



Arbitration CAS 2009/A/1757 MTK Budapest v. FC Internazionale Milano S.p.A., award of 30 July 2009

Panel: Mr Alasdair Bell (United Kingdom), President; Mr Gyula Dávid (Hungary); Mr Bernhard Welten (Switzerland)

Football

Late production of documents

Entitlement of a club to receive training compensation

Calculation of training compensation

1. Under Art. R56 of the Code, a CAS Panel has discretion to admit documents lately produced by a party if such documents are considered potentially important in light of the factual context and in the interest of sporting justice.
2. Under the 2005 FIFA Regulations, a training club may be entitled to receive training compensation even if it has not offered the player a contract provided it *“can justify that it is entitled to such compensation”*. The standards in terms of formal requirements are higher in the case of professionals than they are for amateurs. More generally still, having regard to the fundamental principle of fair play and bearing in mind the spirit of the Olympic Charter on which the CAS itself is based, a club which trained a player should be compensated for its training efforts and the club that has benefited from the training efforts invested by the training club should be obliged to pay a training compensation to the training club. The aims of sporting justice shall not be defeated by an overly formalistic interpretation of the FIFA Regulations which would deviate from their original intended purpose.
3. The sum of training compensation to be paid should be based on the standard FIFA multiples in accordance with the system foreseen under Article 6 of Annex 4 of the 2005 FIFA Regulations. The sum of training compensation due to the training club as a result of application of the standard FIFA multiples can be reduced by the Panel that has discretion to take all surrounding facts and circumstances into account.

The Appellant, MTK Budapest (“MTK”), is a football club registered with the Hungarian Football Association. MTK plays in the top division of the Hungarian national football league, which has been affiliated with the Fédération Internationale de Football Association (FIFA) since 1907.

The Respondent, FC Internazionale Milano SpA (“Inter”) is a football club registered with the Italian Football Association, which has been affiliated with FIFA since 1905. Inter plays in the top division of the Italian football league (“Serie A”).

The player F., born on 12 July 1988, was registered as an amateur with MTK from 1 July 2003 until 30 June 2006. Consequently, he was registered with MTK between the ages of 15 and 18. F. has captained the Hungarian under 19 team and has also been called up for the full national team, making his debut for Hungary against Latvia on 7 February 2007.

It appears that, in July 2006, negotiations took place between representatives of MTK and representatives of Inter in relation to the proposed transfer of F. to Inter. The Respondent has not denied that these negotiations occurred but states in its Answer that *“the Appellant provided no evidence of the said negotiations...”* and *“to know whether the alleged negotiations really took place between the parties, and in which circumstances, or to ascertain the terms and the outcome of those negotiations, is totally pointless with regard to the present case”*. It is alleged by MTK that, in the course of these negotiations, representatives of Inter intimated that, unless the transfer of the player could be agreed, it would be arranged for F. to be transferred to Inter via a third club located in Malta. In the event, direct negotiations between MTK and Inter for the transfer of the player were not successful.

On 22 August 2006 (shortly after the player’s 18th birthday) the Hungarian Football Association (MLSZ) issued an International Transfer Certificate (ITC) for F. to move to Malta and, on 24 August 2006, he was registered as a professional player with the Maltese club, Pieta Hotspurs FC. According to the terms of the contract, he was employed by Pieta Hotspurs until 30 June 2007 and was to be paid the sum of 250 Maltese Liri (approximately EUR 580) a month.

On 31 August 2006, the Maltese Football Association issued an ITC to the Italian Football Association and the player was then registered with Inter. According to the documents on the case file, Inter paid Pieta Hotspurs a fee of EUR 90,000 for the player. During the time he was registered with Pieta Hotspurs (that is to say, for the 9 day period between 22 August 2006 and 31 August 2006) F. did not take part in any competitive match for the club.

MTK has received no training compensation for the player, whether from Pieta Hotspurs or from Inter. The main question to be decided by the Panel in this case is whether MTK is entitled to receive such training compensation and, if so, in what amount. In this respect, the Panel must also consider whether MTK established that it offered the player a contract before he left the club and, if not, how this issue affects the level of training compensation to be paid (if any). These questions are discussed further below.

MTK contacted FIFA on 28 November and 14 December 2006 and requested payment of training compensation in the sum of EUR 273,452 (including interest) to be paid by Inter. MTK argued that the contract between F. and Pieta Hotspurs was a fiction and was essentially designed to circumvent the applicable FIFA Regulations on training compensation since, according to these Regulations, when players are transferred within the EU/EEA area, training compensation is based on the costs of the training club (more particularly, the category into which the training club falls). Also, when a

player is transferred from a club in a lower category to a club in a higher category, training compensation is based on the average costs of the two clubs.

For present purposes, it may be noted that MTK is in Category 2; Pieta Hotspurs is in Category 3; and Inter is in Category 1. According to the Commentary on the FIFA Regulations on the Status and Transfer of Players (in particular, footnote 156 on page 118 which refers to FIFA Circular letter no. 959 of 16 March 2005 and sets out the training costs, established on a confederation basis for each category of club) the training costs established for the European confederation are: Category 1: EUR 90,000; Category 2: EUR 60,000; Category 3: EUR 30,000; and Category 4: EUR 10,000. Suffice to say that, it follows from the system established under the FIFA Regulations that training compensation will be less when a player is signed from a club in a lower category. As explained above, Pieta Hotspurs is in a lower category than MTK.

For its part, Inter maintains that it signed F. for a sum of EUR 90,000 following ordinary negotiations with Pieta Hotspurs. Further, Inter states that MTK produced no evidence demonstrating that it actually offered the player a contract and, for this reason, is not entitled to training compensation in any event.

Without needing to study the full circumstances of F.'s move from MTK to Pieta Hotspurs and then (9 days later) to Inter, the DRC considered, first and foremost, whether MTK had, in fact, offered a contract to F. In this respect, the DRC noted that Article 6, paragraph 3 of Annex 4 of the 2005 version of the FIFA Regulations on the Status and Transfer of Players (being the version applicable to the present case) provides as follows:

"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)".

The DRC observed that MTK had not submitted any documentary evidence demonstrating that it offered the player a contract and therefore failed to discharge the burden of proof in this respect. The DRC found that *"due to the lack of proof with regard the Claimant's allegations of having made an offer for a new employment contract, the Dispute Resolution Chamber decided that it cannot back the Claimant's position"*. On this basis, the DRC concluded that MTK was not entitled to receive training compensation without investigating the circumstances of the case further. On 5 January 2009, MTK filed a Statement of Appeal with the CAS against the DRC Decision.

On 5 January 2009, MTK filed a Statement of Appeal with the CAS in which it asked for the DRC Decision to be set aside and an award of training compensation made in its favour. On 16 January 2009, MTK filed its appeal brief in which it made the following request for relief:

"First, we respectfully request compensation in full for the loss of training fees, which fees should have been paid had by Inter to MTK if acquiring F. on the basis of a negotiated contract with MTK. With late payment, as of the date of filing this appeal, we estimate such loss to be EUR 273,452.

Second, we respectfully request punitive damages in the amount of EUR 500,000 in order to deter Inter from committing such abuse in the future. In light of the threat posed by MTK and, indeed Hungarian football, by the abuse of Inter – which threatens to ruin the country’s only viable youth football training program – we believe such punitive damage is appropriate.

Third, we respectfully request EUR 40,000 in legal fees and expenses”.

In the Appeal Brief, MTK alleged, inter alia, that it presented a draft contract to F. at a meeting on 13 July 2006. Nevertheless, this contract was not provided as an exhibit with the Appeal lodged with CAS. Subsequently, when the Panel notified the parties of the date for the hearing (which took place on 8 April 2009) MTK called no witnesses to testify to the assertion that F. was offered a contract at the meeting on 13 July 2006 or at any other time for that matter. The Panel finds this surprising, given the basis on which the appealed Decision of the DRC was made.

At the hearing on 8 April 2009, MTK produced certain documents (without giving prior notice to either the Panel or the Respondent); these being (1) a Declaration of T.P. (FIFA Player Agent); (2) a draft professional contract; (3) a transcript of Hungarian Court proceedings; and (4) an amateur contract.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from Article 62 ff. of the FIFA Statutes and Article R47 of the Code of Sport-related Arbitration (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 the present dispute.
3. Under Article R57 of the Code, the Panel has full power to review the facts and the law. The Panel has exercised its rights under this provision.

Applicable law

4. Article 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. Article 62 paragraph 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 agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall apply primarily, and, additionally, Swiss law.

Admissibility

7. The appeal was filed within the deadline provided by Article 63 of the FIFA Statutes and stated in the DRC Decision, i.e., within 21 days after notification of such decision. It complied with all other requirements of Article R48 of the Code.
8. It follows that the appeal is admissible.

Procedural issues

9. After deliberation and given the unusual nature of the case, the Panel decided to admit the documents produced by MTK at the hearing pursuant to Article R56 of the Code. The Panel considered that given the potential importance of these documents and in light of the unusual facts and movement pattern of F., in the interest of sporting justice it was in the Panel's discretion to consider this new material.

Merits

10. Nevertheless, after careful consideration of the relevant material, the Panel shares the view of the DRC that the Appellant has not demonstrated to a satisfactory standard of proof that a professional contract was, in fact, offered by MTK to the player prior to his move to Pieta Hotspurs.
11. In particular, the Panel observes that the draft professional contract allegedly offered to F. bears no date and, as such, the Panel is unable to determine with the necessary degree of certainty that it was offered to the player at the relevant time. Nor has any satisfactory explanation been given as to why a contract supposedly drawn up by MTK in the summer of 2006 was not furnished to the DRC when MTK brought its initial claim in December 2006 and was not (as noted) filed as an exhibit to the Appeal to the CAS. Further, the Panel finds it counterintuitive to suppose that (as alleged by MTK) this same draft professional contract was offered to the player at a meeting on 13 July 2006 which was, in fact, the very same meeting at which representatives of MTK were attempting to negotiate the transfer of the player to Inter.
12. In light of the foregoing, the Panel comes to the conclusion that MTK has not demonstrated to a satisfactory standard that it offered the player F. a professional contract. Furthermore,

given the history of events as described, the Panel has serious doubts as to whether a professional contract was ever offered to F. and finds the allegations of MTK to be lacking in credibility in this respect. The Panel must now assess what consequences these conclusions have for the possible award of training compensation in this case.

13. As a point of departure, the Panel observes that the rationale for the provisions in the FIFA Regulations regarding training compensation is that clubs should be encouraged to train players and those clubs that carry out the training process successfully should be rewarded for their training efforts. By the same token, those other clubs which enjoy the fruits of that training process should be obliged to pay something in compensation for the training efforts engaged in by others.

14. The Panel also observes that provisions on training compensation were integrated into the FIFA Regulations following a lengthy procedure before the European Commission which culminated in 2001 and which resulted in a substantial overhaul of the FIFA rules concerning the international transfer of players. Modifications to the previous rules were designed to ensure that the system governing the international transfer of players was consistent with Community law. Provisions on training compensation were an important part of the overall “settlement” reached with the European Commission and, in this respect, the relevant provisions of the 2001 Regulations stated as follows:

“Art. 13: 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. (...).”

Art. 16: The amount of compensation to be paid for training and education shall be calculated in accordance with parameters set out in the Application Regulations, which shall also set out how the compensation amount shall be allocated between the clubs involved in the training and education of the player.

Art. 5(5) of the Regulations governing the Application of the RSTP 2001: In the EU (EEA), if the training club does not offer the player a contract, this shall be taken into account in determining the training compensation payable by the new club, without prejudice to the rights to compensation of the previous training club”. [emphasis added]

15. Subsequently, the revised (2005) FIFA Regulations contain the following provisions relating to training compensation:

“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”.

16. As already noted, Article 6, paragraph 3 of Annex 4 of the 2005 Regulations provides as follows:

“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)". [emphasis added]

17. As noted earlier, it is the 2005 Regulations which apply in the present case. At the same time, however, FIFA itself has clarified that the aim of the revisions introduced in 2005 was simply to "*facilitate the evidence of a contract offer being made*". In its Decision, the DRC stated that "...*when revising the Regulations it was decided to integrate in the 2005 edition of the Regulations some formal preconditions in order to facilitate the evidence that a contract offer was effectively made... This is the actual aim of the relevant formalities*". Consequently, the Panel does not interpret the 2005 revisions to the Regulations as constituting a substantive or material alteration to the 2001 regulatory regime because, as FIFA has said, the changes introduced related only to matters of form, and not of substance.
18. The 2001 Regulations indicate that if a training club does not offer a player a contract this factor should "*be taken into account*" in determining whether or not training compensation is to be paid. Under the 2005 Regulations, a training club may be entitled to receive training compensation (even if it has not offered the player a contract) provided it "*can justify that it is entitled to such compensation*". Against the background of this regulatory regime, the Panel considers that the key issue to decide in the present case is not so much whether the player was offered a contract by his training club but rather whether, having regard to all the circumstances of the case, MTK is entitled to receive training compensation for having trained F. and, if so, in what amount.
19. In this respect, the Panel observes that, in certain previous decisions of CAS (notably, CAS 2006/A/1152) training compensation has been awarded in the CAS 2006/A/1152 case of the international transfer of an amateur player in circumstances where the training club did not offer a professional contract to the player in question. So, for example, in the case, the CAS held that, to justify entitlement to training compensation, the training club should show a *bona fide* interest in retaining the services of the player for the future (paragraph 8.16). In that particular case, the CAS stated that it would have been "*contrary to common sense*" to conclude that the club was not at all interested in keeping the player any longer (paragraph 8.22). At the same time, the CAS observed that:

"it would also be unreasonable to require a club to offer a professional contract to all of its young amateur players in order to avoid the risk of forfeiting all rights to training compensation. It would be too costly and it would contravene the spirit and purpose of the FIFA transfer rules, which are set out in order to grant to clubs 'the necessary financial and sportive incentives to invest in training and education of young players'".
20. A similar principle was expressed in CAS 2008/A/1521, where the CAS stated as follows:

"As correctly mentioned in CAS 2006/A/1152 one cannot expect a club, notably an amateur club, to focus on all its amateur players for whom training compensation might be paid by a third football club and consequently to make formal offers to all those players".

21. On the other hand, in that same case, the CAS took the view that the standards in terms of formal requirements are higher in the case of professionals than they are for amateurs. Consequently, if a professional club did not offer a new contract to one of its players who was already a professional then it would have a higher hurdle to overcome to demonstrate that it was still entitled to training compensation nevertheless. For the purposes of the present case, the Panel simply notes that F. was registered as an amateur player with MTK from 1 July 2003 until 30 June 2006 (as evidenced by the letter from the Hungarian Football Federation dated 29 August 2007 to FIFA, enclosing a copy of the Player Passport, which appears on the FIFA case file).
22. To the above considerations, the Panel would only add that, in the case of a player who has already signed a professional contract, a training club is more likely to have been able to reap at least some of the rewards for the training efforts it has made insofar as the player is already performing a paid (i.e. professional) service for the club. In other words, if a player becomes a professional at the club where he was trained as an amateur then his training club may already be receiving at least some return on the investment that it has made.
23. In the present case, it appears that MTK invested considerable training efforts during the key formative years of F.'s training and education (namely, from the age of 15 to 18). Furthermore, the Panel understands that the training efforts expended by MTK in relation to F. are not questioned by either side in this case. Moreover, the training seems to have been productive and largely successful, as the player was selected to captain the under 19 Hungarian team, was called up for the full national team, and has attracted the interest of one of the top clubs in Europe (i.e. Inter). In all these circumstances, the Panel also finds that it would be "*contrary to common sense*" to suppose that MTK would not have been at all interested in keeping the player, had it been able to do so.
24. For these reasons, the Panel considers it to be justified that MTK should receive training compensation for the player F. As a starting point, the Panel considers that the sum of training compensation to be paid should be based on the standard FIFA multiples. In accordance with the system foreseen under Article 6 of Annex 4 of the 2005 FIFA Regulations, and since F. moved from a club in Category 2 (EUR 60,000) to a club in Category 1 (EUR 90,000), the sum of training compensation shall be assessed on the average of the two (EUR 75,000) for the period during which the player was registered with MTK (3 seasons from July 2003 to July 2006). However, during the first season (July 2003 – July 2004) the Panel notes that the player was only 15 years of age and, therefore, in accordance with Article 5 paragraph 3 of Annex 4 of the 2005 FIFA Regulations, training compensation for that season should be assessed at Category 4, which is EUR 10,000. Accordingly, it follows that the basic sum of training compensation that would be due to MTK in this case would be EUR [2 x 75,000] + 10,000 which gives a total of EUR 160,000.
25. Furthermore, bearing in mind what has been said above and, in particular, since it is Inter that has benefited from the training efforts invested by MTK, it is also Inter that should be obliged to pay any sum of training compensation determined by the Panel. In this respect, Pieta Hotspurs does not appear to have benefited from the training efforts invested by Inter

because, as the record shows, the player was only registered with that club for 9 days and never even played a competitive match in Malta.

26. It may be noted that in certain previous cases (for example, CAS 2008/A/1521), referred to above) CAS was reluctant to oblige a new club to pay training compensation in circumstances where the new club may really not have known that it might be liable to pay training compensation in the event of the transfer of the player, for example, as the new club was not privy to any negotiations that may have taken place between the player and his previous club (see, in particular, paragraph 65 of the Award in CAS 2008/A/1521). However, the Panel considers that the present case represents a different set of circumstances and notes, in particular, that Inter has not suggested that it was unaware that it might be obliged to pay training compensation in the case of F. Indeed, the facts of the case point to the opposite conclusion.
27. As a related matter, the Panel also observes that it is difficult to understand why a player who is rated highly and who has captained the Hungarian under 19 team and who has attracted the attention of Inter Milan should elect to move to a club in Malta and stay there for little more than a week before moving on to Italy. No doubt this unusual pattern of movement was also what the DRC had in mind when, at paragraph II.16 of its Decision, it stated as follows:
“Yet the Chamber deemed it important to emphasize that should it become aware of any blatant circumvention of the regulations or that a party makes abuse of its legal rights, such stance would be severely punished”.
28. Having said all this, and while the Panel is of the opinion that MTK (being the club that trained F.) should be compensated for its training efforts, the Panel is also somewhat troubled by the manner in which evidence of a contract being offered to the player was submitted by MTK. In particular, the Panel does not comprehend how the contract supposedly offered to the player by MTK was not made available to the DRC, nor why this contract was not submitted together with the Appeal brief to CAS, nor why it was only produced at the Oral Hearing with no prior warning to either the Panel or the Respondent. Bearing in mind that the Panel has discretion to take all surrounding facts and circumstances into account, the Panel considers that this element should also be reflected in the award of training compensation made to MTK. Consequently, the Panel is of the opinion that the sum of training compensation due to MTK as a result of application of the standard FIFA multiples should be reduced by 10% (that is to say, EUR 160,000 minus EUR 16,000). Furthermore, the Panel is of the opinion that no interest should be paid on this sum for the same reasons.
29. Finally, and for the avoidance of doubt, the Panel also wishes to emphasize that requiring Inter to compensate MTK for the training of F. cannot in any sense be construed as erecting a barrier to the free movement of the player within the territory of the European Union. To the contrary, not only has the European Commission endorsed the principle that training clubs should be rewarded for their training efforts (in the settlement of the case with FIFA regarding the international transfer of players) but both the Commission and the European Court of Justice have repeatedly recognized the importance of promoting the training and education of players more generally. In this respect, the Panel refers to the very recent Opinion of Advocate-General Sharpston in the case of *Olympique Lyonnais v. Olivier Bernard and*

Newcastle United (Case C-325/08, Opinion of 16 July 2009) and, in particular, paragraph 1 of that Opinion where the Advocate-General states as follows:

“clubs are understandably reluctant to see ‘their’ best young hopefuls, in whose training they have invested heavily, poached by other clubs. Where the apprenticeship club is small and relatively poor and the poaching club is large and vastly more wealthy, such manoeuvres represent a real threat to the survival (both economic and sporting) of the smaller club”.

30. The important point is that any compensation due in respect of player training should not be “disproportionate”. In this connection, since the FIFA multiples are based on real training costs incurred by clubs and the system itself has also been approved by the European Commission the Panel is perfectly satisfied that the award in this case complies not only with the relevant provisions of the FIFA Regulations but also with any applicable principles of Community law. The Panel notes, in addition, that the Opinion of Advocate-General Sharpston in the Olivier Bernard case appears to fully endorse the provisions of the FIFA Regulations in connection with training compensation.
31. More generally still, the Panel considers that, having regard to the fundamental principle of fair play and bearing in mind the spirit of the Olympic Charter on which the CAS itself is based, the aims of sporting justice would not be served if MTK were to be denied compensation in this case. In this respect, the Panel also observes that the aims of sporting justice shall not be defeated by an overly formalistic interpretation of the FIFA Regulations which would deviate from their original intended purpose.

The Court of Arbitration for Sport rules:

1. The appeal filed by MTK Budapest against the decision issued on 31 October 2008 by the FIFA Dispute Resolution Chamber is partially upheld.
2. FC Internazionale Milano S.p.A. is ordered to pay to MTK Budapest the amount of EUR 144,000 (one hundred and forty four thousand Euros).
- (...)
5. All other claims and counterclaims are dismissed.