Arbitration CAS 2014/A/3542 Club Grenoble Football 38 v. Bologna Football Club 1909 S.p.A., award of 5 March 2015

Panel: Mr Lars Hilliger (Denmark), President; Mr François Klein (France); Mr Lucio Colantuoni (Italy)

Football
Termination of an employment contract due to a club's judicial liquidation
Liability for the termination of the employment contract
Burden of proof regarding the entitlement to receive training compensation

1. **In line with CAS jurisprudence, financial difficulties can never be a valid reason for unilateral termination of a contract unless otherwise specifically agreed between the parties or unless the economic problems are not imputable to the party terminating the contract. Therefore, the club terminating an employment contract with a player due to economic problems imputable to that club is responsible for the termination of the contract.**

2. **A football club which encounters financial difficulties has to discharge the burden of proof showing that it is entitled to receive a training compensation for the transfer of a player despite the termination of the contract with the latter. In this regard, the club has to show (i) that the economic problems which led to the judicial liquidation and to the subsequent termination of the contract with the player were not imputable to the commercial company created for administering its professional activities and (ii) that the other conditions are met *i.e.* a genuine interest in keeping the player and evidence that the club -and not the mentioned commercial company- is the one of the two entities that would be entitled to receive a training compensation resulting from the player's transfer.**

1. THE PARTIES

1.1 Club Grenoble Football 38 (the "Appellant") is a French football club, whose headquarters are located in Grenoble, France. The Appellant is a member of the Fédération France de Football ("FFF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

1.2 Bologna Football Club 1909 S.p.A. (the "Respondent") is an Italian football club affiliated with the Federazione Italiana Giuoco Calcio (the "FIGC"), which in turn is affiliated with FIFA.

2. FACTUAL BACKGROUND

2.1 The elements set out below provide 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 17 January 2014 (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 According to the French Sports Code, a French football club has to be created under the form of an association and is obliged to create a commercial company for administering professional activities which generate exceeding benefits of the association. Both entities are required to act under the same name.

2.3 The commercial company created for this purpose by the association is hence legally in charge of the commercial and professional corporate activities carried out by the club as a whole.

2.4 The association affiliated with the FFF which constitutes a commercial company continues to exist and is solely entitled to benefit from the affiliation with the FFF which manifests itself by the licence granted by the FFF.

2.5 According to information forwarded by the FFF to FIFA, the Association Grenoble Foot 38 (the "Association") constituted the Société Anonyme Sportive Professionelle Grenoble Foot 38 (the "SASP").

2.6 According to information provided by the Appellant, on 25 June 2007 the football player S. (the "Player"), born on 29 February 1992, signed a Training Convention with the Association having effect from 1 July 2007 until 30 June 2010 and an aspirant contract with the SASP having effect from 1 July 2007 until 30 June 2010. The aspirant contract was the Player's first professional contract under the FIFA Regulation on the Status and Transfers of Players ("FIFA RSTP").

2.7 At the expiration of the aspirant contract, the Player, at that point 18 years old, signed a new professional contract with the SASP for an additional 3-year period having effect from 1 July 2010 until 26 June 2013.

2.8 The football season in France lasts from 1 July until 30 June of the following year.

2.9 On 12 July 2011, the SASP was declared in judicial liquidation caused by financial difficulties, which it was not able to overcome.

2.10 When entering into judicial liquidation, the SASP lost its status as a professional club at the end of the 2010/2011 season and the first team of the club was thus relegated to the French Division 4, but without the Association losing its affiliation with the FFF.

2.11 During the proceedings before the FIFA DRC, the FFF informed FIFA that the Association cannot be regarded as the legal successor of the SASP. As constituted in the liquidation proceedings before the national courts, the liquidating Commissioner (the "Commissioner") represents the SASP for the duration of the liquidation.

2.12 On 25 July 2011, the Commissioner informed all the players of the SASP, including the Player, about the judicial liquidation and at the same time proceeded to the termination of all the employment contracts due to the judicial liquidation of the SASP.

2.13 Following the termination of his employment contract, the Player was free to sign a professional contract with the Respondent and was registered by the FIGC with this club on 10 August 2011 as a professional.

2.14 On 17 October 2011, the President of the Appellant (the Association) forwarded a claim to the respondent, stating, inter alia, as follows:

"Object - Request for training compensation according to art. 20 FIFA Regulations on the Status and the Transfer of Player

Dear Mr President,

On 08/08/2011 Your club registered S. who was trained by our club from season 2007 to season 2011 as it is possible to see from his FIFA sport passport hereby attached.

According to FIFA classification, Your club belongs to Category 1 and the training compensation is EURO 90.000 for each year of training.

Pursuant to the special provisions for UE/EEE, to which we belong the calculation of the training compensation must be done taking into account the average of the training costs of the clubs, Your club, Category 1 EURO 90.000 and GF38 Categori 4 EURO 10,000.

Therefore the average is EURO 100.000 : 2 = EURO 50.000 for each year of training equal to the sum of EURO 50.000 x 4 = EURO 200.000 that You would pay to Association GF38 as soon as possible".

2.15 By letter of 11 November 2011, the Respondent rejected the claim from the Appellant.

2.16 On 23 November 2011, the Appellant forwarded its claim to FIFA requesting the training compensation in connection with the transfer of the Player to the Respondent in the amount of EUR 360,000.00.

2.17 In its reply, the Respondent argued that the Player was registered with the SASP and not with the Appellant during the 2007/2008 – 2010/2011 seasons. Furthermore, the Respondent stated, *inter alia*, that the SASP's decision to enter into liquidation and thus terminate the employment contract constituted a unilateral breach of the Player's employment contract without just cause, with the consequences stipulated in Article 2 of Annexe 4 of the FIFA RSTP, i.e. that no training compensation should have fallen due. In addition to that, the Respondent emphasised that, according to Article 4 paragraph 1 and Article 5 paragraph 1 of Annexe 4 of the FIFA RSTP, only the club which actually trained the player could claim for training compensation. In this context, the Respondent referred to a decision of the FFF of 27 July 2011, by which it was

established that all sporting rights of the club would be assigned to the Association. Thus, only the sporting rights of the SASP were obtained by the Appellant, which do not include the right to receive training compensation. Finally, given that the Appellant was not involved in the training of the Player, it shall not have the right to receive training compensation.

2.18 Alternatively, the Respondent alleged that the Player had already finished his training before the age of 21, referring to Article 6 paragraph 2 of Annexe 4 of the FIFA RSTP, and when calculating the amount of any training compensation payable, the period to be considered as the effective training period therefore has to be reduced. Furthermore, the Respondent objected to the amount of EUR 360,000 since the Appellant, which actually claimed for training compensation was a Category IV club, whereas only the SASP was a Category I club. Therefore, the calculation of training compensation should only be based on the average between the Appellant and the Respondent, i.e. EUR 50,000 per year of training.

2.19 In its answer to the Respondent's submissions, the Appellant, without making a distinction between the Association and the SASP, emphasised that it was the club itself which effectively trained the Player. In this context, the Appellant indicated that according to the regulations of the FFF, the club was obliged to constitute a company whenever certain levels of profit or remuneration are reached. However, even after constituting the company, the Appellant remains the sole holder of rights with regard to training compensation as the Appellant is representing the totality of the Appellant in accordance with the regulations of FFF. Furthermore, the Appellant stated that it had actually provided the Player with accommodation and food during the period when the Player was registered with the SASP, just as the Player was trained by the coaching staff of the Appellant, which is why the Appellant had actually trained the Player.

2.20 The FIFA DRC, after having confirmed its competence, first of all recalled that the SASP was declared in judicial liquidation by the *Tribunal de Commerce* on 12 July 2011 and that, during the course of these liquidation proceedings, the "nominated Commissioner" informed the Player about the liquidation process of the SASP on 25 July 2011 and announced to him the early termination of his employment contract. Equally, the FIFA DRC took note that the Respondent rejected the Appellant's claim for payment of training compensation, stating that the decision of the SASP to enter into liquidation and the associated termination of the employment contract with the Player constituted a unilateral breach of the employment contract without just cause by the Appellant, leading to the consequences as stipulated in Article 2 paragraph 2 of Annexe 4 of the FIFA RSTP, i.e. that no training compensation fell due. Furthermore, it was noted that the Respondent stressed that the employment contract with the Player did not expire but was cancelled due to the liquidation of the SASP.

2.21 On account of the above, the FIFA DRC concluded that the central issue in the matter at stake would thus be to determine whether Article 2 paragraph 2 of Annexe 4 of the FIFA RSTP is applicable to the case. The FIFA DRC then recalled the content of the said provision, which stipulates that training compensation is not due if the former club terminates the player's contract without just cause. *A contrario*, only if the club had just cause to terminate the relevant employment contract, would it still be entitled to training compensation. The FIFA DRC

further stressed that the definition of just cause and whether just cause exists shall be esta blished in accordance with the merits of each particular case.

2.22 With regard to the particularities of the case, the FIFA DRC recalled that is was undisputed between the Parties that the Player at no time showed any behaviour which would have justified a violation of the terms of the employment contract justifying the early termination thereof. On the contrary, it was undisputed that the only reason for the unilateral termination of the contract was the financial difficulties of the Appellant and the related liquidation. In the light of this, the FIFA DRC formed the belief that the termination of the employment contract with the Player was by no means imputable to the Player and concluded that in fact the Appellant was solely responsible for the liquidation of the SASP and the consequent termination of the contract. Against such background, the Chamber decided that there was no valid or just cause for the unilateral termination of the contract. The FIFA DRC then emphasised that a club that has terminated a contract with a player without having a just cause to do so shall not be able to retain any rights which depend on such rightful termination. Therefore, in accordance with Article 2 paragraph 2 of Annexe 4 of the FIFA RSTP, the Appellant is not entitled to receive training compensation in connection with the transfer of the Player to the Respondent. Based on that result, the FIFA DRC deemed it unnecessary to analyse any further arguments put forward by either Party and concluded that the Appellant's claim for training compensation was to be rejected.

2.23 On 17 January 2014, the DRC rendered the Decision and decided, in particular, that:

"1. The claim of the Claimant, Grenoble Foot 38, is rejected.

2. The final costs of the proceedings in the amount of CHF 18,000 are to be paid by the Claimant, Grenoble Foot 38".

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

3.1 On 1 April 2014, the Appellant filed in the French language a Statement of Appeal with the CAS in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").

3.2 By letter of 4 April 2014, the Respondent was informed about the appeal and granted a deadline of 3 days for submitting a possible objection to the procedure being conducted in the French language.

3.3 On 7 April 2014, the Respondent informed the CAS that *"the preference for the conduct of the appeal is on English language in lieu of French because the proceeding before FIFA was in English, the appealed decision was written in English and also in order to ensure the balance of the parties' position".*

3.4 On 10 April 2014, the Appellant submitted its comments and arguments regarding its preference for having the procedure conducted in the French language.

3.5 Due to the disagreement between the Parties in this regard, the time limit for the Appellant to submit the Appeal Brief was suspended.

3.6 By Order on Language of 17 April 2014, the President of the Appeals Arbitration Division decided in consideration of the Parties' arguments that the language of these proceedings is English. Furthermore, the Appellant was granted a deadline of 10 days from the notification of the Order of Language to file its Appeal Brief.

3.7 On 27 April 2014, and with reference to the Order of Language, the Appellant informed the CAS that it *"is forced to require an additional delay to produce its Appeal Brief, until June 1, 2014"*.

3.8 On 2 May 2014, the Respondent informed the CAS, *"inter alia"*, that *"We agree with the Appellant's request for the extension of the time limit for the appeal brief under the condition that the same period would be granted also to us for the submission of our answer"*.

3.9 By letter of 5 May 2014 from the CAS Court Office, the Appellant was granted an extension until 2 June 2014 to file its Appeal Brief.

3.10 By letter of 2 June 2014, the Appellant requested a new extension of the time limit stating, *inter alia*, *"This additional time is necessary in particular for obtaining additional documents and translating these documents in English"*.

3.11 On 6 June 2014, 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 François Klein, attorney-at-law, Paris, France (nominated by the Appellant) and Professor Lucio Colantuoni, Savona, Italy (nominated by the Respondent).

3.12 By letter of 11 June 2014, the Parties were informed that the Panel had decided to grant the Appellant an extension of its deadline to file its Appeal Brief until 16 June 2014. However, on the same date the Appellant forwarded a new request for an extension of the deadline since the counsel of the Appellant was on a business trip. On 13 June 2014, the Panel granted the Appellant an ultimate deadline until 20 June 2014 to file its Appeal Brief. The Appeal Brief was filed on 20 June 2014 and forwarded to the Respondent on 26 June 2014.

3.13 By letter of 30 June 2014, the Respondent informed the CAS Court Office that the exhibits received together with the Appeal Brief had not been translated into English, which is the language of the procedure. According to Article R51 of the Code, the Appellant shall file *"…a brief stating the facts and legal arguments giving rice to the appeal, together with all exhibits and specification on other evidence upon which he intends to rely…"*. Since the exhibits had not been translated into the English language, notwithstanding the numerous extensions of the deadline for that specific purpose, the Respondent asked the Panel to consider the appeal withdrawn or, in any case, inadmissible for clear violation of the Panel's order.

3.14 On 2 July 2014, the Appellant replied, inter alia, as follows:

"I wish to inform you that GF 38 did not consider useful to proceed to an English translation of every single original document, given that the relevant provisions of the documents written in French have been translated and are featured in the appeal brief.

GF 38 therefore considered that it was not useful for the matter to proceed to the full translation of the documents.

GF 38 has simply produced the documents in order to dispose of a reference to certify their existence and dates.

However, if the Panel considers that a full English translation of the documents is required, GF 38 will respectfully proceed to the translation in question".

3.15 Also by letter of 4 July 2014, the Parties were informed, *inter alia*, as follows:

"Following the parties's latest correspondence on the issue of the exibits to the appeal brief, the Panel decided that it is not for it to decide on behalf of either of the parties whether or not certain documents should be submitted to the CAS. Therefore, the decision by the Appellant not to submit the translation of the exhibits to its appeal brief is entirely the Appellant's own decision.

The parties are informed that any documents not submitted in English will be disregarded by the Panel".

3.16 By letter of 4 July 2014, the Appellant forwarded to the CAS *"a free translation of the necessary documents"*. On the same date, the Respondent once more requested the Panel to declare the appeal inadmissible *"due to the lack of submission of every part of appeal brief in the time limit granted"*. On 8 July 2014, the Appellant insisted in the admissibility of the appeal stating, *inter alia*, *"Therefore the translation of the documents into English is not a condition of the appeal's admissibility regarding the above-mentioned procedural rule of CAS".*

3.17 Finally, by letter of 9 July 2014, the Parties were informed as follows:

"The Panel will not at this stage of the proceedings declare the appeal as inadmissible as requested by the Respondent. However, the Panel will, at a later stage, rule on the admissibility of the "free translation" which the Appellant filed after the deadline had expired".

3.18 The Parties both confirmed that they preferred a hearing to be held in this matter.

3.19 On 2 September 2014, the Respondent filed its Answer to the appeal, and on 19 and 22 September, the Parties signed and returned the Order of Procedure.

4. HEARING

4.1 A hearing was held on 14 October 2014 in Lausanne, Switzerland.

4.2 The Appellant was represented at the hearing by its counsel, Ms Patricia Moyersoen.

4.3 The Respondent was represented by its counsel, Mr Luigi Carlutti and Mr Federico Menichini.

4.4 The Parties confirmed that they did not have any objections to the composition and appointment of the Panel.

4.5 The Appellant and the Respondent had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Panel. After the Appellant's and the Respondent's final submissions, the Panel closed the hearing and reserved its final award. The Panel listened carefully and took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they have not been expressly summarised in the present Award. Upon closure, the Appellant and the Respondent expressly confirmed 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 Code states as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if 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 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 when signing the Order of Procedure.

5.3 The Decision was notified to the Appellant on 13 March 2014, and the Appellant's Statement of Appeal was lodged on 1 April 2014, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed.

5.4 The Appeal Brief was filed with the CAS on 20 June 2014. However, as described above in paragraphs 3.10 – 3.14, the exhibits filed together with the Appeal Brief had not been translated into the English language. A *"free translation"* of the exhibits was later filed by the Appellant.

5.5 The Respondent, with reference to Article R51 of the Code, requests the CAS to consider the appeal as withdrawn since the Appellant failed to file the exhibits translated into the English language in accordance with the Order on Language of 17 April 2014, or in any case as inadmissible together with the *"free translation"*.

5.6 According to Article R51 of the Code, the Appellant shall file *"…a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification on other evidence upon which he intends to rely"*.

5.7 The Panel emphasises in this context that it is only exhibits and specifications on which the Appellant intends to rely that need to be translated into the language of the proceeding. And as already stated by the Panel, it is not for the Panel to decide on behalf of either of the Parties whether or not certain documents should be submitted to the CAS.

5.8 Accordingly, either party's failure to submit exhibits is not in itself to be regarded as formal non-compliance with the provisions of the CAS Code, although the Panel calls attention to the fact that any documents not submitted in English will be disregarded by the Panel.

5.9 The Panel therefore finds that the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

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

5.11 With regard to the contested admissibility of the "free translation" filed by the Appellant on 4 July and, thus, after the deadline, the Panel refers to para 6 of the Order of Procedure signed by both Parties, which reads as follows:

"In accordance with Article R29 of the Code and following the Order on language rendered by the President of the CAS Appeals Arbitration Division on 17 April 2014, the language of this arbitration is English. Documents written in any other language other than English shall only be submitted accompanied by a translation. If such documents are not translated into English, the Panel may decline to consider them. …

With respect to the above, the Panel has decided that the translated exhibits files by the Appellant on 4 July 2014, filed after the deadline provided by the Panel had expired, are deemed inadmissible, as stated in its letter of 4 July 2014. The Appellant chose to only translate the relevant passages of such exhibits it intended to rely on in its appeal brief and only such passages shall be taken into consideration by the Panel".

5.12 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 Article 66 of the FIFA Statutes states as follows:

"The provision 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 Code states as follows: *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

6.3 Article 2 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the DRC states as follows: *"In their application and adjudication of law, the Players Status Committee and the DRC shall apply the FIFA Statutes and regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well ad the specificity of sport".*

6.4 In its Appeal Brief, and with reference to Article 2 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, the Appellant submitted that the Panel should take into consideration the national French provisions since they highly impact the matter at hand in order to evaluate the claimed rights presented by the Appellant.

6.5 In its Answer, the Respondent submitted that the *"applicable regulations"* shall be the FIFA RSTP, since the appeal is directed against a decision by FIFA which was passed applying FIFA's rules and regulations. Subsidiarily, Swiss law is applicable to the merits according to art. 66.2 of the FIFA Statutes.

6.6 The Panel notes initially that in the present matter, the Parties have not agreed on the application of any particular law.

6.7 The Panel further notes that there is a discrepancy between Article 58 of the Code and Article 2 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the DRC. Hence, according to the latter article, the DRC must take *"into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport"*, whereas the CAS, in the absence of any rules of law chosen by the Parties, is entitled to decide the case *"according to the rules of law that the Panel deems appropriate"*.

6.8 This discrepancy between the two articles involves in principle a risk of a situation where the CAS can rightfully choose to decide a case in accordance with rules of law other than the rules which either the Players' Status Committee or the DRC, also rightfully, chose to apply in connection with the decision of the case by the appropriate chamber or committee. In the Panel's view, this means that the CAS panels, for as long as this discrepancy persists, are under an obligation in this type of disputes to pay special attention to this problem and, if necessary, to give a separate account of any application of rules of law other than the rules applied by the FIFA body in question.

6.9 However, in this particular case, the Panel finds that the dispute relates to an alleged claim for payment of training compensation in accordance with the FIFA Regulations on the Status and Transfer of Players.

6.10 Against this background and with reference to Article R58 of the Code, the applicable law in this case shall be the regulations of FIFA and, additionally, Swiss law, which is consistent with the position taken by the DRC in the Decision.

7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

7.1 The following outline of the Parties' requests for relief 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.

7.2 *The Appellant*

7.2.1 In its Appeal Brief of 20 June 2014, the Appellant requested the CAS to:

"1.– set aside the January, 14 2014 decision of the FIFA Dispute Resolution Chamber,

2.– Order the club of Bologna to pay to GF 38 the amount of EUR 360 000 as training compensation in connection with the Player S.,

3.– Order the Club of Bologna to pay to GF 38 interest as the rate of 5% per annum on the said amount starting with the first demand, dated 17 October 2011,

4.– Order the club of Bologna to pay to GF 38 the amount of EUR 35,000, subject to addition, covering the expenses that it had to incur to defend itself before the FIFA DRC and CAS,

5.– Order the club of Bologna to pay all the expenses of the arbitration before the CAS".

7.2.2. In support of its requests for relief, the Appellant submitted, *inter alia*, as follows:

a) According to the French Sports Code and the general regulations of the FFF, a football club has to be created under a form of an association and is obliged to create a commercial company for administering professional activities which generate exceeding benefits of the association and providing remuneration to the athletes concerned. Both entities have to act under the same name and constitute "le Club".

b) The SASP created for this purpose by the Association was hence legally in charge of the commercial and professional corporate activities carried out by the club as a whole. However, and in accordance with the general regulations of the FFF, the Association continues to exist and is solely entitled to benefit from the affiliation with the FFF, which manifests itself by the licence.

c) The relationship between the SASP and the Association is defined in a signed convention (the "Convention"), which is compelled to include several mandatory provisions set up by the French Sports Code.

d) Both entities cooperate in order to accomplish the purpose of the affiliated Association in the sense that the Association preserves the administration of the licence and the activities linked to the non-professional football, whereas the SASP is in charge of the activities related to the professional football.

e) For the purpose of the administration of the licence of the club according to the provisions of the Convention, the Association patronises its "centre de formation" (the "Youth Academy") and sets up the "convention de formation" (the "Training Convention"). The Training Convention is a necessary document and binding contract between the young players and the Association, in the absence of which no employment contract can be signed between the players and the SASP. The employment contract of a young player is signed with the SASP.

f) On 25 June 2007, the Player signed a Training Convention with the Association having effect from 1 July 2007 until 30 June 2010 and an aspirant contract with the SASP having effect from 1 July 2007 until 30 June 2010. The aspirant contract was the Player's first professional contract under the FIFA RSTP. At the expiration of the aspirant contract, the Player, at that point 18 years old, signed a new professional contract with the SASP for an additional 3-year period having effect from 1 July 2010 until 26 June 2013.

g) On 12 July 2011, the SASP was declared in judicial liquidation caused by financial difficulties, which it was not able to overcome. When entering into judicial liquidation, the SASP lost its status as a professional club at the end of the 2010/2011 season and was thus relegated to the French Division 4, but without the Association losing its affiliation with the FFF.

h) Following the declaration of judicial liquidation, the Commissioner informed all the players of the SASP, including the Player, about the judicial liquidation and at the same time proceeded to the termination of all the employment contracts due to the liquidation.

i) Following the termination of the contract with the SASP, the Player signed a professional contract with the Respondent.

j) According to the French commercial code, the judicial liquidation is destined to terminate the business activity, which is why the employment contracts obviously cannot be maintained. Furthermore, all the SASP's rights and actions are executed by the Commissioner during the proceedings of the liquidation.

k) It follows from the French Labour Code, *inter alia*, that *"In the case of a judicial liquidation, the liquidator envisages the breach of contract due to economic reason and sets up a plan for this purpose"* and *"Every breach related to an economic reason is justified by a real and serious reason"*.

l) Furthermore, it follows from the regulations of the French Professional Football League (the "LPF") and in accordance with the "Charte du football professionnel" that only clubs disposing of the professional status are authorised to employ professional players and that only clubs competing in the French championship of the Ligue 1 and Ligue 2 are to be considered as professional clubs. Thus, since the SASP was relegated to the French Division 4 it lost its professional status and therefore also its right to employ professional football players.

m) Article 2 paragraph 2 of Annexe 4 of the FIFA RSTP is not applicable in this case since the termination of the contract of the Player was based on a just cause, being mandatory for the Commissioner.

n) The definition of just cause shall be established in accordance with the merits of each particular case. The meaning of just cause shall be interpreted less restrictively and rather be understood as a valid and legitimate cause leading the parties to terminate the contract, making it impossible for them to maintain the contractual relationship. Even if the Player

did not initiate the breach, it was neither the intention of the SASP. It was not even the economic loss of the SASP that directly led to the breach of the contract, but the application of the local provision and bargaining agreements that gave the Commissioner no other choice but to terminate the professional contract with the Player.

o) Based on the above, and since the contract with the Player was not breached without just cause, the Appellant is rightly entitled to claim payment of training compensation from the Respondent in accordance with the FIFA RSTP. According to the registration in the Player's passport, the club of the Appellant was a category 1 club for the period during which the Player received training with it. Since the Respondent is also a category 1 club, the training compensation should be calculated to EUR 360,000 (4 years of EUR 90,000 each).

p) The amount of training compensation shall not be reduced because even if the Player did participate in several matches of the first team of the club, he was still trained by the Youth Academy, and linked to it until the end of the training contract.

q) As already mentioned, according to the French Sports Code and the general regulations of the FFF, a football club has to be created under a form of an association and is obliged to create a commercial company for administering the professional football activities. The existence of the commercial company protects the association from any risk or financial difficulties that may arise.

r) Not respecting these provisions can be sanctioned by an exclusion of the competitions of the championship. There even exists a model convention set up by the Minister of Sports and which the clubs are invited to consider in order to ensure that the provisions laid down between the commercial company and the association are compliant with the legal sportive dealings.

s) Furthermore, it is important to remember that according to the regulations of the FFF, the associative entity continues to exist as an association of law and remains the only beneficiary of the impacts of being affiliated and in this case the only entity to use the right of the club's licence.

t) According to the Convention, the Association is managing the activities of the non-professional football players, whereas the SASP is being entitled by the Association to supervise all the professional activities related to the club.

u) Since the Association stays in charge of the non-professional sector of the club and takes care of the administration of the younger players who are not yet professionals, it is obvious that the Association participates entirely in the training of these players. Furthermore, the SASP can only rightfully offer training to a player and, if applicable, sign an employment contract with him if the Association has established the Training Convention with that player.

v) The Training Convention proves the Player's relationship to the Association that he maintained during the time he was trained by the club. He only stopped being linked physically to the Youth Academy when he signed his professional contract, binding him in a definite way to the SASP.

w) Even if the Association is not the legal successor of the SASP, the "sportive rights" of the Player always belonged to the Association, which is the only legal entity affiliated to the FFF. On that basis alone, the Appellant is entitled to receive the training compensation claimed.

x) In any case, the Panel should acknowledge the efforts expended by the club on the training it had effectively provided for the Player, which will be in line with the idea of training compensation as stated in the FIFA RSTP.

y) If FIFA wishes to grant training compensation to the clubs which effectively trained the players, it cannot limit itself to finding out whether the breach was initiated by the player or not. The accomplished training should indeed be valued and hence rewarded instead of being punished due to an unwilling breach which occurred.

z) In any case, Article 3 of Annexe 4 of the FIFA RSTP anticipates this situation as it provides training compensation paid to the national federation if the club in question ceased to participate in organised football and no longer exists due to liquidation.

aa) Not allowing the Appellant, which actually trained the Player, to receive the training compensation is a sanction that is unfair and disproportionate in regard to the efforts performed by the Association on the one hand and mandatory and public order obligations it was bound to on the other hand.

bb) The Association and the SASP worked together to accomplish the same result for the club incorporating them, which is why both entities in fact should be entitled to claim training compensation. Yet, it is the Association which always remained affiliated with the FFF.

cc) Finally, it must be stressed that it is not a condition for training compensation to be payable that a transfer fee is paid in connection with a player signing a professional contract with another club in another national federation.

7.3 The Respondent

7.3.1 In its Answer filed on 2 September 2014, the Respondent requested the following from CAS:

"- In preliminary way:

To declare inadmissible/withdrawn the appeal;

- in the merit:

in first instance:

- *to dismiss the appeal confirming the FIFA DRC's decision*

in second instance:

- *to consider the peculiarity of the case in calculation of the training compensation with fair criteria*
- *with condemn of the Appellant to pay all the costs of the proceeding and a contribution for the legal fee".*

7.3.2 In support of its requests for relief, the Respondent submitted as follows:

a) The Appellant is the Association Grenoble Foot 38 that considers itself entitled to receive the training compensation for the training and education of the Player following the international transfer to the Respondent.

b) The Player was registered from 1 July 2007 until 30 June 2010 as an "aspirant" and from 1 July 2010 until 30 June 2013 as a professional with the commercial company SASP.

c) According to the Appellant, the Association and SASP should be part of the same entity of a dual nature, where the Association should be responsible for the organisation of the championship as well as for the education and training of amateur players, while SASP should be the commercial subject, responsible for the organisation of non-amateur championship, including the education and training of professional players and authorised to enter into professional contracts with such players. The different competence and powers of these entities should be specified in the Convention signed by both entities.

d) However, the Appellant never submitted any evidence rightfully documenting such Convention, and the Appellant consequently never managed to discharge the burden of proof regarding such alleged connection between the entities.

e) From the Appellant's appeal brief, it can only be understood that the Player joined the SASP and was registered with it and that the Player was effectively trained by the SASP.

f) According to Article 3 of Annexe 4 of the FIFA RSTP *"training compensation will only be owed to his former club for the time he was effectively trained by that club".*

g) As the Player transferred to the Respondent when he was already a non-amateur registered with the SASP, only the SASP as the previous club should be entitled to receive training compensation. Not any other club or association should be entitled to receive training compensation.

h) When the SASP was declared in judicial liquidation, all the employment contracts were breached exclusively as a result of the SASP's own negligence, and the professional players became free agents, having the right to be freely registered with other clubs. Thus, the only entity involved in that situation was the SASP and not the Association, which had no rights in relation to the registration of the Player.

i) In fact, if the Association should have rights regarding the registration, including education and training, as a former club, then there is no reason that the Player after the liquidation should become a free agent, which he did.

j) Thus, the onus to prove the ground for the alleged right to receive training compensation is not satisfied by the Appellant, which fails to discharge the burden of proof about the alleged relationship between the Association and the SASP and why it should be entitled to receive the training compensation.

k) Furthermore, and without prejudice to the above, it is stressed that according to Article 2 of Annexe 4 of the RTSP *"Training compensation is not due if: i. the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs)";*

l) This must be read in line with one of the pillars of the FIFA rules, which is the maintenance of contractual stability and according to which *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanction) where there is just cause"* (Article 14 of the FIFA RSTP).

m) Whether or not termination is with or without just cause must be decided on a case to case basis.

n) In this case, the Commissioner announced in his letter of letter of 25 July 2011 the unilateral termination of the Player's employment contract prior to its expiry for economic reasons.

o) As such, the lay-off of all the professional players of the SASP was determined by the declaration of the club due to a financial crisis, which was only caused by the negligence of the SASP, so the labour relationship with the Player was terminated without just cause due to the behaviour of the SASP.

p) Furthermore, at the time of the termination of the employment relationship with the Player, the SASP was already in serious breach of contract by not fulfilling its economic obligation according to the contract with the Player.

q) The judicial liquidation of the SASP constitutes the unilateral breach of the employment contract with the Player by the SASP without just cause and triggers the consequences deriving therefrom as provided for in the FIFA RSTP.

r) The financial situation of the SASP does not constitute a just cause to terminate the employment relationship with the Player, which is why no training compensation fell due according to Article 2 of Annexe 4 of the RTSP when the employment relationship was terminated unilaterally without just cause by the SASP.

s) According to Article 6.3 of Annexe 4 of the RSTP – and applicable to transfers from one national association to another inside the territory of the EU/EEA – no training compensation is applicable, unless the former club offers the player a new contract, which must be at least of an equivalent value to the current contract. This provision is intended to protect the right of work as well as the free movement of professional players inside the territory of the EU/EEA.

t) In line with this, the unilateral termination of the employment relationship between the SASP and the Player cannot justify an obligation for a new club to pay training compensation that would create an obstacle to the free movement of the Player within the EU/EEA.

u) If a player who suffered an early termination of contract as a result of default committed by his previous club could only be registered with another club within the EU/EEEA after the new club had paid training compensation to the previous club, the player would become less attractive, with a clear obstacle impeding the free movement, even when the early termination was not caused by him. This would clearly go against the spirit and aim of the EU and FIFA.

v) Finally, and in case the Panel should decide to grant training compensation to the Appellant, it must be stressed that the Appellant is a Category 4 club, while the Respondent is a Category 1 club, and the average should therefore be EUR 50,000.00 for a season of effective training of the Player. Furthermore, the Panel is invited to mitigate the training compensation payable, taking into consideration the peculiarities of the case at hand.

8. DISCUSSION ON THE MERITS

8.1 The Panel notes initially that it is not disputed between the Parties that the professional contract between the Player and the SASP was terminated unilaterally by letter of 25 July 2011 by the Commissioner, who represented the SASP for the duration of the liquidation proceeding. According to said letter from the Commissioner, the early termination of the contract between the Player and the SASP was *"for economic reasons, pursuant to the cessation of activity of the club…"*. The Panel further notes that it is undisputed between the Parties that the Player at no time showed any behaviour which would have justified a violation of the terms of the employment contract justifying the early termination thereof.

8.2 Following this termination, the Player was to be regarded as free agent and as such signed a professional contract with the Respondent and was registered by the FIGC with this club on 10 August 2011 as a professional.

8.3 Article 20 of the FIFA RSTP states as follows: *"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) each time a professional is transferred 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 provision concerning training compensation are set out in Annexe 4 of these regulations".

8.4 Article 2 paragraph 2 of Annexe 4 of the FIFA RSTP states, *inter alia*, as follows: *"Training compensation is not due if: i. the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs)…".*

8.5 Article 6 paragraph 3 of Annexe 4 of the FIFA RSTP, which is applicable with regard to players moving from one association to another inside the territory of the EU/EEA, states as follows: *"If the former club does not offer the player a contract no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player's previous club(s)".*

8.6 The Panel finds initially that it is beyond doubt that the Player cannot in any way whatsoever be held responsible for the termination of the contract and that such responsibility solely rests with the SASP.

8.7 The Panel further regards the termination of the contract as a direct consequence of the fact that the SASP was declared in judicial liquidation caused by financial difficulties which it was not able to overcome, and it can therefore rightfully be concluded that the termination was a direct consequence of the SASP's financial difficulties.

8.8 In line with previous practice, the Panel emphasises that economic problems can never be a valid reason for unilateral termination of a contract unless otherwise specifically agreed between the parties in question or unless the economic problems are not imputable to the party terminating the contract which is not the case in the present dispute.

8.9 The Panel also notes that the Appellant is incidentally not seen to have discharged the burden of proof in support of its allegation that it would be entitled to receive such training compensation. Hence, the Appellant has, inter alia, not discharged the burden of proof to show that the economic problems which led to the judicial liquidation were not imputable to the SASP.

8.10 In so doing, 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 fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).

8.11 Even if the SASP, as a result of the liquidation procedure, was apparently prevented from offering the Player a new contract that was at least equivalent to the former contract, (see Article 6 paragraph 3 of Annexe 4 of the FIFA RSTP), then the Panel finds that the Appellant has failed to discharge the burden of proof to show that the SASP was genuine interested in keeping the Player and thus has adequately pursued other possible endeavours to retain the Player with the SASP, which requirement follows from the same provision according to current practice.

8.12 This means that the SASP has not met the requirements of the above-mentioned provision by substantiating its entitlement to receive training compensation resulting from the Player's transfer to the Respondent.

8.13 Moreover, the Panel finds that the Appellant has not provided sufficient evidence to prove that the Appellant would be entitled to receive the alleged training compensation resulting from the Player's transfer from the SASP to the Respondent.

8.14 The Appellant has referred the CAS to the contents of the Convention made between the Appellant and the SASP, which, according to the information available, would regulate their mutual relationship, including providing documentation to prove that the Appellant would be entitled to receive the alleged training compensation instead of the SASP.

8.15 The Panel refers in that connection to the statements made under paragraphs 5.7 through 5.11 above, from which it appears, inter alia, that any documents not submitted in English will be disregarded by the Panel.

8.16 With reference hereto, and against the background of the material submitted during these proceedings, the Panel finds that the Appellant has failed to discharge the burden of proof to show that the nature of the alleged cooperation/the extent of the alleged interrelationship would make the Appellant entitled to receive any training compensation resulting from the Player's transfer from the SASP to the Respondent.

8.17 Accordingly, the Panel finds, inter alia, that no documentation has been provided to prove that the internal distribution of rights and obligations would make the Appellant the one of the two entities that would be entitled to receive a training compensation amount resulting from players who had entered into professional contracts with the SASP.

8.18 Against the background of the foregoing, the Panel therefore finds no grounds to set aside the Decision, nor does the Panel, as a consequence hereof, find any grounds to address the question about the amount of the alleged training compensation.

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 Commissioner's unilateral termination of the

employment contract between the SASP and the Player was caused by the financial difficulties of the SASP, which does not constitute a valid reason for the termination of the said contract.

9.2 Furthermore, the Panel finds that the Appellant did not discharge its burden of proof to demonstrate that the other conditions for the entitlement of the SASP and, therefore, the Appellant to receive any training compensation resulting from the Player's transfer from the SASP to the Respondent have been met.

9.3 Given these circumstances, the Panel finds no grounds to set aside the Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 1 April 2014 by Club Grenoble Football 38 against the decision rendered by the FIFA Dispute Resolution Chamber on 17 January 2014 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 17 January 2014 is upheld.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.