Arbitration CAS 2009/A/1810 & 1811 SV Wilhelmshaven v. Club Atlético Excursionistas & Club Atlético River Plate, award of 5 October 2009

Sole Arbitrator: Mr Michele Bernasconi (Switzerland)

Football
Compensation for training
Burden of proof in CAS arbitrations
Professional football player within the meaning of the FIFA Regulations
Admissibility of arguments as to the free movement of players across the EU
Interpretation of the statutes and rules of a sports association
Intra EU/EEA transfer and nationality of a player
Conditions for objecting to a training compensation
Short period of the contract as an argument for mitigating the training compensation
Duty of a club to verify the actual status of a less than 23 years old amateur player before hiring him

1. **In CAS arbitrations, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them. In this respect, the CAS Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence**

2. **A professional is a player who is registered at an association and has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs. As long as those criteria are fulfilled, the amateur status of the player is sufficiently demonstrated by his registration and by the lack of any reliable counter-evidence.**

3. **The interpretation of the statutes and of the rules of a sport association has generally to be objective and always begin with the wording of the rule, which is the object of the interpretation. The deciding body will have to verify the grammatical meaning of the rule, looking at the ordinary meaning of the language used, at the syntax of the norm. Of course, the deciding body can take into account historical elements by identifying, if possible, the intentions of the association when establishing the rule at scrutiny. Based on a systematic analysis, the Panel shall determine that the interpretation given to the rules does fit into the context of the whole regulation.**

4. **According to the CAS case law, arguments as to the freedom of movement of football players across the EU can only be raised by the football player himself and no by the**

football clubs

5. **Article 6 of Annex 4 to the FIFA Regulations on the intra EU/EEA transfer of players is very specific and its scope is narrowly circumscribed within a limited geographic area, i.e. the EU/EEA territory. The fact that the criterion of nationality is irrelevant goes back to the rational and the history of the provision itself, and has been confirmed by the CAS.**

6. **The FIFA rules regarding training compensation give the possibility to a club objecting to a training compensation calculated on the basis of the indicative amounts mentioned in the FIFA regulations, 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. However, such clubs have to provide clear and convincing evidence in order to establish that, to the comfortable satisfaction of the Panel, such compensation is disproportionate, failing which the indicative, general amount shall apply.**

7. **Arguments as to the very short period of the contract do not constitute a suitable parameter to evaluate the real and effective training costs incurred by a club for the formation and the education of a player, because only economic factors – and thus not time factors – may be taken into account by the Panel. The applicable FIFA Regulations do not provide any basis for a reduction of the training compensation due to the short period of time spent by the player in the new club he has been transferred to. It is not reasonable to assert that the amount of the compensation due to the training clubs could be influenced by the terms of the contract (such as the length of the labour contract) negotiated by two distinct parties.**

8. **According to the CAS case law, a football club cannot be held responsible nor suffer from the consequences of the Appellant's failure to carefully verify the actual value of a less than 23 years old amateur player before hiring him**

SV Wilhelmshaven is a football club with its registered office in Wilhelmshaven, Germany ("the Appellant"). It is a member of the Deutscher Fussball-Bund (DFB), itself affiliated to the Fédération Internationale de Football Association (FIFA) since 1904.

Club Atlético Excursionistas ("Excursionistas") and Club Atlético River Plate ("River Plate") are two distinct football clubs and both have their respective registered office in Buenos Aires, Argentina. They are members of the Asociación del Fútbol Argentino (AFA), which is affiliated to FIFA since 1912.

The player S. (the "Player") was born in 1987. He has Italian and Argentinean nationality. He was registered as an amateur player with Excursionistas from 20 March 1998 until 7 March 2005 and with River Plate from 8 March 2005 until 7 February 2007.

At an indeterminate time, a professional contract was entered into between the Appellant and the Player. It was a fixed-term agreement, effective from 8 February 2007 until 30 June 2007. The said contract was extended for one more season.

It is undisputed that during the 2006/2007 season, the Appellant belonged to the category 3 under the terms of Annex 4 to the applicable FIFA Regulations for the Status and Transfer of Players.

On 14 June 2007, Excursionistas initiated proceedings with the FIFA Dispute Resolution Chamber to order the Appellant to pay in its favour an amount of EUR 100,000 as compensation for the training it provided to the Player.

On 5 December 2008, the FIFA Dispute Resolution Chamber accepted the claim of Excursionistas notably on the following grounds:

- The Player was registered for the first time as a professional with the Appellant before the end of the season of his 23rd birthday. Until then, he was an amateur.
- The claimed training compensation was calculated in accordance with the applicable FIFA regulations and is not disproportionate. In this regard, the FIFA Dispute Resolution Chamber *"deemed it appropriate to reiterate that according to the established jurisprudence and the applicable Regulations, training compensation is due in case a player signs his first employment contract, thus irrespective of the period of time a player actually renders his services to the new club and/or appears in matches".*
- German regulations or jurisprudence are of no relevance in the case at hand.

As a result, on 5 December 2008, the FIFA Dispute Resolution Chamber decided the following:

"1. The claim of the Claimant, Atlético Excursionistas, is accepted.

2. The Respondent, SV Wilhelmshaven, has to pay to the Claimant, Atletico Excursionistas, the amount of EUR 100,000 ***within 30 days*** *as from the date of notification of this decision.*

3. If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% per year will apply as of expiring of the fixed time limit and the present matter shall be submitted upon the parties' request to FIFA's.

4. If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% per year will apply as of expiring of the fixed time limit and the present matter shall be submitted upon the parties' request to FIFA's Disciplinary Committee so that the necessary disciplinary sanctions may be imposed.

5. The Claimant (…) is directed to inform the Respondent, SV Wilhelmshaven, immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received".

On 3 March 2009, the Appellant and Excursionistas were notified of the decision issued by the FIFA Dispute Resolution Chamber.

On 14 June 2007, River Plate initiated proceedings with the FIFA Dispute Resolution Chamber to order the Appellant to pay in its favour an amount of EUR 60,000 as training compensation in relation with the Player.

On 5 December 2008, the FIFA Dispute Resolution Chamber concluded that the Appellant had to pay to River Plate an amount of EUR 57,500. The grounds of its decision were similar to the ones of the decision rendered in relation to the claim of Excursionistas. It was notified to the concerned parties on 2 March 2009.

It is undisputed that, to date, the Appellant has not paid any training compensation to the Respondents with regard to the Player.

On 23 March 2009, SV Wilhelmshaven filed two statements of appeal with the Court of Arbitration for Sport (CAS). It challenged the decisions rendered by the FIFA Dispute Resolution Chamber to grant to Excursionistas (appeal procedure CAS 2009/A/1810) and to River Plate (appeal procedure CAS 2009/A/1811) each a compensation for the training and the education of the Player.

The statements of appeal contained similar requests for relief, which read as follows:

> *"1. The before-mentioned decision is lifted, the Respondent's claim granted by the FIFA DRC is dismissed.*
>
> *2. The Respondent shall bear all costs before the CAS as well as the fees of the Appellant's counsel in the CAS procedure.*
>
> *3. [The two appeal procedures (CAS 2009/A/1810 and CAS 2009/A/1811) must be consolidated].*

On 2 April 2009, the Appellant filed its appeal briefs, which contain a statement of the facts and legal arguments accompanied by supporting documents.

On 30 April 2009, Excursionistas filed an answer, with the following request for relief:

> *"Therefore, we request the following:*
>
> *- That our petition be considered duly filed.-*
>
> *- That the appeal filed by the appellant be totally dismissed.-*
>
> *- That the resolution passed by FIFA's Dispute Resolution Chamber be totally confirmed, acknowledging the amount of € 100,000 (…) on behalf of Excursionistas, for Formation Indemnity, amount to be paid by the appellant with costs.-".*

On 27 April 2009, River Plate filed an answer, with the following request for relief:

> *"The Respondent requests the Panel:*

1.- To accept this answer against the appeal submitted by the Appellant.

2.- To reject in full the appeal submitted by the Appellant against the decision of the FIFA Dispute Resolution Chamber dated 5 December 2008 and to confirm such decision, with a legal 5% of interest as per that date.

3.- To fix a sum of 5.000 CHF to be paid by the Appellant to the Respondent as for its defence fees and costs.

4.- To condemn the Appellant to the payment of the whole CAS administration costs and the Arbitrator's fees".

Only the Appellant asked for a hearing to be held in the present disputes, the Respondents requesting that the Sole Arbitrator issues an award on the basis of the written submissions.

In accordance with article R57 the Code of Sport-related Arbitration (the "Code"), the Sole Arbitrator decided to hold a hearing. The parties were duly summoned to appear and all agreed on the date of 26 August 2009.

At that scheduled time, a hearing was held at the CAS headquarters in Lausanne.

Excursionistas was not present. Pursuant to article R57 par. 3 of the Code, the Sole Arbitrator nevertheless proceeded with the hearing.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from articles 62 ff. of the FIFA Statutes and article R47 of the Code.

2. It follows that the CAS has jurisdiction to decide on the present dispute.

3. Under article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

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. Pursuant article 62 par. 2 of the FIFA Statutes *"[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

6. Regarding the issue at stake, the Sole Arbitrator is of the opinion that the parties have not agreed on the application of any specific national law. He is comforted in his position by the fact that, in their respective submissions, the parties refer exclusively to FIFA's regulations. As a result, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily.

7. The relevant contract at the basis of the present case was signed after 1 July 2005, which is the date when the revised FIFA Regulations for Status and Transfer of Players (i.e. the edition 2005) came into force (the "FIFA Regulations"). The case at hand was submitted to the FIFA Dispute Resolution Chamber before 1 January 2008, which is the date when the amendments of the said FIFA Regulations came into force. Pursuant to article 26 par. 1 and 2 of the FIFA Regulations, the case shall be assessed according to the FIFA Regulations, notwithstanding the amended provisions.

Admissibility

8. The appeals were filed within the deadline provided by the FIFA Statutes and stated in the decisions issued by the FIFA Dispute Resolution Chamber on 5 December 2008. They complied with all the other requirements of article R48 of the Code.

9. It follows that the appeals are admissible.

Joinder

10. The two appeal procedures (CAS 2009/A/1810 and CAS 2009/A/1811) have been consolidated with the parties' unanimous consent. Therefore, the Sole Arbitrator shall render one common award.

Merits

11. The main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following:

A. Was the Player a professional before he joined the Appellant?

B. Are the Respondents entitled to training compensation?

C. What is the correct calculation of the training compensation?

D. Are there any reasons to adjust the training compensation?

A. Was the Player a professional before he joined the Appellant?

a) In general

12. On the one hand, the Appellant claims that *"River Plate, one of the biggest, richest and most successful clubs in Argentina, hired the services of the player S. at the age of 17 ½ years. Therefore, it seems rather improbable and the Appellant contests that the player S. was an amateur with River Plate (…)"*. On the other hand, the Respondents allege that the Player has been registered as an amateur until he joined the Appellant and that they have never signed a labour agreement with him.

13. According to article 2 par. 2 of the FIFA Regulations, *"A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs"*.

14. Pursuant to article 5 par. 2, first sentence of the FIFA Regulations, *"A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2"*.

15. Regarding the claim for compensation filed by Excursionistas, the Dispute Resolution Chamber held *"that the player, born on 11 September 1987, was registered with the Claimant as from 20 March 1998 until 7 March 2005 as an amateur"*. Likewise, it found that the Player was registered with River Plate *"as from 8 March 2005 until 7 February 2007 as an amateur"*.

16. In addition, the Appellant does not contest the fact that the Player had indeed been registered with the Respondents as an amateur from 20 March 1998 until 7 February 2007, *i.e.* between the ages of 10 and 19 but asserts that the *"pure registration status of a player is not of exclusive relevance for the distinction whether he is to be classified as an amateur or a professional"*.

17. The fact that there was an employer-employee relationship between the Appellant and the Player as of 7 February 2007 is also not disputed.

b) In particular

18. On a preliminary basis, the Sole Arbitrator points out that, in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, *i.e.* it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding

body, it must actively substantiate its allegations with convincing evidence (CAS 2003/A/506, award of 30 June 2004, p. 10, par. 54).

19. The Sole Arbitrator observes that the Appellant's statement according to which the Player was a professional before he went to Germany is made absent a basis in fact. The Appellant has not adduced any evidence to ascertain a plausible labour employment contract between River Plate and the Player or the fact that the latter was effectively paid by the Respondents for his footballing activity. In the view of the above, the Sole Arbitrator considers that the amateur status of the Player with the Respondents from 20 March 1998 until 7 February 2007 is sufficiently demonstrated by his registration as such with the AFA, and by the lack of any reliable counter-evidence.

20. Based on the foregoing, the Sole Arbitrator has no difficulty to find that the Player signed his first professional contract with the Appellant.

B. Are the Respondents entitled to training compensation?

a) In general

21. Article 20 of the FIFA Regulations provides the following:

"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) on each transfer of a Professional 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 annex 4 of these Regulations".

22. Pursuant to article 1 par. 1 of Annex 4 to 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, Training Compensation shall be payable until the end of the Season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between 12 and the age when it is established that the player actually completed his training".

23. According to article 2 par. 1 of Annex 4 to the FIFA Regulations:

"Training Compensation is due:

i) when a player is registered for the first time as a Professional; or,

ii) when a Professional is transferred between clubs of two different Associations (whether during or at the end of his contract) before the end of the Season of his 23rd birthday".

24. Article 3 par. 1 and 2 of Annex 4 to the FIFA Regulations states that:

"1. When a player is registering as a Professional for the first time, the club for which the player is being registered is responsible for paying Training Compensation within 30 days of registration to every club for which the player was registered (in accordance with the players' career history as provided for in the player passport) and that has contributed to his training starting from the Season in which he had his 12th birthday. (…)

2. In both of the above cases, the deadline for payment of Training Compensation is 30 days following the registration of the Professional with the New Association".

b) In particular

25. It has been established that the Player was registered as an amateur with the AFA until he signed his first professional contract with the Appellant, which was effective as of 8 February 2007. He was less than 21 years old when he was training and playing with the Respondents and was less than 23 years old when the latter clubs lodged a formal claim before FIFA for the training compensation.

26. The Appellant has never raised the possibility nor tried to establish that the Player terminated his training period before the age of 21.

27. The Sole Arbitrator concludes, on the basis of the above, that a) the Respondents are entitled to training compensation as provided by article 20 of the FIFA Regulations and their annex 4 and b) the Appellant is liable for its payment.

C. What is the correct calculation of the training compensation?

a) In general

28. Article 3 par. 1 of Annex 4 to the FIFA Regulations states that:

"(…) The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the Professional, Training Compensation will only be owed to his Former Club for the time he was effectively trained by that club".

29. Under the heading *"Training Costs"*, article 4 of Annex 4 to the FIFA Regulations reads as follows:

"1. In order to calculate the compensation due for training and education costs, Associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio between the number of players who need to be trained to produce one professional player.

2. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each Association, are published on the FIFA website (www.FIFA.com). They will be updated at the end of every calendar year".

30. Article 5 par. 1 to 4 of Annex 4 to the FIFA Regulations is related to the *"Calculation of Training Compensation"* and provides the following:

"1. As a general rule, to calculate the Training Compensation due to a player's Former Club(s), it is necessary to take the costs that would have been incurred by the New Club if it had trained the player itself.

2. Accordingly, the first time a player registers as a Professional, the Training Compensation payable is calculated by taking the training costs of the New Club multiplied by the number of years of training in principle from the Season of the player's 12th birthday to the Season of his 21st birthday. In the case of subsequent transfers, Training Compensation is calculated based on the training costs of the New Club multiplied by the number of years of training with the Former Club.

3. To ensure that Training Compensation for very young players is not set at unreasonably high levels, the training costs for players for the Seasons between their 12th and 15th birthday (i.e. four Seasons) shall be based on the training and education costs for category 4 clubs.

4. The Dispute Resolution Chamber may review disputes concerning the amount of Training Compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review".

b) The period during which the Player was trained by Excursionistas and for which compensation is due by the Appellant

31. According to the FIFA Dispute Resolution Chamber, the football season in Argentina for U-20 amateur players starts in January and ends in December. This affirmation has not been challenged by any party to the present proceedings. Likewise, it is also undisputed that in 2007, the Appellant belonged to category 3 under the terms of Annex 4 to the FIFA Regulations.

32. The Sole Arbitrator holds that, based on all evidence produced, Excursionistas has established that it provided proper training and education to the Player from 20 March 1998 until 7 March 2005.

33. As the Player was born in 1987, he turned 12 during the season 1999.

34. In conclusion, the Sole Arbitrator considers that the training periods for which compensation is due to Excursionistas are the following:

- the seasons 1999 to 2004,

- the months of January and February 2005.

35. As it results from article 5 par. 2 of annex 4 to the FIFA Regulations *"the first time a player registers as a Professional, the Training Compensation payable is calculated by taking the training costs of the*

New Club multiplied by the number of years of training in principle from the Season of the player's 12th birthday to the Season of his 21st birthday". However, on the basis of article 5 par. 3 of annex 4 to the FIFA Regulations and with regard to the fact that in 2002, the Player turned 15 years old, *"the training costs for players for the Seasons between their 12th and 15th birthday (i.e. four Seasons) shall be based on the training and education costs for category 4 clubs"*.

36. Pursuant to the FIFA Circular Letters N° 1085 dated 11 April 2007 and N°1142 dated 15 April 2008, compensation for category 3 in Europe amounts to EUR 30,000 and for category 4 to EUR 10,000.

37. The calculation of the training compensation is as follows:

Year 1999	category 4	EUR 10,000
Year 2000	category 4	EUR 10,000
Year 2001	category 4	EUR 10,000
Year 2002	category 4	EUR 10,000
Year 2003	category 3	EUR 30,000
Year 2004	category 3	EUR 30,000
2 months in year 2005	category 3	EUR 5,000
Training compensation		**EUR 105,000**

38. Based on the foregoing, the Sole Arbitrator concludes that Excursionistas is entitled to a training compensation which shall amount to EUR 105,000.

c) The period during which the Player was trained by River Plate and for which compensation is due by the Appellant

39. The Sole Arbitrator holds that, based on the evidence submitted, River Plate has established that it provided proper training and education to the Player from 7 March 2005 until the end of January 2007.

40. The calculation of the training compensation is as follows:

10 months in year 2005	category 3	EUR 25,000
Year 2006	category 3	EUR 30,000
1 month in year 2007	category 3	EUR 2,500
Training compensation		**EUR 57,500**

41. Based on the foregoing, the Sole Arbitrator concludes that River Plate is entitled to a training compensation which shall amount to EUR 57,500.

D. Are there any reasons to adjust the training compensation?

a) Is the Decision of the FIFA Dispute Resolution Chamber in breach of European Community law?

42. With respect to the Appellant's line of reasoning on freedom of movement, the Sole Arbitrator is of the opinion that such argument would have been available to the individual Player, not to the Appellant (CAS 2004/A/794; CAS 2006/A/1027). Accordingly, this ground of appeal must be disregarded without further consideration.

b) Did the Respondents breach the FIFA Regulations by not offering a contract to the Player?

43. The Appellant contends that because of the Italian citizenship of the Player and, in accordance with article 6 par. 3 of Annex 4 to the FIFA Regulations, the Respondents were compelled to offer the Player a professional contract, failing which they cannot claim for any training compensation. Alternatively, the absence of contract offered to the Player is a mitigating circumstance that should lead to a reduction of the training compensation.

44. Under the heading *"Special Provision for the EU/EEA"*, article 6 of annex 4 to the FIFA Regulations reads as follows:

> *"1. For players moving from one Association to another inside the territory of the EU/EEA, the amount of Training Compensation payable shall be established based on the following:*
>
> *a) If the player moves from a lower to a higher category club, the calculation shall be based on the average of the training costs of the two clubs.*
>
> *b) If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower category club.*
>
> *2. Inside the territory of the EU/EEA, the final Season of training may occur before the Season in which the player had his 21st birthday if it is established that the player completed his training before that time.*
>
> *3. If the Former Club does not offer the player a contract, no Training Compensation is payable unless the Former Club can justify that it is entitled to such compensation. The Former Club must offer the player a contract in writing via registered mail 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 rights to Training Compensation of the player's previous club(s)".*

45. The interpretation of the statutes and of the rules of a sport association has generally to be rather objective and always begin with the wording of the rule, which is the object of the interpretation. The deciding body will have to verify the grammatical meaning of the rule, looking at the ordinary meaning of the language used, at the syntax of the norm. Of course, the deciding body can take into account historical elements by identifying, if possible, the intentions of the association when establishing the rule at scrutiny. Based on a systematic

analysis, the Panel shall determine that the interpretation given to the rules does fit into the context of the whole regulation (CAS 2008/A/1673, par. 33, p. 7).

46. In the present case, the terms used in article 6 of Annex 4 to the FIFA Regulations are very specific. The title of this provision clearly suggests that its scope is narrowly circumscribed within a limited geographic area, *i.e.* the EU/EEA territory. This interpretation is confirmed by the wording of par. 1 (*"For players moving from one Association to another inside the territory of the EU/EEA")* and of par. 2 (*"Inside the territory of the EU/EEA"*). The fact that the criterion of nationality is irrelevant goes back to the rational and the history of the provision itself, and has been confirmed by the CAS, for instance in the case filed by the Appellant itself (CAS 2006/A/1125, p. 11, par. 6.12 ff., in particular par. 6.16). In addition, this case law is of no help for the Appellant's argument as it is precisely dealing with the transfer of a player within the EU/EEA territory (*in casu*, from a German club to a French one).

47. Furthermore, in the commentary on the *"FIFA Regulations for the Status and Transfer of Players"* and with regard to the said article 6, it is expressly stated that *"Special provisions apply to transfer within the EU/EEA. These provisions are the result of the understanding reached between FIFA and UEFA on the one hand and the European Union on the other in March 2001".*

48. With respect to the foregoing observation, it can be useful to call to mind the fact that according to FIFA Circular Letter N° 769 dated 24 August 2001, FIFA agreed with the European Commission on the main principles for amending FIFA's rules regarding international transfers. Thereupon, FIFA drafted amendments to its regulations on the status and transfer of players taking into account these principles. Regarding the obligation for a club to offer a contract, the said circular provides that *"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 shall 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. This possibility to derogate is not applicable where national collective bargaining agreements do not envisage it".*

49. In view of the above, it appears that article 6 of Annex 4 to the FIFA Regulations is nothing more than the codification of the system agreed upon by the European authorities and put into place to govern the transfer of a player moving from one association to another inside the territory of the EU/EEA. There is therefore no reason to depart from the unambiguous wording of article 6 of Annex 4 to the FIFA Regulations, which is obviously not applicable in the case of a player moving from a country outside the EU/EEA to a country within the EU/EEA. This is consistent with CAS precedents (for instance, CAS 2007/A/1338).

50. Finally, the Appellant did not explain the circumstances under which it got in touch with Mr S. to hire his services and whether it actually contacted the Respondents before it signed the labour agreement with the Player. In other words, there is no indication that the Respondents were aware of the Player's intention to leave for Europe and even had the opportunity to

offer him a contract, before he joined the Appellant. In such a context, the Sole Arbitrator does not see how the Appellant can raise any objection on the ground of non-compliance with article 6 par. 3 of Annex 4 to the FIFA Regulations.

51. Hence, the submissions of the Appellant with regard to the absence of contract offered to the Player by the Respondents must be rejected.

c) Is the training compensation excessive considering the effective training costs of the Player?

52. According to the Appellant, the amount of training compensation awarded by the FIFA Dispute Resolution Chamber is excessive.

53. Training compensation is based on the training and education costs of the association of the new club in order to encourage solidarity within the world of football. In this way, clubs shall be discouraged from hiring young players from clubs in other countries just because the training costs in those countries are lower. This means, in other words, that a club that has the resources to sign players from abroad shall be paying a foreign club according to the costs of its own country (Commentary on the FIFA Regulations for the Status and Transfer of Players with regard to article 5 of Annex 4).

54. The system put into place by FIFA intends to reward clubs for the worthy work done in training young players and is not designed to simply reimburse the club for its actual costs incurred in cultivating youth teams. The training compensation appears to be a reward and an incentive rather than a refund (CAS 2003/O/506, award of 30 June 2004, p. 16, par. 78). Such solidarity principle applies with the purpose of providing financial assistance to weaker clubs by stronger ones. The indicative amounts mentioned in the FIFA Circular Letters N°1085 and N°1142 are supposed to reflect this principle and are a general average applying globally. In other words, they are supposed to facilitate the handling of transfer cases by making specific calculations unnecessary, thereby simplifying and speeding up the compensation and transfer process (see also CAS 2003/O/500, award of 24 February 2004, p. 12, par. 7.7).

55. The rules however give the possibility to a club objecting to a training compensation calculated on the basis of the indicative amounts mentioned in the FIFA regulations, 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, general amount would apply (CAS 2003/O/500, award of 24 February 2004, p. 13, par. 7.10; CAS 2003/A/527, p. 14, par. 7.4.3; CAS 2004/A/560, p. 15, par. 7.6.2; CAS 2006/A/1027, p. 18, par. 8.40; CAS 2007/A/1218, p. 18, par. 82).

56. In the present case, the Appellant exclusively focused on its own training costs to establish that the awarded compensation is excessive. It filed before the CAS a written statement (2 pages) issued by its ex-auditor, Mr Stephan von Brocken, confirming that the 2006/2007 costs per player amounted to EUR 617 per annum.

57. The Sole Arbitrator is of the opinion that the evidence provided by the Appellant is not clear and convincing enough to establish, to his comfortable satisfaction, that the training compensation awarded is clearly disproportionate. As a matter of fact, the training costs submitted by the Appellant cannot be truly verified, as the latter has not submitted any accounts, coaches' or players' contracts, invoices, receipts or payroll slips. Moreover, in the light of generally accepted accounting principles, auditing standards and business reporting standards, the Sole Arbitrator finds that the audited list of expenses submitted by the Appellant is not satisfactory, at least for the purposes of dealing with the issue at stake in the present dispute. The quality of information displayed in audited accounts and audited financial statements should be such as to allow any interested third party – including judges or arbitrators – to evaluate in depth an entity's economic performance and to verify in depth whether true and fair values were used for measuring, presenting, and disclosing specific components of assets, liabilities and the like. The Sole Arbitrator, upon review of the documentation submitted, comes to the conclusion that he cannot rely on such evidence to arrive at any kind of accurate verification of the Appellant's alleged training costs and, in any event, to arrive to the conclusion that the general compensation would be, in the present case, disproportionate.

58. Additionally, the Sole Arbitrator notes that in relations with the Respondents' training costs, the Appellant has not even tried to prove that the effective costs incurred by the Respondents for the training and education of the Player were lower than the costs calculated on the basis of the indicative amounts mentioned in the FIFA Circular Letters N° 1085 and 1142.

d) Are there other reasons to mitigate the awarded training compensation?

59. The Appellant submitted that the training compensation awarded to the Respondents by the FIFA Dispute Resolution Chamber were excessively high, for other various reasons. It notably argued that a very short period of time elapsed between the beginning of the contract (8 February 2007) and its end (30 June 2007).

60. Firstly, it is undisputed that the said contract was extended for one more season, which brings the contractual period between the Appellant and the Player to a season and a half. Secondly, this argument does not constitute a suitable parameter to evaluate the real and effective training costs incurred by the Respondents for the formation and the education of the Player as only economic factors may be taken into account and not time factors (CAS 2003/A/527, p. 14, par. 7.4.4). The applicable FIFA Regulations do not provide any basis for a reduction of the training compensation due to the short period of time spent by the player in the new club he has been transferred to. It is not reasonable to assert that the amount of the compensation due to the training clubs could be influenced by the terms of the contract (such as the length of the labour contract) negotiated by two distinct parties (in the case at hand, by the Appellant and by the Player).

61. The Appellant also claims that the Player was not as good and skilful as expected. The Respondents cannot be held responsible nor suffer from the consequences of the Appellant's failure to carefully verify the actual value of a less than 23 years old amateur player before hiring him (CAS 2006/A/1027, p. 19; CAS 2007/A/1218, p. 18, par. 84).

62. Finally, the Appellant claims that before and after the 2006/2007 season, it belonged to category 4 under the terms of Annex 4 to the applicable FIFA Regulations. It is of the opinion that this parameter should be taken into consideration when determining the training compensation.

63. All clubs are classified into categories by the association with which they are affiliated. Their categorisation can be revised on a yearly basis (see article 4 par. 1 of Annex 4 to the FIFA Regulations). It is undisputed that during the 2006/2007 season, the Appellant belonged to the category 3. Clubs and third parties must be able to rely on the categorisation of the club as it stands at the moment of the transfer of a player. Otherwise, it would deny the possibility of the training clubs as well as of the transferee clubs to assess precisely the amount of the payable compensation and would open the door to arbitrary results and great uncertainty. In such a situation, how could the training club file a precise and complete claim if the training compensation must be adjusted to the change of category of the transferee club during the proceedings open before FIFA and, subsequently, before the CAS? Conversely, it could expose the debtor of the claim to pay a much higher compensation than the one it was willing to pay at the moment it hired the player, if at the moment of the claim, it was upgraded in a better category. Finally, two players trained and educated by the same club transferred to the same club could trigger a different training compensation, depending on when the claim is filed. This is just not reasonable. Therefore, the fact that Appellant belonged to category 4 before and after the 2006/2007 season under the terms of the Annex 4 to the applicable FIFA Regulations, is not relevant, even though one could that under a rather practical, and non legal point of view, this fact may be considered a kind of "bad luck" by Appellant.

e) Conclusion

64. In the view of the above, the Sole Arbitrator finds that the Appellant has not proven that the amount calculated on the basis of the applicable FIFA Regulations and of the indicative amounts of Circular Letters N° 1085 and 1142, is clearly disproportionate with respect to the actual training costs.

65. Although Excursionistas is entitled to a training compensation of EUR 105,000, it only asked for the payment of EUR 100,000, plus interests. The Sole Arbitrator has no reason to rule beyond the claim submitted to him. Based on the foregoing, the Sole Arbitrator concludes that the training compensation to be awarded to Excursionistas shall amount to EUR 100,000 and to River Plate EUR 57,500.

66. With regard to the interest and in the absence of a specific contractual clause, the Panel can only apply the legal interest due pursuant to article 104 of the Swiss Code of Obligations. This

article provides that the debtor, on notice to pay an amount of money, owes an interest at the rate of 5 % per annum.

67. Regarding the *dies a quo* for the interest, the FIFA Dispute Resolution Chamber ordered the Appellant to pay the financial compensation to the Respondents within 30 days as of notification of its decision. Based on the information and the requests submitted, the Sole Arbitrator does not see any reason to establish a different starting date.

68. It follows that the Appellant shall pay to Excursionistas the amount of EUR 100,000 with interest at a rate of 5% as of 3 April 2009, and to River Plate the amount of EUR 57,500 with interest at a rate of 5% as of 2 April 2009.

69. The above conclusion, finally, makes it unnecessary for the Sole Arbitrator to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The appeals of SV Wilhelmshaven against the decisions issued on 5 December 2008 by the FIFA Dispute Resolution Chamber are dismissed.

2. The decisions issued on 5 December 2008 by the FIFA Dispute Resolution Chamber of FIFA are confirmed.

3. SV Wilhelmshaven is ordered to pay Club Atlético Excursionistas the amount of EUR 100,000 (one hundred thousand Euros) with interest at a rate of 5% as of 3 April 2009.

4. SV Wilhelmshaven is ordered to pay Club Atlético River Plate the amount of EUR 57,500 (fifty-seven thousand and five hundred Euros), with interest at a rate of 5% as of 2 April 2009.

(…)

7. All other or further claims are dismissed.