



Arbitration CAS 2014/A/3620 US Città di Palermo v. Club Atlético Talleres de Córdoba, award of 19 January 2015

Panel: Prof. Petros Mavroidis (Greece), President; Mr José Juan Pintó (Spain); Mr Hernán Jorge Ferrari (Argentina)

Football

Training compensation

Period of training relevant for the calculation of the training compensation according to the “segmentation principle”

Burden of proof according to Swiss law

Loan of a player made free of charge

Validity and enforceability of a unilateral option clause under Swiss law

Loan of a young player to other clubs and interruption of the ongoing training period

Reimbursement of part of the costs of the FIFA proceedings

- 1. The system put in place by the FIFA Regulations on the Status and Transfer of Players (RSTP) divides into segments the player’s sporting career. Each period between each professional transfer is a specific and independent segment of time. In this context, when Article 3 para. 1 of Annexe 4 RSTP states that for any subsequent transfer training compensation will only be owed to the “former club” of the player for the time he was effectively trained by that club, it is evident that it exclusively refers to the segment of time (a) during which the player was contractually bound to the “former club”, and (b) which is immediately preceding the segment of time for which he is registered with the new club. When a club (club 1) transfers a professional player to a new club (club 2) on a permanent basis, the period of time preceding this transfer will constitute a specific period of training for the purpose of calculating the training compensation. Club 1 will be entitled to training compensation for this segment of time. If, subsequently, club 2 transfers the player to a third club (club 3) on a permanent basis, club 2 will be entitled to training compensation for the period of time running from the moment the player was transferred from club 1 to club 3. In other words, each time the player is definitively transferred to another club, it interrupts the “former club’s” entitlement to training compensation.**
- 2. With regards to the burden of proof, the party alleging something must objectively demonstrate its existence. It is not sufficient for it to simply assert a state of fact for a panel to accept it as true. At the same time, in the event direct evidence cannot be offered, a judge does not violate Article 8 CC if he/she bases his/her decision on inferences that could be legitimately drawn with a high degree of likelihood that they might occur. In addition, events the existence of which must be presumed according to the normal course of things can be indicated as a basis of a judgment, even if these events are not confirmed by evidence, if the opposing party does not indicate or prove circumstances suitable to put their existence in doubt.**

3. The fact that the loan was made free of charge is not unusual and is even contemplated in the FIFA Commentary on the RSTP: *“The loan of a player is often used to foster young talented players that would otherwise not find opportunities in a team. These players are therefore loaned to a club with the purpose of letting them regularly play and thus gain experience. Frequently, the club of origin transfers these players on a free loan basis and sometimes covers the salary of the player either entirely or partially”*.
4. By definition, an option is a right, but not an obligation, to exercise a certain action in the face of uncertainty. The validity and enforceability of a unilateral option clause used by a club to extend the employment relationship with a player is not accepted under Swiss law.
5. For the purposes of the provisions of the RSTP governing training compensation, the loan of a young player from his club of origin to other clubs does not interrupt the ongoing training period of the player and the obligation to pay training compensation arises only in case a player is transferred on a definitive basis, with the effect that, at that moment, the club which transferred the player on a loan basis to another club is entitled to training compensation for the entire period of time during which it effectively trained the player, however, excluding the period of time of the loan.
6. If the duration of the FIFA proceedings was unusually long and this resulted to exceptionally high annual interests, the CAS panel may amend the FIFA decision and reduce the costs of the FIFA proceedings to be paid by the parties.

I. PARTIES

1. US Città di Palermo (“Palermo” or the “Appellant”) is a football club with its registered office in Palermo, Italy. It is a member of the Italian National Football Association (Federazione Italiana Giuoco Calcio), itself affiliated to the Fédération Internationale de Football Association (FIFA) since 1905.
2. Club Atlético Talleres de Córdoba (“Talleres” or the “Respondent”) is a football club with its registered office in Cordoba, Argentina. It is a member of the Asociación del Fútbol Argentino (AFA), itself affiliated to FIFA since 1912.

II. FACTUAL BACKGROUND

A. *Background facts*

3. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it deems necessary to explain its reasoning.

B. *J.'s sporting history according to the documents submitted by Talleres*

4. J. ("the Player") is a player of Argentinean nationality, born in 1989. On 8 July 1999, he was registered with Talleres.

5. The following facts are supported by documents submitted by Talleres and their authenticity and veracity was not challenged throughout the proceedings:

- On 7 November 2007, when he was 18 years old, the Player entered into his first professional agreement with Talleres by signing a contract to this effect. The labour agreement was effective from the date of the signature until 30 June 2008.
- On 13 November 2007, Talleres transferred the Player to the Argentinean club Atlético Huracán on a temporary loan basis. According to the evidence submitted by Talleres, the loan was free of charge for Atlético Huracán, and there was no option-clause providing club Atlético Huracán with the right to make the transfer definitive.
- On 27 May 2008, the Player signed another labour agreement with Talleres, valid from the date of the signature until 30 June 2009. According to Article 6 of this contract, Talleres "*has a right of extension regarding this agreement which it may exercise only two times, on terms of a year. The Club shall communicate that exercise the option of the first extension until 31 May 2009, and the option of the second extension until the 30 April 2010*".
- The same day, Talleres signed a contract with club Atlético Huracán whereby it accepted to loan the Player until 30 June 2009 "*and/or tournament end, with no option to a definitive transfer*". This document was entitled "*Conventio de transferencia a prestamo*" ("*Transfer on loan basis*"), and was signed by both clubs as well as by the Player.

6. According to Talleres, the end of the loan agreement coincided with the end of the labour relationship between Talleres and the Player, who then became a free agent.

C. The Player's passports

7. As regards the Player's history, AFA issued two different passports with contradictory information:

Passport dated 8 March 2010

Temporada/ Season	Club	Pais/Country	Condición/Status	Fecha/Data
2001	Talleres	Argentina	Amateur	08/07/1999 Inscripción
2002	Talleres	Argentina	Amateur	
2003	Talleres	Argentina	Amateur	
2004	Talleres	Argentina	Amateur	
2005	Talleres	Argentina	Amateur	
2006	Talleres	Argentina	Amateur	
2007/2008	Talleres	Argentina	Professional	09/11/2007
2007/2008	Huracan	Argentina	Professional	01/02/2008
2008/2009	Huracan	Argentina	Professional	Hasta 30/06/2009
2009/2010	Palermo	Italia	Professional	07/08/2009

Passport dated 9 August 2011

Temporada/ Season	Club	Pais/Country	Condición/Status	Fecha/Data
2001	Talleres	Argentina	Amateur	Desde 08/07/1999
2002	Talleres	Argentina	Amateur	
2003	Talleres	Argentina	Amateur	
2004	Talleres	Argentina	Amateur	
2005	Talleres	Argentina	Amateur	
2006	Talleres	Argentina	Amateur	
2007/2008	Talleres	Argentina	Professional	A partir del 07/11/2007
2007/2008	Huracan	Argentina	Professional	Desde 01/02/2008
2008/2009	Huracan	Argentina	Professional (en préstamo)	Hasta 30/06/2009
2009/2010	Talleres	Argentina	Professional	Desde 01/07/2009 (Reintegro) Hasta 07/08/2009
2009/2010	Palermo	Italia	Professional	Desde 07/08/2009

8. It is undisputed that the sporting season in Argentina runs as follows: a) for amateurs (under 20 years of age) from January to December of the relevant year and b) for amateurs (more than 20 years of age) and professionals from 1 July until 30 June of the following year. It is noted that the season might be prolonged for a few days beyond June 30, in light of the number of play

off games that clubs challenging for the championship title might be called to play.

D. *The Player's employment agreement with Palermo*

9. On 24 May 2009, the Player signed an employment contract (the "Employment Agreement") with Palermo. It was a fix-term agreement for five years, effective from 1 July 2009 until 30 June 2014. The Player was entitled to a fixed and variable salary, the latter being conditional upon the Player being fielded a certain number of times each year:
 - 2009/2010: fixed salary: EUR 350,000 p.a. variable salary EUR 50,000
 - 2010/2011: fixed salary: EUR 400,000 p.a. variable salary EUR 100,000
 - 2011/2012: fixed salary: EUR 450,000 p.a. variable salary EUR 100,000
 - 2012/2013: fixed salary: EUR 500,000 p.a. variable salary EUR 150,000
 - 2013/2014: fixed salary: EUR 600,000 p.a. variable salary EUR 150,000
10. The Player was officially registered with Palermo on 14 August 2009.

E. *Proceedings before FIFA Dispute Resolution Chamber*

11. On 6 July 2010, Talleres lodged a complaint with FIFA against Palermo, claiming the payment in its favour of EUR 298,156 plus interest, as training compensation. This amount was calculated by taking into account the training provided by Talleres to the Player over the period running from 1 January 2001 (the season of the Player's 12th birthday) up to the Player's transfer to club Atlético Huracán (13 November 2007).
12. During the proceedings before FIFA, Palermo contended that Talleres was not entitled to any training compensation, in view of the clear wording of Article 10 of the applicable FIFA Regulations on the Status and Transfer of Players ("RSTP"), combined with Article 3 of Annexe 4 RSTP. This last provision states that in "*the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club*". According to Palermo, the "*former club*" was Atlético Huracán and not Talleres.
13. In a decision dated 12 December 2013, the FIFA Dispute Resolution Chamber ("DRC") rejected Palermo's submission, which it found to be inconsistent with its well-established jurisprudence, and also with the "*intention of the legislator of the relevant regulatory provision*", as well as with the purpose for establishing a training compensation in the first place. In this vein, the DRC held that, the fact that Talleres had loaned out the Player to a different club, did not prevent it (or any other training club for that purpose) from claiming compensation for the period before the loan. It considered that any other conclusion would discourage training clubs from loaning out their young players to other clubs (and thus complete/enrich their education) as they would risk losing out on significant sums. If Palermo were to be followed, it would potentially deprive "*the loan of its essential flexibility and of its purpose of providing young players with the opportunity to gain practical experience in official matches for another club in order to develop in a positive way*". Separately and due to lack of sufficient evidence, the DRC also dismissed Palermo's contention

that the Player's training was already completed at the time he left Atlético Huracán.

14. As a result, on 12 December 2013, the DRC decided the following:

- “1. *The claim of (...) Club Atlético Talleres, is accepted.*
2. *(...) US Città di Palermo, has to pay to (...) Club Atlético Talleres, within 30 days as from the date of notification of this decision, the amount of EUR 298,156 plus interest of 5% p.a. on said amount as from 16 September 2009 until the date of effective payment.*
3. *In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
4. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid by (...) US Città di Palermo, within 30 days as from the date of notification of the present decision as follows:*
 - 4.1 *The amount of CHF 15,000 has to be paid to FIFA to the following bank account (...)*
 - 4.2 *The amount of CHF 5,000 has to be paid to (...) Club Atlético Talleres (...)*”.

15. On 13 May 2014, the Parties were notified of the above decision (the “Appealed Decision”).

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

16. On 3 June 2014, Palermo filed its statement of appeal with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”).
17. On 6 June 2014, the CAS Court Office acknowledged receipt of Palermo's statement of appeal, of its payment of the CAS Court Office fee and took note of the nomination of Mr José Juan Pinto as arbitrator.
18. On 13 June 2014, Palermo filed its appeal brief in accordance with Article R51 of the Code, which contains a statement of the facts and legal arguments accompanied by supporting documents.
19. On 13 June 2014, Palermo informed the CAS court Office that it would be represented in the present dispute by Mr Daniel Mario Crespo, and that it was nominating Mr Hernán Jorge Ferrari as arbitrator.
20. On 19 June 2014, FIFA confirmed to the CAS Court Office that it renounced its right to intervene in the present arbitration proceeding.
21. On 14 July 2014 and within the granted time extension, Talleres filed its answer in accordance with Article R55 of the Code.
22. On 17 July 2014, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.

23. On 22 respectively on 24 July 2014, Talleres and Palermo confirmed to the CAS Court Office that they wished a hearing be held in the present matter.
24. On 1 September 2014, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Petros C. Mavroidis, President of the Panel, Mr José Juan Pinto and Mr Hernán Jorge Ferrari, arbitrators.
25. On 3 September 2014, the Parties were informed that the Panel had decided to hold a hearing, which was scheduled for 23 October 2014, with the agreement of the Parties.
26. On 29 September 2014, Palermo and Talleres respectively signed and returned the Order of Procedure in this appeal.
27. The hearing was held on 23 October 2014 at the CAS premises in Lausanne. The Panel members were present and assisted by Mr Fabien Cagneux, Counsel to the CAS, and Mr Patrick Grandjean, acting as *ad hoc* Clerk.
28. The Parties did not raise any objection as to the composition of the Panel.
29. The following persons attended the hearing:
 - The Appellant was represented by its legal counsel, Mr Paolo Lombardi, assisted by Mr Anton Sotir, attorney-at-law.
 - The Respondent was represented by its legal counsels, Mr Daniel Mario Crespo and Mr Cristian Germán Ferrero, assisted by Mrs Marisol Crespo, interpreter.
30. During the hearing, the Parties agreed to use their best efforts to resolve the dispute amicably on or before 7 November 2014.
31. The Panel heard the detailed submissions of the Parties. After the Parties' final arguments, the Panel closed the hearing and announced that its award would be rendered in due course. At the conclusion of the hearing, all Parties accepted that their rights before the Panel had been fully respected. The Panel reserved its award, which takes account of all the arguments and material admitted before it including, but not restricted to, those summarised above.
32. By letter of 6 November 2014, the Parties informed the CAS Court Office that they needed more time to reach an amicable settlement to their dispute and requested an extension until 14 November 2014 to do so.
33. On 10 November 2014 and on behalf of the Panel, the CAS Court Office acknowledged receipt of such letter and granted the Parties the requested extension.

IV. SUBMISSIONS OF THE PARTIES

(i) *The Appeal*

34. Palermo submitted the following requests for relief:

“REQUESTS

1. *We request this Honourable Court to issue a new decision setting aside the decision passed by the Dispute Resolution Chamber on 12th December 2013, ascertaining that [Talleres] is not entitled to receive any Training Compensation.*
2. *Alternatively, we request this Honourable Court to issue a new decision setting aside the decision passed by the Dispute Resolution Chamber on 12th December 2013, ascertaining that [Talleres] is to receive training compensation of a maximum of € 9,123.29.*
3. *We request this Honourable Court to annul the part of the decision passed by the Dispute Resolution Chamber on 12th December 2013 condemning [Palermo] to reimburse to [Talleres] FIFA procedural costs to the amount of CHF 5'000.*
4. *We request that a hearing be held in these proceedings.*
5. *We request this Honourable Court to order the Respondent to bear all costs related to these proceedings.*
6. *In any case, we request this Honourable Court to order [Talleres] to cover all legal costs of [Palermo] related to these proceedings, which to date approximate CHF 20'000”.*

35. The submissions of Palermo, in essence, may be summarized as follows:

- *“The fact that the Player signed his first professional contract with Talleres on 7th November 2007 and that he registered with Palermo as a free agent prior to the end of the season of his 23rd birthday are not under dispute”.*
- During the proceedings before the DRC, AFA had issued for the Player two different player passports containing conflicting information:
 - According to the first passport dated 8 March 2010, the Player was registered with Talleres as an amateur from 8 July 1999 until 8 November 2007 and as a professional from 9 November 2007 until 31 January 2008. As of 1 February 2008, the Player was registered with Atlético Huracán before he became a free agent on 30 June 2009 and entered into a labour agreement with Palermo on 7 August 2009.

In other words and according to the first player passport, the Player’s *“former club”* (i.e. the Player’s club before he joined Palermo) was Atlético Huracán.

- According to the second passport dated 9 June 2011, the Player was registered with Talleres as an amateur from 8 July 1999 until 6 November 2007 and as a professional from 7 November 2007 until 31 January 2008. As of 1 February 2008, the Player was

registered with Atlético Huracán before he came back to Talleres on 1 July 2009 until 7 August 2009, *i.e.* the date when he was hired by Palermo.

In other words and according to the second player passport, the Player was registered with Talleres *“in two distinct periods, with the most recent period being the period from 1st July 2009 until 7th August 2009 prior to registering with the Appellant. The first period is shown as being from the date of registration on 8th July 1999 until 31st January 2008 when he was registered with Huracan on loan”*.

- The Player was transferred from Talleres to Atlético Huracán on a permanent basis and not on a loan basis. Therefore, Talleres is not entitled to any training compensation as it is not the *“former club”* within the meaning of Article 3 of Annexe 4 RSTP. Atlético Huracán was the former club.
- Under the combined reading of Article 10 of the applicable RSTP and of Article 3 of Annexe 4 RSTP, when a player is loaned by a training club to another club, the training club does not have the right to claim training compensation for any training and education it has provided before the loan took place. This has been confirmed in a recent CAS Award (CAS 2012/A/2908). If one were to rely on the first player passport, Talleres is not entitled to any training compensation. Assuming *“that the second player passport applies, quod non, the only period for which Training Compensation, if any, may be claimed by [Talleres] [is the one during which] the Player was registered again with Talleres from 1st July 2009 to 7th August 2009 prior to registering with Palermo”*.
- The Player’s training ended before his second registration with Talleres, *i.e.* before he returned to the latter club on 1 July 2009. *“In the 2008/2009 season at Huracan, the season of his debut, J. played as many as 30 official games (...) in the very challenging Argentinean top division. In particular, in the “Torneo Final” between February 2009 and June 2009 only, before allegedly registering again with the Respondent, the Player played an impressive 19 matches, always featuring in the starting eleven. (...) “Confirmation that the Player’s performance in the 2008/2009 season was not an isolated episode is provided by his data relevant to his first season at Palermo (...) in 2009/2010. In Italy the Player played 37 official games in the top division, which is regarded as being one of the most competitive worldwide, and earned his first cap with the star-filled Argentinean national team under coach Diego Armando Maradona”*.

In addition, the fact that the Player’s training was completed before he went back to Talleres is also demonstrated by the significant salary agreed on with Palermo at the moment of the signature of the Employment Agreement.

This leads to the conclusion that Talleres is not entitled to any training compensation, not even for the period running between 1 July and 7 August 2009.

(ii) The Answer

36. Talleres filed an answer, with the following requests for relief:

- “1. We request that [Palermo’s] claim be dismissed and that the decision reached on 12th December 2013 by the [DRC] be upheld in its entirety.
2. In any case, we request this Honourable Court to order [Palermo] to bear all cost incurred with these proceedings.
3. In any case, we request this Honourable Court to order [Palermo] to cover all legal expenses of [Talleres] related to these proceedings”.

37. The submissions of Talleres may, in essence, be summarized as follows:

- The Player was transferred from Talleres to Atlético Huracán on a loan basis and not on a permanent basis.
- The “*relevant training period of the present claim goes from 1st of January, 2001 until 13th November, 2007*”. Under these circumstances, the alleged inconsistencies between the Player’s various passports are irrelevant. Likewise, it is pointless to determine whether the Player’s training was completed at the end of his loan to Atlético Huracán.
- Contrary to Palermo’s submission, a club, which accepted a player on a loan basis, cannot be considered as the player’s “*former club*” within the meaning of Article 3 of Annexe 4 RSTP.
- Palermo’s appeal is broadly based on a recent award issued by the CAS (*CAS 2012/A/2098*), “*which has been criticized by the specialized doctrine in this field and which contradicts the prior and pacific jurisprudence of FIFA and CAS in the opposite direction. That case is so isolated that, subsequently, the CAS itself has put the precedent aside*”, i.e. *CAS 2013/A/3119*.
- In the *CAS 2012/A/2098*, the Panel misread Article 10 of the RSTP and Article 3 of Annexe 4 RSTP. Its interpretation of these provisions is inconsistent with the wording of the RSTP, the spirit and purpose of the training compensation as well as with the systematic analysis of the RSTP. In addition, the Panel in the case *CAS 2012/A/2098* wrongfully determined that its finding was supported by another CAS precedent (*CAS 2007/A/1320-1321*). As a matter of fact, in the *CAS 2007/A/1320-1321*, “*the player did not go to another club under a loan agreement, but he did so under a permanent basis or definite contract. In fact the contract between the player and his new club was only concluded after the termination of the player’s contract with the previous club*”.

V. APPLICABLE LAW

38. Article R58 of the 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

39. Pursuant to Article 66 para. 2 of the FIFA Statutes, “[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

40. Since the Parties had not contractually agreed on the application of any specific national law, Swiss Law shall apply, subject to the primacy of the applicable FIFA’s regulations..

41. The present dispute was submitted to the DRC on 6 July 2010, *i.e.* after 1 January 2008, which is the date when the revised FIFA Regulations for the Status and Transfer of Players, edition 2008, came into force. As a consequence, the case shall be assessed according to these regulations (see Article 26 para. 1 and 2 of all the subsequent editions of the FIFA Regulations for the Status and Transfer of Players).

VI. JURISDICTION

42. The jurisdiction of CAS, which is not disputed, derives from articles 66 *et seq.* of the FIFA Statutes and article R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties.

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

44. Under article R57 of the Code, the Panel has the full power to review the facts and the law.

VII. ADMISSIBILITY

45. The appeal is admissible as Palermo submitted it within the deadline provided by article R49 of the Code as well as by article 67 par. 1 of the FIFA Statutes. It complies with all the other requirements set forth by article R48 of the Code.

VIII. MERIT

46. It is undisputed that the payment of training compensation is at the centre of the debate. Closely related to this subject matter is whether Talleres’ entitlement to the training compensation can be affected by the Player’s loan to Atlético Huracán.

47. In this light, the relevant provisions are the following ones:

Article 10 para. 1 RSTP – Loan of professionals

“A professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned. Any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and the solidarity mechanism”.

Article 20 RSTP – Training compensation

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 the season 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. (...)

Article 1 para. 1 Annexe 4 RSTP - Objective

A player’s training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training.

Article 2 para. 1 Annexe 4 RSTP – Payment of training compensation

Training compensation is due when:

i) a player is registered for the first time as a professional;

or

ii) a professional is transferred between clubs of two different associations (whether during or at the end of his contract)

before the end of the season of his 23rd birthday.

Article 3 para. 1 of Annexe 4 RSTP – Responsibility to pay training compensation

“On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players’ career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club”.

48. With respect to the training compensation, and in light of the fact that the Player was a professional and was not 23 years old, the system put in place by the FIFA Regulations could

be described as follows. It first divides into segments the Player's sporting career. Each period between each professional transfer is a specific and independent segment of time. In this context, when Article 3 para. 1 of Annexe 4 RSTP states that for any subsequent transfer training compensation will only be owed to the "former club" of the Player for the time he was effectively trained by that club, it is evident that it exclusively refers to the segment of time (a) during which the Player was contractually bound to the "former club", and (b) which is immediately preceding the segment of time for which he is registered with the new club (See CAS 2007/A/1320 –CAS 2007/A/1321; para. 46 *et seq.*).

49. There is no controversy about the fact that when a club (club 1) transfers a professional player to a new club (club 2) on a permanent basis, the period of time preceding this transfer will constitute a specific period of training for the purpose of calculating the training compensation. Club 1 will be entitled to training compensation for this segment of time. If, subsequently, club 2 transfers the player to a third club (club 3) on a permanent basis, club 2 will be entitled to training compensation for the period of time running from the moment the player was transferred from club 1 to club 3. In other words, each time the player is definitively transferred to another club, it interrupts the "former club's" entitlement to training compensation.
50. In the present case, Palermo contends that the Player was transferred from Talleres to Atlético Huracán on a permanent basis and not on a loan basis. Therefore, Talleres is not entitled to any training compensation from Palermo as it is not the "former club" within the meaning of Article 3 of Annexe 4 RSTP. Atlético Huracán was the "former club". In addition, Palermo submits that, just like a permanent transfer, a loan interrupts a training club's entitlement to training compensation.
51. As a result, the issues to be resolved by the Panel are the following ones:
 - Was the Player's transfer from Talleres to Atlético Huracán made on a loan basis or on a permanent basis?
 - Should the Panel find that the Player was transferred from Talleres to Atlético on a loan basis, is Talleres still entitled to training compensation?
 - If Talleres is entitled to training compensation, how should it be calculated?
- a) ***Was the Player's transfer from Talleres to Atlético Huracán made on a loan basis or on a permanent basis?***
52. It is Palermo's claim that the Player was transferred from Talleres to Atlético Huracán on a permanent basis.
53. With regards to the burden of proof, it is Palermo's duty to objectively demonstrate the existence of what it alleges (Article 8 of the Swiss Civil Code - CC -, ATF 123 III 60 consid. 3a, ATF 130 III 417 consid. 3.1.). It is not sufficient for it to simply assert a state of fact for the Panel to accept it as true (see for instance CAS 2010/A/2071, para. 48). At the same time it must be stressed that according to the jurisprudence of the Swiss Federal Tribunal, in the event direct

evidence cannot be offered, a judge does not violate Article 8 CC if he/she bases his/her decision on inferences that could be legitimately drawn with a high degree of likelihood that they might occur. In addition, events the existence of which must be presumed according to the normal course of things can be indicated as a basis of a judgment, even if these events are not confirmed by evidence, if the opposing party does not indicate or prove circumstances suitable to put their existence in doubt (CAS 2009/A/1909, para. 24; CAS 96/159 & 96/166, para. 16).

54. Palermo puts forward the following arguments in support of its assertion according to which the Player was transferred to Atlético Huracán on a permanent basis:

- Pursuant to the first Player's passport (dated 8 March 2010), the transfer from Talleres to Atlético Huracán appears to be definitive. There is no indication as to the possible existence of a loan between the two clubs. According to the FIFA Commentary on the RSTP "*the club for which the player is registered during the loan must also be indicated in the player passport*" (ad Art. 10 para. 2.1). The accuracy of the information contained in this document is crucial, as clubs must be able to rely on it, when calculating training compensations. It is only in the second Player's passport that the loan is mentioned for the first time. By coincidence, this document was issued during the proceedings before the DRC. Furthermore, it is dated 9 August 2011, *i.e.* almost two years after the signing of the Employment Agreement on 24 May 2009 between the Player and Palermo. Under these circumstances, the second Player's passport is not reliable and must therefore be disregarded.
- The employment contract between the Player and Talleres was valid until 30 June 2009. The loan agreement between Talleres and Atlético Huracán was valid until 30 June 2009 "*and/or tournament end*". Given that Atlético Huracán played its last game of the *2009 Torneo final* (Argentinean Championship) on 5 July 2009, the Player was not bound to Talleres anymore, while he was still providing his services to Atlético Huracán. This establishes the fact that there was no employment relationship between Talleres and the Player.
- The loan agreement signed between Talleres and Atlético Huracán on 27 May 2008 does not envisage the return of the Player to Talleres at the end of the loan. In addition, it is undisputed that the Player has never come back to Talleres since he was transferred to Atlético Huracán on 13 November 2007.
- Palermo signed the Employment Agreement with the Player on 24 May 2009, *i.e.* over a month before the end of the Player's alleged labour relationship with Talleres. This was possible only because there was actually no contractual link anymore between the Player and Talleres.
- In its labour agreement with the Player, Talleres had an unilateral option to extend the Player's agreement for two more years. Talleres did not exercise this option, in spite of the fact that the Player proved to be talented and promising. The fact that Talleres did not try to extend its employment relationship with the Player can only be explained by the fact that it was not bound to the Player anymore.

- The loan to Atlético Huracán was made free of charge because Talleres did not have the Player's economic rights.
55. The Panel cannot agree with Palermo.
56. First, the two Player's passports submitted by Palermo are dated 8 March 2010, and 9 August 2011. In other words, they have been issued after Palermo entered into the Employment Agreement with the Player on 24 May 2009. Palermo has not established that the Player's passport it relied on before acquiring the Player's services did not make any reference to a possible loan between Talleres and Atlético Huracán.
57. Second, the allegation that the Player's transfer to Atlético Huracán was made on a permanent basis is inconsistent with the following facts:
- On 7 November 2007, the Player signed a first labour agreement with Talleres. Five days later, he was transferred to Atlético Huracán. If this transfer had been made on a permanent basis, then why did the Player sign another labour agreement with Talleres on 27 May 2008 and why did Talleres enter into another loan agreement with Atlético Huracán? Palermo did not provide any explanation in this regard.
 - The agreement between Talleres and Atlético Huracán is an official form entitled "*Transfer on a loan basis*". The parties to this contract expressly mentioned an expiry date, which corroborates the fact that it was not in their intention to make the transfer definitive. Had Talleres and Atlético Huracán wished to enter into a permanent transfer agreement, they could have used the appropriate form.
 - Palermo has not established or credibly demonstrated the existence either a) of a transfer fee between Talleres and Atlético Huracán, b) of a labour agreement between the Player and Atlético Huracán or c) of the payment of the Player's salaries by the latter club. In the absence of any of these elements, there is no reason to believe that the Player's transfer to Atlético Huracán was permanent.
58. Third, the fact that the loan was made free of charge is not unusual and is even contemplated in the FIFA Commentary on the RSTP: "*The loan of a player is often used to foster young talented players that would otherwise not find opportunities in a team. These players are therefore loaned to a club with the purpose of letting them regularly play and thus gain experience. Frequently, the club of origin transfers these players on a free loan basis and sometimes covers the salary of the player either entirely or partially*" (see commentary, ad Art. 10, para. 4.3).
59. Fourth, the fact that Talleres did not exercise its unilateral option in order to extend its employment relationship with the Player does not support Palermo's case:
- By definition, an option is a right, but not an obligation, to exercise a certain action in the face of uncertainty. The reasons why Talleres chose not make use of such right is absolutely not documented by Palermo with any convincing evidence.

- The validity and enforceability of such an option clause is not accepted under Swiss law (ATF 108 II 115; ATF 123 III 246; WYLER R., op. cit., p. 437; CAS 2009/A/1856 & 1857; CAS 2007/A/1219; TAS 2005/A/983 & 984; see the references in PORTMANN W., *Einseitige Optionsklauseln in Arbeitsverträgen von Fussballspielern, eine Beurteilung aus der Sicht der internationalen Schiedsgerichtsbarkeit im Sport*, Causa Sport 2/2006, 5.2 a).
60. Fifth, Palermo contends that Talleres' relationship with the Player came to an end immediately after his transfer to Atlético Huracán, because the Player's economic rights were entirely in the hands of a third party, namely Mr Alberto Marcelo Simonian. In support of this submission, Palermo filed a copy of a contract dated 20 July 2009, whereby Mr Simonian claimed to own "*100 percent (100%) of the Economic Rights of [the Player]*" and to accept to transfer 50% of these rights to Palermo. The Panel observes that this document does not give any indication as to when Mr Simonian allegedly purchased these rights (*i.e.* before the Player was registered with Talleres? Before he was transferred to Atlético Huracán? When he became a free agent?). Consequently, the party carrying the burden of proof did not provide evidence that could persuade the Panel that the original training club (Talleres) had been compensated for the training of the Player.
 61. Finally, the contract between Talleres and Atlético Huracán included a clause indicating the end of the contractual relationship between the Player and Atlético Huracán. The Panel found it quite odd that a similar clause had been included in a transfer agreement between two clubs. Similar clauses are negotiated between the parties primarily interested in the duration of the contract, namely the Player and the acquiring club. The selling club has not interest in negotiating clauses for a contract which does not bind its discretion. In fact, the presence of the clause supports the view that the contract between Talleres and Atlético Huracán was indeed a loan contract, since Talleres, through this clause, indicated its interest to bring the Player back to the club after the loan period had ended.
 62. The Panel dismissed the relevance of an additional claim by the Appellant, namely, the fact that the Player kept playing with Atlético Huracán for five days after his employment agreement with Talleres came to an end, and the legal consequences that the Panel should derive from this fact. The mere fact that the Player spent an additional week with Atlético Huracán does not change the nature of his relationship with Talleres. In fact, the loan contract itself included a clause, which stated that the Player could stay on until the end of the championship, if the end of the championship were to occur after 30 June 2009. The Respondent claimed that this had indeed been the case in 2009 when Atlético Huracán participated in the playoff games, and Palermo did not manage to adduce sufficient evidence to prove the opposite before the Panel.
 63. Based on the foregoing, in view of the totality of the circumstances and taking into account the evidence respectively submitted by the Parties, the Panel comes to the conclusion that the Player was indeed transferred from Talleres to Atlético Huracán on a loan basis and not on a permanent basis.

b) *Should the Panel find that the Player was transferred from Talleres to Atlético on a loan basis, is Talleres still entitled to training compensation?*

Introduction

64. For the reason exposed here above, the Panel found that the Player was transferred from Talleres to Atlético Huracán on a loan basis.
65. In its appeal brief, Palermo's main argument was that under the combined reading of Article 10 of the applicable RSTP and of Article 3 of Annexe 4 RSTP, when a player is loaned by a training club to another club, the training club does not have the right to claim training compensation for any training and education it has provided before the loan took place. In support of its position, Palermo relied on the decision *CAS 2012/A/2908* (the "*Panionios Case*").
66. However, at the hearing before the CAS, Palermo's counsel seemed to have abandoned this line of defence, as he did not make any reference to it during his oral submissions. As a matter of fact and before the members of this Panel, Palermo's counsel focused his entire attention towards establishing the fact that the Player's transfer to Atlético Huracán was permanent and, therefore, Talleres' claim was without merit. Likewise, he did not present any evidence or submission as to his allegation that the Player's training had been completed before the end of the training period under review (*i.e.* the season of the Player's 12th birthday until 13 November 2007).
67. The Panel infers from the attitude adopted by Palermo's counsel that he was not inclined to sustain his original position, which relies essentially on the "*Panionios Case*", which was immediately overruled by another CAS Panel (*CAS 2013/A/3119*). Even if the opposite were the case though, and indeed a couple of oblique references by the Appellant during the proceedings could have been interpreted in this manner, the continuing legal relevance of the "*Panionios Case*" is doubtful if not inexistent altogether, in light of subsequent case law as we explain in what immediately follows.

The "*Panionios Case*"

68. The background of the "*Panionios Case*" is very similar to the one of the present dispute. A player had signed his first professional contract with his training club. He was then loaned to another club, before he returned to his training club. In substance, the Panel in the "*Panionios Case*" decided that the training club was not entitled to training compensation for the period during which it trained and educated the player before his loan. The compensation to which the training club was entitled was limited to the period after the loan. The Panel in the "*Panionios Case*" briefly explained that it "*is of the opinion that the right and accurate interpretation of [Article 3 para. 1 of Annexe 4 RSTP] is that the calculation of the training compensation should be made in respect to the former club only for the period of the last cycle of registration with that club. This was indeed held in CAS 2007/A/1320-1321*" (see para. 166).
69. It appears that the Panel in the "*Panionios Case*" based its decision on the case *CAS 2007/A/1320-1321*, which did not concern the application of the training compensation to a

situation where the player was loaned to another club, but to a situation where a) the player had been definitely transferred to another club, b) signed with the new a labour agreement, c) at the end of which he returned to his original club. In the case *CAS 2007/A/1320-1321*, the CAS established the “*segmentation principle*”, whereby training compensation is payable only in respect of the segment of time immediately preceding a player’s permanent transfer to and registration with a new club (see para. 71 *et seq.*).

70. As a result, the approach taken by the Panel in the “*Panionios Case*” was misconceived. Indeed, in a subsequent litigation (*CAS 2013/A/3119*), a CAS Panel explicitly overruled the “*Panionios Case*”, by confirming the analysis that we have presented supra. As a result, this Panel has taken the view that there is no precedential value in the “*Panionios Case*”.

In the present case

71. This said, this Panel fully endorses the reasoning of the DRC, which held that “*the transfer of a player from the club of origin to the club that accepts the player on loan, as well as the return of the player from the club that accepted him on loan to the club of origin, do not constitute a “subsequent transfer” in the sense of art. 3 par. 1 in fine of Annexe 4 of the Regulations. The [DRC] was eager to point out that it could not have been the intention of the legislator of the relevant regulatory provision (i.e. art. 10 par. 1 of the Regulations) to trigger the consequences of art. 3 par. 1 of Annexe 4 of the Regulations on the occasion of a transfer on a loan basis and, thus, potentially deprive the loan of its essential flexibility and, in connection with the training and education of players, its purpose of providing young players with the opportunity to gain practical experience in official matches for another club in order to develop in a positive way. (...). Hence, the Chamber came to the firm conclusion that for the purposes of the provisions of the Regulations governing training compensation, the loan of a young player from his club of origin to other clubs does not interrupt the ongoing training period of the player and the obligation to pay training compensation arises only in case a player is transferred on a definitive basis, with the effect that, at that moment, the club which transferred the player on a loan basis to another club is entitled to training compensation for the entire period of time during which it effectively trained the player, however, excluding the period of time of the loan*”.
72. In this respect, the Panel considers that the following findings in *CAS 2013/A/3119* are pertinent and might be said to be applicable *mutatis mutandis* to the present dispute (para. 113):

“The Panel also finds that this conclusion [(i.e. the club which transferred the player on a loan basis to another club is entitled to training compensation for the entire period of time during which it effectively trained the player, however, excluding the period of time of the loan)] is consistent with the actual rationale of the training compensation system, which is to encourage the recruitment and training of young players. To hold that the loan of a player would interrupt the training period, could, in the opinion of the Panel, deter training clubs from loaning players. It occurs frequently in the world of football that young players are not proficient enough to play for the first team of their club. In order to prepare these players for the first team, or to give these players a chance to train and play in order to try and reach the required level to play for the first team, a solution regularly used is to loan the player concerned to another team in order for the player to gain experience with another club and to prepare him or give him the chance to reach the requisite professional level for playing in the first team of the training club. However, if the making of such loan would entail the consequence that the training club would thereby waive its entitlement to training compensation, the training club might decide not to loan the player to another club merely in order to secure

its entitlement to training compensation. In such situation, the player would be deprived from the very training considered to be the most suitable for him. The Panel would regard such a situation as undesirable, and endorses the view of the FIFA DRC insofar it argued that any other interpretation of the FIFA Regulations would potentially deprive young players of the opportunity to gain practical experience in official matches for another club in order to develop his footballing skills in a positive way”.

73. Palermo has not challenged the fact that Talleres provided proper training and education to the Player while the latter was at his service. As a result, the Panel finds that the training period for which compensation is due by Palermo to Talleres is the one corresponding to the time effectively spent by the Player with Talleres; *i.e.* from 1 January 2001 (the season of the Player’s 12th birthday, see Article 3 para. 1 of Annexe 4 RSTP) until 13 November 2007.

c) *If Talleres is entitled to training compensation, how should it be calculated?*

The relevant provisions

Article 3 para. 1 of Annexe 4 RSTP – Responsibility to pay training compensation

“On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players’ career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club”.

Article 4 para.1 of Annexe 4 RSTP – Training costs

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

Article 5 para. 1 to 3 of Annexe 4 RSTP - Calculation of training compensation

As a general rule, to calculate the training compensation due to a player’s former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.

Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player’s 12th birthday to the season of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.

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

74. The so-called indicative amounts of training compensation for the year 2009 are established in the FIFA circular letter no. 1223. Pursuant to article 5 para. 1 of Annex 4 RSTP, training compensation has to be calculated on the basis of the costs that would have been incurred by the new club, *i.e.* Palermo, as if it had trained the Player itself. Since Palermo is a European club, the indicative amounts for European clubs are to be taken into account. This FIFA circular establishes the following indicative amounts of training compensation for European clubs:

Category I:	EUR 90.000
Category II:	EUR 60.000
Category III:	EUR 30.000
Category IV:	EUR 10.000

75. At the hearing before the CAS, the Parties agreed on the fact that Palermo is a “Category P” club within the meaning of the FIFA circular letter no. 1223.

76. It follows that Talleres is entitled to the following amounts:

– Season 2001: (see Article 5 para. 3 of Annexe 4 RSTP)	10,000
– Season 2002: (see Article 5 para. 3 of Annexe 4 RSTP)	10,000
– Season 2003: (see Article 5 para. 3 of Annexe 4 RSTP)	10,000
– Season 2004: (see Article 5 para. 3 of Annexe 4 RSTP)	10,000
– Season 2005:	90,000
– Season 2006:	90,000
– Season 2007 (10 first months):	75,000
– Season 2007 (13 days in November)	<u>3,250</u>
Total	EUR 298,250

77. The DRC awarded EUR 298,156 to Talleres as well as “5% default interest per year from 16 September 2009 until the date of effective payment”. The 16 September 2009 corresponds to the 30-day deadline following the Player’s registration with Palermo on 14 August 2009 (see Article 3 para. 1 of Annexe 4 RSTP).

78. In view of the above considerations, it appears that the training compensation awarded to Talleres by the DRC must be confirmed. Palermo has never raised the possibility nor tried to establish that the Player terminated his training period before his transfer to Atlético Huracán. Under these circumstances, the Panel sees no reason to adjust the training compensation awarded to Talleres.

IX. THE COSTS OF THE FIFA PROCEEDINGS

79. In the Appealed Decision, the DRC decided namely the following:

“4. The final costs of the proceedings in the amount of CHF 20,000 are to be paid by (...) US Città di Palermo, within 30 days as from the date of notification of the present decision as follows:

4.1 The amount of CHF 15,000 has to be paid to FIFA to the following bank account (...)

4.2 The amount of CHF 5,000 has to be paid to (...) Club Atlético Talleres (...).”

80. In its Appeal Brief, Palermo namely took the following request for relief:

“3. We request this Honourable Court to annul the part of the decision passed by the Dispute Resolution Chamber on 12th December 2013 condemning [Palermo] to reimburse to [Talleres] FIFA procedural costs to the amount of CHF 5'000”.

81. At the hearing, Palermo's counsel had the opportunity to explain what was actually sought with this request. He explained to the members of the Panel that he found unfair that FIFA took almost four years to notify its decision, with the consequence that Palermo had to bear the corresponding increased interest rates. In this light, the Panel understands from the submissions of Palermo's counsel that he was requesting that the CHF 15,000 costs of proceedings should not be granted to FIFA.

82. The Panel agrees with Palermo that the duration of the FIFA procedure was unusually long. In its Appealed Decision, the DRC gave no explanation as to why it took it so long to issue its decision. In particular, it did not suggest that Palermo adopted an obstructive attitude in order to delay the procedure or that the case was so complicated that it requested particular investigating measures. The Panel is fully aware that the DRC is a very busy sports tribunal, and that occasional delays are unavoidable, it is the responsibility of DRC though, to make sure that delays are exceptional indeed and not unduly long, as in the present case where it appears that the amount of the annual interest to be paid by Palermo is approximately EUR 15,000.

83. As a result, the Panel decides to grant Palermo's request in part and to reduce the costs of the FIFA proceedings to be paid by Palermo to CHF 3,000.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by US Città di Palermo against the decision issued by the FIFA Dispute Resolution Chamber on 12 December 2014 is partially upheld.
2. The decision issued by the FIFA Dispute Resolution Chamber on 12 December 2014 is confirmed, the point 4 of its operative part being nevertheless amended as follows:
“4. The final costs of the proceedings in the amount of CHF 8,000 are to be paid by (...) US Città di Palermo, within 30 days as from the date of notification of the present decision as follows:
 - 4.1 *The amount of CHF 3,000 has to be paid to FIFA to the following bank account (...)*
 - 4.2 *The amount of CHF 5,000 has to be paid to (...) Club Atlético Talleres (...).”*
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.