Arbitration CAS 2006/A/1177 Aston Villa FC v. B.93 Copenhagen, award of 28 May 2007

Panel: Mr Efraim Barak (Israel), President; Mr Michael Beloff (United Kingdom); Mr Lars Halgreen (Denmark)

Football
Compensation for training
Competent body to hear the dispute
Right to be heard
Status of the player
Entitlement to compensation
Ne ultra petita *principle*

1. **It cannot be deducted from the FIFA Regulations that a claim for training compensation has to be presented in particular to the Dispute Resolution Chamber in order for it to be regarded as having been validly submitted. Under the regime of the Dispute Resolution Disciplinary and Arbitration System implemented by the RSTP 2001, there is no clear distinction between the DRC and the Players' Status Committee. The DRC is clearly a part of the PSC and the two bodies do not appear to be for present purposes distinguishable.**

2. **According to Art. R57 of the Code, the Panel has full power to review the facts and the law. In consequence, even if a violation of the principle of due process or of the right to be heard occurred in prior proceedings, it may be cured by an appeal to the CAS. The virtue of an appeal system which allows for a rehearing before an appealed body is that issues relating to the fairness of the hearing before the Tribunal of First Instance *"fade to the periphery"*. Furthermore, the case law of the Swiss Supreme Court clearly establishes that any infringement of the right to be heard can be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal of first instance and in front of which the right to be heard had been properly exercised.**

3. **The status of the player has to be analysed based on the relevant FIFA rules, as long as they do not violate any superior legal norm, and conclusions based either on preconceptions as to the difference between amateur and professional, or on alternative (but immaterial) texts or instruments, have to be avoided. According to the FIFA rules, the players are either amateur or non-amateur; there is no space for a third, or hybrid category, to which might belong players undertaking training dedicated to the practice of football but who are at the same time students with the goal of becoming professional football players, even if such players would not ordinarily (i.e. in common professional parlance) be called either amateur or non-amateur.**

4. **The only relevant criterion chosen by FIFA to differentiate between an amateur and a non-amateur player is the remuneration. The receipt by the player of any remuneration *"other than for the actual expenses incurred during the course of their participation in or for any activity connected with association football"* is what alone distinguishes an amateur from a non-amateur player. By corollary, the existence (or otherwise) of an employment agreement is not a relevant criterion to determine the status of the player. Neither is it necessary to determine whether the club has indeed benefited from the player's activity, as nothing in the relevant FIFA rules indicates that the classification as a non-amateur, and the derivative entitlement to training compensation, is subject to such a condition, nor whether the remuneration falls short of a living wage and obliges the player to find other sources of income in order to subsist in the country.**

5. **Only a club which already had a contract with a player is obliged to offer a new contract if it intends to secure its entitlement to training compensation.**

6. **If a party did not lodge any submission within the arbitral proceedings or did not submit any counterclaim with respect to the amount of the training compensation granted by the DRC, the CAS is not in the position to amend the amount even though the latter is too low as a result of an error in its calculation.**

Aston Villa Football Club ("Aston Villa") is a football club with its registered office in Birmingham, England. It is a member of the English Football Association (FA), which has been affiliated with the Fédération Internationale de Football Association (FIFA) since 1905.

B.93 Copenhagen ("B.93") is a football club with its registered office in Copenhagen, Denmark. It is a member of the Danish Football Association, which has been affiliated with FIFA since 1904.

The player M. was born in 1987. He was registered with B.93 from 1 November 2001 until 1 July 2003.

On 26 June 2003, B.93 sent a letter to Aston Villa requesting training compensation in the amount of EUR 70,833 under the FIFA Regulations for M., who had been transferred to Aston Villa as of 1 July 2003. This letter was not answered by the Appelant.

On 4 July 2003, M. and Aston Villa signed an agreement entitled *"Scholarship Agreement"*, originally intended to be valid until 30 June 2006. Under this agreement, M. was to participate in the *"Scholarship Program"*, that is to say to train and play football for Aston Villa ("the Football Element") and to attend and participate in vocational or educational training to be provided by Aston Villa pursuant to the scholarship guidelines agreed from time to time by the Board of Directors of the Footballers Further Educational and Vocational Training Society Ltd ("the Education Element").

M. furthermore agreed to attend all matches Aston Villa was engaged when directed by any duly authorized official of Aston Villa and to play football solely for Aston Villa or as authorized by Aston Villa or as required under the rules and the regulations of the football association and the Aston Villa's League (articles 5 and 6 of the Scholarship Agreement). Under the Scholarship Agreement, M. could apply to his Club for cancellation of registration during his Scholarship, in which case he could not *"subsequently sign as a Scholar or as a player under written contract for a club until after a laps of two years except with the consent of the Club for which he was registered as a Scholar, or on payment of a compensation fee by any club for which he signs to the club for which he was registered as a scholar"* (Article 19 (a) of the Scholarship Agreement). Aston Villa undertook to pay a Scholarship Allowance to M. of an amount of GBP 80 per week as from 4 July 2003 until 30 June 2004, GBP 90 per week as from 1 July 2004 until 30 June 2005 and GBP 115 per week as from 1 July 2005 until 30 June 2006 (Article 24 of the Scholarship Agreement and Schedule attached to this agreement). In addition, the Club undertook to pay the Scholar's legitimate travel expenses.

On 1 July 2004, B.93 wrote a letter to the FIFA Players' Status Committee, via the Danish Football Association. In this letter, B.93 submitted that Aston Villa was due to pay a total amount of EUR 70,833.33 in training compensation for M., and claimed *"on basis of the facts of this matter and the ruling legal regulations to have the matter settled and to determine the amount, which Aston Villa has to pay in compensation to B.93"*. By fax dated 19 August 2004, the Danish Football Association transmitted this letter to FIFA, which acknowledged receipt of this fax on 20 August 2004, explaining that FIFA would *"revert to you with more details concerning the proceedings in due course"*.

On 4 September 2004, B.93 wrote another letter to Aston Villa, informing it that the matter was referred to FIFA and that B.93 was willing to withdraw the matter from FIFA if Aston Villa *"will guarantee…in writing, that Aston Villa will pay the compensation of EUR 70,833 on the very day when M. will be 18 years old"*.

By letter dated 27 September 2004, Aston Villa, for the first time, answered B.93 saying that, whilst accepting B.93's calculations of compensation payments in respect of M. (i.e. EUR 70,833), it would only pay training compensation when it signed a professional contract with M. and that such a contract would be offered on the player's eighteenth birthday.

On 14 April 2005, FIFA wrote to the FA a letter under Ref. no. 05-00137, requesting *"Aston Villa FC to immediately proceed to pay the training compensation amount that is due to B93 Copenhagen. Should any dispute arise, the matter shall be referred to the FIFA Dispute Resolution Chamber for a formal decision"*.

On 18 April 2005, the FA wrote to FIFA that the *"The Club confirmed that training compensation will be paid as soon as the first contract is signed"*.

On 3 May 2005, apparently pursuant to the above mentioned correspondence, FIFA wrote a letter to the English Football Association and the Danish Football Association concerning the litigation *"Training compensation for player M. (B 93 Copenhagen, Denmark / Aston Villa FC, England) Ref. No. 05-00137"*. In this letter, FIFA expressed the opinion that it was advisable for B.93 to re-contact Aston Villa after 5 June 2005, assuming that M. had then been offered a professional contract on his eighteenth birthday, that is to say on 5 June 2005.

At the end of the season 2004/2005, M. returned to Denmark and never came back to sign a professional contract with Aston Villa, having decided to stay in Denmark. Consequently, the Scholarship Agreement was cancelled on 20 May 2005.

On 17 October 2005, the Danish Football Association sent to the FIFA Dispute Resolution Chamber (DRC) a petition dated 12 October 2005 from B.93 against Aston Villa, regarding payment of training compensation for the transfer of M. In this petition, B.93 claimed for the payment of EUR 70,833 as training compensation for the transfer of M.

On 22 November 2005, FIFA served the English Football Association with a copy of the petition filed by B.93. The reference number of the case used by FIFA was identical to the one used by FIFA in its letter to the English Football Association and to the Danish Football Association dated 14 April 2005 and 3 May 2005. In the letter dated 22 November 2005, FIFA noted *"that the Danish Club maintains its claim against Aston Villa FC and wishes us to proceed with the investigation into this matter"* and requested from the Appellant a copy of the Scholarship Agreement.

On 14 December 2005, Aston Villa wrote a letter to FIFA in which it declared that it would strongly resist the claim for training compensation from B.93 in respect of M. Furthermore, Aston Villa wrote in the same letter that *"accordingly, and without prejudice to our contention that Training Compensation is not due, if it should be found that it is…. Aston Villa FC reserves all rights of appeal"*. Aston Villa reserved its rights to apply to the DRC under Annex 4, Art. 5 para. 4 of the FIFA Regulations for the Status and Transfer of Players, edition 2005 ("RSTP 2005"), for an adjustment of the amount due and to adduce further submissions on this point.

On 19 January 2006 and 10 February 2006, FIFA sent letters to the Danish Football Association, with copies to Aston Villa c/o the FA, requesting some more information as to the exact period of time that the player was registered with B93.

On 18 May 2006, FIFA informed the parties, through the English Football Association and the Danish Football Association, that the investigation into the case regarding training compensation for the player M. had been closed and that the matter would be submitted to the DRC for a formal decision.

On 3 July 2006, FIFA requested further information from the Danish Football Association and the English Football Association concerning, inter alia, the Club categories of the parties at the time M. was within each jurisdiction. In this letter FIFA clearly wrote that the matter *"will be submitted to the Dispute Resolution Chamber for a formal decision shortly"*. The English Football Association answered this request in a fax sent to FIFA dated 6 July 2006 and the Danish Football Association in a fax to FIFA dated 18 July 2006. During the hearing at the CAS, and in response to the questions of the Panel, the witness for the Appellant stated that the letters of FIFA of 19 January 2006, 10 February 2006, 18 May 2006 and 3 July 2006, were not transferred to Aston Villa by the FA.

On 4 August 2006, FIFA informed the parties, through their respective national associations, that a hearing of the DRC had been scheduled for 17 August 2006. A week later, on 11 August 2006,

Aston Villa sent a fax to FIFA in which it submitted that the matter had been referred to the DRC at very short notice, with the result that the Club had very little time to make further representations, having received no further correspondence or acknowledgement from FIFA following the letter dated 14 December 2005. Aston Villa requested the postponement of the DRC hearing in order to be given the opportunity to attend the hearing and to make further representations.

On 16 August 2006, FIFA replied to the English Football Association that it considered that each party had already had the opportunity to present its position "twice" in accordance with the procedural rules of FIFA, and therefore that the investigation was deemed to be closed. FIFA added that it was up to the DRC to decide whether the request for postponement of the hearing was to be admitted and whether the investigation should be reopened.

On 17 August 2006, the DRC issued a decision, which was served to the parties by a fax dated 3 November 2006, on the claim presented by the Respondent, stating as follows, in relevant parts ("The Decision"):

"(…)

6. (…) The Chamber deemed it appropriate to firstly examine the allegation of Aston Villa FC that it has not had the right to be properly heard throughout the proceedings in the case at hand.

(…)

11. The members of the Chamber then referred to the procedure outlined in Art. 6 of the Rules Governing the Practice and Procedures of the Dispute Resolution Chamber, in accordance with which only one exchange of correspondence should be instituted. Taking into account the abovementioned details, the members of the Chamber conclude that in line with the said Procedural Rules, the Respondent has been given the opportunity to present its response to the claim and no second exchange of correspondence has taken place.

12. As far as the Respondent's request for an oral hearing in the case at hand is concerned, from Art. 6.9 of the aforementioned Procedural Rules, it can be noted that the DRC should deal with the case on the basis of the documents submitted by the parties. The members of the Chamber confirmed that such is the standard procedure followed in cases submitted in front of it (…).

(…)

14. For all these reasons, the Chamber unanimously concluded that the Respondent's right to be heard has not been infringed upon in any way.

(…)

20. Taking into consideration the criteria set out in the stated Art. 2 and the monies payable to Mr M. on the basis of the "Scholarship Agreement", the members of the Chamber concluded unanimously that the player evidently received remuneration in excess of the expenses and costs described in par. 2 of the said article.

(…)

24. Taking into consideration the above, the Chamber concurred that the relationship between the Respondent and the player, M., must be regarded as non- amateur.

(…)

30. Taking into account points II.27 above, the amount payable by the Respondent for the training throughout the player's aged from 13 to 16 is calculated as follows. The player has been registered (a) two months in the season of the player's age of 13-14 (EUR 1.666,- pro rata temporis) ; (b) one full year in the season of the

player's age of 14-15 (EUR 10.000,- pro rata temporis) ; and (c) half a year in the season of the player's age of 15-16 (EUR 30.000,- pro rata temporis).

31. *Taking into account the above, the Chamber decided that the Respondent is liable to pay the amount of EUR 41.666 to the Claimant as compensation for the training and education of the player, M"..*

For the above-mentioned reasons, the DRC decided the following:

"1. The claim of the Claimant, B 93 Copenhagen, is partially accepted.

2. The Respondent, Aston Villa FC, has to pay the amount of EUR 41.666 to the Claimant.

3. Any further claims of the Claimant are dismissed.

4. The amount due to the Claimant has to be paid by the Respondent within 30 days as from the date of notification of this decision.

5. If the sum of EUR 41.666 is not paid within the aforementioned deadline, an interest rate of 5 % per year will apply as of expiry of the aforementioned time-limit and the case will immediately be submitted to the FIFA Disciplinary Committee.

6. The Claimant is directed to inform the Respondent immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of the payment received.

7. According to Art. 60 par. 1 of the FIFA's statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and should contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we include hereto. Within another 10 days following the expiry of the time-limit for filling the statement of appeal, the Appellant should file a brief stating of facts and legal arguments giving rights to the appeal with the CAS (cf. point 4 of the directives)".

On 24 November 2006, Aston Villa filed a statement of appeal with the Court of Arbitration for Sport (CAS). A hearing was held on 18 April 2007 in Lausanne.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Art. 60 ff. of the FIFA Statutes in force as of 1 August 2006 and Art. R47 of the 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 therefore held a hearing *de novo*, evaluating for itself 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. 60 par. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA and, additionally, Swiss law.

6. In the present matter, the parties have not chosen the application of any particular law. Therefore, the rules and regulations of FIFA apply primarily and Swiss law applies complementarily.

7. It is accepted by both parties that the RSTP 2001 shall apply to the present matter.

Admissibility

8. The appeal was filed within the deadline provided by Art. 61 of the FIFA Statutes and stated in the Decision, that is within 21 days after notification of such Decision. The parties complied with all of the other requirements of Art. R48 of the Code, including the payment of the Court Office fee.

9. It follows (and is accepted by B.93) that the appeal filed by Aston Villa is admissible.

Main Issues

10. The issues to be resolved by the Panel are:

    a) Is the claim made by B.93 against Aston Villa for the payment of compensation for the training and education of M. time-barred?

    b) Has the right to be heard of Aston Villa been violated so that the Decision made by DRC should be annulled?

    c) While registered with Aston Villa under the regime of the Scholarship Agreement, was the player M. an amateur or a non-amateur pursuant to the RSTP 2001?

    d) Has any training compensation to be paid for the training and education of M. to be reduced in application of Art. 5 para. 5 of the Regulations governing the Application of the RSTP 2001 ("the Application Regulations") or in application of any other provision?

A. Is the claim made by B.93 against Aston Villa for the payment of compensation for the training and education of M. time-barred ?

11. Art. 44 of the RSTP 2001 provides the following:

"The FIFA Players' Status Committee shall not address any dispute under these regulations if more than two years have elapsed since the facts leading to the dispute arose".

12. According to this provision, a dispute relating to the RSTP 2001 cannot be referred to the FIFA Dispute Resolution System indefinitely. In the opinion of Aston Villa, this provision should be interpreted as setting a two-year limitation period. As the claim for the payment of training compensation regarding M. should have been paid within 30 days of the date of the registration of the Player, that is on 3 August 2003, B.93 should have lodged its claim no later than 2 August 2005.

13. We do not need to decide whether the rule in Art. 44 of the RSTP 2001 is to be interpreted as a period of limitation under Swiss law, or the consequences if it is, since the Panel is clearly of the opinion that B.93 has complied with the duty of bringing a formal claim within two years since the facts leading to the dispute arose.

14. The Panel considers that the letter sent by B.93 to the FIFA Players' Status Committee on 1 July 2004 satisfies the criteria of a written request filed with the DRC via the FIFA General Secretariat. Contrary to Aston Villa's contention it clearly seeks a decision regarding the training compensation to be paid by Aston Villa, in as much as B.93 asked FIFA *"to have the matter settled and to determine the amount, which Aston Villa has to pay in compensation to B 93"*. Such a wording cannot be considered as merely an attempt to seek the assistance of the FIFA administration, as argued by Aston Villa, but is to be regarded as a claim made to FIFA.

15. The Panel is not convinced either by Aston Villa's submissions that if the letter dated 1 July 2001 was to be regarded as a formal petition, it should have been presented to the DRC and not to the Players' Status Committee in order to interrupt the limitation period. In the Panel's opinion, it cannot be deduced from the FIFA Regulations that a claim for training compensation has to be presented in particular to the DRC in order for it to be regarded as having been validly submitted. Under the regime of the Dispute Resolution Disciplinary and Arbitration System implemented by the RSTP 2001, there is no clear distinction between the Dispute Resolution Chamber and the Players' Status Committee, to which the Respondent presented its claim on 4 July 2004. The DRC is clearly a part of the Players' Status Committee (see, for instance, Art. 42 para. 1 (b) (i) of the RSTP 2001) and the two bodies do not appear to be for present purposes distinguishable. Thus no weight can be given to the fact that the letter of B.93 dated 1 July 2004 was addressed to the Players' Status Committee and not to the DRC. It also has to be noted that Art. 44 of the RSTP 2001 mention the jurisdiction of the Players' Status Committee, and not that of the DRC. If Aston Villa's formalistic and technical interpretations were to be correct, the time limit resulting from Art. 44 of the RSTP 2001 would apply only to the Players' Status Committee and not to the DRC.

16. Furthermore, it is significant that FIFA acknowledged receipt on 20 August 2004, on behalf of the DRC, of B.93's letter of 1 July 2004, referring expressly to *"the proceedings"*. Furthermore, FIFA wrote to the English Football Association on 14 April 2005 and to the English and Danish Football Associations on 3 May 2005, referring to *"training compensation for player M. (…) Ref. no. 05-00137/HDH"*. In the letter of 3 May 2005, it reverted *"to the above referenced litigation"*. The file number mentioned by FIFA in these letters is the same as the one used for the further proceedings which led to the decision subject to the appeal of Aston Villa. These facts show that FIFA itself considered that, as from 20 August 2004 at the latest, proceedings had been initiated between B.93 and Aston Villa regarding the training compensation for M. FIFA itself considered that this dispute opposed Aston Villa to B.93. In such circumstances FIFA would have been estopped from requiring B.93 to lodge with FIFA a further submission to avoid its claim being time-barred, and Aston Villa are in consequence, unable to take the point.

17. It follows that B.93 has presented its claim in front of the FIFA in due time and that this claim is not time-barred pursuant to Art. 44 RSTP 2001.

B. Has the right to be heard of Aston Villa been infringed so that the Decision made by the DRC should be annulled?

18. Aston Villa submits that the DRC decision should in any event be annulled, as there were clear procedural flaws in the way in which the DRC decision was reached and the manner in which the FIFA administration handled the case, as a result of which, Aston Villa has been denied the right to a fair hearing. In particular, Aston Villa submits that it should have been given the opportunity to present further submissions before the DRC made its determination.

19. According to Art. R 57 of the Code, the Panel has full power to review the facts and the law. In consequence, even if a violation of the principle of due process or of the right to be heard occurred in prior proceedings, it may be cured by an appeal to the CAS (see CAS 94/129, published in *Digest of CAS Awards I*, pp. 187 at 203; CAS 2005/A/1001). The virtue of an appeal system which allows for a rehearing before an appealed body is that issues relating to the fairness of the hearing before the Tribunal of First Instance *"fade to the periphery"* (CAS 98/211, published in *Digest of CAS Awards II*, pp. 255 at 264, citing Swiss doctrine and case law). Furthermore, the case law of the Swiss Supreme Court clearly establishes that any infringement of the right to be heard can be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal of first instance and in front of which the right to be heard had been properly exercised (see ATF 124 II 132, especially p. 138 ; ATF 118 Ib 111, especially p. 120 and ATF 116 I a 94, especially p. 95).

20. The Appellant used the opportunity provided by the FIFA Statues to bring the case before CAS, where all of its fundamental rights have been duly respected. In the present proceedings, Aston Villa has presented extensive submissions, embracing every point on which the appeal is based, all of which have been duly heard and considered. At the end of the hearing, Aston

Villa expressly confirmed that it had had a full opportunity to present its case. Accordingly if (as to which we make no finding) Aston Villa had been denied a fair hearing by FIFA, the *de novo* proceedings before CAS have cured any such purported violations of the rules of natural justice.

C. While registered with Aston Villa under the regime of the Scholarship Agreement, was the player M. an amateur or a non-amateur under the RSTP 2001?

21. The Appellant submits that the DRC misinterpreted the relevant rules when concluding that M. had to be classified as a non-amateur player. Aston Villa contended that M. did not receive any remuneration in connection with football activity. Furthermore, M. was not in an employment relationship with Aston Villa since students under the Scholarship Agreement could not be considered as employees. Aston Villa submits also that the Scholarship allowance received by M. did not constitute remuneration in excess of the expenses and costs incurred in respect of participation in any activity connected with association football. Finally, the classification of M. as a non-amateur would be contrary to English law and inconsistent with the status of the player as determined by the English Football Association.

22. The Panel had extensive discussions about the status of the player in the present case. This question is not an easy one and there is force in the arguments of both parties. It is however clear that the Panel has to base its analyses on the relevant FIFA rules, as long as they do not violate any superior legal norm, and avoid conclusions based either on preconceptions as to the difference between amateur and professional, or on alternative (but immaterial) texts or instruments.

23. Both parties accept that the FIFA rules in play are, for the present case, the RSTP 2001. Within such body of rules, FIFA has identified only two categories of players. According to Art. 1 of the RSTP 2001, players of national associations affiliated to the Federation are either amateur or non-amateur. There is no space under the RSTP 2001 for a third, or hybrid category, to which might belong players undertaking training dedicated to the practice of football but who are at the same time students with the goal of becoming professional football players, even if such players would not ordinarily (i.e. in common professional parlance) be called either amateur or non-amateur.

24. Under the RSTP 2001, the test expressly chosen by FIFA to differentiate between an amateur and a non-amateur player is set out in Art. 2 of the RSTP 2001. This provision reads as follows:

> *"1. Players who have never received any remuneration other than for the actual expenses incurred during the course of their participation in or for any activity connected with association football should be regarded as amateur.*
>
> *2. Travel and hotel expenses incurred through involvement in a match and the costs of a player's equipment, insurance and training may be reimbursed without jeopardising a player's amateur status.*
>
> *3. Any player who has ever received remuneration in excess of the amount stated under par. 2 of this*

Article in respect of participation in or an activity connected with association football should be regarded as non-amateur unless he has reacquired amateur status under the terms of Art. 26 par.1 below".

25. The only relevant criterion according to this provision is thus one of the remuneration. In the Panel's view, the receipt by the player of any remuneration *"other than for the actual expenses incurred during the course of their participation in or for any activity connected with association football"* is what alone distinguishes an amateur from a non-amateur player.

26. By corollary the Panel considers that the existence (or otherwise) of an employment agreement is not a relevant criterion to determine the status of the player for the purposes of RSTP 2001. Even if, as argued by Aston Villa, Art. 4 of the RSTP 2001 suggests that a non-amateur player should be employed by a club, the Panel does not consider that this can detract from the force of the test set out in Art. 2; Art 4 provides for the consequence of non-amateur status but is not part of its definition. While remuneration is one of the elements of an employment relationship, it is not the only one, and there are many situations where remuneration is received outside an employment relationship.

27. Given the existence of this single remuneration-related test, there is no need to enquire any further on the classification of the agreement between Aston Villa and M., whether under English law or under any other relevant rule. Neither is it necessary to determine whether the Club indeed benefited from the Player's activity, as nothing in the RSTP 2001 indicates that the classification as a non-amateur, and the derivative entitlement to training compensation, is subject to such a condition.

28. Moreover, in the Panel's view, the classification of the player made by his national associations is not decisive, or indeed persuasive. According to Art. 3 para. 1 of the RSTP 2001, *"A player's status should be determined by the national association with which he is registered"*. On this basis, Aston Villa argued that the DRC was not in a position to reverse the English Football Association classification of M. This argument has no foundation in the FIFA rules: indeed it is inconsistent with them. According to the CAS jurisprudence, the determination of the player's status by a national association is subject to review by the FIFA Players' Status Committee (Art. 3 para. 2 of the RSTP 2001) and if the status of a player has to be determined in the context of a dispute concerning training compensation fees, the competent bodies – i.e. the DRC and the CAS – must determine the player's status as a preliminary question (see CAS 2005/A/838).

29. In this context we draw attention to Art. 2 of the preamble of RSTP 2001, according to which the principles under Chapter I of the Regulations, including Art. 2, *"are also binding at a national level"*. We confirm this to mean that the criteria governing the definition of a player as amateur or non-amateur is also binding at national level, and the national associations are themselves required to apply those criteria within their "Jurisdiction".

30. To summarise, the Panel concludes that the sole criterion to determine the status of a player – amateur or non-amateur – under the RSTP 2001 is the remuneration, more precisely whether the player is paid *"any remuneration other than for the actual expenses incurred during the course of their*

participation in or for any activity connected with association football" subject to the proviso that *"Travel and hotel expenses incurred through involvement in a match and the costs of a player's equipment, insurance and training may be reimbursed without jeopardising a player's amateur status"*. The consequence of the application of this criterion depends upon the fact of any particular case.

31. In that respect, and as a matter of evidence, the Panel relied on and accepted the testimony given by the witness Gordon Taylor, Chief Executive Officer of the English Professional Footballers' Association. Gordon Taylor candidly explained that the reason why the remuneration under the Scholarship Agreement increased annually is that an adolescent's needs increase as the adolescent gets older; he instanced the buying of clothes, gadgets, telephone costs, or even taking out a girlfriend. The Panel naturally accepts that the money so paid may well fall short of a living wage and that the player could not accordingly subsist in England without other sources of income. But the strict test set in Art. 2 of the RSTP 2001 does not engage such considerations and the Panel considers that the remuneration so provided to the player exceeds the stipulated limit of expenses incurred with the footballing activity. The Panel is constrained to conclude that the status of M. at the time he was registered with Aston Villa was that of a non-amateur player. As a consequence, upon joining Aston Villa as a non-amateur, the Player triggered B.93's entitlement to training compensations, in accordance with the FIFA rules.

32. The Panel emphasises for the avoidance of doubt that its conclusion is based on the relevant FIFA Rules and the version of the scholarship agreement applied to M. Later amendments to the FIFA Rules and later versions of the scholarship agreement were not considered as they were not relevant to this matter.

D. Has any training compensation to be paid for the training and education of M. to be reduced pursuant to Art. 5 para. 5 of the Application Regulations or pursuant to any other provision?

33. Under Art. 5 para. 5 of the Application Regulations:

"In the EU/EEA, if the training club does not offer the player a contract, this should be taken into account in determining the training compensation payable by the new club, without prejudice to the right to compensation of the previous training club".

34. FIFA Circular No. 769 of 24th August, 2001 adds, on page 4, reads as follows:

"Furthermore, within the EU/EEA, in case a player younger than 23 years does not receive a contract from the club where he has trained, and this player moves to another non-amateur club, this factor must be taken into account when deciding whether any training compensation should be due, and what the amount of this compensation should be. As a matter of principle, the player's training club will not be entitled to receive training compensation unless this training club can demonstrate to the Dispute Resolution Chamber that it is entitled to training compensation in derogation of this principle".

35. Aston Villa argues that B.93 failed to demonstrate that it had offered M. a contract and that, as a consequence, no training compensation is owed to B.93.

36. B.93 did not present any contrary evidence that it offered a contract to M.

37. The FIFA rules are ambiguous as to whether Art. 5 para. 5 of the Application Regulations applies also to transfers of amateur players who signed their first non-amateur contract with a new club. The duty to offer a player a contract would not self-evidently be imposed on the club for which a player is registered as an amateur. This conclusion that Art. 5 para. 5 does not apply for that reason finds some support in the wording of the Letter Circular No. 769, which states that the requirement of a previous offer from the training club exists only when a player is transferred to *"another non-amateur club"*. This wording led the sole arbitrator in the CAS 2005/A/838 case (above-mentioned) to consider that under the RSTP 2001, the training compensation cannot be conditional upon the former club's offer to the player of a non-amateur contract.

38. A somewhat different opinion has been expressed recently in an award rendered by CAS on 7 February 2007 (CAS 2006/A/1152), which dealt with the new version of the similar principle contained in Art. 6 para. 3 of Annex 4 of RSTP 2005. In that matter, CAS considered that, under the RSTP 2005, if the training club does not offer a professional contract to one of its amateur players and the amateur player signs his first professional contract with another club, the training club is not entitled to training compensation, unless the former club can justify that it is entitled to such compensation (see CAS 2006/A/1152, par. 8.10). As to the justification, CAS considered that the training club has to prove that it has taken a proactive attitude vis-à-vis the player so as to show clearly that the club still counts on him for future seasons (CAS 2006/A/1152, par. 8.16).

39. In the 2006 FIFA Commentary on the RSTP 2005, the FIFA administration provides the following comment on Art. 6 para. 3 of Annex 4 (p. 125):

> *"In order to safeguard its entitlement to training compensation and demonstrate its real intention to continue its relationship with the player concerned, the former club must offer the player a contract in writing via registered mail at least 60 days before the expiry of his current contract. The offer in the new contract shall at least be of an equivalent value to the current contract, otherwise it is as if the club did not offer a contract at all, with the consequence that if the player moves to another club within the EU/EEA, no training compensation is payable to the former club".*

40. Therefore, according to FIFA's interpretation of its own rules, there must be an existing contract between the former club and the player and the former club's duty is to offer a new contract of an equivalent value of such contract, failing which it would lose its entitlement to training compensation.

41. It follows that both the interpretation of CAS of Art. 5 para. 5 of the Application Regulations and the interpretation of the Art. 6 para. 3 of the Annex 4 of RSTP 2005 lead to the same conclusion: only a club which already had a contract with a player is obliged to offer a new contract if it intends to secure its entitlement to training compensation. Therefore, the argument of Aston Villa that B.93's failure to offer M. a contract disentitled it to any training compensation at all must be rejected.

42. In the present case, the compensation due for the training of M. is to be calculated taking into account the prescribed criteria. M. was born in 1987 and played for B.93 two months during the season 2001, the whole season 2002 and half of the season 2003. Pursuant to Art. 7 para 2 of the Application Regulations, the amount of compensation for players aged 12 to 15 must be based on the training and education costs for category 4. According to the FIFA Circulars no. 769 and 826, three years must account for such period, namely the season during which the player turns 12, 13 and 14 (see CAS/2004/A/594, par. 7.2.4 and CAS 2003/O/527). Thereafter, the indicative amounts mentioned in the FIFA Circular no. 826 of 31 October 2002 must apply as follows:

- Two month during season 2001 (14 years old) EUR 1,666
- For the season 2002 (15 years old): EUR 60,000
  that is to say the average of the training costs for the two categories if the player moves from a lower to a higher category (cf. Art. 7.4 a of the Application Regulations), namely the average of EUR 30,000 for category 3, in which B.93 is placed, and EUR 90,000 for category 1, in which Aston Villa is placed.
- Half of season 2003 (16 years old) EUR 30,000
- **Total**: **EUR 91,666**

43. The compensation for the training and education of M. between 1 November 2001 and 1 July 2003 thus amounts to EUR 91,666. The decision of the DRC, on this point, is not correct. The DRC wrongly calculated the training and education costs of M. on category 4 for the season 2002 while it should have applied the average indicative amounts of categories 3 and 1 (see above). Therefore, in fact, the full training compensation to which B.93 would in principle have been entitled has been erroneously reduced by EUR 50,000.

44. In consequence of such error in the calculation of the training compensation, the claim of B.93 has already been reduced by almost 55%. Had it had to exercise its discretion according to Art. 5 para. 5 of the Application Regulations, the Panel would not have reduced the amount of the training compensation by more than 50%. The Panel thus considers that any request for a supplementary reduction of the training compensation awarded to B.93 has to be rejected.

45. This reasoning has to be applied, *mutatis mutandis*, to the other requests for reduction made by Aston Villa, based on the application of FIFA Circular No. 826. Even assuming that the nature of the Scholarship system constitutes a particular circumstance, leading to the adjustment of the training compensation in order to reflect the specific situation of the case, the Panel sees no grounds to apply a reduction in accordance with the criteria set forth in the FIFA Circular no. 826 based either on the evidence produced or on any submissions by Aston Villa on it, relating for instance to invoices, training centre budgets, etc.,. At any rate, the Panel is of the opinion that such potential adjustment may certainly not exceed the one resulting from the mistake of the DRC in calculating the amount of the training compensation.

46. However, although it claimed an amount of EUR 70,833 as compensation for the training and education of the Player before FIFA, B.93 did not lodge any submission within the present arbitral proceedings and did not submit any counterclaim with respect to the amount granted in the Decision. B.93 indeed clearly stated in its letter of 18 January 2007 to the CAS Court Office that it had *"no further comments to the case than those already expressed in the decision by FIFA"*. It follows that in the light of the B.93's pleaded case that the Panel is not in the position to amend the amount decided upon by the DRC.

47. Based on the above-mentioned considerations, the Panel is of the opinion that there is no ground either to reduce or to increase the amount of the training compensation awarded to B.93.

Conclusion

48. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made, the Panel finds that B.93 is entitled to compensation for the training and education of the player M.

49. There is no reason to increase or reduce the amount awarded to B.93 in the Decision of the DRC dated 17 August 2006.

50. Aston Villa's appeal is therefore dismissed. Aston Villa shall pay to B.93 an amount of EUR 41,666 and this amount shall bear interest of 5% *per annum* starting on 4 December 2006, i.e. the Monday following the date on which the deadline of thirty days set by the FIFA decision expired.

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 24 November 2006 by Aston Villa against the decision issued on 3 November 2006 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision issued on 3 November 2006 by the FIFA Dispute Resolution Chamber is confirmed.

3. Aston Villa FC is ordered to pay to B.93 Copenhagen EUR 41,666 (forty-one thousand six hundred and sixty six Euros), plus 5% interest per annum starting on 4 December 2006 until the effective date of payment.

4. All other motions or prayers for relief are denied.

(…).