Arbitration CAS 2015/A/4148 & 4149 & 4150 Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra, award of 17 February 2016

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football
Training compensation
Status of a player
Status of professional player
Exclusivity of the FIFA regulations in the determination of the status of a player
Criterion of wages exceeding expenses effectively incurred

1. **Players are either amateur or professional. There is no space for a third, or hybrid category in the relevant FIFA regulations.**

2. **The definition of *"professional"* in the Regulations for the Status and Transfer of Players (RSTP) is clear. To be a professional, a player must meet two cumulative requirements: a) he must have a written employment contract with a club and b) must be paid more than the expenses he effectively incurs in return for his footballing activity. The title under which a player is registered within the federation is irrelevant in determining the status of a player *per se*. Also, nothing in the relevant FIFA regulations indicates that the classification as a professional is subject to extra conditions, *i.e. "the nature of the agreement"*, the title of the agreement and/or the effective registration as a professional at the concerned association. An inquiry into the economy of the contract is necessary in order to ascertain whether the two conditions conferring the status of a professional player have been met.**

3. **The status of a player has to be analysed exclusively based on the relevant FIFA regulations. The status of the player as a *"professional"* is exclusively defined in the RSTP without any reference to national regulations. This primacy exists not only for international transfers but also for national transfers. Pursuant to Articles 1 para. 3, litt. a) and 26 para. 3 RSTP, a national federation is obliged to literally transpose Article 2 RSTP, which includes the mandatory (and worldwide) definition (for the purposes of the RSTP) of *"Professionals"* and *"Amateurs"*.**

4. **The decisive substantive criterion for qualifying a player as a "professional" is whether the amount of wages paid is "more" than the expenses effectively incurred by the player. In this respect, it is irrelevant whether it is much more or just a little more. The FIFA regulations do not stipulate a minimum wage. The player can still be considered as a non-amateur, even if he agrees to perform services for a meagre salary.**

I. PARTIES

1. Sheffield Wednesday FC is a football club with its registered office in Sheffield, England ("Sheffield Wednesday" or the "Appellant"). It is a member of the English Football Association (the "FA"), which has been affiliated with the Fédération Internationale de Football Association ("FIFA") since 1905.

2. Louletano Desportos Clube is a football club, registered in Loulé, Portugal (together with Internacional Clube de Almancil and Associação Académica de Coimbra, the "Respondents"). It is a member of the Portuguese Football Federation (Federação Portuguesa de Futebol – the "FPF"), itself affiliated to FIFA since 1923.

3. Internacional Clube de Almancil is a football club registered in Almancil, Portugal (together with Louletano Desportos Clube and Associação Académica de Coimbra, the "Respondents"). It is also a member of the FPF.

4. Associação Académica de Coimbra is a football club registered in Coimbra, Portugal (together with Louletano Desportos Clube and Internacional Clube de Almancil, the "Respondents"). It is also a member of the FPF.

II. FACTUAL BACKGROUND

A. Background facts

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

B. R.'s background

6. The player R. (the "Player") is of Portuguese nationality and was born in 1994.

7. According to the passport issued by the FPF, the Player was registered with:
   - Associação Académica de Coimbra between 24 August 2009 and 28 October 2009;
   - Louletano Desportos Clube between 28 October 2009 and 3 August 2010;
   - Internacional Clube de Almancil between 4 August 2010 and 30 June 2011;
   - FC Porto SAD between 21 July 2011 and 30 June 2013;
   - Sheffield Wednesday as from 6 August 2013.

8. Sheffield Wednesday submitted that it released the Player on 5 May 2015. The latter currently plays with the Portuguese Clube de Futebol Os Belenses.

9. The Parties do not agree about the point in time when the Player turned professional.

10. According to Sheffield Wednesday, the Player acquired the professional status once he joined FC Porto SAD, whereas the Respondents claim that he signed his first professional contract with the Appellant, that is, after he had left FC Porto SAD.

11. In support of its allegation, Sheffield Wednesday submitted the following evidence:

- The Player's written statement dated 28 July 2015, whereby he confirmed a) that he is a professional player, b) he was *"registered as a professional by FC Porto from 21 July 2011 until 30 June 2013"*, c) he signed two written contracts with FC Porto SAD, the first one on 1 July 2011 and the second one on 1 July 2012, d) while he was playing with FC Porto SAD, the club covered all of his expenses, in particular it provided him with free accommodation and transport to fixtures and training, it paid for his sporting equipment, laundry, meals and education, e) he also received from FC Porto SAD a monthly salary of EUR 450 during the first season and EUR 250 during the second season as well as standard bonuses.
- A copy of the Player's second employment contract signed with FC Porto SAD as well as its translation from Portuguese to English. The relevant Articles of this document (entitled *"Sports Training Agreement"*) read as follows:

  *"**TWO***

  The Club shall pay the Trainee, on or before the 10th day of the month following the month to which it respects, gross wages of €250.00 (…) from August 2012 to May 2013.

  THREE

  The Club can also pay the player match or ranking bonuses, on the basis of the results obtained.

  FOUR

  The Club will be responsible for the direct costs of the training sessions and matches attended by its athlete, including but not limited to expenses with equipment, laundry services and travel to match venues, as well as food and accommodation. The Club further undertakes to provide food and accommodation to the trainee at Casa do Dragão.

  FIVE

  This Agreement shall be effective as of 01-07-2012 and shall remain in full force and effect through 30-06-2013.

  SIX

  During the term of this Agreement, the Trainee shall not engage in any other sports activity without the prior consent of the Club, and shall not engage in any labour or entrepreneurial activity incompatible with

the sports activity to which he is bound, unless so expressly authorized in writing by the Board of the Club.

(…)

NINE

In the event of wilful or negligent non-compliance with this Agreement by the Trainee, the Trainee will pay to the Club, as liquidated damages, the amount of € 1,500,000 (…)".

12. In order to substantiate their case, the Respondents submitted the Player's passport issued by the FPF, which establishes that he was indeed an amateur until he was registered with Sheffield Wednesday.

13. The following facts are undisputed:

- The football season in Portugal runs from 1 July until 30 June of the following year.
- The Player was registered with the Respondents as an amateur and has never signed any kind of contract with them.
- Associação Académica de Coimbra is a category II club (under the terms of the applicable FIFA Regulations on the Status and Transfer of Players – the "RSTP").
- Louletano Desportos Clube is a category IV club.
- Internacional Clube de Almancil is a category IV club.
- Sheffield Wednesday is a category I club.

C. The Proceedings before the FIFA Dispute Resolution Chamber

14. On 25 October 2013, the Respondents Associação Académica de Coimbra, Louletano Desportos Clube and Internacional Clube de Almancil filed a joint claim with FIFA against Sheffield Wednesday, requesting the payment of training compensation amounting to EUR 13,561.64, EUR 57,534.25, and EUR 68,013.70 respectively, plus interest at a rate of 5% *p.a.* as from 6 September 2013.

15. In three separate decisions dated 24 April 2015, the FIFA Dispute Resolution Chamber (the "DRC ") dismissed all the arguments put forward by Sheffield Wednesday and awarded training compensation to the Respondents based upon the following:

- the Player signed his first professional contract with Sheffield Wednesday. The Sole Arbitrator wishes to underscore at this stage that the DRC did not address the question of whether the Player might have been a professional before his registration with Sheffield Wednesday. It is undisputed that the latter did not argue that the Player had signed professional terms with FC Porto SAD during the proceedings before FIFA;
- the number of months that it considered the Player had been registered with each of the Respondents, *i.e.*:

  - between 24 August and 28 October 2009 with Associação Académica de Coimbra, a category II club (under the terms of the RSTP);
  - between 28 October 2009 and 3 August 2010 with Louletano Desportos Clube, a category IV club;
  - between 4 August 2010 and 30 June 2011 with Internacional Clube de Almancil;
- the fact that Sheffield Wednesday is a category I club (under the terms of the RSTP);
- the parameters and indicative amounts reflected in Annex 4 of the RSTP.

16. Consequently, on 24 April 2015 and with three separate decisions, the DRC partially accepted the Respondents' claim and ordered Sheffield Wednesday to pay to:

- Associação Académica de Coimbra *"**within 30 days** as from the date of notification of this decision, the amount of EUR 12,500 plus 5% interest p.a. on said amount as from 6 September 2013 until the date of effective payment"*;
- Louletano Desportos Clube *"**within 30 days** as from the date of notification of this decision, the amount of EUR 37,500 plus 5% interest p.a. on said amount as from 6 September 2013 until the date of effective payment";*
- Internacional Clube de Almancil *"**within 30 days** as from the date of notification of this decision, the amount of EUR 45,833 plus 5% interest p.a. on said amount as from 6 September 2013 until the date of effective payment"*.

17. As regards the final costs of the proceedings, the DRC decided the following:

- with reference to the claim of Associação Académica de Coimbra, Sheffield Wednesday was ordered to pay to FIFA *"The final costs of the proceedings in the amount of CHF 4,000 (…) **within 30 days** as from the date of the notification of the present decision"*;
- with reference to the claim of Louletano Desportos Clube, the *"final costs of the proceedings in the amount of CHF 7,000 are to be paid [to FIFA] as follows:*
  - *a) The amount of CHF 2,000 by [Louletano Desportos Clube];*
  - *b) The amount of CHF 5,000 by [Sheffield Wednesday]"*;
- with reference to the claim of Internacional Clube de Almancil, the *"final costs of the proceedings in the amount of CHF 7,000 are to be paid [to FIFA] as follows:*
  - *a) The amount of CHF 2,000 by [Internacional Clube de Almancil];*
  - *b) The amount of CHF 5,000 by [Sheffield Wednesday]"*.

18. On 23 June 2015, the Parties were notified of the three decisions issued by the DRC (the "Appealed Decisions").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 13 July 2015, Sheffield Wednesday filed a statement of appeal with the Court of Arbitration for Sport (the "CAS") against each of the decisions issued by the DRC in relation with the training compensation awarded to Louletano Desportos Clube (CAS 2015/A/4148), to Internacional Clube de Almancil (CAS 2015/A/4149) and to Clube Associação Académica de Coimbra (CAS 2015/A/4150).

20. On 20 July 2015, the CAS Court Office acknowledged receipt of Sheffield Wednesday's statements of appeal and of its payment of the CAS Court Office fee. It drew the Parties' attention to the possibility of submitting the dispute to CAS mediation, and noted that Sheffield Wednesday chose English as the language of the arbitration. In this respect, it informed the Respondents that, unless they objected within three days, the procedure would be conducted in English. The CAS Court Office also invited a) the Parties to comment within three days on whether they agreed to consolidate the three procedures, and b) the Respondents to comment within 5 days on Sheffield Wednesday's request to submit the present matter to a sole arbitrator and, in this respect, to the nomination of Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel.

21. On 21 July 2015, Sheffield Wednesday confirmed to the CAS Court Office that it agreed to the consolidation of the procedures and also requested a 5 day extension to file its appeal brief, which was granted the very same day.

22. On 23 July 2015, the Respondents confirmed to the CAS Court Office that they agreed a) to the consolidation of the procedures and b) to submit the proceedings to a Sole Arbitrator, provided that the latter was appointed by the CAS.

23. On 24 July 2015, the CAS Court Office took good note of the fact that the Parties had agreed to the consolidation of the procedures and to refer the matter to a sole arbitrator, to be appointed by the President of the CAS Appeals Arbitration Division, or her Deputy.

24. On 28 July 2015, Sheffield Wednesday 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.

25. On 3 August 2015, FIFA confirmed to the CAS Court Office that it renounced its right to request its intervention in the present arbitration proceedings.

26. On 18 August 2015, the Respondents requested an 8-day extension of their deadline to file their answer, which was eventually granted.

27. On 28 August 2015, the Respondents filed a joint answer in accordance with Article R55 of the Code.

28. On 2 September 2015, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.

29. On 4 and 11 September 2015, the Respondents, respectively Sheffield Wednesday, confirmed to the CAS Court Office that they preferred for the matter to be decided solely on the basis of the Parties' written submissions.

30. On 17 September 2015, the CAS Court Office advised the Parties that the Panel to hear the case had been constituted as follows: Sole Arbitrator: Prof. Petros C. Mavroidis, professor, Commugny, Switzerland.

31. On 1 October 2015, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to grant them a second round of written submissions. In this context, Sheffield Wednesday was invited to file its reply within the next ten days.

32. On 13 October 2015, the CAS Court Office acknowledged receipt of the Sheffield Wednesday's reply dated 12 October 2015 and invited the Respondents to file their rejoinder within the next ten days.

33. On 23 October 2015, the Respondents requested an extension of the deadline to file their rejoinder until 30 October 2015. The same day, the CAS Court Office invited Sheffield Wednesday to comment on this request by 27 October 2015.

34. On 26 October 2015, Sheffield Wednesday informed the CAS Court Office that it did not object to the Respondents' application for an extension of the deadline to file their rejoinder, which was then granted.

35. On 2 November 2015, the CAS Court Office acknowledged receipt of the Respondents' common rejoinder and invited the Parties to state on or before 6 November 2015 whether their preference was for a hearing to be held.

36. On 2 and 6 November 2015, the Respondents, respectively Sheffield Wednesday, confirmed to the CAS Court Office that they preferred for the matter to be decided solely on the basis of the Parties' written submissions.

37. On 25 November 2015 and on behalf of the Sole Arbitrator, the CAS Court Office invited the Respondents to submit a copy of the contracts signed between them and the Player, if any, and to file any comments in relation with the said documents, if necessary.

38. On 1 December 2015, the Respondents confirmed that they have never signed any employment contract with the Player and have *"simply registered him as an amateur player for one sporting season, each"*. They provided the CAS Court Office with the copies of the Player's amateur registration forms at the FPF.

39. On 2 December 2015, the CAS Court Office invited Sheffield Wednesday to comment on the Respondents' letter of 1 December 2015 on or before 9 December 2015.

40. On 3 December 2015, Sheffield Wednesday informed the CAS Court Office that it changed of representative.

41. On 10 December 2015, the CAS Court Office drew the Parties' attention to the fact that the Appellant had failed to file its comments with respect to the Respondents submissions of 1 December 2015. The CAS Court Office, on behalf of the Sole Arbitrator, advised the Parties that the Sole Arbitrator deemed himself sufficiently informed, and would, therefore, issue the arbitral award solely based on the Parties' respective written submissions, without holding a hearing.

42. On the same day, by providing a positive facsimile report, Sheffield Wednesday informed the CAS Court Office that it did file its comments towards the Respondents' submissions dated 1 December 2015, that is, within the given time limit.

43. On 14 December 2015, the CAS Court Office acknowledged receipt of Sheffield Wednesday's submissions and forwarded them to the Respondents and the Sole Arbitrator.

44. On 21 and 23 December 2015 respectively, the Parties returned their signed Order of Procedure. By signing the Order of Procedure, the Parties confirmed their agreement that the Sole Arbitrator may decide this matter based on their written submissions and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

(i) The Appeals

45. Sheffield Wednesday submitted the following requests for relief:

"[Sheffield Wednesday] therefore requests that the Panel decides in an award that:

I. the Appeal is admissible and well-founded; and

II. the decisions of the DRC to award Training Compensation to the [Respondents] are rendered incorrect by the appearance of new evidence and should be annulled accordingly;

III. the Decisions are replaced by a new decision which states that no Training Compensation is payable by [Sheffield Wednesday] to the [Respondents];

IV. The [Respondents] shall be jointly and severally liable for the payment in full, or in the alternative, a contribution towards:

i) the costs and expenses, including [Sheffield Wednesday's] legal costs and expenses, pertaining to these appeal proceedings before the CAS; and

ii) the costs and expenses, including [Sheffield Wednesday's] legal costs and expenses, pertaining to the proceedings before the DRC; and

V. [Sheffield Wednesday] is not liable to pay the procedural costs before the DRC as awarded against it in the Decision".

46. Sheffield Wednesday's submissions, in essence, may be summarized as follows:

- The Appealed Decisions *"are based on the presumption that the Player was first registered as a professional by virtue of the [Sheffield Wednesday's] Registration. However, since the Decisions were issued, new evidence has come to the attention of [Sheffield Wednesday] which confirms that the Player was, in fact, already a professional player for the purposes of the FIFA Regulations, prior to the [Sheffield Wednesday's] Registration"*. As a consequence, the Appealed Decisions have been reached on an incorrect factual basis.

- During his period of registration with FC Porto SAD, the Player was already a professional for the purposes of the RSTP as he a) had a written employment contract with FC Porto SAD and b) was paid more than the expenses he effectively incurred in order to perform his footballing activity:

  - It has been established that the Player and FC Porto SAD had signed two valid employment contracts. *"The Player has not retained a copy of the First Professional Contract but has confirmed in his witness statement that its terms were the same as the Second Professional Contract"*, a copy of which was duly filed.

  - As regards the Player's remuneration, *"[in] addition to paying the Player's expenses associated with his football activity in full, FC Porto also paid a monthly salary to the Player for the duration of his registration with it"* as well as bonus payments. The Respondents failed to provide credible evidence that FC Porto SAD did not pay for some of the Player's expenses and/or that his remuneration was exclusively intended to cover expenses incurred by him in the course of his footballing activity. Hence, the Player's case differs greatly from the CAS cases relied upon by the Respondents in their answer; *i.e.* TAS 2014/A/3609 and TAS 2014/A/3610.

    In addition, the fact that the Player's wage may seem modest is irrelevant as the RSTP does not set a minimum amount by which such remuneration is required to exceed the Player's expenses. The Respondents' argument made in relation with the Portuguese national minimum wage is misleading.

- The Player signed his first professional contract with FC Porto SAD. His registration with Sheffield Wednesday constitutes a *"subsequent transfer"* within the meaning of Article 3 para. 1 of Annexe 4 of the RSTP. As a consequence, the Appellant is only liable to pay training compensation to FC Porto SAD, which is not a party to the present arbitration proceedings.

- The fact that the Player's passport confirms that the Player signed his first professional contract with Sheffield Wednesday is false and cannot be opposed to the latter club. *"It has been unequivocally held in previous cases before the DRC and the CAS that the only relevant criteria for establishing whether a player is an amateur or a professional are those expressly set out in the FIFA Regulations (…) and that 'the classification of the player made by his national association is not decisive, or indeed persuasive' (…)"*. In the present case, the status of the Player at the time he was registered with FC Porto SAD was that of a professional as set out in Article 2 para. 2 of the RSTP.

(ii) The Answer

47. The Respondents filed a joint answer, with the following requests for relief:

> *"In view of all the above factual and legal arguments, the Respondents hereby request the Panel to:*
>
> *1. Entirely upheld all 3 (three) appealed decisions.*
>
> *2. Condemn the Appellant, as the sole responsible for the present procedure, to bear all the proceeding costs, as well as to contribute towards the expenses incurred by the Respondents (e.g. legal assistance and other expenses such as transports and accommodation) in an amount still to be determined, but no less than CHF 15.000.00 (fifteen thousand Swiss Francs)".*

48. The Respondents' submissions, in essence, may be summarized as follows:

- According to his passport issued by the FPF, the Player signed his first professional contract with Sheffield Wednesday. The Player was not registered as a professional with FC Porto SAD *"since the nature of the agreement signed between him and such SAD on 12 July 2012 (…) was not of a professional contract but rather of a sports training agreement for youth players".*

- The contract signed between the Player and FC Porto SAD is entitled *"Sports Training Agreement"*. It is the kind of agreement, which is normally signed with young amateur players, whereas employment contracts signed by professional players are named *"Professional Sports Employment Contract".*

- *"The minimum age legally required in Portugal to sign a 'Professional Sports Employment Contract' is 16 (sixteen), meaning that when the player was registered for the first time with FC Porto SAD, he could have signed one of such nature if he would have been indeed considered as a professional".*

- The monthly contribution paid to the Player by FC Porto SAD was too modest to be considered as a salary. The Player received a gross amount of EUR 250 per month during a short period of time; *i.e.* from August 2012 to May 2012.

- The amount of money paid to the Player was actually inferior to the national Portuguese minimum monthly wage, which was of EUR 485.

- *"For the sake of completeness, it is important to clarify that despite having most of his expenses covered by FC Porto SAD, the player (like anyone else) would obviously still incur in some small extra daily basis costs (e.g. buying a bottle of water on the way to the training facilities or charging his mobile plafond, apart from tens of other tinny expenses that we could think about), the reason why such insignificant amount was allocated as a contribution towards expenses rather than a remuneration".*

- At the time the Player was with FC Porto SAD, his home and relatives were located in Quarteira, a city which is approximately 550 km away from Porto. The Player's monthly remuneration paid by FC Porto SAD was not sufficient to cover the travel costs of one return trip Quarteira – Porto. When he was playing with the Respondents, the Player used

to frequently pay visits to his family. There is no reason to believe that he would change his habits while playing with FC Porto SAD. This is particularly true for such a young player, who would obviously go home during most of his free time and holidays. *"[It] is common practice for clubs, independently of their dimension, to contribute with an allowance towards player's expenses with transports, particularly when they are not from the same region of the club in question"*.

- The Player has not acquired the status of professional player whilst registered with FC Porto SAD. His situation is similar to the one observed in the recent CAS precedents TAS 2014/A/3609 and TAS 2014/A/3610.

- The Player's written statement dated 28 July 2015 is not reliable as a) it is not supported by any document, b) is obviously not independent and c) contains false information, namely when he claims that he was *"registered as a professional by FC Porto"*. Furthermore, it is difficult to believe the Player when he affirmed that the remuneration paid to him by FC Porto SAD during the first year was significantly higher than the one paid the following year. Logically, it should be the other way around.

- *"In conclusion, the Respondents deem that it is absolutely unrealistic to believe or defend that the payment of € 250,00 per month during 10 (ten months) (…) can actually be considered as a remuneration exceeding the expenses incurred by the player with his footballing activity in order to have him considered as a professional within the scope of Art. 2 Par. 2 of the Regulations"*.

- In light of the foregoing considerations, *"the Respondents had no obligation whatsoever to offer the player a contract in compliance with Art 6 Par. 3 of Annexe 4 of the [RSTP] since such obligation relied solely upon the player's former club. i.e. over FC Porto SAD"*.

V. JURISDICTION

49. The jurisdiction of CAS, which is not disputed, derives from Articles 66 *et seq*. of the FIFA Statutes and Article R47 of the Code.

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

51. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

VI. ADMISSIBILITY

52. The appeals are admissible as Sheffield Wednesday submitted them within the deadline provided by Article R49 of the Code as well as by Article 67 para. 1 of the applicable FIFA Statutes. They comply with all the other requirements set forth by Article R48 of the Code.

VII. APPLICABLE LAW

53. 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".*

54. The present case was submitted to FIFA on 25 October 2013, *i.e.* after 31 July 2013 and after 1 December 2012, which are the dates when the FIFA Statutes, edition July 2013 (hereinafter the "applicable FIFA Statutes") and the RSTP, edition 2012, came into force.

55. Pursuant to Article 66 para. 2 of the applicable 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".*

56. In their respective briefs, both Sheffield Wednesday (para. 15 of the appeal brief) and the Respondents (para. II.2 of the answer) confirmed that they agreed on the application of the relevant FIFA regulations, and accessorily, Swiss law. As regards the edition of the applicable RSTP, they both confirmed that the 2012 version was the pertinent one (para. 16 of the appeal brief and para. II.2 of the answer).

57. As a result and in light of the foregoing, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily.

VIII. MERITS

58. The main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following:

- Was the Player already a professional when he joined Sheffield Wednesday?
- Are the Respondents entitled to training compensation?

A. Was the Player already a professional when he joined Sheffield Wednesday?

59. On the one hand, Sheffield Wednesday claims that the Player signed his first contract as a professional with FC Porto SAD.

60. On the other hand, the Respondents submit that, according to his passport issued by the FPF, the Player was not registered as a professional with FC Porto SAD. They further contend that the requirement of a *"written contract"* included in Article 2 of the RSTP is not fulfilled as *"the nature of the agreement signed between him and [FC Porto SAD] on 12 July 2012 (…) was not of a professional contract but rather of a sports training agreement for youth players"*. Finally, the Respondents

are of the view that the Player did not receive from FC Porto SAD a remuneration, which exceeded the costs he effectively incurred with his footballing activity.

1. In general

61. According to Article 2 para. 2 of the RSTP, *"A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs"*.

62. Pursuant to Article 5 para. 2, first sentence of the RSTP, *"A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2"*.

63. In other words, the players are either amateur or professional. There is no space for a third, or hybrid category in the relevant FIFA Regulations (see DUBEY J-P, The jurisprudence of the CAS in football matters (except Art. 17 RSTP), in CAS Bulletin 1/2011, page 4, and numerous references).

64. The definition of *"professional"* in the RSTP is clear (see FIFA Commentary on the RSTP, ad Article 2 of the edition 2005 RSTP, which has a similar wording to Article 2 para. 2 of the edition 2012 RSTP). As stated *supra*, to be a professional, the Player must meet two cumulative requirements: a) he must have a written employment contract with a club and b) must be paid more than the expenses he effectively incurs in return for his footballing activity (TAS 2009/A/1895 consid. 29).

2. In particular

65. It is undisputed that the Player was registered as a professional with Sheffield Wednesday.

66. It is hence for the Sole Arbitrator to decide whether the two conditions set in Article 2 para. 2 of the RSTP were fulfilled, while the Player was registered with FC Porto SAD.

a) Is there a written contract between the Player and FC Porto SAD?

67. In support of its submissions, Sheffield Wednesday filed:

- the Player's written statement dated 28 July 2015, whereby he confirmed that he signed two written contracts with FC Porto SAD, the first one on 1 July 2011 and the second one on 1 July 2012;

- a copy of the Player's second employment contract signed with FC Porto SAD as well as its translation from Portuguese to English.

68. The Respondents contest the existence of the contract dated 1 July 2011 as Sheffield Wednesday failed to produce reliable evidence in this regard. However, they did not suggest that the second

contract was not signed or was not authentic. Nevertheless, they contend that the mere fact that the Player signed with FC Porto SAD a document entitled *"Sports Training Agreement"* does not mean that he had a *"written contract with a club"* as foreseen under Article 2 para. 2 of the RSTP. They claim that their position is validated by the fact that the Player was always registered as an amateur at the FPF until he joined Sheffield Wednesday.

69. The Sole Arbitrator observes that there was at least one written agreement between the Player and FC Porto SAD. Against this background alone, the situation of FC Porto SAD differs from the Respondents', which have admittedly never signed any contract with the Player. In spite of this, the Respondents contend that the Player was an amateur when he was registered with FC Porto SAD, that is, he continued to have the same status as when he was registered with them.

70. The Respondents failed to explain why the *"Sports Training Agreement"* is not a *"written agreement"* as foreseen under Article 2 para. 2 of the RSTP. They submit that a) *"the nature of the agreement signed [by the Player] was not of a professional contract but rather of a sports training agreement for youth players"*, b) the said agreement refers to the Player as *"Trainee"* and was entitled *"Sports Training Agreement"*, whereas employment contracts signed by professional players are named *"Professional Sports Employment Contract"*. In Addition, the Respondents give a lot of weight to the fact that the Player was registered as an amateur at the FPF, when he was playing for FC Porto SAD.

71. The Sole Arbitrator recalls that, as stated *supra*, a player is considered as a professional in the sense of the relevant FIFA Regulations if he meets two cumulative requirements: a) he must have a written employment contract with a club and b) must be paid more than the expenses he effectively incurs in return for his footballing activity.

72. According to the well established CAS jurisprudence, the title under which the Player is registered within the federation is irrelevant in determining the status of a player *per se* (CAS 2010/A/2069 para. 18 and references). An inquiry into the economy of the contract is necessary in order to ascertain whether the two conditions conferring the status of a professional player mentioned *supra* have been met.

73. The Sole Arbitrator notes that nothing in the relevant FIFA rules indicates that the classification as a professional is subject to extra conditions, *i.e. "the nature of the agreement"*, the title of the agreement and/or the effective registration as a professional at the concerned association. The plain wording of Article 2 para. 2 of the RSTP does not support such a finding. In fact, were one to follow the argument advanced by the Respondents, one would actually have introduced a hybrid category of players, depending on the nature of the contract signed, on its title and/or on whether the player is registered or not.

74. In this regard, the status of the Player has to be analysed exclusively based on the relevant FIFA rules. The status of the player as a *"professional"* is exclusively defined in the RSTP without any reference to national regulations. This primacy exists not only for international transfers but also for national transfers (see DUBEY, *op. cit*, page 4). As a matter of fact, pursuant to Articles 1 para. 3, litt. a) and 26 para. 3 of the RSTP, a national federation is obliged to literally transpose Article 2 of the RSTP. This means that FPF should transpose – without modification – Article

2 of the RSTP, which includes the mandatory (and worldwide) definition (for the purposes of the RSTP) of *"Professionals"* and *"Amateurs"* (CAS 2009/A/1781, consid. 39).

75. The mere fact that a national federation registers a player in a way inconsistent with the requirements of the RSTP (*e.g.* because a club did not inform the national federation that it concluded an employment contract with a player) should not affect the decision as to the true status of the Player and should not remove the Player from the scope of the FIFA regulations and the criteria established in Article 2 of the RSTP. As a result, the RSTP, and in particular its Article 2, override possible conflicting national rules, the existence of which have – in any event – not been established.

76. At any rate, the existence of a written contract is a formal criterion. The party bearing the burden of proof must be in position to show that a written agreement between a player and a club exists. In the view of the Sole Arbitrator, it cannot be denied that the Player had a *"written contract"* with FC Porto SAD, as provided by Article 2 para. 2 of the RSTP. Indeed, the contract between the player and the club, FC Porto SAD, has been submitted to the Sole Arbitrator. The formal requirement (existence of a written contract) has thus, been met in this case.

b) When playing for FC Porto SAD, was the Player paid more for his footballing activity than the expenses he effectively incurred?

77. The Respondents submit that the monthly contribution paid to the Player by FC Porto SAD a) was too modest to be considered as a salary, b) was actually inferior to the national Portuguese minimum monthly wage and c) actually corresponded to the actual costs he effectively incurred.

ba) In general

78. The decisive substantive criterion for qualifying a player as a "professional" is whether the amount is "more" than the expenses effectively incurred by the player. In this respect, it is irrelevant whether it is much more or just a little more (CAS 2009/A/1781 consid. 46; CAS 2006/A/1177 consid. 7.4.5). The FIFA regulations do not stipulate a minimum wage. The player can still be considered as a non-amateur, even if he agrees to perform services for a meagre salary (CAS 2006/A/1027 para. 18).

79. According to Swiss law, the individual employment contract is a contract whereby the employee has the obligation to perform work in the employer's service for either a fixed or indefinite period of time, during which the employer owes him a wage (Article 319 para. 1 of the Swiss Code of Obligations - "CO"). The main elements of the employment relationship are the employee's subordination to the instructions of the employer and the duty to personally perform work (Decision of the Swiss Federal Tribunal, 4C.419/1999 of 19 April 2000, consid. 1.a; ATF 112 II 41 consid. 1a/aa p. 46; AUBERT G, Du contrat individuel de travail, in Commentaire Romand, Code des obligations I, Bâle, 2012, ad art. 319, N. 6, p. 1966). The employer's main duty is to pay salary for the time the employee is in its service or for the work

performed (WYLER R., Droit du Travail, Berne 2008, page 154). The employee's wages may be paid in cash as well as in kind (*ibidem*; page 173). In this regard and for instance, Article 322 para. 2 CO expressly states that *"Where the employee lives in the employer's household, his board and lodgings are part of the salary unless agreement or custom provide otherwise"*.

bb) In the present case

80. It results from the second contract signed between FC Porto SAD and the Player, that the latter was entitled to:

- *"[monthly]gross wages of €250.00 (…) from August 2012 to May 2013";*
- *"match or ranking bonuses, on the basis of the results obtained"*;
- the payment of *"the direct costs of the training sessions and matches attended by [the Player], including but not limited to expenses with equipment, laundry services and travel to match venues, as well as food and accommodation";*
- in addition to the above, *"food and accommodation (…) at Casa do Dragão"*.

81. In return the Player agreed:

- *"not [to] engage in any other sports activity without the prior consent of the Club, and [not to] engage in any labour or entrepreneurial activity incompatible with the sports activity to which he is bound, unless so expressly authorized in writing by the Board of the Club";*
- to pay to FC Porto SAD *"as liquidated damages, the amount of € 1,500,000 [in the event of wilful or negligent non-compliance with [the] Agreement]"*.

82. The Respondents claim that the monthly retribution paid to the Player by FC Porto SAD was too modest to be considered as a salary. However, they forget to take into account the fact that, in consideration for his services, the Player was entitled not only to a monthly wage and appearance bonuses in the event he played, but also enjoyed other rights and benefits, which constitute an in-kind contribution. In particular, he was entitled to food and accommodation, which, together with the monthly wage, certainly can be valued at an amount equal or superior to the Portuguese national minimum wage, which the Respondents seemed to accept as an adequate threshold for a player to be qualified as a *"professional"*.

83. Considering that FC Porto SAD bore *"the direct costs of the training sessions and matches attended by [the Player], including but not limited to expenses with equipment, laundry services and travel to match venues, as well as food and accommodation"*, the advantages received by the Player clearly exceed the expenses he incurred with his footballing activity.

84. The Respondents contend that the Player's monthly remuneration paid by FC Porto SAD was not sufficient to cover the travel costs of one return trip to his home.

85. Pursuant to Article 12 para. 3 of the applicable FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof"*. The same principle can be found under Swiss law, which provides that *"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"* (Article 8 of the Swiss Civil Code).

86. Based on the foregoing and with regards to the burden of proof, it is the Respondents' duty to objectively demonstrate the existence of what they allege (ATF 132 III 449 consid. 4; ATF 130 III 417 consid. 3.1). It is not sufficient for them to simply assert a state of fact for the Sole Arbitrator to accept it as true.

87. It can be observed that the Respondents have not produced a single evidence (documents and/or witnesses) to substantiate a) that the Player actually returned to his family home while he was registered with FC Porto SAD, b) that the travel costs were not paid by FC Porto SAD and/or c) that those travel costs were actually paid by the Player and not someone else.

88. Finally, the Respondents rely on two CAS precedents to support their position, *i.e.* TAS 2014/A/3609 and TAS 2014/A/3610.

89. There are significant differences between these two cases and the Player's situation:

- In TAS 2014/A/3609 and TAS 2014/A/3610, the player was "only" entitled to EUR 300 *per* month, bonuses for match attendance, as well as the equipment except the shoes; *i.e.* much less than what the Player was entitled to while playing with FC Porto SAD (see para. 80 above).

- In the present case, the Player undertook not to engage *"in any other sports activity"* or *"in any labour or entrepreneurial activity"* without the prior consent of FC Porto SAD. In addition, in case of *"wilful or negligent non-compliance with [the] Agreement"*, the Player was exposed to pay a penalty of EUR 1,500,000. Similar restrictions did not exist in the relationship existing between the Player and the Respondents. Likewise, they did not exist in the CAS precedents on which the Respondents rely on.

90. In light of the foregoing, TAS 2014/A/3609 and TAS 2014/A/3610 are not comparable to the present matter and can be disregarded without further consideration.

bc) In conclusion

91. Based on the relevant FIFA regulations and in view of the specific circumstances of the case, the Sole Arbitrator concludes that the player had signed a professional contract with FC Porto SAD because he had a written contract, and because he was receiving compensation beyond whatever was necessary for him to cover his training costs.

92. The Sole Arbitrator finds support in his position in the fact that, from the moment he signed the contract, the Player agreed to perform services for the club. A situation of directional control, on the part of the FC Porto SAD, and subordination, on the part of the Player, is clearly present. The Player undertook not to engage *"in any other sports activity"* or *"in any labour or entrepreneurial activity"* without the prior consent of the club. A constraint of this kind is certainly not compatible with an amateur status of a player. This is even more true as, in case of *"wilful or negligent non-compliance with [the] Agreement"*, the Player was exposed to pay a penalty of EUR 1,500,000. Similar restrictions did not exist in the relationship existing between the Player and the Respondents. Likewise, they did not exist in the CAS precedents on which the Respondents rely on (TAS 2014/A/3609 and TAS 2014/A/3610). The Sole Arbitrator understands that the proper organization of amateur championships might require that amateur players are not free to offer their services in various clubs during the same footballing season. Nevertheless, in the case at hand, the Player was not threatened with a sporting sanction in case he did so, but with a heavy pecuniary sanction, akin to clauses that are encountered in contracts signed by professional players. It is thus, this clause that critically supports the Sole Arbitrator's finding that the player had already signed professional terms with FC Porto SAD, before he had signed his professional contract with Sheffield Wednesday. Under the circumstances, the Sole Arbitrator upholds the appeals filed in the present arbitral proceedings to the effect that the Player had already signed a professional contract before moving to Sheffield Wednesday.

B. Are the Respondents entitled to training compensation?

93. Article 20 of the RSTP provides the following:

"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. The provisions concerning training compensation are set out in Annexe 4 of these regulations".

94. Pursuant to Article 3 para. 1 of annex 4 to the RSTP:

"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".

95. For the reasons exposed here above, the Player signed his first professional contract with FC Porto SAD.

96. Based on the above provisions, in particular Article 3 para. 1, last sentence of Annex 4 to the RSTP, neither Associação Académica de Coimbra, Louletano Desportos Clube nor

Internacional Clube de Almancil are entitled to claim any training compensation from Sheffield Wednesday.

97. The above findings make it unnecessary for the Sole Arbitrator 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 appeals filed by Sheffield Wednesday against the decisions issued by the FIFA Dispute Resolution Chamber on 24 April 2015, registered in the CAS roll under the reference numbers CAS 2015/A/4148, CAS 2015/A/4149 and CAS 2015/A/4150, are upheld.

2. The decisions issued by the FIFA Dispute Resolution Chamber on 24 April 2015, registered in the CAS roll under the reference numbers CAS 2015/A/4148, CAS 2015/A/4149 and CAS 2015/A/4150 are set aside.

3. Sheffield Wednesday has no obligation to pay any training compensation to Associação Académica de Coimbra, Louletano Desportos Clube and Internacional Clube de Almancil in relation with the Player, R.

4. (…).

5. (…).

6. All other claims are dismissed.