Arbitration CAS 2016/A/4447 Real Racing Club de Santander SAD v. Clube Atlético e Cultural Pontinha, award of 2 December 2016

Panel: Mr Fabio Iudica (Italy), Sole Arbitrator

Football
Training compensation
Proof of fulfillment of the regulatory precondition for a claim for training compensation (professional status of the player)
Relevancy of the FIFA circulars for the interpretation of the FIFA regulations
Standard of proof regarding disproportionality justifying an adjustment of the training compensation

1. **According to art. 8 of the Swiss Civil Code and pursuant to CAS jurisdiction, a party wishing to prevail on a disputed issue, or wishing to draw legal consequences from factual circumstances it alleges, must discharge its burden of proof, which is to say that it must meet the onus to substantiate its allegations and to affirmatively prove the facts or circumstances on which it relies its argumentation. In this regard, the documents in the file may demonstrate that the regulatory precondition for a club's claim for training compensation i.e. the professional status of the player with his new club, is fulfilled since the new club failed to demonstrate that an amateur contract was actually executed between it and the player instead of a first contract signed by the player as a professional. Hence, according to article 1, para 1 of Annex 4 of the FIFA Regulations, the previous club of the player claiming for compensation is entitled to receive training compensation in relation to the relevant periods of training.**

2. **According to consistent CAS jurisprudence, Circular Letters issued by FIFA are not regulations in a strict legal sense. However, they reflect the understanding of FIFA and the general practice of the federations and associations belonging thereto. Thus, these Circular Letters are relevant for the interpretation of the FIFA Regulations.**

3. **The possibility that the training compensation amount be adjusted according to Article 5, para 4 of Annex 4 of FIFA Regulations and to FIFA Circular Letter N. 826 i.e. if clearly disproportionate, does not affect the strict standard of the burden of proof that an objecting club has concerning the facts it relies on to allege the "clear disproportionality". A CAS panel needs to be comfortably satisfied that compensation is clearly disproportionate when considering the truly particular circumstances involved in the case under review and that therefore the calculated compensation must be adjusted. Consistent with CAS jurisprudence, the guidelines contained in FIFA Circular Letter N. 799 can be used to appraise whether training compensation calculated on the basis of the indicative amounts is clearly disproportionate to the particular circumstances of the case.**

I. INTRODUCTION

1. The present appeal is brought by Real Racing Club de Santander SAD against the decision rendered by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (hereinafter the "FIFA DRC") on 13 August 2015 in the relevant dispute arisen between Real Racing Club de Santander SAD and Clube Atlético e Cultural Pontinha, regarding training compensation in connection with the player C. (the "Player").

2. At the same time, the Appellant lodged two other appeals towards União Desportiva Alta de Lisboa and Sport Grupo Sacavenense, against two parallel decisions, similar to the decision appealed against in the present proceedings, rendered by the FIFA DRC on 13 August 2015 in the relevant disputes concerning training compensation in connection with the Player (the "Parallel Proceedings").

3. The Parallel Proceedings have been submitted to the same Sole Arbitrator appointed for the present arbitration proceedings, pursuant to Article R50 of the Code of Sports-related Arbitration (the "CAS Code").

II. THE PARTIES

4. Real Racing Club de Santander SAD (hereinafter the "Appellant" or the "Spanish Club") is a football club with registered office in Santander, Spain. The Appellant is registered with the Real Federación Española de Fútbol ("RFEF"), which in turn is affiliated with FIFA and competes in the Second Division of the Spanish Football League.

5. Clube Atlético e Cultural Pontinha (hereinafter referred to as the "Portuguese Club" or the "Respondent") is a Portuguese football club affiliated with the Federação Portuguesa de Futebol (the "FPF"), which in turn is affiliated with FIFA.

III. THE CHALLENGED DECISION

6. The decision appealed against is the decision rendered by the FIFA DRC on 13 August 2015, on the claim filed by the Respondent against the Appellant regarding training compensation with respect to the Player (hereinafter the "Appealed Decision").

IV. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, on the file of the proceedings before the FIFA DRC and relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. 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 the Award only to the submissions and evidence he considers necessary to explain his reasoning.

8. According to the FPF, the player C., born in Lisbon in 1994 (hereinafter the "Player") was registered as an amateur player with the following clubs, during the following periods:

   - Sport Grupo Sacavenense: 14 November 2005 - 30 June 2006; 12 October 2006 until 30 June 2007; 24 September 2007 – 30 June 2008;
   - União Desportiva Alta de Lisboa: 15 October 2008 – 30 June 2009; 6 October 2009 – 30 June 2010; 21 October 2010 – 30 June 2011
   - **Clube Atlético e Cultural Pontinha (the Respondent)**: 20 September 2011 – 30 June 2012.

9. Subsequently, the Player played for CD National, another Portuguese club with which he was still registered as an amateur from 10 August 2012 until 30 June 2013.

10. On 14 August 2013, the Player signed an employment contract (Contrato de Trabajo de Jugador) with the Appellant to be valid for the sporting seasons 2013/2014 and 2014/2015 (hereinafter the "First Contract").

11. According to the First Contract, the Player was entitled to receive an amount of EUR 20,000.00 gross for the sporting season 2013/2014 and EUR 20,000.00 gross, plus 10% for the sporting season 2014/2015, payable in 11 monthly instalments of EUR 500.00 gross each up to the total annual amount of EUR 5,500.00. With regard to the remaining EUR 14,500.00 the First Contract stipulates that such an amount would be paid as an annual award in three instalments provided that the Player satisfied certain physical/weight conditions within 30 October (apparently 2013).

12. According to clause number 5 of the First Contract, in the event that the above mentioned conditions were not met, the Player would only receive a monthly amount of EUR 700.00.

13. In addition, the Appellant undertook to cover the Player's costs for accommodation and living expenses and to pay the following bonuses:

   - EUR 110,000.00 if during the season 2014/2015 the Player would play in the second division;
   - EUR 500.00 per goal scored with the B team and EUR 750.00 per goal scored with the first team;
   - EUR 15,000.00 if the Player would be fielded in 20 matches for more than 45 minutes per match in the second division during the season 2014/2015;
   - EUR 15,000.00 the Player would be fielded in 30 matches for more than 45 minutes per match in the second division during the season 2014/2015.

14. In this context, and with no apparent reason thereof, nine days after concluding the First Contract, on 23 August 2013, the Appellant and the Player signed a new agreement (hereinafter "the Second Contract"), according to which the Player would be registered as an amateur and would not receive any remuneration from the Spanish Club: *"Que el Real Racing club no pagará*

cantitad alguna al menciondado jugador al tratarse de un equipo amateur sin ánimo de lucro" (which, freely translated into English means that the Spanish Club would not pay any amount to the Player, in consideration of the avowed status of amateur).

15. According to the "Federación Cántabra de Fútbol", the Player was registered with the Appellant as an amateur on 29 August 2013.

16. On 10 July 2014, and with effect from that date, the Appellant and the Player signed a termination agreement with respect to the First Contract, whereby the Spanish Club acknowledged having paid to the Player the total amount of EUR 1,593.00 net (corresponding to the gross amount of EUR 2,000.00) for the months of March, April, May and June 2014.

17. On 29 July 2014, the Respondent lodged a claim in front of FIFA against the Spanish Club requesting for its proportion of training compensation with respect to the signing of the First Contract based on article 20 of the FIFA Regulations for the Status and Transfer of Players (hereinafter the "FIFA Regulations"), alleging that the Player signed his first contract as a professional with the Appellant.

18. The Respondent requested the amount of EUR 23,520.00 plus 5% p.a. *"since August 2013"*.

19. On 10 June 2014, the Spanish Club rejected the claims lodged by the Respondent on the following basis: a) the First Contract was a sham contract and was never executed between the parties; b) the person who signed the First Contract, acting on behalf of the club, Mr Angel Lavin Iglesias, was later involved in criminal proceedings in Spain for alleged corporate crimes; c) the Second Contract superseded the First Contract and therefore the Player did not acquire the status of professional; d) the Player's commitment was only part-time; e) the Player was in fact registered as an amateur player and not as a professional as it also results from the certification issued by the "Federación Cántabra de Fútbol" on 10 June 2015.

20. Notwithstanding the foregoing, the Appellant acknowledged having compensated the Player for the expenses incurred in connection with his football activity in the amount of EUR 500.00 gross (i.e. EUR 458.25 net) per month from October 2013 to December 2013 and EUR 398.25 net per month from January 2014 until July 2014, for a total amount of EUR 4,162.25, which according to the Appellant cannot be understand as a "salary".

21. In consideration of the foregoing, the Spanish Club requested FIFA to reject the Respondent's claim or, as an alternative, to reduce the amount claimed by the Respondent as disproportionate.

22. On 13 August 2015, the FIFA DRC rendered the Appealed Decision by which the Spanish Club was ordered to pay to the Respondent the amount of EUR 23,520.00 plus 5% interest p.a. as of 29 September 2013 until the date of effective payment as training compensation with respect to the Player.

23. The grounds of the Appealed Decision were notified to the Appellant on 20 January 2016.

V. SUMMARY OF THE APPEALED DECISION

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

25. The Chamber first took note that, before his registration with the Appellant, the Player was registered as an amateur with the Respondent in the following period: 20 September 2011 – 30 June 2012.

26. While the Respondent maintained it was entitled to receive its respective proportion of the training compensation as from the month of August 2013 since the Player was registered as a professional for the first time with the Appellant, the Spanish Club rejected the Respondent's claim asserting that the Player was registered with it as an amateur.

27. Therefore, the FIFA DRC established that it first had to determine whether the Player held the amateur status or the professional status at the time he was registered with the Appellant and, to this end, the Chamber examined the First Contract and the Second Contract which were submitted by the Parties, as well as the statements made by the Appellant during the FIFA proceedings.

28. In this context, the FIFA DRC noted that by admission of the same Appellant, the Player was paid *de facto* a compensation in the amount of EUR 500.00 gross per month (i.e. EUR 458.25 net per month) from October to December 2013, and EUR 398.25 net per month from January until July 2014.

29. In consideration of the above, the Chamber concluded that, irrespective of the contract at the basis of the relationship between the Appellant and the Player, the latter periodically received from the Appellant a fixed monthly amount regardless the expenses he actually incurred and with no obligation to justify these alleged expenses.

30. In this regard, the FIFA DRC referred to Article 2, para 2 of the FIFA Regulations which qualifies a professional player as the one who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs, while all other players are considered to be amateurs.

31. Therefore, the actual compensation received by the Player constitutes the decisive factor in the determination of his status, being the legal nature or qualification of the employment contract irrelevant in this regard.

32. Considering the above mentioned compensation received by the Player and the fact that he also signed a written contract with the Appellant, the FIFA DRC finally established that the Player was registered as a professional with the Spanish Club.

33. With regard to the claims for compensation lodged by the Respondent, the Chamber considered the following facts in the light of Annex 4 of the FIFA Regulations: 1) since the Player moved from Spain to Portugal when he was registered with the Appellant, the special provision of Article 6 of Annex 4, with respect to EU/EEA territory, is applicable as *lex specialis*; 2) however, para 3 of Article 6 of Annex 4 requiring that the former club offers a new contract in writing in

order to be entitled to training compensation is not applicable to the present matter; 3) as to the calculation of the training compensation due, at the time the Player was registered with the Appellant, the Respondent belonged to category 4 within UEFA (corresponding to the indicative training costs of EUR 10,000.00) while the Appellant belonged to category 2 (corresponding to the indicative training costs of EUR 60,000.00) according to Article 4 of Annex 4; 4) pursuant to Article 6, para 1 of Annex 4, if a player moves from a lower category to a higher category inside the EU/EEA territory, as is the present case, the calculation of training compensation shall be based on the average of the training costs of the two clubs; 5) the sporting season in Portugal runs as from July 1 until 30 June of the following year.

34. In consideration of the foregoing, and taking into account the periods of training that the Player received from the Respondent, the FIFA DRC decided to grant the amount of EUR 23,520.00 plus 5% interest p.a. as of 29 September 2013 until the date of effective payment.

VI. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 8 February 2016, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter: the "CAS") in accordance with Article R48 of the CAS Code against the Respondent with respect to the Appealed Decision.

36. On the same day, the Appellant filed two similar statements of appeal with the CAS in accordance with Article R48 of the CAS Code against União Desportiva Alta de Lisboa , and Sport Grupo Sacavenense, with respect to two parallel decisions, similar to the Appealed Decision, rendered by the FIFA DRC on 13 August 2015 in the relevant disputes concerning training compensation in connection with the Player

37. The Appellant requested a 20-day extension of its time limit to file its appeal brief, that Spanish be the language of the proceedings and proposed that the present case be submitted to a Sole Arbitrator. The appeal was not directed at FIFA.

38. On 17 February 2016, following the Appellant's request, the CAS Court Office suspended the relevant time limit for the Appellant to file its appeal brief, pending the notification of the Respondent's position in this regard.

39. By fax communication on 22 February 2016, Mr Gonçalo Almeida, on behalf and in representation of the Respondent, objected to the Appellant's request for an extension of its time limit to file the appeal brief and to the proposal to submit the present procedure to a Sole Arbitrator. Finally, the Respondent requested that the Parallel Proceedings be consolidated to the present arbitration proceedings and that English be selected as the language of the procedure.

40. On 23 February 2016, the CAS Court Office informed the Parties that English had been chosen as the language of the proceedings, and invited the Parties to express whether they agreed to refer the present proceedings and the Parallel Proceedings to the same Panel, since the consolidation is not applicable to the present case.

41. By fax communication on 24 February 2016, the Respondent informed that it agreed to submit the procedure to a Sole Arbitrator.

42. On 24 February 2016, the Appellant informed the CAS Court Office that it agreed to refer the three procedures to the same Panel.

43. By relevant fax communications dated 29 February 2016, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the proceedings.

44. On 1 March 2016, the Parties were informed by the CAS Court Office that the President of the CAS Appeals Arbitration Division, taking into account the circumstances of the case, had decided to submit the present matter to a Sole Arbitrator.

45. On 8 March 2016, i.e. within the time limit granted by the Division President, the Appellant filed its appeal brief in the present procedure, pursuant to Article R51 of the Code.

46. On 30 March 2016, upon request of the Respondent on 28 March 2016, the CAS Court Office granted it a five-day extension of its time limit to file its answer.

47. On 4 April 2016, the Respondent filed its answer in the present procedure, pursuant to Article R55 of the Code.

48. Further to the CAS Court Office's request to the Parties, on 11 April 2016, the Respondent expressed its preference for the Sole Arbitrator to render an award based solely on the Parties' written submission, due to financial reasons, while on 12 April 2016, the Appellant requested that a hearing be held in the present proceedings.

49. On 19 May 2016, the Parties were informed by the CAS Court Office that Mr Fabio Iudica had been appointed as Sole Arbitrator to decide the present procedure and the Parallel Proceedings.

50. By fax communication dated 3 June 2016, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in the present matter.

51. On 16 June 2016, the CAS Court Office informed the Parties that, in accordance with their agreement, a hearing would be held in Madrid on 7 September 2016, and invited the Parties to submit a list with the names of all the persons who would be attending the hearing.

52. On 22 June 2016, the Respondent informed the CAS Court Office that only Mr Gonçalo Almeida would be present at the hearing on its behalf.

53. On 6 July 2016, further to the request of the Sole Arbitrator, FIFA provided the CAS Court Office with a copy of the complete FIFA's file related to the present procedure.

54. On 18 July 2016, the CAS Court Office forwarded the relevant Order of Procedure to the Parties.

55. On 21 July 2016 and on 25 July 2016 respectively, the Appellant and the Respondent returned duly signed copies of the Order of Procedure to the CAS Court Office, confirming the jurisdiction of the CAS.

56. By fax communication dated 24 August 2016, the Appellant informed the CAS Court Office that Mr Juan De Dios Crespo Pérez, counsel, Mr Manuel Higuera, President, and Mr Manuel Asensio, in-house counsel, would be present at the hearing on 7 September on behalf of the Spanish Club.

57. On 7 September 2016, a hearing was held in Madrid, Spain. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel, nor to the jurisdiction of the CAS.

58. In addition to the Sole Arbitrator and Mr Antonio de Quesada, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

- Mr Juan De Dios Crespo Pérez, Counsel;
- Mr Manuel Higuera, President;
- Mr Manuel Asensio, in-house Counsel.

For the Respondent:

- Mr Gonçalo Almeida, Counsel

59. The Sole Arbitrator also heard evidence from the Appellant's President.

60. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their rights to be heard and to be treated equally were respected.

VII. SUBMISSIONS OF THE PARTIES

61. The following outline is a summary of the main positions of the Parties in this procedure which the Sole Arbitrator considers relevant to decide the present dispute and does not comprise each and every contention put forward by the Parties. However, the Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's submissions and request for reliefs

62. The Appellant made a number of submissions which are included in its statement of appeal and in its appeal brief and which can be summarized as follows.

63. The Spanish Club basically recognizes the training incurred by the Player with the Respondent in the alleged periods.

64. What the Appellant contests in opposition to the Respondent's contentions, is that the Player was not registered with it as a professional, based on the following arguments: 1) the First Contract was simulated and never entered into effect between the parties; 2) in fact, the signing of the First Contract is the result of a fraudulent operation conducted by the former Appellant's Sports Director and the former Appellant's President who afterwards underwent criminal investigation in Spain; 3) the Player himself acknowledged that the First Contract was invalid and that he was registered with the Appellant as an amateur; 4) the Second Contract is the only valid contract between the Player and the Appellant; 5) the amounts granted by the Appellant to the Player merely constitutes reimbursement of the Player's expenses and not a remuneration for his footballing activity; 6) the Player was never registered as a professional with the Appellant, nor had such status even in practice; 7) the Player never received the amount of EUR 20,000 per season, as it was provided in the First Contract, since he actually received the amount of EUR 4,162.25 (EUR 346,00 per month) which sum cannot be considered as a salary in the present case; 8) according to the information deriving from the Player's passport, on 29 August 2013, the Player was registered with the Appellant as an amateur.

65. As a consequence of the above, the Appellant rejects the Respondent's claim for training compensation since the condition set forth under the FIFA Regulations with regard to the Player's professional status is not met.

66. With regard to the amounts received by the Player from the Appellant (EUR 458.25 net per month from October to December 2013 and EUR 398.25 net per month from January until July 2014), the latter maintains that such fixed amounts were indeed calculated on the basis of the Player's *"football-related expenses due to his amateur status"*.

67. Moreover, the FIFA DRC failed to duly take note that the above mentioned amounts are lower than the minimum wage established yearly by the Spanish Government based on the costs of living and inflation (i.e. EUR 654.30 per month in 2013, corresponding to EUR 7,743.60 + 2 extra monthly salaries = EUR 9,034.20 per year).

68. As a consequence, the total amount of EUR 4,162.25 received by the Player can only be regarded as the reimbursement of all the costs incurred by the latter, arising from his football activity as an amateur, *"including travel costs, living costs, material and sport equipment and food expenses"*.

69. The Appellant further maintains that it paid EUR 600.00 per month for renting an apartment which the Player shared with two other teammates (corresponding to EUR 200.00 per player) during 2013, and with three other teammates (corresponding to EUR 150.00 per player) during 2014.

70. As a matter of fact, according to the Appellant, the total amount of the Player's expenses on a monthly basis can be broken down as follows:

"Rent a room": EUR 600.00 (EUR 200.00 for 2013 and EUR 150.00 for 2014)

"Travel Expenses": EUR 50.00 (EUR 1.66 daily commuting expenses)

"Equipment and maintenance of equipment": EUR 50.00 (based on an average cost of EUR 1.66 daily)

"Meals Expenses": EUR 158.25 (minimum daily amount of EUR 5.00).

71. Therefore, the Appellant argues that the monthly amount of EUR 458.25/EUR 398.25 paid to the Player merely covers the football-related expenses incurred by the latter during his stay with the Spanish Club in return for his football activity, and therefore the FIFA DRC wrongly considered that the relevant sums was to be considered as the Player's salary.

72. With regard to the FIFA DRC's objection that the Spanish Club failed to prove the exact and effective expenses incurred by the Player during the FIFA proceedings, the Appellant contends that according to CAS jurisprudence (CAS 2014/A/3659 + CAS 2014/A/3660 + CAS 2014/A/3661) such a strict burden of proof is not required as long as *"… a flat-rate concerning football-related expenses of amateurs has to be accepted as long as the flat-rate broadly reflects the average expenses of an amateur football player. To represent a different opinion would mean that an amateur player would have to keep all his football-related receipts and that the club would have to control each of those quittances"…. "in casu, the monthly flat-rate of EUR 400,00 reflects as seen above, the average football-related costs of the Player in the season 2011/2012. Hence, the amount of EUR 400,00 does not constitute a salary or remuneration but only a refund for football-related costs".*

73. As an alternative claim, in the event that the CAS founds that the Respondent is entitled to training compensation in regard to the Player's registration with the Spanish Club, the Appellant maintains that the amount established by the FIFA DRC in the Appealed Decisions is disproportionate with respect to the value of the employment relationship with the Player, corresponding to EUR 4,162.65.

74. In this regard, the Appellant avers that training compensation should be proportionate taking into account the effective costs invested by the Appellant in training players, which significantly differ from the average costs corresponding to a category 2 club in which the Appellant is classified for the purpose of calculating training compensation according to Annex 4 of the FIFA Regulations.

75. Since the amount of training compensation granted to the Respondent by the Appealed Decision is excessive with respect to the actual costs invested by the Appellant in training players, it represent an unjust enrichment to the benefit of the Respondent and shall therefore be mitigated, in accordance with the indication set forth under FIFA Circular letter N. 826 dated 31 October 2002: *"Whenever particular circumstances are given, the Dispute Resolution Chamber can adjust the amounts for the training compensation so as to reflect the specific situation of a case. For this task the Dispute Resolution Chamber can ask for all documents and/or information it deems necessary, such as invoices, training centres budgets, etc".*

76. In this context, the Appellant relies on a financial report named *"Expense report Cantera, period 2005/2006 to 2012/2013 Season (a.i.) determination unit cost per player"* submitted together with its appeal brief (hereinafter the "Report"), according to which the unit cost per player for the

sporting season 2012/2013 allegedly corresponds to EUR 5,002.14, which is significantly lower that the indicative amounts provided by FIFA for the purpose of calculating training compensation.

77. At the hearing, the Appellant reiterated the arguments put forward in its written submissions, especially referring to the principle of proportionality with respect to the calculation of training compensation, recalling the award rendered by the European Court of Justice in the case C-328/08 (the "Bernard case"), and finally stating that the entire costs sustained by the Spanish Club for training young players until the age of 18 amounts to EUR 45,000.

78. With respect to the signing of the Second Contract, the Appellant further explained that even if the Player was being transferred from a Portuguese club playing in the first division, at the time he was registered with the Spanish Club, nonetheless he was interested in signing an amateur contract with a third-division club since the Spanish Football League is one of the top 4 in the world.

79. As regards the Report, the Appellant insisted that the relevant document was indeed certified by an external auditor and that it demonstrates that the amounts of training compensation calculated by the FIFA DRC are actually disproportionate with respect to the Appellant's effective training costs.

80. Regarding the termination agreement, the Appellant maintained that it erroneously refers to the date of signing of the First Contract but it was meant to apply to the Second Contract.

81. In its statement of appeal, the Appellant submitted the following Requests for relief:

"To accept this appeal against the decision rendered by the FIFA Dispute Resolution Chamber on 20 January 2016.

To adopt an award annulling the said decision and adopting a new one declaring that:

A) The decision of the FIFA Dispute Resolution Chamber dated 20 January 2016 is not consistent with the law, because the relation between Real Racing Club de Santander and the player C. does not meet the requirements to be considered as a professional player and therefore, has not generated rights for training for the aforementioned clubs established in the article 20.1 of the FIFA Player Transfer Regulations and its Annex 4.

B) Or alternatively if it is deemed that the claimant is entitled to receive training compensation, we ask for the compensation to be moderate according to paragraph 5.4 of Annex 4 of Regulation Statute Transfer Players FIFA and ECJ case law on the subject, resulting compensation proportional to the actual cost of the amount received by the player and in relation to the costs of Real Racing Club de Santander in the training of young players.

To fix a sum of 5000 CHF to be paid by the Respondent to the Appellant, to help the payment of its legal fees and costs.

To condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fee".

82. In its appeal brief, the Appellant submitted the following Requests for relief:

"To fully accept the present appeal against the Decision, rendered by the FIFA Dispute Resolution Chamber on the 13 August 2015.

As a consequence, to adopt an award annulling said decision and declaring that:

- *The appealed decision of the FIFA Dispute Resolution Chamber dated 13 august 2015 is annulled and*
- *The "player" has to be considered as an amateur and consequently, the "Respondent" is not entitled to receive any compensation of whatsoever kind related to the training of the "Player".*

Subsidiarily,

To decide that the compensation is not in accordance with the real costs of training (as per the "Bernard" jurisprudence of the European Court of Justice) and to reduce it accordingly as per its real costs.

To fix a sum of 10,000 CHF to be paid by the "Respondent" to the "Appellant" to help the payment of its legal fees and costs.

To condemn the "Respondent" to the payment of the whole CAS administration costs and the Arbitrators fees".

B. The Respondent's submissions and requests for relief

83. The position of the Respondent is set forth in its answer which can be summarized as follows.

84. The Respondent claims that the Player actually acquired his professional status by signing the First Contract with the Appellant, at the age of 18, i.e. before the end of the sporting season of his 23rd birthday.

85. Therefore the Respondent is entitled to receive training compensation from the Appellant in accordance with Article 20 and Annex 4 of the FIFA Regulations, in relation to the period of training the Player received when he was registered with the Portuguese Club.

86. The First Contract is in fact valid and binding. Such a contract stipulated that the Player would be entitled to receive EUR 20,000.00 for the sporting season 2013/2014, EUR 20,000.00 +10% for the sporting season 2014/2015, as well as several bonuses and other benefits such as accommodation and other essential daily expenses. Consequently, it is undisputable that the Player received a real salary under the First Contract and shall be therefore considered as a professional.

87. The Appellant's argument that the First Contract is simulated or that it is the result of an alleged fraudulent operation carried out by two of the Appellant's former representatives who underwent criminal investigation is completely irrelevant with respect to the validity of the First Contract and it has no influence on the professional status of the Player and on the obligation of the Appellant to pay training compensation. The same conclusion also applies with regard to the Spanish Court's decision apparently considering null and void the employment contract of

the Appellant's former Sports Director, since this fact has no connection at all with the present matter.

88. With reference to the Second Contract, the Respondent maintains that it cannot be considered as a real contract since it even fails to stipulate a period of validity of the employment relationship between the Appellant and the Player, which is a condition for the very existence of a contract of a sporting labour nature.

89. Moreover, contrary to what it is provided under Clause 3 of the Second Contract, the Appellant in fact acknowledged it actually paid the Player a certain amount of money (i.e. EUR 4,162.25 according to the Appellant). On this subject, the Respondent also argues that the alleged payment acknowledged by the Appellant was made on a fixed basis, irrespective of the actual expenses incurred by the Player.

90. In addition, it is to be noted that, notwithstanding the Second Contract was signed by the Appellant's former President who also signed the First Contract, such fact does not appear to be significant to the Appellant with respect to the validity of the Second Contract, which is a sign of the inconsistency of the Appellant's argument when referred to the validity of the First Contract.

91. The Respondent emphasizes that the Appellant is even more contradictory in the light of the termination agreement of the First Contract which has been submitted by the same Appellant without any particular commentary, although such a termination agreement, and in particular Clause 1 and Clause 4, are clear indications of the existence and the validity of the First Contract.

92. Furthermore, under Clause 3 of the termination agreement, the Appellant acknowledged having paid to the Player the total amount of EUR 1,593.00 corresponding to the monthly payment of March, April, May and June 2014, equivalent to EUR 500.00 gross per month, which fact suggests that the information provided by the Appellant concerning the total amount paid to the Player during the sporting season 2013/2014 is false. In fact, it is to note that the amount of EUR 500.00 gross per month corresponds to the amount agreed upon under the First Contract as the Player's remuneration (i.e. EUR 20,000.00 payable by means of a sign-on fee of EUR 14,500.00 in 3 instalments and a fixed gross amount of EUR 5,500.00, in 11 monthly instalment of EUR 500.00 each).

93. In this context, the Respondent believes that the First Contract was valid and binding, that the Player received the amounts set forth under the First Contract, including the sign-on fee of EUR 14,500.00, and that the only reason why the Second Contract was signed (just ten days after the First Contract) is that the Appellant realized it would be liable to pay training compensation and tried to avoid such an obligation.

94. As regards the calculation of the training compensation due, the Respondent contests the Appellant's allegation that the amount granted by the FIFA DRC is disproportionate since it is in line with the average training costs established within FIFA on a confederation basis for each category of club and there is no exceptional circumstance or any sustainable reason that could justify any departure from that calculating system.

95. In this respect, the Respondent also emphasizes that the Report submitted by the Appellant concerning its training costs is biased and unreliable.

96. At the hearing, the Respondent reiterated the arguments put forward in its answer and specifically emphasized that, in the light of the signing of the First Contract, (which is a valid and binding contract) and in the absence of any apparent reason whatsoever, it still remains absolutely incomprehensible why the Player allegedly decided to renounce to a professional contract by signing the Second Contract, unless it is accepted that the only reason why the Second Contract was signed was that the Appellant tried to avoid payment of the training compensation.

97. With reference to the Appellant's alternative claim that the amount of training compensation be reduced in the light of the Report submitted by the latter with its appeal brief, the Respondent argued that it is a one-sided, unofficial document which has not been certified by any external entity and therefore they contested its probative value.

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

- *Entirely upheld the [3 (three)] appealed decision[s]*
- *Condemn the Appellant, as the sole responsible for the present procedure, to bear all proceeding costs, as well as to contribute towards the expenses incurred by the Respondent[s] (e.g. legal assistance, transports and accommodation) in a total amount no less than CHF 15.000,00 (fifteen thousand Swiss Francs), corresponding to CHF 5.000,00 per Respondent.*

VIII. JURISDICTION

99. The Appellant specifically relies on article 67(1) of the FIFA Statutes (2014 edition) as conferring jurisdiction to the CAS over the present cases: *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*.

100. CAS jurisdiction is also confirmed by the Respondent in its answer.

101. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

102. It follows that CAS has jurisdiction to adjudicate on and decide the present dispute.

IX. ADMISSIBILITY

103. As mentioned above, the grounds of the Appealed Decision were notified to the Appellant on 20 January 2016.

104. Pursuant to article 67 of the FIFA Statutes which is consistent with article R49 of the CAS Code, the time limit for appeal against a decision rendered by FIFA's legal bodies shall be twenty-one days as of receipt of notification of the decision appealed against.

105. The Appellant submitted its statement of appeal on 8 February 2016.

106. Therefore the Panel holds that the appeal was filed within the 21 days set by Article 67(1) of the FIFA Statutes.

107. It follows that the appeal is admissible.

X. APPLICABLE LAW

108. Article R58 of the CAS Code provides the following:

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

109. Article 66 para 2 of the FIFA Statutes so provides:

"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".

110. In its appeal brief, the Appellant requests that the present dispute be settled primarily according to the various FIFA regulations and additionally by Swiss law.

111. The Respondent agrees that the present procedure is governed by the FIFA Regulations (Edition 2012) and subsidiarily, Swiss Law.

112. In consideration of the above and pursuant to Article R58 of the CAS Code, the Sole Arbitrator holds that the present dispute shall be decided according to FIFA Regulations as a first choice, with Swiss law applying subsidiarily.

113. Since the registration of the Player with the Appellant occurred on 29 August 2013, the Sole Arbitrator concurs with the FIFA DRC that pursuant to article 26 of the FIFA Regulations, the 2012 edition of such regulations is applicable to the present matter.

XI. MERITS OF THE APPEAL – LEGAL ANALYSIS

A. The Main Issues

114. With regard to the merits of the present dispute, first of all, the Sole Arbitrator observes that the following facts are undisputed between the Parties:

a) that the Player was registered as an amateur with the Respondent, during the following period: 20 September 2011 – 30 June 2012.

b) that after having signed an employment contract as a professional on 14 August 2013 (the First Contract), the Player concluded with the Appellant a different agreement as an amateur player on 23 August 2013 (the Second Contract);

c) that, according to the "Federación Cántabra de Fútbol", the Player was formally registered with the Appellant as an amateur on 29 August 2013.

115. In the Sole Arbitrator's view, the main issues to be resolved in the present matter are the following: a) which of the two existing contracts was effectively executed between the Appellant and the Player, and, as a consequence, whether the Appellant is obliged to pay training compensation to the Respondent with respect to the Player's registration with it, b) in the affirmative, which is the correct amount of training compensation due according to the applicable FIFA Regulations and, c) whether there are reasons justifying a reduction of the amount of training compensation established by the Appealed Decision.

a) Is the Respondent entitled to receive training compensation with respect to the registration of the Player with the Appellant?

116. What is firstly disputed between the Parties is whether the Respondent is in principle entitled to receive training compensation with respect to the Player's registration with the Spanish Club, which fact is contested by the Appellant on the allegation that the Player did not acquire the professional status at the time he was registered with the Spanish Club. On the contrary, the Respondent claims training compensation based on the alleged validity and effectiveness of the First Contract, being the first contract signed by the Player as a professional.

117. The Sole Arbitrator reminds that, with regard to the specificity of the case at hand, according to Article 20 and Annex 4 of the applicable FIFA Regulations, as a general rule, training clubs are firstly entitled to receive training compensation when a player signs his first contract as a professional, before the end of the season of his 23rd birthday.

118. Moreover, according to Article 1 para 1 of Annex 4 of the FIFA Regulations *"A player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable*

shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training".

119. In this context, what is disputed between the Appellant and the Respondent is which of the two contracts, between the First Contract and the Second Contract, was effectively executed between the Player and the Appellant.

120. In fact, the Appellant maintains that the Second Contract superseded the First Contract which allegedly never entered into effect since it was a sham contract, while the Respondent contests that only the First Contract was valid and binding between the parties and that the Second Contract constitutes an attempt of the Appellant in order to circumvent the application of training compensation system.

121. Irrespective of and in addition to the above, the Appellant also argues that the Player was never registered with it as a professional, nor had he such status even in practice, since he merely received a reimbursement of the expenses incurred in relation to his football activity, which implies that the Respondent is not entitled to receive training compensation in respect of the Player under the provisions of the FIFA Regulations.

122. As a preliminary consideration, with regard to the alleged invalidity/ineffectiveness of the First Contract, the Sole Arbitrator observes that there is no evidence in the file, nor has the Appellant demonstrated otherwise, that the involvement of the Appellant's former President and Sports Director in criminal investigation in Spain had any impact, even direct or indirect, on the power of the First Contract to produce its legal effects (Beside the fact that, as a principle, a legal entity shall be liable for the actions of its legal representatives).

123. Secondly, the Sole Arbitrator believes that the Appellant failed to prove that the Second Contract was actually executed between it and the Player in place of the First Contract.

124. In this respect, the Spanish Club alleges it merely paid the total amount of EUR 4,162.25 to the Player for the entire period of registration, and contests that the Player ever received the salary in the amount of EUR 20,000.00 which was set forth under the First Contract.

125. However, the Sole Arbitrator observes that the fact that the Appellant acknowledges the payment of EUR 4,162.25 (i.e. EUR 458.25 net/month from October until December 2013 and EUR 398.25 net/month from January until July 2014), only constitutes evidence of that payment but it is not sufficient by itself to further demonstrate that no other payment was ever made to the Player.

126. In addition, it is to be noted that the abovementioned amount acknowledged by the Spanish Club also matches with the 11 monthly instalments of EUR 500.00 gross stipulated under the First Contract.

127. Moreover, the Sole Arbitrator observes that, notwithstanding the signing of the Second Contract, on 10 July 2014 the Appellant and the Player reached an agreement in writing for the termination of the First Contract, which fact implies that the Appellant recognized the validity

of the First Contract, and, in the absence of any strong counter-evidence provided by the Appellant, that the latter and not the Second Contract was the contract performed between the Spanish Club and the Player.

128. In this respect, the Sole Arbitrator emphasizes that the Appellant was not able to give explanations in order to overcome the contradiction between the signing of the Second Contract and the signing of the termination agreement with reference to the First Contract. In this sense, the Appellant's testimony at the hearing according to which the termination agreement erroneously refers to the date of signing of the First Contract but it would actually apply to the Second Contract is not persuasive and, moreover, it is not confirmed by any other evidence in the file.

129. In conclusion, in the light of the documents in the file, the Sole Arbitrator believes that the Appellant failed to demonstrate that the Second Contract was actually executed between it and the Player instead of the First Contract.

130. In this respect, the Sole Arbitrator points out that any party wishing to prevail on a disputed issue, or wishing to draw legal consequences from factual circumstances it alleges, must discharge its respective burden of proof, which is to say that it must meet the onus to substantiate its allegations and to affirmatively prove the facts or circumstances on which it relies its argumentation on that issue (CAS 2013/A/3082; CAS 2009/A/1810 & 1811; CAS 2009/A/1908). This principle is equally enshrined in art. 8 of the Swiss Civil Code: *"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"* (see also Swiss Federal Tribunal, ATF 130 III 417; ATF 123 III 60).

131. Therefore, the Sole Arbitrator is persuaded that the regulatory precondition for the Respondent's claim for training compensation (i.e. the professional status of the Player with the Appellant) is fulfilled.

132. Hence, according to article 1, para 1 of Annex 4 of the FIFA Regulations, the Respondent is entitled to receive training compensation in relation to the relevant periods of training.

b) Which is the correct amount of training compensation due according to the applicable FIFA Regulations?

133. With regard to the amount of the training compensation due, the Sole Arbitrator refers to the general rule of calculation based on the "indicative amounts" set forth under Article 4 of Annex 4 of the applicable FIFA Regulations which reads as follows: *"1. In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player. 2. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year. Associations are required to keep the data regarding the training category of their clubs inserted in TMS up to date at all times (cf. Annexe3, article5.1 paragraph 2)".*

134. Such indicative amounts were further specified by FIFA in the Circular Letter N. 826 dated 31 October 2002 (and subsequently in the Circular Letter N. 959a) on the basis of the information received by all national associations on a confederation basis, in accordance with the guidelines provided by FIFA under Circular Letter N. 799.

135. The Sole Arbitrator abides by the consistent CAS jurisprudence (CAS 2009/A/1908; CAS 2004/A/594), according to which *"the Circular Letters issued by FIFA are not regulations in a strict legal sense. However, they reflect the understanding of FIFA and the general practice of the federations and associations belonging thereto. Thus, these Circular Letters are relevant for the interpretation of the FIFA Regulations"* and also takes note that CAS Panel have previously relied on Circular Letter N. 826 as a valid basis for the calculation of the training compensation (CAS 2009/A/1908; CAS 2003/O/527; CAS 2003/O/469; CAS 2003/O/506).

136. In this context, the Sole Arbitrator considers that it is undisputed that both Appellant and Respondent are European Clubs belonging to UEFA and that the Appellant was a category 2 club at the time the Player was registered with it, while the Respondent was a category 4 club.

137. According to FIFA Circular Letter N. 826, the indicative training costs for a category 2 club belonging to UEFA amount to EUR 60,000.00, and to EUR 10,000.00 for a category 4 club, which fact is also undisputed by the Parties.

138. The Sole Arbitrator points out that, pursuant to Article 6 of Annex 4 of the FIFA Regulations, for players moving from one Association to another inside the territory of the EU/EEA, if the player moves from a lower to a higher category club, as is the present case, the calculation of the amount of training compensation due shall be based on the average of the training costs of the two clubs (i.e. EUR 35,000.00 in the present case) as an exception to the general rule set forth under Article 5 of Annex 4.

139. Furthermore, according to the general rules set forth under Article 5, para 2 and 3 of Annex 4, the average of the costs of the Appellant and Respondent shall be multiplied by the number of years of training respectively received by the Player with the Respondent, from the season of the Player's 12th birthday to the season of his 21st birthday. Finally, the Sole Arbitrator notes that para 3 of Article 5 of Annex 4, providing that the training costs for the seasons between the Player's 12th and 15th birthday shall be based on the training and education costs for category 4 clubs (i.e. EUR 10,000 in the present disputes), also applies to the present disputes.

140. With specific regard to training compensation due at a player's first registration as a professional, as is the present case, in accordance with Article 3, para 1 of Annex 4 of the FIFA Regulations, *"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".*

141. In view of the foregoing, the Sole Arbitrator is of the view that the calculation of the training compensation payable to the Respondent according to FIFA Regulations shall be the following:

Training period	Training Club	Age of the Player	Applicable Category	Training compensation
14/11/2005-30/6/2006	Sport Grupo Sacavenense	11	-	-
12/10/2006-30/6/2007 (261 days)	Sport Grupo Sacavenense	12	4	€ 7,150.68
24/9/2007-30/6/2008 (280 days)	Sport Grupo Sacavenense	13	4	€ 7,671.23
15/10/2008-30/6/2009 (258 days)	União Desportiva Alta	14	4	€ 7,068.85
6/10/2009-30/6/2010 (267 days)	União Desportiva Alta	15	4	€ 7,315.07
21/10/2010-30/6/2011 (252 days)	União Desportiva Alta	16	4/2	€ 24,164.38
20/9/2011-30/6/2012 (284 days)	**Clube Atlético e Cultural Pontinha**	**17**	**4/2**	**€ 27,232.88**

142. In light of the calculation above, the Sole Arbitrator believes that the amount established by the FIFA DRC in the Appealed Decision complies with the applicable FIFA Regulations and relevant Circular Letters.

c) Are there are any reasons justifying an adjustment of the amount of training compensation established by the Appealed Decisions based on FIFA "indicative amounts"?

143. Notwithstanding the above, the Sole Arbitrator notes that the Appellant claims the alleged disproportionality of the amount of training compensation determined by the FIFA DRC in comparison with the alleged effective costs invested by the Appellant for training players, which, according to the Appellant, significantly differ from the indicative amount corresponding to a category 2 club within UEFA and therefore requests that, in the event that training compensation is awarded to the Respondent, the amount established by the Appealed Decision be moderated by the CAS taking into account the specificity of the case at hand.

144. In this context, the Appellant relies on the Report submitted together with its appeal brief, according to which the training costs per player for the relevant sporting seasons are allegedly

lower that the indicative amounts provided by FIFA for the purpose of calculating training compensation.

145. Therefore, the Sole Arbitrator shall assess whether there are in the matter at hand, considerable reasons to deviate from the amount of training compensation calculated by the FIFA DRC in the Appealed Decision.

146. In this respect, the Sole Arbitrator turns his attention to Article 5, para 4 of Annex 4 of the FIFA Regulations providing 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"* (emphasis added).

147. Moreover, the Sole Arbitrator points out that according to FIFA Circular Letter N. 826 *"Any party that objects to the results of a calculation based on the rules on training compensation is entitled to refer the matter to the Dispute Resolution Chamber. The Chamber will then review whether the training compensation fee calculated on the basis of the indicative amounts and the principles of the revised regulations, as simplified below, is clearly disproportionate to the case under review in accordance with Art. 42.1.b. (iv) of the Basic Regulations, while taking into account the indicative nature of these amounts. Whenever particular circumstances are given, the Dispute Resolution Chamber can adjust the amounts for the training compensation so as to reflect the specific situation of a case. For this task the Dispute Resolution Chamber can ask for all documents and/or information it deems necessary, such as invoices, training centres budgets, etc".*

148. Finally, the Sole Arbitrator observes that consistent with CAS jurisprudence (CAS 2009/A/1908), the guidelines contained in FIFA Circular Letter N. 799 can be used to appraise whether training compensation calculated on the basis of the indicative amounts is clearly disproportionate to the particular circumstances of the present proceedings.

149. Stating the above, the Sole Arbitrator reminds that the possibility that the training compensation amount be adjusted according to Article 5, para 4 of Annex 4 of FIFA Regulations and according to FIFA Circular Letter N. 826 does not affect the strict standard of the burden of proof that an objecting club has concerning the facts it relies on to allege the "clear disproportionality" (CAS 2005/A/927).

150. In the case CAS 2009/A/1908, the Panel emphasized that *"Appellant bears the burden of proving to the comfortable satisfaction of this Panel that such compensation is clearly disproportionate when considering the truly particular circumstances involved in the case under review and that therefore the calculated compensation must be adjusted. Appellant has to satisfy its burden of proof on the basis of specific documents, such as invoices, costs of training centres, budgets, and other documentation of expenses showing that the expenses bear a clear relation to the training of its youth sector".*

151. As a consequence, in the absence of such evidence, the indicative amounts apply (CAS 2003/O/500, para. 7.10; CAS 2003/O/506, paras. 80, 99 and 100; CAS 2003/O/527, para. 7.4.3; CAS 2004/A/560, para. 7.6.2; CAS 2006/A/1027, paras. 38 and 39; CAS 2007/A/1218, para. 82; and CAS 2009/A/1810, para 83).

152. In line with the principles established by the panel in the case CAS 2009/A/1908, the Sole Arbitrator holds that the guidelines contained in Circular 799 can be used in order to assess whether the amount of training compensation determined by the Appealed Decision are clearly disproportionate to the particular circumstances of the case at stake.

153. In fact, FIFA Circular 799 sets forth the philosophy underlying the rules on training compensation and contains certain guidelines listing the costs that should be considered by each national association *"when calculating a value for the actual costs of training young players at clubs"* (CAS 2003/O/469, paras. 6.36 and 6.46 to 6.48; CAS 2003/O/506, paras. 67 to 70):

"On the basis of the responses from national associations and studies carried out by the FIFA General Secretariat, we set out below guidelines, which are not intended to be exhaustive, as to the types of expenses that national associations should take into account when calculating a value for the actual costs of training young players at clubs. These costs must be limited to those which are incurred by clubs in each category in the country concerned in training young players, based on the criteria set out below.

- *Salaries and/or allowances and/or benefits paid to players (such as pensions and health insurance)*
- *Any social charges and/or taxes paid on salaries*
- *Accommodation expenses*
- *Tuition fees and costs incurred in providing internal or external academic education programmes*
- *Travel costs incurred in connection with the player' education*
- *Training camps*
- *Travel costs for training, matches, competitions and tournaments*
- *Expenses incurred for use of facilities for training including playing fields, gymnasiums, changing rooms etc. (including depreciation costs)*
- *Costs of providing football kit and equipment (e.g. balls, shirts, goals etc.)*
- *Expenses incurred in playing competitive matches including referees expenses, and competition registration fees*
- *Salaries of coaches, medical staff, nutritionists and other professionals*
- *Medical equipment and supplies*
- *Expenses incurred by volunteers*
- *Other miscellaneous administrative costs (a % of central overheads to cover administration costs, accounting, secretarial services etc.)".*

154. Moreover, CAS jurisprudence has explained the method of FIFA Circular Letter N. 799 as follows: *"In order to determine an average training compensation amount for each different category, the figure representing the annual average training cost for each category is then divided by the total number of players that are effectively trained, on average, by a club in each category. The resulting figure represents the average cost for training one player at a club in a particular category. Finally, to arrive at the training compensation amount, this figure is multiplied by the average "player factor". The player factor represents the number of players that*

need to be trained on average by a club in a given category in order to produce one professional player. The actual amount of compensation to be paid for a particular player is then calculated by multiplying this amount by the number of years training which the player effectively received from a particular club" (CAS 2003/O/469, para 6.36).

155. In this context, the Sole Arbitrator notes that in support of its claim for reduction and on the basis of the Report, the Appellant maintains that the annual training costs per player incurred in the period between the sporting season 2005/2006 and the sporting season 2012/2013 ranges from EUR 5,002.08 (sporting season 2012/2013) to a maximum of EUR 7,356.16 (sporting season 2008/2009).

156. According to the *"Criteria for determining costs attributed to the youth team"* set out under point 1 of the Report, such training cost includes the following items:

- *"Salaries and the like;*
- *Salaries Technical lower sections;*
- *Transport aid and other lower sections;*
- *All right arbitrations;*
- *Purchase sport equipment;*
- *Pharmacy and Medical equipment;*
- *Maintenance facilities;*
- *Cleaning services;*
- *Medical services;*
- *Supplies;*
- *Insurance Premium".*

157. The Report contains the budget plan and the final balance with reference to each sporting season concerned, the relevant notes to the financial statements and n. 8 summary tables showing the overall amount of costs incurred by the Appellant and the relevant proportion allocated to the youth sector, with the corresponding percentage.

158. A final summary table under point 7 of the Report shows, for each sporting season involved, the total number of players in the youth sector, the overall costs of the youth sector and the unit cost per player.

159. In this regard, and having closely examined the relevant document submitted by the Appellant, the Sole Arbitrator makes the following comments:

- the items of costs set out in the 8 summary tables concerning the youth sector do not always match with those listed in each relevant budget plan and/or final balance, nor has the Appellant submitted other evidence such as bills or invoices in order to substantiate the correctness and reliability of the figures indicated for each items of costs related to

the youth sector, therefore not every item of cost alleged by the Appellant is actually corroborated by the corresponding budget plan and/or final balance;

- some of the items, such as "Accommodation" (*"Vivienda"*), or the item related to travel costs (*"Ayuda Transporte Secciones Inferiores"*) are not contemplated with respect to each and every sporting season concerned;
- the Report does not specify the *"player factor"* requested under Article 4 of Annex 4 of the FIFA Regulations and under FIFA Circular Letter N. 799 (i.e. the average number of players that need to be trained on average by a club in a given category in order to obtain one professional player);
- in indicating the numbers of players belonging to the youth sector with the purpose of calculating the unit training cost, the Report also includes the category *"Alevin A"* and *"Alevín B"* who are young players under the age of 12, i.e. players who shall not be taken into account since according to FIFA Regulations a player's training takes place between the ages of 12 and 23.

160. As a consequence, the Sole Arbitrator is not persuaded that the final training costs per player claimed by the Appellant is the result of an accurate, exhaustive and reliable calculation.

161. In consideration of the deficiencies mentioned above, the Sole Arbitrator holds that the Appellant failed to prove to the Sole Arbitrator's comfortable satisfaction that the amount of training compensation established by the FIFA DCR in the Appealed Decisions is clearly disproportionate to the specific circumstances of the present case.

162. As a consequence, the Sole Arbitrator believes that the amount established by the Appealed Decision shall be upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 8 February 2016 by Real Racing Club de Santander SAD against Clube Atlético e Cultural Pontinha with respect to the decision issued on 13 August 2015 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is dismissed.

2. The decision issued on 13 August 2015 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association between Real Racing Club de Santander SAD and Clube Atlético e Cultural Pontinha is confirmed.

(…)

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