



**Arbitration CAS 2014/A/3785 Federación Peruana de Fútbol (FPF) v. Club Budapest Honvéd FC KFT, award of 5 June 2015**

Panel: Mr João Nogueira da Rocha (Portugal)

*Football*

*Training compensation*

*Entitlement of a national federation to training compensation*

The associations are the pertinent contact in order to receive correct information about the career of a player. The new club of a player can rely on the information provided by the association to which the player's former club was affiliated. Therefore, it is not acceptable for a club, which takes a player under contract based on the confirmation of the previous association and trusting that it would not have to pay training compensation, to be subsequently obliged to pay training compensation. By not disclosing information related to the player – player's passport and "player card" – to the new association, the former association created legitimate expectations on the new club that it had not to pay training compensation to a former club.

## **I. PARTIES**

1. Federación Peruana de Fútbol (the "Appellant" or the "FPF") is the governing body of football in Peru, with its registered office in Lima, Peru. The FPF is a member of the Fédération Internationale de Football Association (FIFA).
2. Club Budapest Honvéd FC KFT (the "Respondent" or the "Club") is a professional Football Club with its registered office in Budapest, Hungary. The Club is member of the Hungarian Football Federation (the "HFF"), which in turn is affiliated to FIFA.

## **II. FACTS**

3. The facts stated below are a summary of the main relevant facts, as established on the basis of the parties' written submissions and the evidence examined in the course of the proceedings. The Sole Arbitrator also considered facts that emerged from the examination carried out by the FIFA DRC. This background is made for the sole purpose of providing a synopsis of the matter in dispute.
4. On 30 July 2008, the HFF sent a letter to the FPF requesting:

- The issuance of the International Transfer Certificate (“ITC”) of the Player *“Pablo Cesar Albarracin”*, born on 30 November 1989;
  - Information on *“the status of the Player, i.e. whether he has been registered as an amateur or non-amateur”* with the FPF;
  - If the Player *“is a non-amateur player on loan”*, to send the *“separate written contract”*;
5. On 5 August 2008, the FPF informed the HFF that the player Pablo César Albarracín had never been registered with the FPF.
  6. On 19 August 2008, through a document so-called *“Carta Pase”* (Transfer Letter), Academia Deportiva Cantolao, upon request of the HFF, authorized the player Paulo Albarracín García to be registered with the Club.
  7. After having double checked its database, the FPF concluded that *Paulo Albarracín García* was registered as an amateur player with Academia Deportiva Cantolao.
  8. On 29 August 2008, the FPF informed the HFF that the real name of the player was Paulo Albarracín García and not *“Pablo César Albarracín”*. In this respect, the FPF informed the HFF that such player was registered as an amateur by Academia Deportiva Cantolao. Furthermore, the FPF sent the Player’s ITC to the HFF.
  9. The player entered into an employment contract with the Club on 16 September 2008 and such contract was registered with the HFF on 17 September 2008.

### III. PROCEEDINGS BEFORE FIFA

10. On 30 August 2010, the FPF lodged a claim against the Club with the Dispute Resolution Chamber of FIFA (the “FIFA DRC”) requesting the payment of its alleged share of the Player’s training compensation for the period of 6 June 2003 to 9 June 2005, which amounts to EUR 41’997, 42.
11. The FPF confirmed that Paulo César Albarracín García was registered as an amateur player with the following clubs:
  - Atlético Universidad Nacional as of 6 June 2003 until 9 June 2005; and
  - Academia Cantolao as of 10 June 2005 until 29 August 2008.
12. On 26 April 2011, the Club rejected the claim filed by the FPF, stating that, prior to the signing the Player, it requested the FPF information about previous registrations of the Player with Peruvian clubs. Thereafter, the FPF provided the following information to the Club:
  - By letter dated 5 August 2008, the FPF stated that the Player had never been registered with any Peruvian Club;
  - By letter dated 29 August 2008, the FPF rectified and informed the Club that the Player was registered with Academia Cantolao.

13. Moreover, the Club held that, in order to do not be obliged to pay training compensation, on 10 November 2008, it entered into an agreement with Academia Cantolao where it was stipulated:

*“2. Academia declares that it will not claim for training or solidarity compensation or compensation of any other form now or in the future from the [Respondent] and that no other previous clubs of the player will have a claim for training or solidarity compensation of any other form from the [Respondent] now or in the future”.*

14. On 9 May 2014, the FIFA DRC rendered its decision (the “Appealed Decision”) with the following operative part:

*“1. The claim of the [Claimant], Federación Peruana de Fútbol, is rejected”.*

15. On 23 September 2014, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

- *The Chamber underlined that in the present case, it was an association and not a club which claimed payment of the training compensation. Therefore, it first had to analyse whether the conditions set forth in art. 3 par. 3 of Annexe 4 of the Regulations were fulfilled.*
- *The Chamber recapitulated that the aforementioned provision stipulates that if a link between a professional player and any of the clubs that trained him cannot be established within 18 months of his transfer, or if those clubs do not make themselves known within 18 months of the player’s first registration as a professional, the training compensation shall be paid to the association(s) of the country where the professional player was trained.*
- *In continuation, the DRC acknowledged that the player, born on 30 November 1989, was, according to FPF, registered with its affiliated clubs, as an amateur, Atlético Universidad Nacional from 6 June 2003 until 9 June 2005 as well as Cantolao from 10 June 2005 until 29 August 2008.*
- *Furthermore, the Chamber duly noted that, on the one hand, the Claimant is requesting training compensation from the Respondent in the amount of EUR 41,997.42 for the period the player was allegedly registered with Atlético Universidad Nacional, and, on the other hand, that the Respondent contested the Claimant’s entitlement to receive any training compensation, arguing that, on the occasion of the transfer of the Player, the FPF had confirmed that the player was only registered for Cantolao before the Respondent registered the player.*
- *[...] the Chamber emphasised that on 29 August 2008, after having informed the the Respondent that there were no records of the player, the FPF had sent a letter to the Respondent, confirming that “the player is registered with Academia Cantolao”. As a result, relying on this statement, the Respondent registered the player as a professional on 17 September 2008.*
- *[...] the DRC noted that the question if the Respondent could rely on the FPF’s confirmation is fundamental to decide on the Claimant’s right to receive training compensation.*
- *[...] the Chamber unanimously concluded that the associations are the pertinent contact in order to receive correct information about the career of a player. Therefore, it decided that the Respondent could rely on the FPF’s confirmation.*

- [...] *the DRC concluded that it was not acceptable for a club, which takes a player under contract based on the confirmation of the previous association and trusting that it would not have to pay training compensation, to be subsequently obliged to pay training compensation.*

#### IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 14 October 2014, the FPF filed a Statement of Appeal, pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”), with the Court of Arbitration for Sport (“CAS”) against the Club and FIFA with respect to the Appealed Decision. Thereafter, the FPF excluded FIFA as a Respondent.
17. On 24 October 2014, the FPF filed its Appeal Brief, pursuant to Article R51 of the CAS Code.
18. On 12 November 2014, after consulting the parties, the CAS Court Office informed the Parties that the Division President had decided to submit these arbitration proceedings to a Sole Arbitrator.
19. On 26 November 2014, the Club filed its Answer, pursuant to Article R55 of the Code.
20. By letter dated 11 December 2014, the CAS Court Office informed the parties that the Panel to appointed to decide these proceedings had been constituted as follows:
  - Sole Arbitrator: Mr João Nogueira, attorney-at-law in Lisbon, Portugal
21. By letter dated 13 January 2015, the CAS Court Office informed the parties that the Sole Arbitrator, after having consulting them, had decided to render an award on the sole basis of the parties’ written submissions, pursuant to Article R57 of the Code.

#### V. SUMMARY OF THE PARTIES’ POSITIONS

22. The Appellant submitted the following requests for relief:
  - “1. To annul or to set aside in its entirety the Decision of the FIFA DRC passed on 9 May 2014 and finally notified with the grounds on 24 September 2014 (hereinafter the “DRC decision”) which rejects our claiming for training compensation due by the First Respondent related to the Peruvian Player Paulo César ALBARRACIN GARCIA.
  2. To order Honvéd FC to pay us EUR 41 863 (forty one thousand and eight hundred and sixty-three Euros) as training compensation, plus interest of 5% per year from 19 October 2008 (the date since the payment is outstanding), until the date of the effective payment.
  3. To condemn Honvéd FC to pay us USD 10 000 (ten thousand American dollars) as a contribution to our legal, administrative and communication expenses.
  4. To condemn Honvéd FC to reimburse us the appeal fee of CHF 1 000 (one thousand Swiss francs).
  5. To condemn Honvéd FC to assume the costs of the present proceedings in its entirety”.

23. The FPF's position, in essence, may be summarized as follows:

- The FPF argues that the HFF, by its letter dated 30 July 2008, had never requested details of the Player's career but, in turn, it only asked the FPF whether the Player was registered with the latter and, if that was the case, whether he was registered as an amateur or professional player.
- In such letter, the HFF misspelled the name of the Player.
- After consulting its players' data base, FPF informed the HFF that the Player "*Pablo Albarracín*" was not registered with the FPF, which was correct given the wrong name provided by the Respondent.
- After this exchange of communications, "*in the last days of August 2008*", Club Cantolao filed before the FPF the "*Transfer-Letter*" of the Player with his correct name (Paulo Albarracín).
- Subsequently, having the Player's correct name being clarified due to the fact that Club Cantolao had submitted the Player's "*Transfer-Letter*", the FPF sent the ITC of the Player Paulo Albarracín to the HFF.
- The FPF also argues that the Player Paulo Albarracín was registered as an amateur player as of 6 June 2003, with the Club Atlético Universidad Nacional and as of 10 June 2005, with the club Academia Deportiva Cantolao.
- When the FPF sent the ITC to the HFF, the FPF also sent the "*Player Card*", which contained information regarding the Peruvian clubs with which the Player was previously registered.
- The FPF sustains that Art. 3.3 of the Annex 4 of the FIFA RSTP establishes that if a link between the player and any of the clubs that trained him could not be established, or if those clubs do not make themselves known within 18 months after the players' first registration as a professional, the training compensation shall be paid to the association(s) of the country (or countries) where the professional was trained.
- "*Therefore, as more than 18 months had elapsed since the first registration of the player as a professional with Honvéd FC, and not having claimed club Atlético Universidad Nacional its training compensation, that right, which was originally of this Peruvian club, becomes a right of the national federation where the player was trained, i.e., FPF*".

24. In its answer, the Respondent submitted the following requests for relief:

- "a.) dismiss the appeal as having no merit and*
- b) order the FPF to pay all costs including Budapest Honvéd FC's legal costs for this sham appeal".*

25. The Respondent's position may be summarized as follows:

- All the correspondence's exchange regarding the player's registration with the Club took place between the relevant associations, i.e. the HFF and the FPF.

- Some of the documents submitted by the FPF annexed to its Appeal Brief had never been submitted at the moment when the player was registered with the Club.
- The HFF, upon the Club's request, asked the FPF to provide information regarding the player's previous registrations with Peruvian Clubs. The FPF sent to the HFF two different answers. Initially, the FPF stated that the player was not registered with the Appellant. Thereafter, by its final and second answer, the FPF informed the HFF that the Player had only been registered with Academia Cantolao.
- In view of the information provided by the Appellant, the Respondent decided to enter into an employment contract with the player.
- In view of the documentation provided by the FPF at the time when the player was registered with the HFF, the Respondent is not obliged to pay training compensation to the FPF.

Moreover, the HFF states:

*"Although in point 5.1. of the appeal FPF acknowledges that Edition 2008 of the FIFA Regulations on the Status and Transfer of Players is applicable in case, they failed to comply with their obligation set out in Annexe 3 Article 1 (3) of the said regulations. By issuing the ITC FPF didn't inform MLSZ [short for HFF in Hungarian] about the sport career by providing a relevant player passport [...]"*

*"In point 6.A.3. of the appeal FPF mentions that from the Player card ("Ficha del jugador") the player's previous club, Cantolao should've been aware that the player had previously played for Atletico Universidad Nacional. [...]"*

*"In this regard, we would to outline that the document "Ficha del jugador" is an internal document used for domestic transfers in Peru, therefore MLSZ as another member association of FIFA shall not considered it. All the same this document is listed above among those which were NOT submitted to MLSZ".*

## VI. ADMISSIBILITY

26. The appeal was filed within the time limit of 21 days set by Article 67(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code.
27. It follows that the appeal is admissible.

## VII. JURISDICTION

28. The jurisdiction of the CAS, which is not disputed by the parties, derives from article R47 of the Code and Article 67 (1) of the FIFA Statutes.
29. It follows that the CAS has jurisdiction to decide on the present dispute.
30. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

## VIII. APPLICABLE LAW

31. 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 application of which the Panel deems appropriate. In the later case, the Panel shall give reasons for its decision”.*

32. Pursuant to Article 66 (2) of the FIFA Statutes *“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*
33. Therefore, the Sole Arbitrator considers that the present dispute shall be resolved in accordance with FIFA Regulations and, subsidiarily, Swiss law.

## IX. MERITS

34. The main issues to be solved by the Sole Arbitrator in this matter are as follows:

- A. Whether, in principle, there would be training compensation to be paid;
- B. If so, whether an Association is entitled to receive training compensation;
- C. If so, whether the FPF is entitled to receive training compensation from the Club;

*A. Whether, in principle, there would be training compensation to be paid*

35. First of all, and taking into consideration that the player was registered with the Respondent on 17 September 2008, the Sole Arbitrator analysed which edition of the FIFA RSTP should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the FIFA RSTP, the edition 2008 is applicable to this matter.
36. The Sole Arbitrator observes that, as established in art. 20 in connection with art. 1 par. 1, as well as art. 2 of Annex 4 of the FIFA RSTP, training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when the player concerned is registered for the first time as a professional, or when a professional is transferred between two club of two different associations, before the end of the season of the player’s 23<sup>rd</sup> birthday.
37. The Sole Arbitrator notes that the Appellant submitted a *“Player Card”* [*“Ficha del Jugador”*] which proves that the player Paulo César Albarraacín García, born on 30 November 1989, was registered, as an amateur, with the Peruvian clubs Atlético Universidad Nacional as of 6 June 2003 to 9 June 2005 and with Academia Cantolao as of 10 June 2005 to 29 August 2008.
38. Furthermore, the Sole Arbitrator also observes that the Club registered the player as a professional on 17 September 2008 with the HFF.

39. In this respect, the Sole Arbitrator refers to art. 3 par. 1 of Annex 4 of the FIFA RSTP according to which, the club for which the Player was registered for the first time as a professional, is responsible for paying training compensation in accordance with the player's career history as provided by the relevant player's passport.
40. In the light of the above, the Sole Arbitrator concludes that in principle, in this scenario, training compensation has to be paid.

*B. If so, whether an Association is entitled to receive training compensation*

41. Given the Sole Arbitrator's finding that we are facing a scenario where, in principle, training compensation has to be paid, the issue to be solved at this stage is whether an Association – i.e., the FPF – is entitled to receive training compensation.
42. Art. 3 par. 3 of Annex 4 of the Regulations reads as follows:  
*"If a link between the professional and any of the clubs that trained him cannot be established, or if those clubs do not make themselves known within 18 months of the player's first registration as a professional, the training compensation shall be paid to the association(s) of the country (or countries) where the professional was trained. This compensation shall be reserved for youth football development programmes at the association(s) in question".*
43. The Sole Arbitrator considers pertinent to refer to the following facts:
  - The required time frame of 18 months established by the above-mentioned provision had elapsed;
  - The player trained in Peru during the period of 6 June 2003 to 9 June 2005;
  - During such period, the player's training took place with Atlético Universidad Nacional, a club which was at that moment affiliated to the FPF;
  - Atlético Universidad Nacional did not make itself known after 18 months of the player's first registration as a professional with the Club.

44. Therefore, the Sole Arbitrator concludes that the Appellant was, in principle, entitled to claim training compensation.

*C. Whether the FPF is entitled to receive training compensation from the Club;*

45. Having established that we are facing a situation where there would be training compensation to be paid and that such compensation could be claimed by an Association, the issue to be solved at this stage is whether the FPF is entitled to claim the payment of training compensation from the Club.
46. The FPF requested training compensation to be paid by the Club in the amount of EUR 41'997,42 corresponding to the period in which the player was registered with Atlético Universidad Nacional.



47. The Club contested the FPF's request arguing that, when the transfer of the player occurred, the FPF informed the HFF that the player was only registered with Academia Cantolao.
48. In order to solve this issue, the Sole Arbitrator considers pertinent to refer to the following facts:
  - On 30 July 2008, the HFF sent a letter to the FPF requesting the issuance of the ITC of the player *Pablo Cesar Albarracin*;
  - On 5 August 2008, the FPF informed the HFF that such player had never been registered with the FPF;
  - On 19 August 2008, through a document so-called "*Carta Pase*" (Transfer Letter), Academia Cantolao authorized the Player Paulo Albarracín García to be registered with the Club;
  - On 29 August 2008, the FPF informed the HFF that Paulo Albarracín García was registered as an amateur player with Academia Deportiva Cantolao and, then, sent the Player's ITC to the HFF;
  - On 16 September 2008, the Club and the Player entered into an employment contract;
  - On 17 September 2008, the Player's contract was registered with the HFF;
49. First of all, the Sole Arbitrator remarks that Associations are the appropriate entities to request and to issue International Transfer Certificates of Players.
50. Furthermore, the Sole Arbitrator refers to Article 3 of the Annex 3 of the FIFA RSTP, which provides the rules regarding the issuance of the Players' ITC:
  - "1. *All applications to register an amateur player must be submitted by the new club to the new association during one of the registration periods established by that association.*
  2. *Upon receipt of the application, the new association shall immediately request the former association to issue an ITC for the player ("ITC request").*
  3. *The former association shall, within seven days of receiving the ITC request, issue the ITC to the new association".*
51. Moreover, Art. 1 par. 3 of Annex 3 of the FIFA RSTP states as follows:
  - "3. *The association issuing the ITC shall also attach a copy of the player passport to it".*
52. The Sole Arbitrator notes that, initially, the FPF informed the HFF that the player had never been registered with the Appellant. In this respect, the Sole Arbitrator is aware that the HFF misspelled the Player's name when it requested the Player's ITC. Nevertheless, the Sole Arbitrator is also aware that, later on, this information was corrected by the own FPF. So, when the ITC was issued, the FPF knew that the HFF was referring to the player Paulo César Albarracín García. In this respect, the FPF informed the HFF that "*We make the saving that Mr Albarracín García, Paulo César is registered with Academia Cantolao, therefore, we adjoin the corresponding transfer-letter*".

53. Thus, at the moment when the Club entered into the employment contract with the Player, the only information provided by the FPF to the HFF was that the Player had been previously registered with the Academia Deportiva Cantolao. The Sole Arbitrator notes that the FPF has never disclosed to the HFF that the player was registered with Club Atlético Universidad during the period of 6 June 2003 to 9 June 2005.
54. In this respect, the Sole Arbitrator also notes that the FPF did not provide the HFF with a copy of the Player's passport when it issued the Player's ITC.
55. Furthermore, the Sole Arbitrator takes into account that not even the "Player Card" ["Ficha del Jugador"] was submitted to the HFF. Only during these proceedings, the FPF submitted the referenced "Player Card".
56. Based on the foregoing, namely the information provided by the FPF to the HFF and further to the agreement entered into by the Club with Academia Cantolao, the Sole Arbitrator considers that the FPF created legitimate expectations on the Respondent that it had not to pay the training compensation derived from the Player's signing with the Club.
57. Moreover, in view of the inaccurate information provided by the FPF to the HFF, which omitted the fact that the Player trained with Club Atlético Universidad during the period of 6 June 2003 to 9 June 2015, the Sole Arbitrator considers that the FPF cannot be based on such inaccuracy for claiming training compensation to the Club, which indeed corresponds to said period.
58. In view of the foregoing, the Sole Arbitrator dismisses the appeal filed by the FPF and, therefore, upholds the Appealed Decision.

## **ON THESE GROUNDS**

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

1. The appeal filed by Federación Peruana de Fútbol against the decision issued on 9 May 2014 by the Dispute Resolution Chamber of FIFA is dismissed.
2. The decision issued on 9 May 2014 by the Dispute Resolution Chamber of FIFA is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.