



**Arbitration CAS 2004/A/560 Associazione Calcio Venezia 1907 v. Clube Atlético Mineiro & AS Roma, award of 7 February 2005**

Panel: Mr Jan Paulsson (France), President; Mr Alfonso Picone (Italy); Mr Carlos Nuzman (Brazil)

*Football*

*Compensation for training*

*Effective training period(s) of a player*

*Effective training of a loaned player*

*Legal interest rate*

- 1. It would be against the object pursued by the training compensation system that clubs' entitlement to it be conditioned on the basis of complete years of effective training of a player. Absent any regulatory provision reading that a training period lasting less than 12 months should not be compensated, and the hypothesis of a player being trained for only a period of a few months having obviously been omitted by the legislator, training compensation will (provided other regulatory conditions being met) be owed to clubs of a player for the time he was effectively trained by these clubs.**
- 2. A club that cannot prove the costs it allegedly bore in relation to a player who was loaned to another club and paid by the latter cannot claim that it effectively trained such player while he was loaned.**
- 3. In the absence of specific contractual clause, CAS panels can only apply the legal interest pursuant to art. 104 of the Swiss Code of Obligations, which states that a debtor on notice to pay an amount of money owes an interest at the rate of 5 % *per annum*.**

Associazione Calcio Venezia 1907 srl (hereinafter “the Appellant”) is a football club with its registered office in Mestre, Italy. It is a member of the Italian National Football Association (Federazione Italiana Giuoco Calcio), which has been affiliated with FIFA since 1905.

Clube Atlético Mineiro (hereinafter “The Respondent”) is a football club with its registered office in Lourdes, Brazil. It is a member of the Brazilian National Football Association (Confederação Brasileira de Futebol), which has been affiliated with FIFA since 1923.

AS Roma S.p.A. is a football club with its registered office in Roma, Italy. It is also a member of the Italian National Football Association.

The player A. was born on 1 August 1980.

A. was registered with the Respondent as an amateur player from August 1995 to 18 February 1998. At that date, he signed a first non-amateur contract with the Respondent. It expired on 18 February 2001 but was extended until 31 December 2002.

It is undisputed that in 2001, A. was loaned by the Respondent to A.D. São Caetano for six months and to A.A. Portuguesa de Desportos for another six months.

On 30 January 2003, a professional contract was entered into between A. and the Appellant.

A. turned 23 years old on 1 August 2003.

The Appellant submits that by petition dated 22 May 2003, the Respondent requested the FIFA Dispute Resolution Chamber of the Players' Status Committee "to sentence A.C. Venezia to pay in their favour as training compensation for the player A. [...] the following sums:

- a) € 445.000,00 pursuant art. 9.1 of the F.I.F.A applications;
- b) € 667.500,00 on the same ground;
- c) USD 5.000.000 granted by a sentence of a Brazilian Court pronounced in a proceeding A. vs. Atletico Mineiro to be charged to any club whereto the player would have transferred".

On 15 January 2004, the FIFA Dispute Resolution Chamber of the Players' Status Committee issued a decision stating as follows on relevant part:

- "As established in the Regulations and in Circular letter no. 826, dated 31 October 2002, training compensation is payable up to the age of 23, for training incurred between the ages of 12 and 21.
- In this context, the Chamber acknowledged that A. had been registered for the Brazilian club, Clube Atlético Mineiro, from 9 August 1995 until 31 December 2002, i.e. between the ages of 15 and 22.
- It is undisputed that Clube Atlético Mineiro is entitled to receive compensation for the training and education of the player A. for the timeframe that the player spent with it.
- In fact, taking into consideration the aforementioned period of stay with the claimant, it is evident that the player's positive development has to be essentially attributed to the training and education that he received from the aforementioned Brazilian Club.
- in accordance with the principles for calculation of the training compensation amounts, stipulated in the Regulations and in the aforementioned Circular letter, the category of the former club and the amount corresponding to the same category in the new club's Confederation, which is UEFA in the present case, apply.
- Therefore, taking into account the fact that the Brazilian club, Clube Atlético Mineiro, is a first division club belonging to Category 1 in South America, EUR 90,000 (indicative amount per year for category 1 in Europe) is granted from the age of 15 to the age of 21.

- *In view of the above, the Chamber decided that A.C. Venezia Calcio is liable to pay the total amount of EUR 540,000 to Clube Atlético Mineiro, for the training compensation of the player A.*
- *Finally, the Chamber took note of the fact that Clube Atlético Mineiro is also claiming the amount of USD 5,000,000 from A.C. Venezia Calcio, due to a decision taken by a Brazilian Labour Court, based on the Brazilian Sports Law “Lei do passe”, according to which, independently of the termination of an employment contract, a transfer compensation could still be owed to the player’s previous club by his future one.*
- *In this respect, the Chamber decided not to recognise the validity of the aforementioned decision, since in accordance with the general principles of the FIFA Regulations, once an employment contract between a club and a player reaches its end, the latter is considered free to sign for the club of his choice without any transfer compensation being due to his former club.*
- *As a consequence, the Chamber concluded that, since the employment contract between A. and Clube Atlético Mineiro ended on 31 December 2002, the player was free to sign for the club of his election after the aforementioned date and therefore, A.C. Venezia Calcio is not liable to pay any transfer compensation to the aforementioned Brazilian Club”.*

For the above-mentioned reasons, the FIFA Dispute Resolution Chamber of the Players’ Status Committee decided the following:

- “1. *The Italian club, A.C. Venezia Calcio, has to pay the amount of EUR 540,000 to the Brazilian club, Clube Atlético Mineiro, within 30 days of notification of the present decision.*
2. *If the Italian club, A.C. Venezia Calcio, fails to comply with the above-mentioned deadline, an interest rate of 5% per year will apply.*
3. *According to art. 60 par. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 10 days of receiving notification of this decision and has to contain all elements in accordance with point 2 of the directives issued by the CAS”.*

The Appellant was notified by fax dated 19 February 2004 of the decision issued by the FIFA Dispute Resolution Chamber of the Players’ Status Committee (“the Decision”). It alleged that it received the said Decision on 20 February 2004.

On 1 March 2004, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter “CAS”). It challenged the above-mentioned Decision, submitting the following request for relief:

*“Be the Court wanting, rejected any other and different contrary petition, upon staying of the execution of the decision appealed:*

- a) *to rectify the judgment sentencing as not owed any compensation for lack of proof;*

- b) *secondarily to decide the owed debated compensation in the reduced amount of 250.000,00 USD;*
- c) *in third order, to decide the compensation owed in the amount of € 300.000,00;*
- d) *granting all legal costs”.*

The Appellant’s submission, in essence, may be summarized as follows:

- The Appellant’s first point is that the Respondent has failed to establish for how long A. was registered with it and that the said player was transferred to the Appellant’s Club. According to the Appellant, the Respondent has never proven such facts. It is inadmissible that the FIFA Administration took the initiative to seek the information from the Brazilian Football Confederation. By doing so, it has been “*making up for the lack of preparation of the petitioner, breaking in this way the governing principles of the civil procedures of every legal system*”. Accordingly, the finding of the FIFA Dispute Resolution Chamber of the Players’ Status Committee cannot be used against the Appellant.
- Since the Appellant is a second division club, belonging to category 2 under the terms of the FIFA Circular Letter No 826, the indicative amount of training compensation to be taken into account is EUR 60,000 per year and not EUR 90,000. Such amounts are not representative of the effective costs incurred by the Respondent for A.’s training and education. Moreover, the latter played and trained during 2001 with Assoc. Portuguesa de Desportos. Therefore, no training compensation is due to the Respondent for the 2001 season.
- The decision issued by the Brazilian Labour Court according to which the Respondent is entitled to receive a compensation fee of USD 5,000,000 from the Appellant cannot be invoked against the latter for the following reasons:
  - No document related to the alleged judgment has ever been produced and therefore the Appellant has never been able to examine it nor consider what it really covers.
  - The Appellant was not a party of the proceedings held before the Brazilian Labour Court, which could not issue a judgment against it. It did not have a chance to appear and to be heard at the said proceedings.
  - The judgment of the Brazilian Labour Court conflicts with the training compensation established by the FIFA Regulations of 2001 for the Transfer and Status of Players dated July 2001 (hereinafter referred to as “the FIFA Regulations”), which apply exclusively.
  - Brazilian laws do not apply to companies organized under Italian Law.

On 9 March 2004, the Respondent submitted to CAS the following answer:

**“Respondent of the Appeal asks for:**

- 1- to rectify the judgment sentencing the true value of the 7 years and 5 months of the training compensating fee, as showed on **Atlético** petition, in the amount of EUR 667.500,00 (six hundred and sixty seven thousand and five hundred euros), to be paid within 30 days.
- 2- to recognize the right to receive USD 5.000.000,00 (five million dollars) granted by the Brazilian Labor Court, before the transfer was concluded (indemnity / compensation fee for international transfer according to the Brazilian legislation on that period).
- 3- granting the payment of all legal costs to **AC Venezia**, according article 65.3 of the Code of Sports-related, taking into account the outcome of the proceedings and financial resources of the parties.
- 4- to impleader [sic] AC Roma for the demand.
- 5- to oblige AC Venezia and AC Roma to show all contracts, documents and agreements related to A. transfer between AC Venezia versus A., AC Venezia versus AC Roma, A. versus AC Roma”.

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

- Based on the FIFA Regulations and the FIFA Circular Letter No 826, the Respondent is entitled to compensation computed by reference to 7 years and 5 months of training, since A. was registered with it from August 1995 until 31 December 2002. In 2001, the Respondent sent the player to spend six months in A.D. São Caetano and six months in A.A. Portuguesa de Desportos. It was part of the training of the player, who was still under the Respondent’s responsibility. Therefore, the latter is entitled to the training compensation, even for the time spent by A. with the other clubs in 2001.
- In its decision, the FIFA Dispute Resolution Chamber of the Players’ Status Committee did not take into account the real value of A. and should have adjusted the amount for the training compensation to his specific situation and skills.
- A.’s transfer to the Appellant was fraudulent in that sense that the latter was “acting as a mere “bridge”, which was an easier and cheaper way to transfer A. to AS Roma, which was the club in Serie A that the player plays nowadays”.
- The decision issued by the Brazilian Labour Court granting the Respondent the right to claim USD 5,000,000 from A.’s next employer is binding upon the Appellant since “FIFA had never issued any kind of rules regarding international transfer of players before July 5, 2001, therefore, the national laws should be taken into account in this specific case”.
- A.S Roma S.p.A. rejects the Respondent’s allegations of fraudulence.

A hearing was held on 15 September 2004 in Lausanne.

The Appellant was represented by its manager, Mr Stefano Bazzacco, and by Mr Cesare Persichelli, attorney-at-law, both assisted by Mr Sorin Pacurariu, who acted as interpreter.

The Respondent was represented by Mr Fabio Laudisio Corrêra and Mr Luiz Fernando Pimenta Ribeiro, both attorneys-at-law.

AS Roma S.p.A. was not represented and did not attend the hearing.

During the hearing, the parties made full oral submissions. No witness was called to testify.

At the hearing and with the consent of the Respondent, the Appellant produced the contract dated 30 January 2003 between A. and the Appellant.

## LAW

### CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from art. 59 ff. of the FIFA Statutes and art. R47 of the Code of Sport-related arbitration (hereinafter “Code”). It is further confirmed by the order of procedure duly signed by the parties.
2. It follows that the CAS has jurisdiction to decide on the present dispute.
3. Under art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial *de novo*, evaluating all facts and legal issues involved in the dispute.

### Applicable law

4. Art. R58 of the Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and 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”.*

5. Art. 59 para. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs, and, additionally, Swiss law.
6. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall apply primarily and Swiss law shall apply subsidiarily.

### Admissibility

7. The appeal was filed within the deadline provided by art. 60 of the FIFA Statutes and stated in the Decision, that is within 10 days after notification of such decision.
8. It follows that the appeal is admissible, which is also undisputed.

### Main issues

9. The main issues to be resolved by the Panel are:
  - A. Was A.'s registration with the Respondent properly established?
  - B. If the answer is yes, on what basis should the training compensation be calculated?
  - C. What is the correct calculation of the training compensation?
  - D. Was there a "fraudulent transfer" which should affect the training compensation granted to the Respondent?
  - E. Are there any other reasons to adjust the training compensation?

A. *Was A.'s registration with the Respondent properly established?*

10. R57 of the Code provides:

*"The Panel shall have full power to review the facts and the law".*

11. As already mentioned under para. 3 above, the Panel can review all evidence, oral and written, produced before it. Given that the trial is a *de novo* trial, any error as to burden of proof can be corrected on appeal. In other words the Panel's scope of review is basically unrestricted. It has the full power to review the facts and the law (CAS 2003/A/507, p. 10; CAS 98/211, p. 6).
12. In its decision issued on 15 January 2004, the FIFA Dispute Resolution Chamber of the Players' Status Committee submitted:

*"In this context, the Chamber acknowledged that A. had been registered for the Brazilian club, Clube Atlético Mineiro, from 9 August 1995 until 31 December 2002, i.e. between the ages of 15 and 22".*

*"the FIFA Administration was informed via the Brazilian Football Confederation that A. was in fact registered for Clube Atlético Mineiro from August 1995 until February 1998, as an amateur player. A document issued by the Federação Mineira de Futebol indicating that the player was registered with Clube Atlético Mineiro within the aforementioned period has been provided to the FIFA Administration".*

*“On 18 February 1998, A. and Clube Atlético Mineiro signed an employment contract valid until 18 February 2001, which was later on extended until 31 December 2002. A copy of the relevant employment contract and of its renewal has been provided to the FIFA Administration”.*

13. In view of the above, the Panel considers that the registration of A. with Clube Atlético Mineiro from August 1995 until the end of December 2002 is sufficiently demonstrated. Whether the evidence was presented by the Respondent or a third party is of no moment.

B. *On what basis should the training compensation be calculated?*

- a) Application of the FIFA Regulations/Circular Letter No 826

14. This case is primarily governed by the FIFA Regulations. For the implementation of the FIFA Regulations, the FIFA has issued a certain number of Circular Letters. Although these Circular Letters are not regulations in a strict legal sense, they reflect the understanding of the FIFA and the general practice of the federations and associations belonging thereto. Thus, the Panel considers these Circular Letters to be relevant also for the interpretation of the FIFA Regulations (CAS 2003/O/527, p. 10).

15. Art. 46 para. 3 of the FIFA Regulations provides that:

*“Contracts between players and clubs concluded before 1 September 2001 will continue to be governed by the previous version of these regulations, which came into force on 1 October 1997, unless the clubs and the players expressly agree to subject their agreements signed after 5 July 2001 to these regulations”.*

16. The FIFA Circular Letter No 826 dated 31 October 2002 further provides that:

*“For greater certainty, it is reaffirmed (as already established in circular letter no. 799) that the revised regulations are applicable to all transfers of players that have occurred after the entry into force of the revised transfer regulations on 1 September 2001. All pending cases on the compensation amounts owed for the training of young players, that have transferred as from 1 September 2001, are to be calculated in accordance with the present circular”.*

17. The FIFA Circular Letter No 826 dated 31 October 2002 was issued before A. was transferred to the Appellant on 30 January 2003 and thus before 15 January 2004, *i.e.* the date when the FIFA Dispute Resolution Chamber of the Players’ Status Committee determined the training compensation upon request of the Respondent.

18. The FIFA Circular Letter No 826 did not create a new obligation which would not have existed otherwise. That Circular Letter rather simplified and facilitated the determination of the training compensation within the framework of the Regulations and Circular Letters which existed already at the time of the transfer of A.. Before that date, FIFA had communicated the relevant parameters and criteria to calculate the training compensation (FIFA Regulations, Art. 6 and FIFA Circular Letter No 799 of 19 March 2002).

19. The Panel has no difficulty to rely on the FIFA Circular Letter No 826 as a valid basis for the calculation of the training compensation. The Panel takes comfort from the fact that its opinion on this issue is consistent with the opinions recently rendered by other CAS Panels on similar issues (CAS 2003/O/469, p. 32; see also CAS 2003/O/527, p. 11; CAS 2003/O/506, p. 18).
- b) The decision issued by the Brazilian Labour Court
20. The Respondent bears the onus of proof on this issue. The latter has not submitted any copies of any documents related to the alleged judgment rendered by the Brazilian Labour Court. It has not established its existence, its scope, the parties concerned by it, its timing, nor the circumstances under which it was issued.
21. In the absence of proof in relation to the existence of a valid judgment issued by the Brazilian Labour Court, the Panel considers that it is not possible for it even to consider whether it created obligations on the Appellant. The Respondent's petition must be dismissed.
22. As a consequence of the above, the Panel does not need to examine whether or not the alleged decision taken by the Brazilian Labour Court conflicts with the FIFA Regulations in any manner or with the Appellant's national laws.
- C. *What does the training compensation amount to and why?*
  - a) The relevant provisions and guidelines
23. The relevant provisions and guidelines for the calculation of the training compensation are the following:

Art. 13 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, compensation shall be due until the player reaches the age of 23, but the calculation of the amount of compensation shall be based on the years between 12 and the age when it is established that the player actually completed his training".*

FIFA Circular Letter No 769

The FIFA Circular 769 provides that in the case of a transfer of a player from a country outside the European Economic Area ("EEA") to a country within the EEA *"whenever training compensation is due it shall be based on the costs of the country of the new club, (...) while taking the category of the club which has effectively trained the player"*.

FIFA Circular Letter No 826:

*"compensation for training is based on the costs of the country in which the new club is located"*.

*“training compensation will only be owed to the previous club of the player for the time he was effectively trained by that club”.*

*“Until a more definitive calculation system is put into place, FIFA has established the following indicative amounts on the basis of information received for all national associations on a confederation basis, also keeping in mind the many requests from interested parties for simplicity:*

*(...)*

*Europe:*

- 1. Category: EURO 90,000*
- 2. Category: EURO 60,000*
- 3. Category: EURO 30,000*
- 4. Category: EURO 10,000*

*(...)*

*South America:*

- 1. Category: USD 50,000*
- 2. Category: USD 30,000*
- 3. Category: USD 10,000*
- 4. Category: USD 2,000*

*These amounts will be used when applying the provisions contained in Chapter VII of the FIFA Regulations for the Status and Transfer of Players (hereafter “Basic Regulations”), as well as Chapter III of the Regulations governing the Application of the Regulations for the Status and Transfer of Players (hereafter “Application Regulations”), together with circular letters nos. 769 and 799, subject to the simplifications outlined below”.*

Art. 5 para. 1 of the Regulations governing the Application of the FIFA Regulations:

*“1. For the purposes of calculating compensation, the training period starts at the beginning of the season of the player’s 12th birthday, or at a later age, as the case may be, and finishes at the end of the season of his 21st birthday”.*

Art. 7 para. 1 and 3 of the Regulations governing the Application of the FIFA Regulations:

*“The compensation for training and education shall be obtained by multiplying the amount corresponding to the category of the training club for which the player was registered by the number of years of training from 12 to 21.*

*(...)*

*As a general principle, compensation for training is based on the training and education costs of the country in which the new club is located”.*

- b) The period during which A. was trained by the Respondent and for which compensation is due
24. Based on the foregoing and contrary to the Respondent’s submission, it is undisputable that the training compensation cannot be calculated for the whole 7 years and 5 months during which A. was registered with it.
25. The Panel finds that A.’s training period started in August 1995, when he first registered with the Respondent.
26. The Appellant has never raised the possibility nor tried to establish that the said player terminated his training period before the age of 21.
27. Nevertheless, the Appellant objected that the year 2001 cannot be taken into consideration in the calculation of the training period since during the said period of time, A. was loaned by the Respondent to two different clubs.
28. In its answer, the Respondents explained that the loan of the said player was part of his training and education.
29. In a recent decision, in accordance with the FIFA Circular Letter No 769, art. 13 of the FIFA Regulations and art. 7 para. 1 of the Regulations governing the Application of the FIFA Regulations, it has been ruled that *“only years of effective training may be taken into account”* (CAS 2003/O/506).
30. The Panel cannot agree with the said decision and is of the firm opinion that an interpretation based on the exact wording of the FIFA Regulations would lead to a result which would be in opposition with the whole purpose of the “training compensation system”.
31. As expressed in the FIFA Circular Letter No 769, the *“new regulations create a detailed system for the payment of training compensation. This system is designed to encourage more and better training of young football players, and to create solidarity among clubs, by awarding financial compensation to clubs which have invested in training young players”*. In the Panel’s opinion, it would be against the actual object pursued in producing that system if, for instance, a 11 months long training period was not compensated.
32. According to art. 5 para. 1 of the Regulations governing the Application of the FIFA Regulations, *“For the purposes of calculating compensation, the training period starts at the beginning of the season of the player’s 12th birthday, or at a later age, as the case may be, and finishes at the end of the season of his 21st birthday”*.
33. Such a principle can only be applicable with “ideal cases”, where the player did not interrupt his training period. It is obvious to the Panel that the hypothesis of a player being trained for only a period of a few months has been omitted. Art. 5 para. 3 of the Regulations governing the Application of the FIFA Regulations enumerates when compensation for training is not due.

The said article does not say that a training period lasting less than 12 months should not be compensated. The FIFA Circular Letter No 769 gives several examples to illustrate how training compensation is calculated. None of them takes into consideration an interrupted training period.

34. In addition, art. 5 para. 4 of the Regulations governing the Application of the FIFA Regulations states that *“As a general rule, the amount due shall reflect the costs which were necessary to train the player and shall be paid for the benefit of every club which has contributed to the training of the player in question, starting from the age of 12”*. The Panel strongly believes that this provision clearly expresses the spirit of the law. In concordance with this article, the FIFA Circular Letter No 826, which is more recent than the FIFA Circular Letter No 769, insists on the fact that *“training compensation will only be owed to the previous club of the player for the time he was effectively trained by that club”*.
35. The Panel considers that the period during which A. was effectively trained by the Respondent must be taken into consideration. The FIFA Dispute Resolution Chamber of the Players’ Status Committee did not have to take position on the issue. As a matter of fact, the loan of the player was mentioned for the first time by the Appellant in its statement of appeal filed with the CAS on 1 March 2004.
36. A. was registered with the Respondent since August 1995. It is undisputed that in 2001, he was loaned to other clubs by the Respondent. According to undisputed documents submitted by the Appellant the player was paid by the “borrower”, at least from 1 January to 22 August 2001. Furthermore, the Respondent did not make plausible nor demonstrate the costs it bore for A.’s training in 2001. For all these reasons, the Panel considers that the Respondent cannot claim that it effectively trained the player while he was loaned. In August 2001, the player turned 21 years of age. Therefore, the training period for which compensation is due lasted 5 years and 5 months, from August 1995 to December 2000.
- c) Categorisation of the Respondent and calculation of the compensation
37. It is undisputed that the Appellant is a second division club, belonging to category 2 under the terms of the FIFA Circular Letter No 826. Likewise, the Respondent belongs to a first division club, *i.e.* category 1.

As it results from art. 7 para. 3 of the Regulations governing the Application of the FIFA Regulations and as it is expressed in the decision issued on 15 January by the FIFA Dispute Resolution Chamber of the Players’ Status Committee, the category of the former club and the amount corresponding to the same category in the new club’s Confederation, which is UEFA in the present case, apply (CAS 2003/O/505, p. 20; CAS 2003/O/469, p. 33).

38. According to the FIFA Circular Letter No 826, compensation for category 1 in Europe amounts Euro 90,000.
39. The calculation of the training compensation is as follows:
- |                           |            |
|---------------------------|------------|
| Season 95-96 – category 1 | EUR 90,000 |
| Season 96-97 – category 1 | EUR 90,000 |

Season 97-98 – category 1	EUR 90,000
Season 98-99 – category 1	EUR 90,000
Season 99-00 – category 1	EUR 90,000
August to December 2000 – category 1	<u>EUR 37,500</u>
<b>Training compensation</b>	<b>EUR 487,500</b>

40. Based on the foregoing, the Panel concludes that the training compensation to be awarded to the Respondent shall thus amount to EUR 487,500.

*D. Was there a “fraudulent transfer” which should affect the training compensation granted to the Respondent?*

41. As stated above, the Respondent claims that A.’s transfer to the Appellant was fraudulent in the sense that the latter was “acting as a mere “bridge”, which was an easier and cheaper way to transfer A. to AS Roma, which was the club in Serie A that the player plays nowadays”.

42. The Respondent has neither explained nor demonstrated how A.’s transfer to the Appellant was fraudulent nor why and in what manner it deprived the Brazilian Club of its right to full training compensation.

43. On the contrary, the Panel notes that the training compensation of EUR 487,500 is as high as it could possibly get. Even if A. had been directly transferred from the Respondent to AS Roma S.p.A., the training compensation would have been of the same amount.

44. It appears that the Respondent has demonstrated neither the fraudulent transfer nor its alleged prejudicial consequences. This accusation is dismissed.

*E. Are there any other reasons to adjust the training compensation?*

45. During the hearing held on 15 September 2004, the Appellant as well as the Respondent questioned the validity of the calculation principles as set forth in the FIFA Regulations as well as in the FIFA Circular Letter No 826. In essence, the Appellant considers that the effective costs of the training and education of A. were lower than the amount calculated by the FIFA Dispute Resolution Chamber of the Players’ Status Committee in its Decision. The Respondent is of the opinion that A. is such an exceptional player, that the amount granted for the training compensation is too modest and should have been adjusted so as to reflect the real value of the player. None of the parties produced any evidence to support their respective submission.

46. The FIFA Circular Letter No 826, page 2, states:

*“Any party that objects to the result 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”.*

It follows that the club objecting to a training compensation calculated on the basis of the indicative amounts mentioned within the FIFA Circular Letter No 826 is entitled to prove that such compensation is disproportionate on the basis of concrete evidentiary documents, such as invoices, costs of training centers, budgets, and the like. It shall thus prove such disproportion, failing which the indicative amount would apply.

47. Based on the foregoing, the Panel finds that neither the Appellant nor the Respondent has proven that the effective costs incurred by the latter for the formation and the education of A. were lower or higher than the ones calculated on the basis of the indicative amounts mentioned within the FIFA Circular Letter No 826.
48. Consequently, the indicative amounts established by the FIFA and set down in the FIFA Circular Letter No 826 shall apply.

## Conclusion

49. As stated in para. 40 above, the Panel concludes that the training compensation to be awarded to the Respondent shall amount to EUR 487,500.
50. With regard to the interest rate, in the absence of a specific contractual clause, the Panel can only apply the legal interest pursuant to art. 104 of the Swiss Code of Obligations. That article states that the debtor on notice to pay an amount of money, owes an interest at the rate of 5 % *per annum* (see Award CAS 2003/O/486 of 19 December 2003).
51. Regarding the *dies a quo* for the interest, it must correspond to the due date of the Training Compensation. Art. 9 para. 1 of the FIFA Regulations governing the Application of the Regulations for the Status and Transfer of Players provides the following:

*“The new club shall pay the training club the amount due as compensation for training and education pursuant to the above provisions at the latest within 30 days of the signature of the first contract under the terms of Art. 4 of the FIFA Regulations for the Status and Transfer of Players or for any subsequent transfer, within 30 days of the player’s new registration”.*
52. It follows that the due date of the Training Compensation is 30 days after the signature by the player of the contract with the new club. As a consequence, the interest of 5% shall start running, in the present circumstances, as from 2 March 2003, that is 30 days after 30 January 2003, date of the conclusion of the agreement between A. and the Appellant.
53. This solution complies with the CAS jurisprudence (see Award CAS 2003/O/500).

**The Court of Arbitration for Sport rules:**

1. Associazione Calcio Venezia 1907 srl is ordered to pay EUR 487,500 (four hundred eighty seven thousand and five hundred Euro) to Clube Atlético Mineiro, plus interest at 5% (five percent) as from 2 March 2003.
2. All other claims and counterclaims are dismissed.
3. (...).
4. (...).