Arbitration CAS 2016/A/4720 Royal Standard de Liège v. FC Porto (Player T.), award of 19 May 2017

Panel: Prof. Ulrich Haas (Germany), President; Prof. Luigi Fumagalli (Italy); Mr Mark Hovell (United Kindom)

Football
Training compensation
Offer of contract or genuine and bona fide interest in retaining the services of the player
Validity of an offer to enter into a contract under Swiss law
Reception of non-picked up letter sent by registered mail
Establishment of a lack of genuine and bona fide interest in retaining the services of the player

1. **The *"contract offer"* and the *"bona fide interest in retaining the services of the player"* alternatives serve a common purpose, *i.e.* to make the payment of training compensation subject to the condition that the club wanted to retain the services of the player. Only if the club sincerely and honestly pursued this goal shall the free movement of the player be impeded by an automatic price tag calculated as a lump sum. It is in light of this common purpose that both alternatives must be interpreted and that CAS established its jurisprudence in relation to the second alternative, whereby the club must demonstrate, absent any offer, that it had a *"genuine and bona fide interest in retaining the services of the player"* in order to be entitled to a training compensation. No formalistic approach is warranted, but both alternatives must be read and construed in light of the very purpose of the provision, *i.e.* that in both alternatives there must be evidence, be it through an offer or some other means, of a *"genuine and bona fide interest in retaining the services of the player".***

2. **Under Swiss law, which shall be referred to in order to interpret and construe the meaning of art. 6 para. 3 of Annexe 4 of the FIFA Regulations on the Status and Transfer of Players, an offer to enter into a contract is a declaration of intent which becomes complete upon receipt by the other party only.**

3. **According to Swiss law, receipt of a declaration between absentees implies that the declaration enters into the sphere of influence of the addressee. A letter sent by registered mail is however deemed to have been received by the addressee if a notice of failure of delivery is left in the addressee's mail box, even if the latter fails to pick up the registered letter from the post office.**

4. **A club's lack of genuine and *bona fide* interest in retaining the services of a player is to be established *inter alia* on the basis of the claiming club's behaviour towards a player, prior and after the emission of the contract offer, the contents of said offer as well as the timing of its sending, or based on witnesses' testimonies in relation to the**

(latest) developments of the club's and player's relationship.

I. THE PARTIES

1. Royal Standard de Liège (hereinafter the "Appellant" or "Liège") is a professional football club with its registered headquarters in Sclessin/Liège, Belgium. The Appellant is registered with the Union Royal Belge des Sociétés de Football-Association (hereinafter the "URBSFA"), which in turn is affiliated to the Union Européenne de Football Association (hereinafter "UEFA") and the Fédération Internationale de Football Association (hereinafter "FIFA").

2. FC Porto (Futebol Clube do Porto) (hereinafter the "Respondent" or "Porto") is a professional football club with its registered headquarters in Porto, Portugal. The Respondent is registered with the Federação Portuguesa de Futebol (hereinafter the "FPF"), which in turn is affiliated to UEFA and FIFA.

II. FACTUAL BACKGROUND

3. The present dispute concerns the claim for payment of "training compensation" regarding the Belgian player T., born in 1997 (hereinafter the "Player").

4. Below is a brief summary of the main facts and allegations based on the Parties' written submissions, the CAS file and the content of the hearing that took place in Lausanne, Switzerland on 7 February 2017. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in other parts of this award.

5. From 1 July 2008 until 28 April 2014, the Player was registered with the Appellant as an amateur player.

6. On 28 April 2014, the Appellant sent a draft employment contract for the two upcoming seasons 2014/2015 and 2015/2016 by registered mail to the home address of the Player's father, L. The draft contract was accompanied by an official letter signed by the Appellant's Sports Director and CEO. Neither the Player nor his father ever collected these documents from the post office. Consequently, the documents were returned to the Appellant on 16 May 2014 at the very latest.

7. On 25 July 2014, the Player signed an employment contract with the Respondent for three seasons, i.e. 2014/2015 to 2016/2017. However, he was registered with the Respondent only on 10 November 2014.

8. On 11 August 2014, the Appellant contacted the Respondent in order to claim the payment of training compensation.

9. By letter dated 27 August 2014, the Respondent replied to the Appellant that it was not obliged to pay any training compensation to the Appellant. In its response dated 28 August 2014, the Appellant indicated that it had always been its desire to keep the Player. The Respondent restated its position that it would not make any payment to the Appellant.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

10. On 14 September 2015, the Appellant filed a claim with the FIFA Dispute Resolution Chamber (hereinafter the "FIFA DRC") requesting that the Respondent pay EUR 160,000 for training compensation. The Respondent contested the Appellant's claim.

11. On 18 February 2016, the FIFA DRC issued its decision in relation to the Appellant's claim. Following a request of the Appellant, the FIFA DRC forwarded its motivated decision to the Parties by fax on 21 June 2016 (hereinafter the "FIFA Decision"). The FIFA Decision reads – inter alia – as follows:

> *"**III. Decision of the Dispute Resolution Chamber***
>
> *1. The claim of the Claimant, Royal Standard de Liège, is rejected.*
>
> *2. (…)".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 12 July 2016, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter the "CAS") directed against the Respondent with respect to the FIFA Decision (hereinafter the "Statement of Appeal"). The Appellant requested that the case be submitted to a sole arbitrator and, in the event that the case be submitted to a Panel of three arbitrators, nominated Mr Luigi Fumagalli as arbitrator.

13. On 19 July 2016, the Appellant filed its Appeal Brief (hereinafter the "Appeal Brief").

14. By letter of 27 July 2016, the CAS Court Office invited the Respondent to inform within five days whether it agreed to the appointment of a sole arbitrator. In addition, the CAS Court Office referred in its letter to the Appellant's request to submit the present dispute and the matter CAS 2016/A/4721 to the same panel. It invited the Respondent to inform it within the same time limit whether the Respondent agreed with such further request.

15. By fax letter of 5 August 2016, the Respondent objected to the appointment of a sole arbitrator, but agreed that this matter be submitted together with CAS 2016/A/4721 to the same panel.

16. By letter of 5 August 2016, the CAS Court Office advised the Parties that pursuant to article R50 of the Code of Sports-related Arbitration (the "Code") the Deputy President of the CAS Appeals Arbitration Division had decided to submit the dispute to a panel of three arbitrators. Furthermore, the CAS Court Office informed the Parties that the Deputy President had decided to submit both proceedings (CAS 2016/A/4720 and CAS 2016/A/4721) to the same panel. In accordance with article R53 of the Code, the Respondent was invited to nominate an arbitrator from the list of CAS arbitrators within ten days.

17. By letter of 15 August 2016, the Respondent nominated Mr Mark Hovell as arbitrator.

18. By letter of 21 September 2016, the CAS Court Office informed the Parties that the Panel had been constituted as follows: Prof. Ulrich Haas, President of the Panel; Prof. Luigi Fumagalli and Mr Mark Hovell, arbitrators. The Parties did not raise any objection as to the constitution and composition of the Panel.

19. By letter of 27 September 2016, the Appellant referred to a decision of the FIFA DRC of 18 August 2016 concerning a dispute for payment of training compensation between the Appellant and the English club Stoke City FC (according to the Appellant, such decision was communicated to it only on 23 September 2016). With regard to this decision, the Appellant submitted that its calculation of the training compensation in the Appeal Brief was incorrect. The amount of training compensation for the first four seasons (i.e. 2008/2009 to 2011/2012) has to be EUR 60,000 for each season instead of EUR 10,000 for each season.

20. By letter of 28 September 2016, the CAS Court Office invited the Respondent to comment on the admissibility of the Appellant's letter of 27 September 2016.

21. By letter of 30 September 2016, the CAS Court Office advised the Parties that Mr Karsten Hofmann had been appointed ad hoc Clerk in this matter. The Parties did not raise any objection as to his appointment.

22. By letter of 3 October 2016, the Respondent submitted that the Appellant's letter of 27 September 2016 and its enclosures were entirely inadmissible.

23. By letter of 12 October 2016, the CAS Court Office informed the Parties of the Panel's decision to declare admissible the Appellant's letter of 27 September 2017 and to grant the Respondent the possibility to comment on it with its answer.

24. On 17 October 2017, the Respondent filed its answer (hereinafter the "Answer").

25. On 18 October 2016, the Parties were invited to inform the CAS Court Office by 25 October 2016 whether they preferred a hearing to be held or for the Panel to issue an award based solely on the Parties' written submissions.

26. By letter of 23 October 2016, the Respondent informed the CAS Court Office of its preference *"for a (single) hearing to be held"*. By letter of 25 October 2016, the Appellant informed the CAS

Court Office that it *"prefers a hearing being held (…) either simultaneously or at least on the same day"* with the case CAS 2016/A/4721. In addition, the Appellant requested *"to be authorized to supplement its arguments and requests"*, in particular regarding the decision of the FIFA DRC of 18 August 2016 concerning a dispute for payment of training compensation between the Appellant and the English club Stoke City FC.

27. By letter of 3 November 2016, on behalf of the Panel, the CAS Court Office invited the Respondent to comment on the Appellant's request *"to be authorized to supplement its arguments and requests"*.

28. By letter of 9 November 2016, the Respondent objected to the Appellant's request of 25 October 2016 to be allowed to file further submissions.

29. On 26 January 2017, the CAS Court Office forwarded to the Parties an Order of Procedure and invited them to return a signed copy by 2 February 2017. The Respondent returned a signed copy on 26 January 2017. The Appellant returned its signed copy on 1 February 2017.

30. On 7 February 2017, a hearing was held at the CAS Court Office in Lausanne, Switzerland. The Panel was assisted by Mr Karsten Hofmann (*ad hoc* Clerk) and Mr Daniele Boccucci (Counsel to the CAS).

31. In addition, the following persons attended the hearing:

    i. for the Appellant: Mr Pierre Locht (Appellant's in-house counsel); Mr Alexander Vantyghem (counsel).

    ii. for the Respondent: Mr Nuno Santos Rocha (Respondent's in-house counsel); Mr David Casserly (counsel); Mr Nicolas Zbinden (counsel); Ms Pirot Starr (interpreter).

32. At the hearing, the Parties made submissions in support of their respective cases. The following witnesses were heard on behalf of the Respondent:

    i. T.: the Player (in person);

    ii. C.: the Player's brother, football player (in person);

    iii. L.: the Player's father and representative (in person).

33. At the closing of the hearing, the Parties confirmed that they had no objections in respect to their right to be heard and that they had been given the opportunity to fully present their cases.

V. THE POSITIONS OF THE PARTIES

34. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Panel has thoroughly considered in its discussion and

deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

A. The Appellant: Royal Standard de Liège

35. The Appellant submitted, in essence, the following:

(a) On 28 April 2014, the Appellant offered the Player a contract as a professional player for two seasons which is a prerequisite in order to be entitled to training compensation in accordance with the FIFA Regulations on the Status and Transfer of Players (hereinafter the "FIFA RSTP").

(b) The transfer of the Player from the Appellant to the Respondent is a transfer between clubs of two different associations within the territory of the EU/EEA. The Player was registered for the first time as a professional player with the Respondent before the end of his 23rd birthday. Therefore, the Appellant is entitled to training compensation on the basis of article 2 para. 1 lit (i) of Annexe 4 to the FIFA RSTP.

(c) The contract offer of 28 April 2014 meets all requirements provided for in article 6 of Annexe 4 to the FIFA RSTP, in particular:

i. the contract offer was presented to the Player in writing;

ii. the contract offer was sent to the Player by registered mail and to the correct address; the fact that the Player did not collect the letter is of no relevance;

iii. the contract offer was sent to the Player on 28 April 2014, *i.e.* within the prescribed 60-day time period before the end of the football season on 30 June 2014;

iv. as the Player was not bound by any previous professional contract with the Appellant, the requirement provided for in the relevant rules *("equivalent value to the previous contract"*) is moot; and

v. the FIFA RSTP do not provide for the contract offer to be signed; however, the accompanying letter to the contract offer that was sent to the Player was signed by the Appellant's Sports Director and CEO. This is clear evidence of the Appellant's will to enter into an employment contract. The FIFA DRC was, thus, wrong in holding that the contract offer did not bind the Appellant; any reference to the case CAS 2008/A/1521 is irrelevant, because the circumstances in both cases differ completely.

(d) Even if the contract offer of 28 April 2014 should be held invalid, the Appellant would be entitled to training compensation according to article 6 para. 3 of Annexe 4 to the

FIFA RSTP. In light of the CAS jurisprudence (CAS 2012/A/2890, CAS 2009/A/1757 and CAS 2006/A/1152), a training club is entitled to training compensation, if it can demonstrate that it clearly had the intention to benefit from the player's services despite the fact that no contract was offered. It follows – *inter alia* – from internal email correspondence that the Appellant's intent was to keep the Player. Furthermore, the financial benefits granted to the Player's parents throughout the seasons 2011/2012 and 2012/2013 show the Appellant's *bona fide* intention to continue the contractual relationship with the Player.

(e) The 2012 edition of the FIFA RSTP is applicable. According to the decision of the FIFA DRC of 18 August 2016 in the case of Stoke City FC, a training compensation dispute must be assessed pursuant to the regulations that were in force at the time when the contract at the centre of the dispute was signed. The contract between the Player and the Respondent was signed on 25 July 2014. However, the 2014 edition of the FIFA RSTP entered into force only on 1 August 2014.

(f) On the basis of article 5 para. 2 of Annexe 4 of the 2012 edition of the FIFA RSTP, the training compensation for all six seasons (*i.e.* seasons 2008/2009 to 2013/2014) is EUR 60,000 per season. Thus, the total amount of training compensation due is EUR 360,000. The exception stipulated in article 5 para. 3 first sentence of Annexe 4 to the 2012 edition of the FIFA RSTP does not apply in the case at hand, because the event giving rise to the right to training compensation (*i.e.* the signing of a contract between the Player and the Respondent) occurred before the end of the season in which the Player accomplished his 18th birthday.

(g) The new calculation of the training compensation submitted by letter of 27 September 2016 cannot be qualified as an amendment or change of the Appellant's prayers for relief submitted in the Appeal Brief. Instead, the amount of EUR 360,000 has been covered – from the very beginning – by the Appellant's prayers for relief in the Appeal Brief (*"The Respondent is ordered to pay (…) any other amount as calculated in accordance with the FIFA RSTP"*).

(h) Article 3 para. 2 of the Annexe 4 to the FIFA RSTP explicitly states that payment of training compensation is due 30 days after the registration of a player with his new club. Despite various requests by the Appellant, the Respondent has not yet paid any such amounts. Consequently, the Appellant is entitled to interest on the amount of training compensation due as of 30 days after the registration of the Player with the Respondent at the default interest rate of 5% *per annum*.

(i) At the hearing, the Appellant further argued that Belgian law applies with regard to the validity of the Appellant's *"offer"* to the Player dated 28 April 2014. According to article R58 of the Code, the Panel would be permitted to take into consideration any *"appropriate law"*. Belgian employment law would have governed the employment contract and, therefore, also applies to the question of the validity of the contract offer. According to Belgian law, no signature is needed for the validity of an employment contract.

36. In light of the above, the Appellant submitted the following prayers for relief in its Appeal Brief:

> *"- The decision of the FIFA Dispute Resolution Chamber of 18 February 2016 is annulled;*
>
> *- The Respondent is ordered to pay an amount of EUR 160.000 (or any other amount as calculated in accordance with the FIFA RSTP) to the Appellant as training compensation in relation to the player T.;*
>
> *- The Respondent is ordered to pay interest on the training compensation due as of 30 days from the registration of the Player with the Respondent at a rate of 5% per annum;*
>
> *- The Respondent is ordered to pay all costs of the present arbitration procedure;*
>
> *- The Respondent is ordered to pay a substantial contribution to the legal fees and costs incurred by the Appellant".*

37. By letter of 27 September 2016, the Appellant amended its calculation and requested EUR 360,000 in training compensation.

B. The Respondent: FC Porto

38. The Respondent submitted, in essence, the following:

(a) The jurisprudence of the FIFA DRC and the CAS (*e.g.* CAS 2009/A/1757 and CAS 2006/A/1152) provides for the only relevant factors for the purpose of claiming training compensation. According thereto, training compensation can only be claimed if the former club was *"genuinely interested"* in keeping the player and if it adopted a *"proactive attitude"* to attain that said goal. The burden of proof lies with the Appellant, who failed to demonstrate a respective intention and approach. In particular, the Appellant's internal emails do not constitute evidence that the Appellant wished to retain the services of the Player. In contrast, the evidence in this dispute suggests that the Appellant sent the draft offers of 28 April 2014 in bad faith with the sole purpose to collect training compensation.

(b) Early in the 2013/2014 season, the Appellant's Sports Director, Mr Jean-François De Sart, informed the Player's father that the Player did not feature in the Appellant's sportive plans for the future. This is evidenced by the Player's demotion from the U19 team to the U17 team for the second half of the 2013/2014 season and his non-selection for certain matches.

(c) The Appellant only sent the draft offer after being informed of the de-registration of the Player on 28 April 2014.

(d) The draft offer was not made *"in writing"*: article 2 para. 2 of the FIFA RSTP requires that professional employment contracts be entered into in writing. According to the applicable Swiss law, an offer in writing must be signed by the club and the player. The draft employment contract sent by the Appellant on 28 April 2014 was not signed. It was a non-binding document and just an invitation to the Player to make an offer to the Appellant. The fact that the accompanying letter (and not the draft contract) was signed is insufficient to consider the draft employment contract a firm offer. This is supported by CAS jurisprudence (CAS 2008/A/1521 and TAS 2014/A/3587).

(e) The Player and his family were unaware of the contract offer because of the failed delivery of the Appellant's letter of 28 April 2014. Neither the Player nor another member of the family had been informed by the Appellant that documents had been sent to the Player. The Player did not decline acceptance of the documents sent by the Appellant. Instead, the documents never reached the Player because no member of the family was at home at the time of the attempted delivery. Whether a *"missed delivery note"* was left in the post-box is not totally clear. While the Respondent stated so in its Answer, the father of the Player indicated in his testimony that he was not aware of such notice and had not seen it. In any event, the Respondent submitted that in Belgium the sender is not identified on a missed delivery note if it is a registered letter. The Appellant did not make any further or other attempts to contact the Player or his father. This holds even true once the Appellant's letter of 28 April 2014 had been returned and when it was clear that delivery of the documents had failed.

(f) On a subsidiary basis the Respondent submitted that the Appellant's calculation of the training compensation is incorrect. The Player was not trained for the entire 2013/2014 season and a *pro rata* calculation according to article 3 para. 1 of Annexe 4 to the FIFA RSTP results in the total amount of EUR 149,643 instead of EUR 160,000.

(g) The Respondent objected to the Appellant's letter dated 27 September 2016 and the amendment of its claims contained therein. Firstly, the applicable provisions are the 2014 edition of the FIFA RSTP as already stated by the Appellant in its Appeal Brief; the relevant criteria is the moment in time of a player's registration and not the date of the signing of the contract as indicated by the last ten decisions of the FIFA DRC published on the FIFA website. In addition, the decision of the FIFA DRC in the case of Stoke City FC does not contain any reasons and does not state which edition of the FIFA RSTP was applied. Finally, the Panel cannot go beyond the claims submitted before the FIFA DRC. CAS is an appellate instance of review with the consequence that the Panel's power of review cannot exceed the scope of the first-instance decision. The FIFA DRC, however, only adjudicated a claim filed by the Appellant in the total amount of EUR 160,000.

(h) The Respondent disputed the Appellant's submissions made at the hearing in relation to the applicability of Belgian law. Instead, the Respondent submitted that Swiss law applies with regard to the validity and interpretation of the Appellant's (alleged) *"offer"*.

39. The Respondent submitted the following prayers for relief:

> *"i. Reject the appeal filed by Royal Standard de Liege;*
>
> *ii. Order Royal Standard de Liege to pay the full amount of the CAS arbitration costs; and*
>
> *iii. Order Royal Standard de Liege to pay a contribution towards the legal costs and other related expenses of FC Porto, at least in the amount of €20,000 (twenty thousand euros)".*

VI. JURISDICTION AND MANDATE OF THE CAS

40. The jurisdiction of the CAS derives from article R47 of the Code in connection with article 67 para. 1 of the FIFA Statutes. Furthermore, reference to CAS jurisdiction is made also on the last page of the FIFA Decision.

41. Article R47 para. 1 of the Code provides as follows:

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

42. Article 67 para. 1 of the FIFA Statutes reads as follows:

> *"Appeals 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".*

43. Moreover, according to the *"Note relating to the motivated decision (legal remedy)"* on the last page of the FIFA Decision, *"this decision may be appealed against before the Court of Arbitration for Sport (CAS)".*

44. The Respondent did not object to the jurisdiction of the CAS but – instead – agreed to it in para. 8 of its Answer (*"In light of the above, we may conclude that the CAS is competent to resolve the present dispute"*). Furthermore, all Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure dated 26 January 2017.

45. It follows from all of the above that the CAS has jurisdiction to decide the present dispute.

VII. ADMISSIBILITY

46. 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".

47. Article 67 para. 1 of the FIFA Statutes provides that appeals *"shall be lodged with CAS within 21 days of notification of the decision in question"*. The same 21-day deadline is mentioned on the last page of the FIFA Decision *("The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision (…).")*.

48. The FIFA Decision was rendered on 18 February 2016, however, the grounds of the decision were notified to the Parties only by fax on 21 June 2016. The Appellant's Statement of Appeal was filed on 12 July 2016, *i.e.* before the expiry of 21 days after notification of the motivated decision. It follows that the appeal is admissible.

49. The Appeal Brief was sent to the CAS Court Office on 19 July 2016 and was, thus, submitted within the 10-day deadline stipulated in article 67 para. 1 of the FIFA Statutes, *i.e.* 10 days following the expiry of the time limit for filing the statement of appeal. Therefore, it was filed in due time.

VIII. MANDATE OF THE PANEL

50. Under article R57 of the Code and in line with the consistent jurisprudence of the CAS, the Panel has full power to review the facts and the law. The Panel therefore dealt with the case *de novo*, evaluating all facts and legal issues involved in the dispute. However, this *de novo*-mandate only applies to the matter in dispute that has been brought before this Panel. The matter in dispute is defined by the requests of the Parties and the live circumstances underlying the latter.

51. The Respondent submitted that in an appeal arbitration procedure the matter in dispute before this Panel cannot exceed the scope of the adjudication before the first instance body. In particular, the prerequisite that the Appellant must have exhausted all legal remedies before filing an appeal before CAS proves that the Appellant cannot pursue different requests for relief before the various instances. Insofar as the claims pursued by the Appellant exceed the claims filed before the FIFA DRC, the Appellant has – according to the Respondent – not exhausted the post-decision review process provided for by article R49 of the Code and the FIFA regulations.

52. The Panel first and foremost notes that the core of the matter in dispute before the FIFA DRC and the CAS is identical and that the Appellant in his prayers for relief already demanded on a subsidiary basis that the Panel award *"any other amount as calculated in accordance with the FIFA RSTP"*. In addition, the Panel notes that there are generally recognized exceptions to the

prerequisite that the internal legal remedies of an association must be exhausted before filing an appeal with CAS. In particular, where the result of such internal review is obvious from the very outset, no such obligation exists, since in such case the duty to exhaust legal remedies would only serve as a barrier to delay access to justice. In the case at hand the FIFA DRC denied the Appellant's request for training compensation in the amount of EUR 160,000. It is clear from the reasoning of the FIFA Decision that the FIFA DRC would have *a fortiori* dismissed a request for EUR 360,000. Consequently, the Panel has the mandate to adjudicate on the entire dispute between the Parties.

IX. APPLICABLE LAW

53. Article R58 of the Code provides as follows:

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

54. Article 66.2 of the FIFA Statutes further provides as follows:

> *"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".*

55. These provisions are in line with article 187 para. 1 of the Swiss Private International Law Act (PILA), which in its English translation states as follows: *"The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected".*

56. Thus, the Panel applies the FIFA regulations as the *"applicable regulations"* within the meaning of article R58 of the Code. In light with article 66.2 of the FIFA Statutes the Panel will apply Swiss law for the interpretation and construction of the respective FIFA regulations. Whether there is room to apply any other law to questions not covered by the FIFA regulations will be discussed where relevant.

57. The Parties are in dispute regarding the applicable version of the FIFA RSTP, namely whether the 2012 version (in force as of 1 December 2012) or the 2014 version (in force as of 1 August 2014) apply to the case at hand. The Appellant argued that the 2012 version is applicable because these were the regulations in force at the time the contract between the Player and the Respondent was executed, *i.e.* on 25 July 2014. The Respondent argued that the 2014 version applies because these were the regulations in force at the time of the Player's registration with the Respondent, *i.e.* on 10 November 2014. In the case at hand this question can be left unanswered because it is not decision-relevant. Insofar as the Panel takes recourse to the FIFA RSTP, both versions of the regulations are identical.

X. MERITS OF THE APPEAL

58. The Appellant claimed training compensation according to article 20 of the FIFA RSTP. The provision reads (identical in the 2012 and the 2014 version) 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. The provisions concerning training compensation are set out in Annexe 4 of these regulations".*

59. Article 2 para. 1 of Annexe 4 to the FIFA RSTP (identical in the 2012 and the 2014 version) reads 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".*

60. It is undisputed that the Player signed his first professional contract and was registered for the first time as a professional with the Respondent. At this time, the Player was 17 years old. Thus, article 2 para. 1 lit (i) of Annexe 4 to the FIFA RSTP applies.

61. There is a special rule in the FIFA RSTP dealing with a case where players move from one football association to another inside the territory of the EU/EEA. The rule is contained in article 6 of Annexe 4 to the FIFA RSTP and acts as a *lex specialis*. According to constant CAS jurisprudence the provision *"has to be read as qualifying any general principle elsewhere in the FIFA RSTP dealing with the obligation to pay training compensation"* (cf. CAS 2010/A/2316, para. 55; CAS 2008/A/1521, para. 16 and CAS 2006/A/1152, para. 11). Given that the Player moved from the Appellant to the Respondent, both being registered with associations inside the territory of the EU/EEA (the URBSA and the FPF), article 6 of the Annexe 4 to the FIFA RSTP (identical in the 2012 and the 2014 versions) applies. The provision reads as follows:

> *"1. For players moving from one association to another inside the territory of the EU/EEA, the amount of training compensation payable shall be established based on the following:*
>
> *a) If the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs.*
>
> *b) If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower-category club.*

2. Inside the EU/EEA, the final season of training may occur before the season of the player's 21st birthday if it is established that the player completed his training before that time.

3. If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player's previous club(s)".

62. In line with CAS jurisprudence (and the jurisprudence of the FIFA DRC), the Panel finds that the first sentence of article 6 para. 3 of Annexe 4 to the FIFA RSTP covers both players with and players without a contract, *i.e.* professionals and amateurs, whereas the second sentence covers – on the face of it – only players who are already under contract, *i.e.* only professionals (see, *inter alia*, CAS 2014/A/3587, para. 79 *et seq*, CAS 2010/A/2316, para. 55 and CAS 2006/A/1152, para. 12 *et seq*). This follows from the wording of article 6 para. 3 *("current contract"*) and from the fact that an agreement between a club and an amateur does not qualify as a *"contract"* within the meaning of article 2 para. 2 of the FIFA RSTP (see also CAS 2006/A/1152, para. 14).

63. Thus, in light of the above the Appellant is only entitled to training compensation, if one of the following alternative situations is satisfied, *i.e.* if

- it offered the Player a professional contract, or if

- it can otherwise justify that it is entitled to training compensation.

A. Purpose and relationship between both alternatives

64. The purpose of article 6 para. 3 of Annexe 4 to the FIFA RSTP has been described in the decision CAS 2006/A/1152, para. 22 *et seq* as follows:

"(…) the purpose of the above provision is to ensure that no player, whether amateur or professional, in whom the club has no interest is impeded to accept the offer of another club because he carries some sort of "compensation price tag"".

"Indeed, in case a club is not interested any more in the services of one of its (…) players and decides to write off the investment made for its training, the player should be free to move to another club with no strings attached. In other terms, the application of an automatic compensation price tag to all amateur players should be deemed unreasonable".

65. This Panel adheres to the above finding. Furthermore, this Panel finds that it follows from the above that both alternatives serve a common purpose, *i.e.* to make the payment of training compensation subject to the condition that the club wanted to retain the services of the player. Only if the club sincerely and honestly pursued this goal shall the free movement of the player be impeded by an automatic price tag calculated as a lump sum. It is in light of this common

purpose that both alternatives must be interpreted and that CAS established its jurisprudence in relation to the second alternative, whereby the club must demonstrate (absent any offer) that it had a *"genuine and bona fide interest in retaining the services of the player"* in order to be entitled to a training compensation (see, *inter alia*, CAS 2012/A/2890 at para. 69 and CAS 2006/A/1152 at para. 23).

66. Thus, the Panel finds that no formalistic approach is warranted, but that both alternatives must be read and construed in light of the very purpose of the provision, *i.e.* that (in both alternatives) there must be evidence (be it through an offer or some other means) of a *"genuine and bona fide interest in retaining the services of the player"*. The Panel refers in this respect to the decision CAS 2014/A/3497, para. 65, where the panel stated that the aims of sporting justice should not be defeated by an overly formalistic interpretation of the FIFA RSTP, which would deviate from their original purpose:

> *"The Panel also took into account the case CAS 2009/A/1757 to which the Parties were referred in the course of the hearing. It bears in mind that the aims of sporting justice should not be defeated by an overly formalistic interpretation of the FIFA Regulations which would deviate from their original purpose, appreciating that the standards in formal requirements are higher in the case of professionals than amateurs. However, it notes that section 6.3 of Annex 4 of the 2005 Regulations does impose an onus of proof on the former club (in this case the Appellant). This reflects the need to balance the interests of the club involved in being compensated for its effort and expenditure on training a young player on the one hand and the interests of the young player in being able to advance his career on the other hand".*

B. Did Royal Standard de Liège offer the Player a professional contract?

67. The Appellant submits that it offered the Player a professional contract by sending a draft employment contract and an accompanying letter to the Player on 28 April 2014. In fact the Appellant sent the documents via registered mail to the address of the Player. However, for there to be an *"offer"* within the meaning of article 6 para. 3 of Annexe 4 to the FIFA RSTP the declaration must have been received by the Player. This follows from Swiss law in light of which the FIFA regulations must be interpreted and construed (see *supra*). According thereto an offer to enter into a contract is a declaration of intent which becomes complete upon receipt by the other party only (SFT 4A_559/2012, E. 5.2.1).

68. According to Swiss law, receipt of a declaration between absentees implies that the declaration enters into the sphere of influence of the addressee (SFT 4C.159/2002/ngu, E. 2.2; SFT 118 II 42, E. 3 b)). It is undisputed that the documents were not handed over to the Player or to his representative. Due to the absence of the family, the registered letter was stored at the post office. The latter, however, does not belong to the Player's sphere of influence. The registered letter did not enter into the Player's sphere of influence at a later point in time either, since the Player never picked up the letter from the post office before it was sent back to the Appellant on 16 May 2014. According to Swiss law, however, a letter sent by registered mail is deemed to have been received by the addressee if a notice of failure of delivery is left in the addressee's post-box even if the latter fails to pick up the registered letter from the post office (SFT 4A_525/2009, E. 7.1). According to the Appellant, Belgian law points in the same direction.

Whether this principle is applicable in the case at hand appears, however, questionable, since the father of the Player in his oral testimony before this Panel declared that he did not find a notice of failure of delivery in his post-box.

69. Be it as it is, the Panel can leave this question open, because even if receipt and further formalistic prerequisites (*e.g. "in writing"* and 60-day-period) of the alleged offer were assumed, the Panel finds that this offer was not made in a genuine and *bona fide* attempt to retain the services of the Player. Instead, it appears to the Panel that the sole motivation of the offer was to obtain training compensation, because it was made at a time where the Appellant had written off its investment in the Player. The Panel follows this from a variety of circumstances in this case:

(a) The alleged offer sent by the Appellant to the Player contained a cover letter and the draft contract. In order for there to be an offer the latter must be binding and definitive so that an acceptance of the offer automatically leads to the execution of the contract without any further act to be taken. Whether this is the case here, appears questionable, since the draft contract was not signed by a representative of the club. If, however, the draft provides for a formal signature by a club's representative and such signature has not been affixed, it appears – at least from the view of the Appellant – that the final act that brings the contract into existence is not the acceptance of the *"offer"* by the Player, but the outstanding signature by itself. Such business practices appear to leave open a back door not to retain the services of the player. This is all the more true, considering that the window for deregistration was about to expire and the Parties needed legal certainty with respect to their legal situation.

(b) Further evidence of the Appellant's ambivalent attitude can be found in the behaviour displayed by the Appellant towards the Player and his father prior to the sending of the alleged offer. It was the Appellant's Sports Director, Mr Jean-François De Sart, who informed the Player's father early in the 2013/2014 season that the Player did not feature in the Appellant's sportive plans for the future. Furthermore, the Player was downgraded from the U19 team to the U17 team for the second half of the 2013/2014 season. In addition, the Player's father testified that the Appellant signed a new player to substitute for the Player during the 2013/2004 season and that, accordingly, the Appellant had no use anymore for the Player (which is evidenced by the Player's demotion in the lower teams). Due to the Player's demotion, he was no longer invited to train and play with Belgian national team. All of these incidents rather speak against a genuine and *bona fide* intention of the Appellant to retain the services of the Player.

(c) The Panel sees itself also comforted in its view when looking at the timeline of the events. The Appellant's letter containing the alleged offer is dated 28 April 2014. The date of this letter coincides with the date of de-registration of the Player. According to the testimonies heard at the hearing, the Player's father de-registered the Player at the end of the de-registration window, which lasted from 1 April to 30 April 2014. On 27 April 2014 the father sent a registered letter to the URBSFA and a copy of the letter to the Appellant. The URBSFA must have received the father's letter on 28 April 2014, because it uses an

online management system called *"e-kick off"*, in which the de-registration of the Player was entered on 28 April 2014. Therefore, it appears to the Panel that it is very likely that the Appellant was informed of the Player's de-registration before sending the alleged offer to the Respondent. The Panel is not prepared to believe that the fact that the de-registration and the sending of the alleged offer occurred on the same day was a simple coincidence. In coming to this conclusion the Panel also takes note of the statement of the Appellant's in-house counsel at the hearing where he confirmed that the sending of the *"offer"* on 28 April 2014, *inter alia*, served the purpose to protect the Appellant's rights for training compensation.

(d) The view held by the Panel is further backed by the testimony of the witnesses. The Player in his testimony declared that he would have liked to stay with the Appellant, but that nobody from the Appellant ever approached him to tell him that he should to stay with club. This is all the more surprising considering that the Player stayed with the Appellant until his de-registration, *i.e.* until end of April 2014. During all this time nobody from the club ever spoke with him about the alleged contract or his future in the club. The Player heard of the offer from the Appellant for the first time when he was already with Porto. He convincingly stated that he was surprised by said *"offer"* since he did not feel appreciated by the Appellant while he was still playing and staying with the Appellant.

(e) The testimony of the Player was corroborated by the testimony of L., the Player's father who acts also as the Player's representative. L. explained that *"certain events"* took place which lead to a deterioration of the relationship between him and his sons on the one hand and the Appellant on the other hand. According to the father, representatives of the Appellant had made unsubstantiated allegations of doping vis-à-vis his sons. Furthermore, L. felt unhappy that his sons were being sportively downgraded. This resulted also in a tense relationship with the Appellant's Sports Director. Furthermore the father stated that he was never informed or contacted in person by the Appellant with respect to the alleged offer. This is rather surprising considering that – according to the father's testimony – he kept in close contact with the club until the end of the season. Thus, there were opportunities to discuss the matter.

(f) Once the documents were returned to the Appellant, the latter decided to do nothing. It did not resent the offer or contact the Respondent or his father by any other means. Thus, the Appellant failed to take any proactive stance or attitude vis-à-vis the Player to retain his services. The latter, however, would be the expected normal business behaviour in case a club was genuinely and *bona fide* interested in retaining the services of a player. The Appellant did not display any behaviour be it before or after the offer that would clearly indicate an interest in the Player to stay and play for the Appellant.

70. In coming to its conclusion the Panel has not ignored the (scarce) evidence submitted by the Appellant. According to the Appellant, it follows – in particular – from internal email correspondence that it was always keen and interested to keep the services of the Player.

71. The internal emails to which the Appellant referred are partly from September/October 2012 and partly from January 2014. The 2012 emails mention details of a potential offer to the Player. However, the emails do not show whether such offer was ever made to the Player. The 2014 emails refer to the Player with *"No contract"* (24 January 2014) or *"without contract today"* (28 January 2014). It follows from this that the 2012 emails were internal discussions only that never materialized into an offer or contract vis-à-vis the Player. In addition, also the 2014 emails never mention any offer to the Player. In the view of the Panel this internal correspondence is no proof of a *bona fide* and genuine interest of the Appellant in the Player.

72. With regard to the content of the *"offer"* of 28 April 2014, the Panel has taken note that the *"fixed monthly allowance"* offered to the Player (EUR 859 gross) was less than the amounts mentioned in the Appellant's internal email of 3 October 2012 (EUR 900 gross). In addition, the *"offer"* of 28 April 2014 was made for a two-year contract while the internal email dated 3 October 2012 referred to a three-year contract. If the club was genuinely interested to retain a player one would have expected a higher salary offer or – in any event – an offer not below the (internally) discussed amounts dating back one and a half years.

73. The Appellant argued that it treated the Player and his family preferentially, *inter alia*, by providing a car and a driver to the family and that such special treatment was evidence for a genuine interest in the Player. Any preferential treatment, however, is disputed by the Respondent which submits that the Player was not treated any differently from other players in the Appellant's teams. The Panel finds that any amenities provided to the Player or his father were based on the still existing agreements (as mentioned in the Appellant's internal email of 25 September 2012 with regard to transportation costs) and did not serve the purpose to retain the services of the Player for the 2014/2015 and 2015/2016 season. Therefore, in the Panel's view these submissions are not relevant for the question in dispute.

C. Conclusion

74. The Panel is not persuaded that the Appellant's alleged offer was received by the Player. In any event, the Panel finds that the alleged offer was not made for the purpose of retaining the services of the Player. Instead, the Panel finds that the letter was motivated to put an automatic price tag on a player even though the Appellant was no longer interested in the Player and had written off its investment. Contrary to the very purpose of the FIFA RSTP, according to which such players shall move within the EU/EEA freely with no strings attached, the Appellant tried to reap training compensation from the Respondent. Consequently, the Panel finds that the Appellant is not entitled to any training compensation according to article 20 of the FIFA RSTP in correspondence with article 2 para. 1 of Annexe 4 to the FIFA RSTP and dismisses its appeal.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Royal Standard de Liège on 12 July 2016 against the decision issued on 18 February 2016 by the Dispute Resolution Chamber of FIFA is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of FIFA on 18 February 2016 is upheld.

3. (…).

4. (…).

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