIFA DRC's calculation method in the Decision, notwithstanding that the Appellant finds the result clearly

disproportionate. Moreover, as previously mentioned, the Parties agree that both clubs belonged to the category II (indicative amount of EUR 60,000 per year).

- 8.63 As the Panel finds that the Player terminated his training at the end of the 2008/2009 season, which, according to the information from the SFA, ended in late May 2009, the training compensation awarded by the FIFA DRC in its Decision for the 2009/10 season (being the season of the Player's 21<sup>st</sup> birthday) must be deducted and the total reduced by EUR 65,000.00, corresponding to a reduction of the period of training of 13 months.
- 8.64 The Panel thus finds that the Respondent is entitled to receive training compensation from the Appellant in an amount of EUR 185,000.00.
- 8.65 The Panel does not find this amount disproportionate.

## **9. SUMMARY**

- 9.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Panel finds that the Respondent is entitled to receive training compensation from the Appellant in the amount of EUR 185,000.00.
- 9.2 The Appeal filed against the Decision is therefore partially upheld.

## **ON THESE GROUNDS**

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

1. The appeal filed on 16 August 2013 by Bradford City Football Club against the decision rendered by the FIFA Dispute Resolution Chamber on 23 January 2013 is partially upheld.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 23 January 2013 is amended and Bradford City Football Club is ordered to pay to Falkirk Football Club the amount of EUR 185,000.00, plus interest at 5% as from 29 August 2013.
3. (...).
4. (...).
5. All further and other requests for relief are dismissed.