



Arbitration CAS 2016/A/4603 SC Dinamo 1948 v. FC Internazionale Milano SpA, award of 15 February 2017

Panel: Mr Marco Balmelli (Switzerland), Sole Arbitrator

Football

Training compensation

Club responsible to pay training compensation

Player professional contract and professional player in the meaning of Article 2 RSTP

Bridge transfer or circumvention of Article 20 RSTP

- 1. Under the FIFA Regulations on the Status and Transfer of Players (RSTP) it is the club that registers a player as a professional for the first time that is responsible for paying training compensation to the player's former registered club(s), which have contributed to his training. In the case of subsequent transfers, training compensation will only be owed to the player's former club for the time the player was effectively trained by that club.**
- 2. A player who – at the age of 16 – is paid a minimum wage as defined by the football association of the country of his club, receives more for his footballing activity than the expenses he effectively incurred and his contract therefore qualifies as professional contract. He furthermore falls under the definition of a professional player in the meaning of Article 2 RSTP.**
- 3. According to the definition of the Swiss Federal Tribunal a circumvention of a rule is given in case someone acts according to the wording of such regulation but does not respect/comply with its purpose. The FIFA DRC and CAS jurisdiction have established some criteria in order to evaluate whether a club circumvents Article 20 RSTP, amongst others: (a) a player stays with the club of the lower category (the “intermediate club”) for only a short period; (b) a circumvention is likely if a player already signed a contract with the upper level club before being transferred to the intermediate club or if he already took part in a training camp; (c) it is considered unusual if there is no rational explanation for a young, talented player to transfer to a second tier club before a sudden discovery by a big club. A circumvention of Article 20 RSTP is not established in circumstances where *e.g.* a 16-year old player is transferred to a second tier club due to a work-related move of his parents, stays with the intermediate club for 5 months before being transferred to an upper level club and where furthermore there are no indications that the player had been contacted by the upper level club before being transferred to the intermediate club, nor that he had already signed a contract with the upper level club before his transfer to the intermediate club.**

I. PARTIES

1. SC Dinamo 1948 (the “Appellant”) is a Romanian professional football club competing in the 1st League. The Appellant is affiliated to the Romanian Football Federation (the “RFF”) which is affiliated to the Fédération Internationale de Football Association (the “FIFA”).
2. FC Internazionale Milano SpA (the “Respondent”) is an Italian professional football club competing in the Seria A. The Respondent is affiliated to the Italian Football Federation (the “FIGC”) which is affiliated to FIFA.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the 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 considers necessary to explain his reasoning.
4. From 2 February 2012 until 18 March 2013, the Romanian goalkeeper R., born in 1997, (the “Player”) was registered with the Appellant as junior amateur player.
5. On 18 March 2013, the Player joined Pergolettese, an Italian football club competing in the 4th League and was registered as junior amateur player.
6. On 3 July 2013, the Player signed a professional contract with Pergolettese and was registered as a professional player with the FIGC.
7. On 13 August 2013, Pergolettese and the Respondent entered into a transfer agreement regarding the Player. They agreed on a transfer sum in the amount of EUR 315,000. The same day, the Respondent and the Player signed an employment contract. After the transfer, the Player was registered with the Respondent as a professional player.

B. Proceedings before the FIFA Dispute Resolution Chamber

8. In January 2014, the Appellant lodged a claim for training compensation against the Respondent and Pergolettese in the amount of EUR 89,424 before FIFA’s Dispute Resolution Chamber (the “FIFA DRC”).
9. On 16 April 2014, upon request by the FIFA DRC, the FIGC stated that the Player was registered as an amateur player with Pergolettese on 18 March 2013 and on 13 August 2013, the Player was registered with the Respondent as professional player.

10. On 11 August 2014, the Appellant withdraw its claim against Pergolettese, assuming that it was the Respondent, which first registered the Player as a professional.
11. On 21 July 2015, upon a new request by the FIFA DRC, the FIGC stated that on 3 July 2013, the Player had signed his first contract as a professional player with Pergolettese before he transferred to the Respondent. Therefore, he was already a professional player at the time of the transfer. The FIGC explained the discrepancy to its information dated 16 April 2014 as follows: After the season 2012/2013, Pergolettese was promoted to the Lega Pro (3rd professional League in Italy). In the beginning of the season 2013/2014, the Player signed a contract with Pergolettese and became a professional player on 3 July 2013. On 13 August 2013, the Player was transferred to the Respondent.
12. On 18 February 2016, the FIFA DRC dismissed the Appellant's claim. The reasoned decision was issued on 11 April 2016 (the "Appealed Decision"). The FIFA DRC considered, in essence, the following:
 - From the Transfer Matching System (the "TMS"), the FIFA DRC notes that the Player and his family were registered in Italy on 22 December 2012. The FIGC authorized the registration of the Player with Pergolettese on 18 March 2013 and on 3 July 2013, the FIGC registered the Player as a professional player with Pergolettese.
 - Since the FIGC registered the Player's first professional contract with Pergolettese dated 3 July 2013, it is concluded that Pergolettese was the first club to register the Player as a professional.
 - Pergolettese and the Respondent agreed on a transfer sum in the amount of EUR 315,000. This amount is significantly higher than the total entitlement of the clubs involved in the Player's training. Therefore, it is deemed neither evident nor logical, that Pergolettese was used by the Respondent to avoid the payment of training compensation.
 - To summarize, a circumvention of the duty to pay training compensation was not established.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 3 May 2016, the Appellant filed its statement of appeal against the Appealed Decision in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2016) (the "Code").
14. On 14 May 2016, the Appellant filed a request for the production of the FIFA file. With the Respondent's tacit agreement, the CAS Court Office requested FIFA a copy of its file, on 24 May 2016.
15. On 31 May 2016, FIFA provided the CAS Court Office with a copy of its file but mentioned that the TMS-extracted documents should only be disclosed to the Panel in charge of the case.

16. On 15 June 2016, the parties were informed that the Appellant's request for the submission of the present matters to a sole arbitrator had been accepted by the President of the CAS Appeals Arbitration Division.
17. On 13 July 2016, Dr. Marco Balmelli was appointed as Sole Arbitrator.
18. On 21 July 2016, further to a request from the Appellant, the parties were provided, on behalf of the Sole Arbitrator, with a full copy of the FIFA file.
19. In accordance with Article R51 of the Code, the Appellant filed its appeal brief on 27 July 2016 by fax and by e-mail as well as on 28 July 2016 by courier.
20. In accordance with Article R55 of the Code, the Respondent filed its answer on 29 September 2016.
21. An Order of Procedure was issued on 16 November 2016, it was signed by the Appellant on 20 November 2016 and by the Respondent on 21 November 2016.
22. On 30 November 2016, a hearing was held in Lausanne, Switzerland. In addition to the Sole Arbitrator and Ms Pauline Pellaux, Counsel to the CAS, the following persons attended the hearing:

For the Appellant: Mr Mincu Paul Alexandru and Mr Diaconu Silviu Constantin, both attorneys-at-law in Bucharest

For the Respondent: Mr Angelo Capellini and Mr Gianpaolo Monteneri, both attorneys-at-law with monteneri sports llc, Zurich, Switzerland.
23. No witnesses or experts were heard. The parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.
24. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
25. The Sole Arbitrator confirms that he carefully heard and took into account in the subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

26. The following outline of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the parties, even if no explicit reference has been made in what immediately follows. The parties' written submissions and the content of the Appealed Decision were all taken into consideration.

A. Appellant

27. The Appellant filed the following prayers for relief:

1. *“To annul the appealed decision;*
2. *To order Football Club Internazionale Milano SpA to pay S.C. DINAMO 1948 S.A the training compensation of 67.397 Euros for the player [R., born in May 1997];*
3. *To order Football Club Internazionale Milano SpA to pay S.C. DINAMO 1948 S.A. interest of 5% / year for the amount of 67.397 Euros, starting with 13.09.2013 until the actual payment of the debt;*
4. *To order Football Club Internazionale Milano SpA to pay S.C. DINAMO 1948 S.A. all the expenses incurred in the proceedings before CAS and FIFA”.*

28. The Appellant’s submissions, in essence, may be summarized as follows:

- The FIFA DRC made the wrong conclusion assuming that Pergolettese was the club, which signed the first professional contract with the Player.
- The Appellant is entitled to receive training compensation. The Respondent signed the Player as a professional player. Therefore, the burden of proof that the Player was already registered as a professional before joining the Respondent, lies with the Respondent. As the Respondent failed to prove the existence of a professional contract between the Player and Pergolettese or any payments made by Pergolettese to the Player, the Player may not be considered a professional Player when he was registered with Pergolettese.
- Only during the procedure before CAS, the Appellant became aware of the respective professional contract dated 3 July 2013 between the Player and Pergolettese. In any case, the contract does not meet the “remuneration test” as established by CAS jurisprudence since the salary in the amount of the “federal minimum” may not be considered an appropriate salary.
- The Player was only registered as a professional player for a very short time with Pergolettese before being transferred to the Respondent. The registration as a professional player with Pergolettese shall be deemed as “bridge-transfer” in order to avoid training compensation.
- In the event the Respondent would file new evidence before CAS, Article R57 of the Code should be taken into consideration to assess its admissibility as the Respondent had the opportunity to file such evidence before the FIFA DRC.

B. Respondent

29. The Respondent filed the following prayers for relief:

1. *“To reject the appeal;*

2. *To uphold the Challenged Decision;*
3. *To condemn the Appellant to the payment in the favour of the Respondent of the legal expenses incurred;*
4. *To establish that the costs of the arbitration procedure shall be borne by the Appellant”.*

30. The Respondent’s submission, in essence, may be summarized as follows:

- The Player became a professional player with Pergolettese as indicated in the FIGC-files and in the valid contract between Pergolettese and the Player. The reference to the minimum wage, which is defined by the Italian Footballer’s Association (the “AIC”), is usual for a small club. In 2015/2016, the yearly minimum wage of a player at the age of 16-19 years was EUR 14,086 as can be seen on the AIC website. Therefore, the remuneration was appropriate for the Player who became a professional for a recently promoted Lega Pro-team at his age.
- Pergolettese’s statement confirms that it signed a professional contract with the Player after it was promoted to the Lega Pro. In addition, the Player’s passport clearly indicates that the Player acquired his professional status with Pergolettese.
- Pergolettese and the Respondent belong to the same Federation (Association). Therefore, there is no training compensation due according to Article 20 of FIFA’s Regulations on the Status and Transfer of Players (the “RSTP”).
- The Respondent would not have paid a transfer sum of EUR 315,000 to “avoid” training compensation, as such compensation would have been much lower than the transfer sum.
- The assertion that the Respondent used Pergolettese to avoid training compensation is neither established nor proved.

V. JURISDICTION

31. The jurisdiction of the CAS – which is not disputed by the parties – derives from Article 67 para. 1 of the FIFA Statutes, which provides that:

“[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”.

and Article R47 of the Code which provides:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.

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

32. Therefore, the Sole Arbitrator considers that CAS is competent to decide over this case.

VI. ADMISSIBILITY

33. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties”.

34. The Appealed Decision was notified to the Appellant on 11 April 2016. The statement of appeal was filed on 3 May 2016, *i.e.* within the deadline of 21 days set by Articles 67 of the FIFA Statutes and R49 of the Code. The appeal brief was filed within due time after an extension was granted due to the filing of the FIFA file. The appeal further complied with all other requirements of Articles R48 and R51 of the Code, including the payment of the CAS Court Office fee. Therefore, the appeal is admissible.
35. For the sake of completeness, the Sole Arbitrator notes that, after having been provided with the Answer, the Appellant did not submit that any of the Respondent’s exhibits should be excluded from the CAS file and confirms that none of the exhibits produced before CAS should be deemed inadmissible in application of Article R57(3) of the Code.

VII. APPLICABLE LAW

36. 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”.

37. Accordingly, the Sole Arbitrator rules that FIFA Regulations (primarily the RSTP) would apply, with Swiss law applying to fill in any gaps or lacuna, when appropriate.

VIII. MERITS

a. First professional contract

38. The Appellant claims for the payment of training compensation from the Respondent, relying on the RSTP. Article 20 RSTP holds as follows:

“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”.

39. Annex 4, Article 2 RSTP specifies as follows:

“Training compensation is due when:

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

or

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

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

40. The club, which registers a player as a professional for the first time is responsible for paying training compensation to the player's former registered clubs, which have contributed to his training. In the case of subsequent transfers, training compensation will only be owed to his former club for the time he was effectively trained by that club (Annex 4, Article 3 RSTP).
41. The Sole Arbitrator notes that the transfer from Pergolettese to the Respondent was within the FIGC. Therefore, he deems it is evident that the Appellant would only be entitled to claim training compensation from the Respondent, if the Respondent is to be considered the club where the Player signed his first contract as a professional. The Sole Arbitrator notes that there is sufficient documentation to establish that the Player was first registered with Pergolettese as an amateur player. Then – after being promoted to the Lega Pro – Pergolettese signed a professional contract with the Player on 3 July 2013. The FIGC was aware of this change of status since it informed FIFA about it. When the Player was transferred to the Respondent on 13 August 2013, the Player was already a professional player. Insofar, the Sole Arbitrator deems the facts regarding the Player's status to be clear.
42. Therefore, the Sole Arbitrator considers the Appellant's argument that the contract with Pergolettese may not be regarded as a professional contract since the “remuneration test” is not met. In this respect, the Sole Arbitration notes the definition of a professional player (Article 2 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”.

Given that the Player – at the age of 16 – was paid a minimum wage defined by the AIC (*i.e.* EUR 14,086 a year), it is established that the Player received more for his footballing activity than the expenses he effectively incurred. Therefore, the Sole Arbitrator sees no reason to deny that the contract signed by the Player and Pergolettese on 3 July 2013 was a professional contract. Therefore, the Sole Arbitrator concludes that the Player signed his first professional contract with Pergolettese.

b. Circumvention of Article 20 RSTP?

43. The Sole Arbitrator therefore turns his attention to the Appellant’s claim that the whole process of the Player being registered with Pergolettese as a professional for a short time and then being transferred to the Respondent shall be considered a bridge-transfer, *i.e.* a circumvention of Article 20 RSTP.
44. The Swiss Federal Tribunal defines a circumvention of a rule (freely translated) as follows: “*A circumvention of a regulation is given in case someone acts according to the wording of such regulation but does not respect/comply with its purpose*” (SFT 114 Ib 15 para. 3a). Turning to the jurisprudence of FIFA DRC (Cases 7101140 dated 22 July 2010, 0213936 dated 27 February 2013, 10131359 dated 31 October 2013) and CAS (CAS 2009/A/1757), the Sole Arbitrator notes that FIFA DRC and CAS established some criteria in order to evaluate whether a club circumvent Article 20 RSTP:
- A player stays with the club of the lower category (the “intermediate club”) for only a short period. In the aforementioned cases, the player was registered with the intermediate club for 4 to 19 days: In the case at hand, the Player stayed 5 months (whereby 41 days after signing the professional contract).
 - Jurisprudence only dealt with cases where none of the players had played for the intermediate club before joining the club at an upper level: The Sole Arbitrator notes that, according to Pergolettese’s statement, which is not denied by the Appellant, the Player played for the junior team during the 2012/2013 season.
 - A circumvention is likely if a player already signed a contract with the upper level club before being transferred to the immediate club or if he already took part in a training camp. The Sole Arbitrator holds that neither the parties’ submissions nor any documents indicate that the Player was contacted by the Respondent before moving to Italy or had already signed a contract with the Respondent before his transfer to Pergolettese.
 - It is considered unusual if there is no rational explanation for a young, talented player to transfer to a second tier club before a sudden discovery by a big club. In this respect, the Sole Arbitrator considers it reasonable that the Player transferred from the junior squad of the Appellant to a small Italian club due to the work-related moving of his parents. This fact remained undisputed; therefore, the Sole Arbitrator does not raise doubts about the findings of the FIGC.

45. Considering these criteria, the Sole Arbitrator is convinced that a circumvention of Article 20 RSTP is not established by the Appellant. This conclusion is also supported by the fact that the Respondent paid a transfer sum of EUR 315,000. It is indeed likely that this amount was significantly higher than signing the Player directly from the Appellant and pay the respective training compensation. Therefore, the Sole Arbitrator finds that the case at hand is not comparable to the cited cases where Article 20 RSTP was indeed circumvented. Thus, the Sole Arbitrator holds that the Appellant is not entitled to receive training compensation from the Respondent.

c. Conclusion

46. In conclusion, the Sole Arbitrator notes that it was established from the file that the Player signed his first professional contract with Pergolettese. The Appellant, on the other hand, failed to establish that the Respondent should be considered the “first” club where the Player signed a professional contract due to a circumvention of Article 20 RSTP. The appeal is therefore dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by SC Dinamo 1948 on 3 May 2016 is dismissed.
2. The decision rendered by the FIFA DRC on 18 February 2016 is confirmed.
- (...)
5. All other prayers for relief are dismissed.