Arbitration CAS 2014/A/3547 Club Grenoble Football 38 v. Sporting Clube de Portugal, award of 5 march 2015

Panel: Mr Fabio Iudica (Italy), President; Mr François Klein (France); Mr Markus Bösiger (Switzerland)

Football
Termination of an employment contract due to a club's judicial liquidation
Inadmissibility of untranslated documents and of documents filed out of time
Training compensation not due to a club in case of termination of contract without just cause
Lack of evidence of the entitlement to training compensation under art. 6 para. 3 of Annexe 4 FIFA RSTP
Lack of evidence regarding the entitlement of the club to receive training compensation as a legal entity

1. **According to the CAS Code, translated documents filed lately as well as documents filed in due time but not translated, shall be disregarded except regarding the assessment of their respective date of origin and existence since they were only intended to certify those elements.**

2. **As an exception to the general rule under article 20 of the FIFA Regulations on the Status and Transfer of Players, pursuant to article 2 para 2 of Annexe 4 of the FIFA Regulations, training compensation is not due if the former club terminates the player's contract without just cause. The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In this respect, 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 that the economic problems which led to the judicial liquidation were not imputable to the commercial company created for administering its professional activities or that such difficulties were attributable to other unrelated circumstances. Absent any evidence in this regard, even if the termination of the contract is a legal consequence of the judicial liquidation, the club did not prove that the commercial entity cannot be held responsible (*"latu sensu"*) for the termination of the player's contract, due to liquidation. In that sense, the termination of the contract by the club cannot be considered as "justified" under the terms of the FIFA Regulations governing the mechanism of training compensation.**

3. **Where a club is constituted of two entities, it is irrelevant whether the club lost its professional status due to the liquidation of one entity, which fact made it impossible for the club to offer any other professional contract to the player. Moreover, the club's failure to demonstrate a genuine interest in retaining the player, by virtue of a proactive behaviour towards the same, according to article 6 para 3 of Annexe 4 of the FIFA Regulations, cannot justify any entitlement to receive training compensation.**

4. **Where a club is constituted of two entities and where one of the entity has been liquidated, the remaining one is not allowed to training compensation if it cannot prove that it is the legal entity which would, in principle be entitled to receive training compensation resulting from the player's transfer.**

I. INTRODUCTION

1. This appeal is brought by Association Grenoble Football 38 (hereinafter also referred to as the "Association" or the "Appellant"), against the decision rendered by the FIFA Dispute Resolution Chamber (hereinafter also referred to as the "DRC") on 17 January 2014, served to the Appellant on 13 March 2014, in the proceedings filed by the Appellant regarding a dispute related to training compensation in connection with the transfer of the player A. (hereinafter also referred to as the "Appealed Decision").

II. THE PARTIES

2. The Appellant is a sport association and it is currently the (sole) legal entity corresponding to the football club "Grenoble Foot 38" (hereinafter also referred to as "the Club") based in Grenoble, France, affiliated to the French Football Federation (Fédération Française de Football, hereinafter also referred to as the "FFF"), which in turn is member of FIFA.

3. Sporting Clube de Portugal - Futebol, SAD (hereinafter also referred to as the "Respondent") is a professional Football Club with headquarters in Lisbon, Portugal, affiliated to the Portugal Football Federation (Federaçao Portuguesa de Futebol, hereinafter also referred to as the "FPF") which in turn is member of FIFA.

III. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions and relevant documentation produced and on the fact-finding established in the Appealed Decision. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. According to art. L. 122-1 of the French Sports Code and to the Statutes and Regulations of the FFF, the Appellant is one of the two entities of which the Club was constituted at the time of the events which gave rise to the present dispute. In fact, at that time, the Club was composed of the Société Anonyme Sportive Professionnelle Grenoble Foot 38 (hereinafter the "SASP") and the Association Grenoble Foot 38, which is the entity formally acting today as the "Appellant" in the present case.

6. Actually, according to article 26 of the Règlements Généraux de la FFF, sport clubs exceeding the maximum threshold of revenues specified under the French Sports Code must constitute a commercial company to administer the club's business activities: in such cases, the commercial company coexists with the sports association.

7. In fact, pursuant to article 27 of the Règlements Généraux de la FFF, a club which constitutes a commercial company in accordance with these regulations still continues to exist also in the form of a sport association which is the sole entity within the club which benefits from the affiliation with the FFF.

8. In addition, according to article 27 of the Règlements Généraux de la FFF, the relationship between the sport association and the commercial company of the club shall be governed by a convention complying with the provisions set forth under the French Sports Code.

9. In view of the above, it resulted from the file that the SASP was the Club's commercial company which was charged with the administration of the professional football activities and relevant business, while the Association was responsible for the management of the activities related to amateur football.

10. It also emerged from the file that the player A., born in […] (France) [in] 1992 (hereinafter the "Player") was registered with the Club from 1 July 2007 until 30 June 2010 as an "Aspirant" player (which was actually the Player's first professional contract) and from 1 July 2010 until 26 June 2011, as a professional.

11. On 12 July 2011 the SASP entered into judicial liquidation before the Commercial Court of Grenoble, because of financial difficulties which it was not able to overcome.

12. The liquidation of the SASP did not cause the loss of the Club's affiliation to the FFF as the association keeps the benefit from the affiliation with the FFF as mentioned before under par. 7. However, the SASP lost its status of professional club at the end of the season 2010/2011. Under the responsibility of the association the first team continued competing in the 4th French division (which is the second Championship of amateur football), and since then it has the status of a category IV club according to FIFA Regulations on the Status and Transfer of Players (hereinafter the "FIFA Regulations").

13. Based on the information received by the FFF, the FIFA DRC established that although the SASP and the Association were linked by a convention governing their relationship, as mentioned before under par. 8, the Association cannot be regarded as the legal successor of the SASP.

14. According to the DRC's fact-finding, on 25 July 2011 the judicial commissioner appointed in the liquidation proceedings, informed the Player about the liquidation process of the SASP and announced to him the early termination of his contract due to the company's liquidation.

15. On 8 August 2011, the Player was then registered with the Respondent, as a professional.

16. On 29 November 2011, the Association lodged a claim before FIFA against the Respondent requesting training compensation in connection with the transfer of the Player to the Respondent, for an amount of Euro 360,000. The Respondent contested the claim in its reply before the FIFA DRC stating that the early termination of the Player's contract constituted a unilateral breach of contract without just cause.

17. With the Appealed Decision, the FIFA DRC rejected the claim lodged by the Association, based on the opinion that there was no valid reason or just cause for the unilateral termination of the employment contract of the Player and that, therefore, in accordance with article 2, par. 2 of Annex 4 of the FIFA Regulations, the Club was not entitled to receive training compensation in connection with the transfer of the Player to the Respondent.

IV. SUMMARY OF THE APPEALED DECISION

18. The grounds of the Appealed Decision can be summarized as follows:

- The central issue in the matter at stake concerns whether article 2, par. 2 of Annexe 4 of the FIFA Regulations is applicable to the case.
- The said provision stipulates that training compensation is not due if the former club terminates the player's contract without just cause.
- Therefore, only if the Club had just cause to terminate the relevant employment contract, would it still be entitled to training compensation.
- In this respect, the definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case.
- Moreover, the Chamber made reference to the legal principle of *pacta sunt servanda*, and stressed that unilateral termination of a contract without just cause is to be vehemently discouraged.
- Taking into account all the particularities of the case, the Chamber had to analyse whether with respect to the liquidation of the SASP, the Club terminated the Player's contract with just cause, i.e., for a valid reason under the provision of article 2, par. 2 of Annexe 4 of the FIFA Regulations.
- In this context, the Chamber concluded that: a) it was undisputed between the Parties that the player at no time showed any behaviour which would have constituted a violation of the terms of the employment contract; and b) the only reason for the unilateral termination of the contract with the Player were the financial difficulties and the related liquidation of the SASP pursuant to the decision of the Commercial Tribunal of Grenoble on 12 July 2011.
- Therefore, according to the DRC judgment, the termination of the employment contract was by no means imputable to the Player while the Club was solely responsible for the liquidation of the SASP and the consequent termination of the contract, thus there was no valid reason or just cause for the unilateral termination of the contract.

- As a consequence, the FIFA DRC established that the claimant was not entitled to receive training compensation in connection with the transfer of the Player to the Respondent, according to the provisions of article 2, para 2 of Annex 4 of the FIFA Regulations.

V. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 1 April 2014, the Appellant lodged an appeal before the CAS against the Respondent with respect to the Appealed Decision by submitting a Statement of Appeal according with articles R47 and R48 of the Code of Sports-related Arbitration, Edition 2013 (hereinafter referred to as the "CAS Code").

20. The Appellant chose French as the language of the arbitration.

21. By fax letter to the CAS Court Office on 11 April 2014, the Respondent objected to the language selected by the Appellant and requested that English be chosen as the language of the arbitration, arguing that the Appealed Decision was rendered in English and that there would be no reason to change the language before the CAS.

22. By fax letter dated 11 April 2014, the Appellant was invited to inform the CAS Court Office within 15 April 2015 whether it agreed that the present arbitration be conducted in English.

23. On the same day, the parties were informed that, pending a decision by the TAS on the language of the proceedings, the time limit prescribed by the CAS Code for filing the Appeal Brief had been suspended.

24. By fax letter dated 15 April 2014, the Appellant reiterated its choice for French as the language of the arbitration, alleging that it would not be in the position to afford the cost of the translation of all the documents it intended to produce, and, at the same time, it suggested that the Respondent may be granted to file its written submissions and documentation in English language and requested that an Order on language be issued by the President of the Division.

25. Upon request of the CAS Court Office, by fax letter on 23 April 2014, the Respondent objected to the Appellant's proposal that the arbitration be conducted in English and French respectively, rejecting the economic issue alleged by the Appellant in support of its choice and stating that reasons of fairness should require that English be exclusively selected as the language of this arbitration.

26. On 22 April 2014, the Respondent submitted a brief statement of defence.

27. On 25 April 2014, in accordance with article R29 of the CAS Code, the President of the CAS Appeals Arbitration Division issued the Order on language by which it was established that English shall be the language of the present arbitral proceedings. By the same decision, the Respondent was granted a deadline of 10 days from the notification of the Order on language to file its Appeal Brief.

28. By fax letter dated 5 May 2014, the Appellant requested to the CAS Court Office to be granted an additional delay in order to file its Appeal Brief, due to the need to translate the relevant documents.

29. Since the Respondent had no objection to the Appellant's request for an extension, the CAS Court Office granted the Appellant a new deadline until 2 June 2014 to file its Appeal Brief.

30. On 2 June 2014, the Appellant requested a new additional delay until 1 July to produce its Appeal Brief, maintaining it was necessary in particular for obtaining additional documents and for the relevant translation.

31. Since the Respondent did not object to this further request by the Appellant, on 6 June 2014, the CAS Court Office informed the Parties that the Appellant's deadline to file its Appeal Brief had been extended until 1 July 2014.

32. On 6 June 2014, the CAS Court Office also informed the Parties that the Panel appointed to decide the present case had been constituted as follows:
    - Mr Fabio Iudica attorney-at-law in Milan, Italy, President
    - Mr François Klein, attorney-at-law in Paris, France, Arbitrator appointed by the Appellant,
    - Mr Markus Bösiger, attorney-at-law in Zürich, Switzerland, Arbitrator appointed by the Respondent.

33. On 1 July 2014, the Appellant filed its Appeal Brief together with the relevant documents in French language, but omitted to produce the translations in the language of the proceedings.

34. By fax letter dated 8 July 2014, the Appellant provided the CAS Court Office with a free translation of part of the documents attached to its Appeal Brief, informing that it did not consider it 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"*, and that *"it was not mandatory for the resolution of the dispute to proceed to the entire translation of the documents"* and that, therefore, it *"simply produced the documents in order to dispose of a reference to certify their existence and dates"*.

35. By fax letter to the CAS Court Office on 25 July 2014, the Respondent requested an extension of the deadline to file its Answer until 4 October 2014.

36. In consideration of the Appellant's agreement to the Respondent's request for an extension, by fax letter of the CAS Court Office dated 30 July 2014, the Respondent was granted a deadline until 6 October 2014 to file its Answer.

37. Upon request by the Respondent on 1 October 2014, the deadline to file the Respondent's Answer was further postponed for 5 more days.

38. On 10 October 2014, the Respondent filed its Answer.

39. By fax letter dated 16 October 2014, the Parties were invited to inform the CAS Court Office by 23 October 2014 whether they prefer a hearing to be held in the present proceedings or for the Panel to issue an award based solely on the Parties' written submissions.

40. By fax letter dated 23 October 2014 the Appellant informed the CAS Court Office of its preference for a hearing to be held in the present proceedings.

41. On 28 October 2014 the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present case.

42. After consulting the Parties, the CAS Court Office informed both Appellant and Respondent that they were called to appear at the hearing which would take place on 26 November 2014 at the CAS Headquarter in Lausanne, together with such witnesses and experts which they had already specified in their written submissions.

43. The Order of Procedure was forwarded by the CAS Court Office to the Parties on 6 November 2014 and it was returned signed by the Appellant on 13 November 2014. By signing the Order of Procedure on 21 November 2014, the Respondent raised an objection with respect to par. 8.3, contesting that the Appellant had failed to comply with the translation of its exhibits in due respect of the time limit of 1 July 2014, thus opposing to their admissibility.

44. With the signature of the Order of Procedure, the Parties confirmed the jurisdiction of the CAS.

45. By fax letter on 7 November 2014, the Appellant informed the CAS Court Office that at the hearing it would be represented by Mrs Patricia Moyersoen, while on 14 November 2014 the Respondent informed that Mr Hugo Vaz Serra would attend the hearing on its behalf.

46. By fax letter dated 24 November 2014, the CAS Court Office informed the Parties that, in view of the Respondent's objection to par. 8.3 of the Order of Procedure, the issue concerning the translations of the exhibits produced by the Appellant would be discussed on 26 November 2014 at the beginning of the hearing.

VI. HEARING

47. On 26 November 2014, a hearing was duly held at the CAS Headquarters in Lausanne.

48. The following persons attended the hearing:
    - For the Appellant, Mrs Patricia Moyersoen, attorney-at-law in Paris.
    - For the Respondent, Mr Hugo Vaz Serra, attorney-at-law in Lisbon.

49. Mr William Sternheimer, Managing Counsel & Head of Arbitration for the CAS assisted the Panel at the hearing.

50. At the beginning of the hearing, the Parties confirmed that they did not have any objection to the composition of the Panel, nor to the jurisdiction of the CAS.

51. The Appellant, contrary to its statements in the fax letter on 8 July 2014, as already mentioned above under para 34, claimed that the English translations of its documents shall be unconditionally admitted in the proceedings, and not only with regard to their existence and dates.

52. During the hearing, the Parties were granted the opportunity to present their oral arguments and answer the questions posed by the Panel.

53. At the conclusion of the hearing, the Parties explicitly agreed that their right to be heard and to be treated equally in these arbitration proceedings had been fully observed. The Parties were also satisfied that due process had been fully observed.

VII. SUBMISSIONS OF THE PARTIES

54. The following outline is a summary of the main positions of the Appellant and the Respondent and does not comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by Appellant and Respondent, even if no explicit reference has been made in what follows. The Parties' written submissions, their verbal submissions at the hearing, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. Appellant's Submissions and Requests for Relief

55. The Appellant made a number of submissions, in his statement of Appeal, in its Appeal Brief and at the hearing. These can be summarized as follows.

56. Contrary to what was established by the FIFA DRC, with respect to the Player, the Club did not commit any breach of contract without valid reason and it is therefore entitled to receive training compensation in connection with the transfer of the Player, under the provision of article 20 of the FIFA Regulations.

57. According to the Appellant, in fact, the employment contract with the Player should be regarded as legally terminated since termination was a legal consequence of the judicial liquidation of the SASP under both French Labor Law and French Commercial Law. Specifically, termination of the Player's contract was the result of the application of several national mandatory provisions (including employment provisions set forth in the collective bargaining agreement regarding professional players) whose implementation unavoidably lead to an involuntary early breach of contract.

58. In particular, not only the purpose of the liquidation procedure is to end the business activity of the company concerned, pursuant to the French Commercial Code, but the French Labor Code also establishes that the appointed liquidator shall envisage the termination of contracts due to economic reason and set up a plan for this purpose. Moreover, according to the provisions set forth by the French Professional Football League, only clubs with professional status are authorized to employ professional players; therefore, once a Club is downshifted to

an amateur league (due to a sportive or an administrative reason), it loses its professional status (unless exceptionally authorized) and therefore any professional player under contract with the Club is immediately free to sign with another Club as it is set out in the relevant bargaining agreement for professional football.

59. Since the FIFA DRC did not take into account these relevant provisions, the Appealed Decision results in an infringement of article 2 of the FIFA Rules governing the Procedures of the Player's Status Committee and the Dispute Resolution Chamber which reads 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 arrangement, laws and or collective bargaining agreements that exist at national level…"*.

60. Despite the FIFA DRC's ruling, the Appellant relies on the fact that the Panel has the power to take into consideration the national provisions invoked by the Appellant, according to article R58 of the CAS Code, as it did in the case CAS 2004/A/791 where the Panel in fact ruled that one of the parties was responsible of infringement of a provision which only existed at national level and, namely, in the national bargaining agreement.

61. In this regard, the Appellant avers that French Laws should not be neglected by the Panel in the present proceedings since they highly impact on the matter at stake and that the interpretation of article 2, para 2 of Annex 4 of the FIFA Regulations shall be conducted also on the basis of all national laws and regulations mentioned above, including the bargaining agreement, which the Club was forced to apply.

62. In view of the foregoing arguments, the Appellant contends that the legal obligation to terminate the Player's contract, pursuant to the above-mentioned provisions, constitutes "just cause" under the terms of the FIFA Regulations.

63. In this respect, the meaning of just cause shall be interpreted so as to be understood as a valid and legitimate cause leading the parties to terminate the contract, making it legally impossible for them to maintain their contractual relationship and should not be limited to a fault attributable to the player.

64. Since the Club had no other choice but to terminate the Player's contract due to the judicial liquidation of the SASP, and considering that this was not the intention of the Club, the Appellant maintains that the conditions of article 2, para 2 of Annex 4 of the FIFA Regulations are not met and, as a result, the Appellant shall still be entitled to receive training compensation with regard to the transfer of the Player to the Respondent.

65. In addition, the Association is the entity within the Club which actually trained the Player through the stipulation of the Training Convention and moreover, the entitlement of the Association to claim training compensation with respect to the transfer of the Player from SASP to the Respondent is allegedly based on the convention governing the relationship between the SASP and the Association.

66. In its Appeal Brief, the Appellant submitted the following prayers for relief:

"Pursuant specifically to FIFA bylaws and regulations, the bylaws and the Code of the Court of Arbitration for Sport, the rules of procedure applicable to the Court of Arbitration for Sport, the French Employment Code, French Commercial Code and generally speaking of all the relevant rules of the French Sports Law, FFF and LFP Regulations' and the French bargaining agreement for professional football, the Association GF 38 asked to the Panel to:

- *Consider that Association GF 38 is entitled to receive the training compensation*

As a consequence of which:

- *Set aside the January, 14 2014 decision of the FIFA Dispute Resolution Chamber;*
- *Order Sporting Club de Portugal to pay to the Association GF 38 the amount of EUR 360,000 as training compensation in connection with the Player A.;*
- *Order Sporting Club de Portugal to pay to the Association GF 38 interest at the rate of 5% per annum on the said amount starting with the first demand, dated 17 October 2011;*
- *Order Sporting Club de Portugal to pay to the Association 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;*
- *Order Sporting Club de Portugal to pay all the expenses of the arbitration before the CAS".*

B. Respondent's Submissions and Requests for Relief

67. The Respondent made a number of submissions, in its Answer and at the hearing. Its position is summarized in its Answer, and is the following.

68. First of all, the Respondent objects that despite the request for an extension of time to file its Appeal Brief and to translate the relevant documents, the Appellant failed to provide the Panel with the referred translations which means that the extraordinary extension was not founded and, therefore, the Appellant benefited from an unjustified advantage, contrary to the provision of article R51 of the CAS Code.

69. As a consequence, the Respondent requests that the Appeal be deemed withdrawn considering that the Appellant did not respect the deadline set forth under article R51 of the CAS Code, or, in the alternative, that the documents submitted by the Appellant, which were not translated into English, should be removed from the proceedings.

70. As a second preliminary issue, the Respondent also contests that the Appellant allegedly lacks legitimacy in the present proceedings, since the employment contract between the Club and the Player was actually signed with (and terminated by) the SASP, and not the Association. And the SASP is not a party in the current arbitration.

71. In this respect, the SASP and the Association are two different legal entities; the Association is not the former Club of the Player having title to claim training compensation, it is not even the successor of the SASP and furthermore, it is not entitled to act in the name or on behalf of the SASP.

72. Considering that the former club of the Player, i.e. the SASP, went on judicial liquidation, the legal entity which would be entitled to claim training compensation with respect to the transfer of the Player, according to the FIFA Regulations, is the FFF and not the Appellant.

73. As to the merits of the case, the Respondent maintains that the Appealed Decision is well founded and should therefore be upheld by the Panel.

74. In fact, it was correctly established by the FIFA DRC that the employment contract with the Player was unilaterally terminated by the Club without just cause, since the only reason for termination were the financial difficulties and the related liquidation of the SASP which cannot be considered as a just cause for termination under the FIFA Regulations.

75. Actually, termination of the contract by the Club consisted in a violation of article 13 of the FIFA Regulations, according to which a *"contract between a professional and a club may only be terminated upon expiry of the term of the contract, or by mutual agreement"*.

76. Moreover, pursuant to the jurisprudence of the Swiss Federal Tribunal, the early termination for valid reason shall be restrictively admitted (CAS 2006/A/1100) and therefore, article 2, para 2 of Annex 4 of the FIFA Regulations must be interpreted in a restrictive manner.

77. In this context, the Respondent argues that under FIFA Regulations, the termination of a contract due to insolvency of the club, as in the present case, is a termination without just cause. Such a conclusion derives from the fact that the FIFA purpose of training compensation consists in that the former club cannot obtain training compensation in case it left the player unemployed without his consent, or without the player's fault.

78. In addition, according to article 6, para 3 of Annex 4 of the FIFA Regulations which is applicable to players' transfer within the EU/EEA, the Appellant is not entitled to receive training compensation since it did not make any offer of a new employment contract to the Player, thus failing to demonstrate its real interest to continue the relationship with the Player.

79. Besides the foregoing, and for the sake of completeness, the amount claimed by the Appellant is also wrong since the Appellant belonged to the 4th Category Club when the transfer of the Player occurred.

80. In its Answer, the Respondent submitted the following prayers for relief:

"In the light of the above, we gently request that the Appeal is completely dismissed".

VIII. CAS JURISDICTION

81. The admissibility of an appeal before CAS shall be examined in light of article R47 of the CAS Code (Edition 2013), which reads as follows: *"An Appeal against the decision of a federation, association or sports-related body may be filed with 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 that body"*.

82. The Appellant relies on article 67 of the FIFA Statutes as conferring jurisdiction to the CAS which states as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*.

83. The jurisdiction of CAS is not disputed by the Respondent and is further confirmed by a footnote in the Appealed Decision which reads as follows: *"According to art. 67, par. 1 of the FIFA statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS)"*.

84. The signature of the Order of Procedure by the Parties confirmed that the jurisdiction of the CAS in the present case was not disputed. Accordingly, the Panel is satisfied that it has jurisdiction to hear this case.

85. Under article R57 of the CAS Code, the Panel has the full power to review the facts and the law and may issue a new decision which replaces the decision appealed or annul the challenged decision and refer the case back to the previous instance.

IX. ADMISSIBILITY OF THE APPEAL

86. Article R49 of the CAS Code provides as follows: *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late"*.

87. According to article 67 par. 1 of the FIFA Statutes, Appeals against final decisions passed by FIFA's legal bodies shall be lodged with CAS within 21days of notification of the decision in question.

88. In consideration of the above, the Panel notes that the FIFA DRC rendered the Appealed Decision on 17 January 2014, and notified it to the Appellant on 13 March 2014. The Appellant lodged its Statement of Appeal before the CAS on 1 April 2014, i.e. within the prescribed deadline of 21 days from notification.

89. It follows that the appeal is admissible.

90. However, as already mentioned under para 68 and 69 above, the Respondent raises objections to the fact that the Appellant failed to submit the relevant documents with English translation within the prescribed time limit to file its Appeal Brief, i.e. within 1 July 2014.

91. In this respect, since article R51 of the CAS Code requires that the Appellant shall file its Appeal Brief within the relevant deadline, together with all exhibits and specification of any other evidence on which it intends to rely, the Respondent alleges that the Panel shall consider the Appeal Brief as withdrawn since the Appellant submitted the (free) translation of the relevant documents only on 8 July 2014, i.e. beyond the time limit to file its Appeal Brief. As an alternative request, the Respondent claims that the documents submitted by the Appellant, which were not translated into English, should be removed from the proceedings.

92. The Panel points out that it is the burden of each party to the proceedings to produce any exhibit on which they intend to rely, within the time limit set forth in the CAS Code for the Appeal Brief and the Answer, according to articles R51 and R55. Moreover, article R56 establishes that, unless otherwise agreed between the Parties or instructed by the Panel on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their arguments nor to produce new exhibits after the submission of the appeal brief and the answer.

93. Moreover, pursuant to article R29 of the CAS Code, the parties shall file their documents in the language of the proceedings or provide translations of the documents filed in a different language.

94. In addition to that, the Panel refers to para 6 of the Order of Procedure which was signed by both parties and 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 25 April 2014, the language of this arbitration is English. Documents written in any 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"*.

95. In this context, the Panel observes that the Appellant failed to produce the relevant English translation of its documents within the ultimate time limit granted for the filing of the Appeal Brief without requesting any other delay.

96. Moreover, the Panel emphasises that by submitting the free translation of the relevant documents by letter dated 8 July 2014, as mentioned above under para 34, the Appellant specified that these translated documents were only intended to certify the date and their existence, and not their content, *"given that the relevant provisions of the documents written in French have been translated and are featured in the appeal brief"*.

97. Accordingly, and in consideration of all the above, the Panel holds that, notwithstanding the failure by the Appellant to produce the relevant translated documents in due time, i.e. by 1 July 2014, the Appeal shall be considered filed in due time and in compliance with article R51 of the CAS Code. Nevertheless, the Panel has decided that the translated documents filed on 8 July 2014, as well as the documents in French language filed by the Appellant with its Appeal Brief on 1 July 2014, shall be disregarded, except as it regards the assessment of their respective date of origin and existence.

98. Likewise, the Panel further considers that document 1 and 4 submitted by the Respondent in French language without translation shall be also disregarded for the same reasons.

X. APPLICABLE LAW

99. Article R58 of the CAS Code provides the following: *"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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

100. In their respective written submissions, both the Appellant and the Respondent rely on the FIFA Regulations on the Status and Transfer of Players and, subsidiarily, on Swiss Law, while the Appellant also specifically refers to the FIFA Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, as well as French Law.

101. In particular, as already mentioned above under para 59, 60 and 61, the Appellant, with reference to the provision of article 2 of the FIFA Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, requests that the Panel should take into consideration the national French provisions since they highly impact the matter at stake.

102. With this respect, and in anticipation of the following legal analysis, the Panel considers that the application of the French provisions invoked by the Appellant is irrelevant for the purposes of deciding the present case, since even assuming that the termination of the contract was a legal consequence of the mandatory application of the relevant French provisions due to liquidation of the SASP, the Appellant failed to prove that the relevant liquidation was not imputable to SASP, ultimately making the termination of the contract by the Club "unjustified" under the terms of the FIFA Regulations governing the mechanism of training compensation.

103. Therefore, the Panel deems that the FIFA Rules and Regulations are primarily applicable, with Swiss Law applying subsidiarily.

XI. MERITS OF THE APPEAL – LEGAL ANALYSIS

104. The Panel first notes that it is undisputed between the Parties that the employment contract between the Club and the Player was unilaterally terminated on 25 July 2011 by the judicial commissioner appointed in the liquidation proceedings, as a consequence of the judicial liquidation of the SASP caused by financial difficulties.

105. It is also unquestioned that the early termination of the employment contract was not due to any Player's fault which could represent a violation of such contract.

106. The Parties also acknowledged that after early termination of the contract with the SASP, the Player was free to sign the professional contract with the Respondent, as a professional.

107. The two main issues to be decided by the Panel in the present proceedings, since they are contested between the Parties, are the following:

- whether the claim for training compensation with respect to the transfer of the Player to the Respondent is justified in the merits, pursuant to the FIFA Regulations, taking into account that the Player's contract was unilaterally terminated by the Club; and
- whether the Appellant is, in principle, legally entitled to claim training compensation before the CAS with respect to the transfer of the Player.

108. As to the first issue, the question relates to whether the termination of the Player's contract constitutes a breach by the Club pursuant to the FIFA Regulations that would exclude the right of the Club to receive training compensation, or, on the contrary, if the Club had a "just cause" to terminate the Player's contract.

109. According to the Appellant's arguments, such an early termination cannot be attributed to any will or initiative of the Club, since it was a necessary legal consequence of the judicial liquidation of the SASP, under both French Labor Law and French Commercial Law. In this respect, as a result of the liquidation, it was the implementation of the applicable laws which unavoidably lead to an involuntary early termination of the Player's contract.

110. In addition, the Appellant claims that the Club lost its professional status as a consequence of the liquidation of the SASP, and therefore, it was no more authorized to employ professional players.

111. In conclusion, according to the Appellant's reasoning, the Club had a legal obligation to terminate the Player's contract, which fact allegedly constitutes "just cause" under the terms of the FIFA Regulations and therefore the Appellant is still entitled to receive training compensation with regard to the transfer of the Player to the Respondent, in accordance with article 20 of the FIFA Regulations which reads 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"*.

112. On the contrary, the Respondent objects that the employment contract with the Player was unilaterally terminated without just cause, since the only reason for termination were the Appellant's financial difficulties and the related liquidation of the SASP which cannot be considered as a just cause for termination under the FIFA Regulations.

113. In this respect, the Respondent also refers to article 13 of the FIFA Regulations, according to which a *"contract between a professional and a club may only be terminated upon expiry of the term of the contract, or by mutual agreement"*.

114. In the light of the conflicting positions of Appellant and Respondent mentioned above, the Panel reminds that, as an exception to the general rule under article 20 of the FIFA Regulations, pursuant to article 2 para 2 of Annexe 4 of the FIFA Regulations, *"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 club)…"*, which is to say that only if the Club had just cause to terminate the contract, would it still be entitled to training compensation.

115. The Panel shares the opinion of the FIFA DRC in the Appealed Decision that *"the definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case"* and that, in any event, in accordance with the basic principle of *pacta sunt servanda*, unilateral termination of a contract without just cause is to be vehemently discouraged.

116. With regard to the particularities of the present case, the Panel notes that the reason why the Player's contract was early terminated was the judicial liquidation of the SASP, due to its economic difficulties.

117. In the Panel's opinion, in order to decide the present case, it is irrelevant whether the termination of the contract was the unavoidable consequence of the mandatory implementation of French Laws to the liquidation of the SASP and not a deliberate choice of the Club. In this regard, the Panel points out that in the present proceedings, the Appellant failed to demonstrate that the financial difficulties which finally led the company to judicial liquidation were not imputable to the SASP, nor that such difficulties were attributable to other unrelated circumstances.

118. Therefore, even if the termination of the contract was a legal consequence of the judicial liquidation, the Appellant did not prove that the SASP cannot be held responsible (*"latu sensu"*) for the termination of the Player's contract, due to liquidation. In that sense, the Panel is of the opinion that the termination of the contract by the Club cannot be considered as "justified" under the terms of the FIFA Regulations governing the mechanism of training compensation.

119. The same reasoning applies with respect to the provisions of article 6, para 3 of Annexe 4 of the FIFA Regulations providing a special rule in relations to transfers of players occurring within the territory of the EU/EEA, according to which *"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"*.

120. Also within this framework, the Panel observes that it is irrelevant whether the Club lost its professional status due to the liquidation of the SASP, which fact made it impossible for the Club to offer any other professional contract to the Player. In this respect, the Panel refers to the fact that the Appellant did not provide any evidence that the financial difficulties and the following liquidation proceedings were not attributable to the SASP and therefore the impossibility for the Club to offer a new contract to the Player was still attributable to the SASP's responsibility, as defined under para 117 and 118 above. Beside this, the Panel considers that the Appellant also failed to demonstrate that, notwithstanding the failure to offer the Player a new contract, it can justify that it would still be entitled to receive training compensation, having showed a genuine interest in retaining the Player, by virtue of a proactive behaviour towards the same, according to article 6 para 3 of Annexe 4 of the FIFA Regulations.

121. With regard to the burden of proof the Panel reaffirm 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).

122. With reference to the second issue, the Panel notes that the Respondent also contests that the Appellant allegedly lacks legitimacy in the present proceedings, since the employment contract between the Club and the Player was actually signed with (and terminated by) the SASP, and not the Association, which is a different legal entity and as such, it is allegedly not entitled to claim training compensation with respect to the transfer of the Player.

123. In this respect, the Panel emphasises that the Appellant failed to prove that the Association is the legal entity which would be, in principle, entitled to receive training compensation with regard to the transfer of the Player from the SASP to the Respondent.

124. In fact, the Appellant merely maintained that any distinction between the SASP and the Association is allegedly irrelevant with regard to the claim of the training compensation since *"the obligatory convention signed by the two entities to cooperate for the sportive success of the club as a whole, actually proves that both entities should be entitled to demand training compensation"*, but did not provide any evidence thereof.

125. In this regard, the Panel reminds that, following the decision taken according to articles R51, R56 and R29 of the CAS Code, as established under para 97 and 98 above, any documents not submitted in English language are intended to be disregarded by the Panel, except as regards the assessment of their respective date of origin and existence.

126. In this context, the Appellant did not provide any documentation to demonstrate that the legal relationship between the two legal entities which constituted the Club would entitle the Association, after the liquidation of the SASP, to receive training in connection with transfers of players which were under contract with the SASP.

XII. CONCLUSION

127. In view of all the above, and taking into consideration all evidences produced and all arguments put forward by the Parties, the Panel has reached the conclusion that the Appellant's claim for training compensation in relation to the transfer of the Player to the Respondent is groundless and shall therefore be rejected since the Appellant failed to prove that the unilateral termination of the Player's contract was justified under the terms of the FIFA Regulations governing the mechanism of training compensation, or that the Club would anyway be entitled to receive training compensation under the provision of article 6, para 3 Annexe 4, and finally that the Appellant is the legal entity which would, in principle, be entitled to receive training compensation with regard to the relevant transfer.

128. As a result of the above, the present Appeal is rejected, and the Appealed Decision is upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

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

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

3. (…).

4. (…).

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