Arbitration CAS 2015/A/3981 CD Nacional SAD v. CA Cerro, award of 26 November 2015

Panel: Mr Pedro Tomás Marqués (Spain), President; Mr João Nogueira da Rocha (Portugal); Mr Michele Bernasconi (Switzerland)

Football
Training compensation
FIFA Circular Letters
Calculation of training compensation amount
Inadmissibility of counterclaims in CAS Appeal proceedings CAS power of review
Rationale of the rules on training compensation
Use of guidelines established by FIFA Circular Letters to assess potential disproportion of the standard training compensation

1. **Pursuant to Annexe 4 of the FIFA Regulations on the Status and Transfer of Players (RSTP), FIFA has issued Circular Letters aimed to establish some guidelines in connection with the method of calculation of the training compensation, as well as to classify the clubs, on an annual basis, into different categories based on the extent of each club's expenditure for training young players, leading to certain indicative amount regarding training costs that would apply to each category. Although these Circular Letters are not regulations in a strict legal sense, they reflect the understanding of FIFA and the general practice of federations and associations belonging thereto. Accordingly, FIFA Circular Letters are relevant for the interpretation of the relevant FIFA rules and shall therefore be taken into account when deciding a dispute governed by FIFA rules.**

2. **As a general rule, the relevant costs to be taken into account when calculating the amount of the training compensation are those that would have been incurred by the new club. In principle, the effective training costs of the former club are not relevant.**

3. **Since the amendment of the CAS Code in 2010, there is well established jurisprudence (which has also been endorsed by the Swiss Federal Tribunal) according to which in CAS Appeal proceedings it is no longer possible for a respondent to submit a counterclaim at the stage of filing the Answer to the Appeal. Therefore, taking further into consideration Article R55 of the CAS Code, a Panel shall *a limine* reject a petition submitted by a respondent in its Answer to the Appeal Brief.**

4. **As a general rule, a party that objects to the result of a calculation based on the rules on training compensation should refer the matter to the FIFA Dispute Resolution Chamber (DRC). However, a party may firstly challenge before the DRC its obligation to pay any training compensation at all and later on, in case its claim is rejected by the said body but the grounds leading to the rejection of such claim are correct in its view, limit any further appeal before the CAS to challenging the amount of the training**

compensation awarded by the DRC. This is because pursuant to Art. R57 of the CAS Code, a CAS panel has full power to review the facts and the law within the limits determined by the parties within the appeal procedure. In addition, although it is true that by doing this the panel may be theoretically deciding an aspect of a decision that was not previously and expressly addressed by the first instance body, this is not prohibited by or against any specific provision of the CAS Code or of any of the applicable regulations. Indeed, in principle, in the appeal procedures before the CAS the parties are not utterly bound by the specific position held by them in the previous instance, hence they are able to file new arguments or evidences provided that these are in relation with the submissions filed therein.

5. **Training compensation is considered to be a reward and an incentive rather than a refund of the actual training costs incurred in training young players. The aim of the training compensation is to stimulate solidarity within the world of football, not the reimbursement of actual training costs.**

6. **Even though FIFA Circular Letter 769 provides that, to render the system manageable and to ensure predictability as to the amount of training compensation due, the training and education costs to be compensated will not be calculated for each individual club, the guidelines established by the FIFA Circular Letters can be used to calculate the effective training cost of one player in one particular case, in order to assess if in a given case the standard training compensation amount is "clearly disproportionate". However, this calculation must be supported by official background or accounting documents or expert reports that prove the reliability of the information and the reality of such costs.**

I. PARTIES

1. Clube Desportivo Nacional Futebol SAD (hereinafter the "Appellant" or "Nacional") is a Portuguese football club affiliated to the Federação Portuguesa de Futebol (hereinafter "FPF"), which in turn is a member of the Fédération Internationale de Football Association (hereinafter "FIFA"). Appellant has its seat in Funchal, Portugal.

2. Club Atlético Cerro (hereinafter the "Respondent" or "Cerro") is a Uruguayan football club affiliated to the Asociación Uruguaya de Fútbol (hereinafter "AUF"), which in turn is a member of FIFA. Respondent has its seat in Montevideo, Uruguay.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings, the evidence taken and the submissions made at the hearing.

Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion 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 considers necessary to explain its reasoning.

4. Pursuant to the player passport of the football player E. (hereinafter the "Player") issued by the AUF, the Player, who was born on 26 November 1989, was registered with the Respondent as an amateur football player from 16 March 2007 until 30 September 2009 and, as a professional football player, from 1 October 2009 until 30 August 2012.

5. On 31 August 2012, the Player was registered as a professional player with the Portuguese club Associação Desportiva da Camacha (hereinafter "Camacha").

6. On 26 September 2012, the Player was registered as a professional player with the Appellant.

B. Proceedings before the FIFA's Dispute Resolution Chamber

7. On 14 March 2014, the Respondent filed a claim before the Dispute Resolution Chamber of FIFA (hereinafter referred to as the "FIFA DRC") against the Appellant and Camacha, claiming the payment of the training compensation from the Appellant and, subsidiarily, from Camacha. In these proceedings Cerro maintained that the first transfer of the Player to Camacha was simulated, in order to circumvent the regulations on training compensation by the Appellant, as the Player was first hired by Camacha on 20 August 2012 and subsequently transferred on a loan basis to Nacional on 21 August 2012, without even having to pay any loan fee. For this reason, Cerro held that, with regard to the payment of the training compensation, the Appellant would have to be considered as the Player's new club.

8. On 27 November 2014, the FIFA DRC rendered the following decision:

> 1. *The claim of the Claimant, Club Atlético Cerro, is partially accepted.*
>
> 2. *The Respondent I, Clube Desportivo Nacional, has to pay to the Claimant, <u>within 30 days</u> as from the date of notification of this decision, the amount of EUR 225,000 plus 5% interest p.a. as of 27 October 2012 until the date of effective payment.*
>
> 3. *In the event that the aforementioned amount 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. *Any further claim lodged by the Claimant is rejected.*

5. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the Respondent I within 30 days of notification of the present decision, to FIFA to the following bank account with reference to case nr. 14-00735/gbo:*

[bank details]

6. *The Claimant is directed to inform the Respondent I immediately and directly of the account number to which the remittance under point 2 above is to be made and to notify the Dispute Resolution Chamber of every payment received.*

9. On 19 February 2015, upon request of the Appellant, FIFA notified the parties the grounds of the above-mentioned Decision rendered by the FIFA DRC on 27 November 2014.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

10. On 11 March 2015, the Appellant filed a Statement of Appeal before the Court of Arbitration for Sport (hereinafter the "CAS") against the Respondent with respect to the Decision rendered by the FIFA DRC on 27 November 2014 (hereinafter the "Appealed Decision"), with the following Requests for Relief:

"The Appellant requests the Panel to:

a) Accept this appeal against the decision of the FIFA Dispute Resolution Chamber, on 27 November 2014;

b) Adopt an award annulling said decision and adopting a new one declaring that the Appellant does not have to pay training compensation for the player E.,

Or, alternatively,

c) Adopt an award annulling said decision and adopting a new one, considering the amount of EUR 225.000,00 of training compensation, excessive considering the effective training costs of the Player, and therefore reducing said amount;

d) Condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fees";

11. On 17 March 2015, the CAS Court Office invited FIFA to confirm whether it intended to participate as a party in the present arbitration procedure or not.

12. On 23 March 2015, the Appellant filed its Appeal Brief with the following Requests for Relief:

"The Appellant requests the Panel to:

a) Accept this appeal against the decision of the FIFA Dispute Resolution Chamber, on 27 November 2014;

b) Provide the Appellant with an additional deadline of 15 days in order to produce documentary evidence, supporting all the facts referred to in Document 1 and in par. 11 of the present brief;

c) Adopt an award annulling said decision and adopting a new one, considering the amount of EUR 225.000,00 of training compensation, excessive considering the effective training costs of the Player (those of the Appellant), and therefore reducing said amount to EUR 1.000,00 per season;

d) Condemn the Respondent to the payment of the whole administration costs and the Arbitrators' fees".

13. On 9 April 2015, FIFA informed the CAS Court Office that it renounced its right to intervene in the present arbitration proceedings.

14. On 23 April 2015, the Respondent filed its Answer to the Appeal, requesting the CAS the following:

> *"First: That the objection to the Appeal submitted by NACIONAL against the decisions* [sic] *adopted by the DRC on 27th November 2014 is considered to be presented in due time and manner.-*
>
> *Second: That the request made by NACIONAL is rejected with regard to the granting of an additional term to present the documentation, as well NACIONAL's request to demand CERRO to add the documentation providing the average of costs effectively incurred in by my client in training.*
>
> *Third: That all of the proof offered by our party is received and that, having compelled with legal formalities, the appeal filed by NACIONAL is rejected.-*
>
> *Fourth: That, if CAS was to determine the Training Compensation to be paid by NACIONAL to CERRO, the sum of such Training Compensation amounts to €237,616,* [Sic] *in accordance with grounds described in numeral 2.26 and FIFA Regulations and Circulars; adding also a 5% interest rate per year as of the 27th October, 2012, up to its effective payment.-*
>
> *Fifth: That NACIONAL is ordered to pay CERRO all legal costs incurred in, including generated court costs and attorney's fees, caused by the remarkable bad faith in NACIONAL's behavior at all times, being the sole responsible for all these procedures".*

15. On 4 May 2015, the CAS Court Office informed the parties that they were no longer authorized to supplement or amend their requests or their arguments, produce new exhibits, or specify further evidence on which they intended to rely.

16. On 6 May 2015, the Respondent informed the CAS Court Office that it preferred not to hold a hearing in the present dispute and, therefore, requested the Panel to issue an award based solely on the parties' written submissions.

17. On 11 May 2015, pursuant to Article R54 of the Code of Sports-related Arbitration (hereinafter the "CAS Code"), and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to settle the present dispute had been constituted as follows: (i) Mr. Pedro Tomás, attorney-at-law in

Barcelona, Spain, as President of the Panel; (ii) Mr. João Nogueira da Rocha, attorney-at-law in Lisbon, Portugal (appointed by the Appellant); and (iii) Mr. Michele A. R. Bernasconi, attorney-at-law in Zurich, Switzerland (appointed by the Respondent).

18. On the same date, the Appellant informed the CAS Court Office that it requested a hearing to be held in the present case.

19. On 20 May 2015, the CAS Court Office notified the parties that, pursuant to Article R56 of the CAS Code, the Panel had rejected the Appellant's request to extend the deadline in order to produce documentary evidence as it considered that such documentation was already available when the Appellant filed its Appeal Brief. At the same time, the CAS Court Office informed the parties that the Panel had also rejected the Appellant's request regarding the production of *"Documentary evidence of the average costs effectively incurred by Club Atlético Cerro with its youth players, more specifically the Player E."*, as it considered that such documentation was not relevant in order to resolve the present dispute.

20. On 12 June 2015, the CAS Court Office informed the parties that, pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing in the present matter.

21. On 25 June 2015, FIFA filed with the CAS Court Office a copy of the complete FIFA file related to the present case.

22. On 2 July 2015, the Appellant requested the CAS Court Office to hear the witnesses it had proposed in its Appeal Brief by telephone or videoconference.

23. On 3 July 2015, the CAS Court Office notified the parties that the President of the Panel, pursuant to Article R57 in connection with Art. R44.2 of the CAS Code, had decided to hear the witnesses proposed by the Appellant by telephone or video-conference.

24. Both parties countersigned the Order of Procedure issued by the CAS Court Office.

25. The hearing in the present case took place in Lausanne on 1 September 2015. In addition to the Panel, the following persons attended the hearing:

For the Appellant:

Mr. João Marques, attorney-at-law in Funchal, Portugal

For the Respondent:

Dr. Horacio González, attorney-at-law in Montevideo, Uruguay.

Mr. Ariel Reck, attorney-at-law in Buenos Aires, Argentina.

26. Mr. Antonio de Quesada, counsel to the CAS and Mr. Yago Vázquez, *ad hoc* clerk, assisted the Panel at the hearing.

27. At the outset of the hearing both parties confirmed not to have any objection as to the constitution and composition of the Panel, and did not object the jurisdiction of CAS. The Panel invited the parties to reach an amicable agreement in this case. However, the parties rejected this possibility and thus the hearing was resumed. After the opening statements of the parties, the Panel examined Mr. Paulo Pereira, a witness proposed by the Appellant. Afterwards the Appellant renounced its right to call the other witness that it had initially proposed, Ms. Margarida Camacho.

28. At the hearing the parties had the opportunity to present their case, to submit their arguments, and to answer the questions posed by the Panel. At the end of the hearing both parties expressly declared that they did not have any objection with the procedure and that their right to be heard had been respected.

29. Both parties countersigned the order of procedure issued by the CAS Court Office.

30. The language of the present arbitration is English.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

31. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in what follows.

A. The Appellant

32. The Appellant's submissions, in essence, may be summarized as follows:

33. When calculating the training compensation that the Appellant has been ordered to pay to the Respondent, the Appealed Decision took into account the indicative amount corresponding to the category where the Appellant is ranked (i.e. Category II club), i.e. EUR 60,000 per season.

34. However, the aforesaid amount, despite being established by the FIFA's Circular Letters, is merely a way of simplifying and facilitating the determination of the training compensation within the framework of the FIFA Regulations and, therefore, a club can object to training compensation calculated merely on this basis by proving that this compensation is disproportionate by submitting concrete evidentiary documents such as invoices, budgets, costs of the training centres, etc. proving that such training compensation is disproportionate.

35. Training compensation is based on the training and education costs of the association of the new club in order to encourage solidarity within the football world. In this sense, training compensation appears to be more of a reward or an incentive rather than a refund, in the sense of a reimbursement for the actual costs incurred in training youth teams. Therefore, according to the FIFA's Commentary on the Regulations for the Status and Transfer of Players (hereinafter "RSTP") regarding Article 5 of its Annexe 4, a club that has the resources

to sign players from abroad, shall be paying the foreign club in accordance with the costs of its own country.

36. In this respect, the Appellant supports an annual budget of EUR 437,769 for the entirety of its youth teams. Likewise, for the 2014-2015 sporting season, the Appellant is currently training a total of 507 youth players, which constitutes the average number for the last 10 years. Thus, when dividing the annual budget indicated, i.e. EUR 437,769, by the number of players effectively trained and currently playing for the Appellant's youth football team, i.e. 507, the Appellant spends an average of EUR 1,000 to train one player per year.

37. Additionally, it is also relevant to analyse the Respondent's training costs. However, the Respondent failed to make reference to the costs it effectively incurred in training the Player.

38. Consequently, the Respondent is not entitled to receive the training compensation awarded in the Appealed Decision, which is clearly excessive as well as disproportionate and unfair.

B. The Respondent

39. The Respondent's submissions, in essence, may be summarized as follows:

- As to the obligation regarding the payment of the training compensation.

40. In its Appeal Brief, the Appellant expresses that the amount of the training compensation established in the Appealed Decision is disproportionate but it does not reject the obligation of paying such training compensation to the Respondent.

41. Thus, the appeal filed by the Appellant before the CAS is only directed to determine the amount of the training compensation and, therefore, the obligation imposed by the FIFA DRC regarding the payment of such training compensation shall not be under discussion, as it has not been questioned by the Appellant.

- As to the meaning of the RSTP and FIFA's Circulars Letters.

42. The system defined by the RSTP and by FIFA's Circulars Letters intends to reward and motivate the clubs that train young players, but it is not intended to reimburse the expenses incurred by the training club.

43. Furthermore, in accordance with Article 4 subsection 5 of Appendix 4 of the RSTP, clubs may request the FIFA DRC to revise the amount of the training compensation if such amount is clearly disproportionate. However, the club claiming such disproportion shall have the responsibility of proving the alleged disproportion and submit all the necessary evidence.

44. In this respect, the Appellant did not request the revision of the amount of the training compensation before the FIFA DRC and thus it did not comply with the RSTP. Therefore, as no revision was requested by the Appellant before the FIFA DRC, there is no decision in that sense that could be appealed before the CAS.

45. In addition, the Appellant has not filed any evidence before the CAS proving that the amount of the training compensation was clearly disproportionate. Therefore, as the Appellant failed to comply with its burden of proving the clear disproportion, the RSTP and the FIFA's Circulars Letters should be applied in order to determine the amount of the training compensation in the present dispute.

- As to the amount of the training compensation.

46. In the present dispute, the training compensation awarded by the FIFA DRC is not excessive and thus should not be reduced to the amount claimed by the Appellant, i.e. EUR 1,000 per season.

47. Additionally, Article 5 of Appendix 4 of the RSTP is clear when it stipulates that in order to calculate the training compensation, it is necessary to consider the expenses that the new club would have incurred in the event of having trained the player. Furthermore, in accordance with the aforesaid regulations, the first time that a player is enrolled as a professional player, the training compensation should be calculated by considering the training costs of the category of the new club multiplied by the number of years of training.

48. Therefore, the request of the Appellant demanding the Respondent to submit documentation regarding its training costs shall not be admitted since these costs are not relevant in order to establish the training compensation to be paid by the Appellant.

49. With regard to the compensation of EUR 225,000 awarded by the FIFA DRC, in accordance with FIFA's rules, the training compensation should have been set at the amount of EUR 327,616, taking into account that the Player was born on 26 November 1989 and that he was registered with the Appellant from 16 March 2007 until 30 September 2009, as an amateur football player, and from 1 October 2009 until 30 August 2012, as a professional football player.

- As to the bad faith of the Appellant.

50. The Appellant used a Category IV club (Camacha), as a manoeuvre exclusively aimed at improperly avoiding the payment of the training compensation.

51. In this respect, during the proceedings before the FIFA DRC, the Appellant neither cooperated with the parties nor with the FIFA DRC and intentionally withheld relevant documentation for the case.

V. JURISDICTION

52. Article R47 of the CAS Code 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. […]

53. The jurisdiction of the CAS, which has not been disputed by any party, arises out of Article 67 of the FIFA Statutes, in connection with the above-mentioned Article R47 of the CAS Code.

54. Therefore, the Panel considers that the CAS is competent to rule on this case.

VI. ADMISSIBILITY

55. Pursuant to Article 67, para. 1 of the FIFA Statutes, in connection with Article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.

56. The grounds of the Appealed Decision were communicated to the Appellant on 19 February 2014, and the Statement of Appeal was filed by the Appellant on 11 March 2015, i.e. within the time limit required by the FIFA Statutes and Article R49 of the CAS Code.

57. The Appeal is therefore admissible.

VII. APPLICABLE LAW

58. Article R58 of the CAS Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

59. In addition, 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"*.

60. The Appealed Decision determined that, considering the dates in which the Player was registered with Camacha and with the Appellant, the 2012 edition of the RSTP was applicable as to the substance of the case. In the present appeal procedure, none of the parties have contested this pronouncement with regard to the applicable law. However, the Panel notes, for good order, that the 2012 edition of the RSTP entered into force on 1 December 2012 (art. 29 of the said Regulations), establishing as a transitional measure (art. 26) that disputes regarding training compensation *"shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose"*. For this reason, taking into account that the date of registration of the Player with the Appellant (26 September 2012), as well as the date of the relevant contracts, the Panel considers that the applicable regulations would be the 2010 Edition of the FIFA Regulations on the Status and Transfer of Players (hereinafter the "FIFA Regulations"), not the 2012 one.

61. Notwithstanding this, and to dispel any doubt with regard to the applicable law, the Panel deems it convenient to remark that both editions of the FIFA Regulations (2010 and 2012) provide the same in what concerns to this specific issue.

62. Within this same regulatory context the Panel notes that, pursuant to what is envisaged by art. 4.2 of Annexe 4 of the RSTP, FIFA has issued a certain number of Circular Letters aimed to establish some guidelines in connection with the method of calculation of the training compensation, as well as to classify the clubs, on an annual basis, into different categories based on the extent of each club's expenditure for training young players, leading to certain indicative amount in concept of training costs that would apply to each category. In particular in their written statements the parties have referred to FIFA Circular Letters no. 826 and no. 1299, both establishing the indicative amount of EUR 60,000 per season in relation to European clubs belonging to category 2, as it is the case of the Appellant.

63. In this regard, as it has been constantly determined by CAS in the past, although these Circular Letters are not regulations in a strict legal sense, they reflect the understanding of FIFA and the general practice of federations and associations belonging thereto (see, e.g., CAS 2009/A/1908). The Panel does not see any reason to consider the legal nature of FIFA Circular Letters in a different way. Accordingly, the Panel considers that FIFA Circular Letters are relevant for the interpretation of the relevant FIFA rules, here the RSTP, and thus shall be taken into account to decide the present dispute.

64. Furthermore, pursuant to art. 66.2 of the FIFA Statutes, Swiss law is also applicable to the present case, on a subsidiary basis. Therefore, and for the reasons explained above, the Panel concludes that FIFA Statutes and Regulations and, additionally, Swiss Law shall apply in the present case.

VIII. MERITS

A. Inadmissibility Of The Evidentiary Measures Requested By The Appellant

65. Before entering into the merits of the case, the Panel shall first provide the grounds that led to the inadmissibility of the evidentiary measures requested by the Appellant in its Appeal Brief, and that were briefly indicated in the correspondence sent by the CAS to the parties on 20 May 2015.

66. The Appellant filed with the Appeal Brief two requests related to the production of certain documentary evidence. In the first place, it requested an additional term of 15 days in order to produce some documentary evidence in support of the alleged disproportion of the training compensation granted by the DRC of FIFA. The Appellant intended to ground such petition on the fact that the *"amount of documentary evidence involved (namely invoices, salary receipts, airplane tickets, etc.)"* prevented it to file all these alleged documents with its Appeal Brief.

67. The Panel took into account that, pursuant to Art. R51 of the CAS Code, it is the burden of the Appellant to submit with its Appeal Brief *"all exhibits and specification of other evidence upon which he intends to rely"*. Notwithstanding this, it is true that Art. R56 of the CAS Code allows

the Panel to authorize a party the production of late evidence *"on the basis of exceptional circumstances"*. However, the Panel is satisfied that there are no such *"exceptional circumstances"* leading to the admission of late evidence in the present case. In particular, because it is clear that the Appellant is intending to produce certain internal documentation of accounting nature (invoices, salary receipts, airplane tickets, etc.) that was available to it and under its sphere of control from the very first moment. Specifically, it is obvious that the Appellant had all this documentation at its disposal not only since it was notified by FIFA of the proceedings started by the Respondent (May 2014), but also since FIFA notified the findings (on 2 December 2014) and the grounds (on 19 February 2015) of the Appealed Decision (i.e. a long time before the term for filing its Appeal Brief was to expire). Therefore, the Panel is of the opinion that no exceptional circumstances concur in the present case that would lead to authorize the Appellant to produce such new evidence. For this reason, the petition of the Appellant was dismissed.

68. Secondly, the Appellant requested the Panel to order the Respondent to produce some documentary evidence in connection with the average costs that it had effectively incurred for training the Player. In this regard the Panel notes that, pursuant to Art. 44.3 of the CAS Code (that applies by analogy to appeal proceedings in accordance with Art. R57 of the CAS Code) a party may request the Panel to order the other party to produce documents in its custody or under its control. However, it also provides that *"The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant"*.

69. In this regard, to determine whether the evidence proposed by the Appellant was relevant for the resolution of the present case or not, the Panel took into account that pursuant to Art. 5 of Annexe 4 RSTP, *"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"*. Therefore the Panel notes that, as a general rule, the relevant costs to be taken into account when calculating the amount of the training compensation are those that would have been incurred by the new club, which in turn allows to conclude that, in principle, the effective training costs of the former club are not relevant to this purpose. In this regard, the Panel is of the opinion that the Appellant did not give any thorough reason that could have led the Panel to conclude that in the case at stake the costs effectively incurred by the Respondent were relevant for the resolution of this dispute, and thus would have led the Panel to deviate from the general rule established by Art. 5 of Annexe 4 RSTP. This is even more the case if one does take into account the limited evidentiary activity that the Appellant has conducted in the present proceedings, which in turn makes the Panel conclude that with said evidentiary request the Appellant was indeed merely trying to amend its lack of evidentiary activity by means of displacing the burden of proof on the side of the Respondent. For this reason, the Panel reached the conclusion that the prerequisites established by Art. 44.3 of the CAS Code to justify the admission of the evidence requested by the Appellant were not met, as the latter did not demonstrate that such evidence was relevant for the resolution of the present dispute.

70. As a consequence, and for the reasons set forth above, the request of production of evidence submitted by the Appellant in its Appeal Brief was rejected.

B. Scope Of The Present Appeal

71. The Panel finds it necessary to determine the scope of the present appeal as it has been defined by the parties. In this regard, the Panel notes that the Appellant is not challenging the main pronouncement of the Appealed Decision by virtue of which it is determined that Nacional shall pay to the Respondent the training compensation envisaged by Art. 20 RSTP. Indeed, although in its Statement of Appeal the Appellant seemed to intend to challenge the abovementioned pronouncement (submitting as its principal petition that the CAS was to adopt an award annulling the Appealed Decision and declaring *"that the Appellant does not have to pay training compensation for the player"*, and alternatively requesting the reduction of its amount), when filing its Appeal Brief it limited its legal argumentation to sustain an allegedly disproportion of the amount of the training compensation and restrained its submissions to the request for reduction of the amount granted by the FIFA DRC as training compensation.

72. Therefore, as it has been highlighted by the Respondent during the proceedings, the appeal filed by the Appellant is simply intended to reduce the amount of the training compensation awarded by the FIFA DRC, but not to question its obligation to pay such a training compensation.

73. In line with this, with regard to the petition submitted by the Respondent under Section Fourth of its Answer to the Appeal Brief (*"That, if CAS was to determine the Training Compensation to be paid by NACIONAL to CERRO, the sum of such Training Compensation amounts to € 237,616, in accordance with grounds described in numeral 2.26 and FIFA Regulations and Circulars; adding also a 5% interest rate per year as of the 27th October, 2012, up to its effective payment"*), the Panel has indeed noticed that when the FIFA DRC applied the indicative amounts established by the FIFA Regulations to calculate the amount of the training compensation, it apparently committed a material error and thus granted an amount which is lower than the correct one. In particular, it is likely that the FIFA DRC did not take into account the period of time that the Player spent with the Respondent during the sporting season of his 21st anniversary and, in particular, the training period between the 1st of January 2011 and the 31st of July 2011. Notwithstanding this, taking into account that the Respondent did not file an independent appeal with the CAS against the Appealed Decision to challenge the calculation made by the FIFA DRC of the training compensation, at this stage it is not possible for the Panel to review it. In particular, the submission filed by the Respondent does not constitute a mere statement of defence but a genuine counterclaim that exceeds the content that any answer to an appeal can have in accordance with Article R55 of the CAS Code.

74. In particular, since the amendment of the CAS Code in 2010, there is well established Jurisprudence in this regard (see e.g. CAS 2013/A/3432; CAS 2014/A/3746) that has been also endorsed by the Swiss Federal Tribunal (cf. ATF 4A_10/2010), according to which it is no longer possible for a Respondent to submit a counterclaim at the late stage of the filing of the Answer to the Appeal. Therefore, taking into consideration the provision under Article R55 of the CAS Code as well as the referred CAS Jurisprudence on this matter, the Panel shall reject *a limine* the petition submitted by the Respondent under Section Fourth of its Answer to the Appeal Brief, which is not admissible under the CAS Code.

75. As a result, and for the reasons explained above, the Panel considers that the sole issue to be settled in the present dispute is whether there is any ground to reduce the training compensation awarded by the FIFA DRC to the Respondent or not.

C. The Alleged Disproportion Of The Training Compensation Awarded

76. The Appellant claims that the amount awarded by the Appealed Decision to the Respondent as training compensation should be reviewed (and reduced) because it is excessive and disproportionate, taking into account the effective training costs incurred in connection with the Player. The Appellant intends to base its position on the average costs it would be bearing for the training of its young players. In particular the Appellant holds that during the 2014/2015 sporting season it has trained a total number of 507 youth players (which as per the Appellant's statements would be its average annual number of young players under training of the past 10 years), spending an annual budget of EUR 437,769 per year in their training. Therefore, in the Appellant's opinion, its average training cost per player and year amounts to EUR 1,000.

77. On the other hand, the Respondent holds that since the Appellant did not request before the FIFA DRC the revision of the training compensation resulting from the application of the indicative amounts established by the FIFA Circular Letters, not having filed with the latter any evidence for this purpose, the FIFA DRC did not take a decision in that regard that could be appealed before the CAS. Therefore, the Respondent holds that the appeal would not be admissible. In spite of this the Respondent states that, in any case, the Appellant has not proved that the amount awarded by the FIFA DRC as training compensation is disproportionate. Therefore, the Respondent considers that the appeal should be dismissed.

78. To address this question the Panel has firstly considered that Article 5.4 of the FIFA Regulations expressly envisages that *"The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review"*. Therefore, it is clear that the training compensation fee resulting from a calculation based on the rules on training compensation could be reviewed by the DRC of FIFA and reduced in case it is clearly disproportionate taking into account the circumstances of the case.

79. This being said, the Panel shall dismiss the allegations made by the Respondent to sustain the inadmissibility of the appeal on the basis that the Appellant did not request such review before the previous instance (where it merely contested the Respondent's right for a training compensation). The Panel agrees with the Respondent that, as a general rule, a party that objects to the result of a calculation based on the rules on training compensation should refer the matter to the FIFA DRC, thus allowing it to assess if the training compensation fee calculated on the basis of the indicative amounts is clearly disproportionate to the case under review or not. However, the Panel is of the opinion that a party may firstly challenge plain and simply before the FIFA DRC its obligation to pay any training compensation and later on, in case its claim is rejected by the said body but the grounds leading to the rejection of such claim are correct in its view, limit any further appeal before the CAS to challenging the amount of the training compensation awarded by the FIFA DRC.

80. Pursuant to Art. R57 of the CAS Code, the Panel has full power to review the facts and the law within the limits determined by the parties within the appeal procedure, thus being empowered to issue a new decision replacing the appealed one. In addition, although it is true that by doing this the Panel may be theoretically deciding an aspect of a decision that was not previously and expressly addressed by the first instance body (the potential reduction of the training compensation to be awarded due to its potential disproportion with the effective training costs), this is not prohibited by or against any specific provision of the CAS Code or of any of the applicable regulations. Indeed, the Panel considers that, in principle, in the appeal procedures before the CAS the parties are not utterly bound by the specific position held by them in the previous instance, hence being able to file new arguments or evidences provided that these are in relation with the submissions filed therein (i.e. like it occurs in the case at stake, where the Appellant moves from requesting that no training compensation should be awarded to the Respondent to request the reduction of its corresponding amount). For these reasons the Panel shall dismiss the arguments made by the Respondent in this regard.

81. In the assessment of the reduction of the training compensation requested by the Appellant, the Panel has firstly taken into account that the rationale of the rules on training compensation is for such compensation to be rather a reward and an incentive rather than a refund of the actual training costs incurred in training young players. This is because the aim of the training compensation is to stimulate solidarity within the world of football, and not to reimburse actual training costs. However, the RSTP allow the new club of the Player (in the present case, the Appellant) to ask for the reduction of the training compensation fee if it deems that the amount resulting from the indicative amounts and principles of the FIFA Regulations is *"clearly disproportionate to the case under review"*. In particular, *"'Disproportionate' means that the amount is clearly either too low or too high with respect to the effective training costs incurred in the specific case"* (FIFA Commentary to Art. 5 of Annexe 4 RSTP).

82. In order to assess if in the present case there is any reason that could lead the Panel to deviate from the indicative amounts envisaged by the RSTP and thus to reduce the amount of the training compensation awarded, the Panel shall bear in mind that in this regard the burden of proof lies on the Appellant. In particular, pursuant to article 8 of the Swiss Civil Code (hereinafter the "CC"), *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*. Therefore to claim for the reduction of the training compensation the claimant shall discharge its burden of proof.

83. With regard to the kind of evidence to substantiate the alleged disproportion of the training compensation, both FIFA and the CAS Jurisprudence have repeatedly outlined the types of costs and expenses that are likely to be taken into account to evaluate the potential disproportion of the training compensation. In particular the Panel notes that, in its Circular Letter no. 799, FIFA set out some criteria for calculating training compensation, highlighting the following costs and expenses to be taken into account when making such calculation:

i. salaries and/or allowances and/or benefits paid to players,

ii. any social charges or taxes paid on salaries,

iii. accommodation expenses,

iv. tuition fees and costs incurred in providing academic education programmes,

v. travel costs incurred in connection with the players' education,

vi. training camps,

vii. expenses related to the use of the training facilities,

viii. costs of providing football equipment,

ix. expenses incurred in playing competitive matches including referees expenses and competition registration fees,

x. salaries of coaches, medical staff, nutritionists and other professionals,

xi. medical equipment and supplies,

xii. expenses incurred by volunteers,

xiii. other miscellaneous administrative costs (a % of central overheads to cover administration costs, accounting, secretarial services, etc.).

84. In this respect, the Panel deems it necessary to clarify that, even though that *"to render the system manageable and to ensure predictability as to the amount of training compensation due, the training and education costs to be compensated will not be calculated for each individual club"* (FIFA Circular Letter 769), the guidelines established by the FIFA Circular Letters can be used to calculate the effective training cost of one player in one particular case, in order to assess if in a given case the standard training compensation amount is "clearly disproportionate".

85. In particular, the total sum of the above-referred expenses and costs in a year would be the total figure representing the annual average training cost of the particular club that, once divided by the total number of players it has effectively trained, will represent the average cost for training one player in a given year. Furthermore, to calculate which is the effective training costs of one player, pursuant to Art. 4.1 of Annexe 4 RSTP, this figure (the average cost of training one player) would have to be *"multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player"*. By doing this calculation one will have the approximate average training cost of one player in one particular club, that could be used to assess the potential disproportion of the standard training cost resulting from the indicative amounts established by FIFA.

86. In the case at stake, the Appellant has only submitted one piece of evidence in purported support of its appeal, in particular a self-made document of one page in which it is detailed an alleged summary of the costs corresponding to the club's *"Youth Football Budget Season 2014/2015"* (which, indeed does not correspond to any of the sporting seasons in which the player was affiliated with the Respondent). However, this summary is not supported by any document, background or accounting official document or expert report that proves the reality of such costs. In particular, the Appellant has not even enclosed with this document any invoice or any official document (annual audited accounts, balance sheets filed before a Public Registry, etc.) that could lead the Panel to believe that the information provided is reliable and reflects the real budget effectively spent by the Appellant during the 2014/2015 season in training its young players.

87. For this reason, the Panel considers that the Appellant has not discharged his burden of proof and that the evidence provided is not sufficient to establish to its comfortable satisfaction the alleged disproportion of the training compensation awarded. In the Panel's opinion the lack of evidentiary activity of the Appellant would be enough to entail to the inadmissibility of the appeal. Notwithstanding this, and for the sake of completeness, the Panel deems necessary to highlight that, even assuming for dialectical purposes that the Appellant had discharged its burden of proof and its alleged training costs were real (i.e. EUR 437,769), no disproportion of the training compensation awarded by the FIFA DRC would exist.

88. In particular, the Panel took note of the fact that Mr. Paulo Pereira, witness for the Appellant, who at the time of the facts in dispute held a position within the financial control body of the club, recognized that from the 507 young players trained annually by the Appellant, only 5 or 6 succeed and become professional players. This means that, pursuant to Art. 4.1 of Annexe 4 RSTP, the Appellant's player factor is between 1/84,5 and 1/101,40 (depending on the number of players that one does assume that the club is bringing to a professional career: 5 or 6). In these circumstances, if the total annual training costs of the Appellant were EUR 437,769 and the total number of players under training is 507, it results that the average annual cost per player for the Appellant is EUR 863,44. Therefore, if such average cost per player is multiplied by the relevant player factor, it results that the training costs of the Appellant is between EUR 72.960 and EUR 87.552,81 per season (thus higher than the EUR 60,000 established as an indicative amount by the FIFA Regulations), depending on the number of players one does assume it is bringing to a professional status (5 to 6). As a consequence, even the financial data provided by the Appellant confirms the correctness and proportionality of the training compensation awarded by the FIFA DRC.

89. The above considerations lead the Panel to conclude that the training compensation awarded by the Appealed Decision is not to be deemed as disproportionate in the terms envisaged by Article 5.4 of the Annexe 4 RSTP and that, on the contrary, it is fully in accordance with the applicable rules. Therefore, the Appeal filed by the Appellant shall be dismissed.

90. The above conclusion makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Clube Desportivo Nacional Futebol SAD against the decision issued on 27 November 2014 by the Dispute Resolution Chamber of FIFA is dismissed.

2. The decision issued on 27 November 2014 by the Dispute Resolution Chamber of FIFA is confirmed.

(…).

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