

**Arbitration CAS 2011/A/2544 FK Ventspils v. FC Stefan cel Mare, award of 10 February 2012**

Panel: Mr Michele Bernasconi (Switzerland), President; Mr Akihiko Hara (Japan); Mr Daniel Visoiu (Romania)

*Football**Training compensation**Transfer of a player for the first time as a professional to a category 4 club**Circumvention of FIFA's rules on training compensation*

1. Normally, according to article 2.2.ii of Annex 4 of the FIFA Regulations on the Status and Transfer of Players, in case a player is transferred to a category 4 club with which he signed his first professional contract, no training compensation is due.
2. In general, when a player who signed his first professional contract with a category 4 club is subsequently loaned to a category 3 club which would have had to pay a training compensation had the player signed his first professional contract with it, the category 3 club should not automatically have to pay such training compensation. However, where the circumstances and the evidence submitted by the parties show that (i) the two clubs are closely connected and might have been *de facto* a single legal entity at the time of the player's transfer and subsequent loan and that (ii) the player exclusively played after the signing of his first professional contract for the club he was loaned to and which effectively benefited from the efforts of training invested in the player, it appears that the category 3 club tried to circumvent the application of the provisions regarding the payment of training compensation. Therefore, the category 3 club shall be liable for the payment of training compensation.

SIA Futbola Klubs Ventspils ("FK Ventspils" or "the Appellant") is a football club with its registered office in Ventspils, Latvia. It is a member of the Latvian Football Federation (LFF), itself affiliated to the Fédération Internationale de Football Association (FIFA).

Clubul de Fotbal Pentru Copii si Tineret "Stefan cel Mare" ONG ("FC Stefan cel Mare" or "the Respondent") is a football club with its registered office in Chisinau, Republic of Moldova. It is a member of the Football Federation of Moldova (FMF), itself affiliated to the FIFA.

From 1 March 1998 to 14 August 2007, A. ("the Player") was registered with the FMF for its affiliated club FC Stefan cel Mare as an amateur. On 15 August 2007, the Player was registered with the LFF as a professional player for the Latvian club FC Tranzits (a club that is now also known under the name of "FC Tranzit").

The Player had signed an employment contract with FC Tranzits, a category 4 club, valid from 27 July 2007 until 31 August 2010.

The Player was transferred on a loan basis to FK Ventspils, a category 3 club, on two occasions: from 6 August 2007 until 15 November 2007, and until 15 November 2008 without the starting date of the latter being clearly established. The Player played regularly matches for FK Ventspils during the rest of the 2007/2008, 2008/2009 and 2009/2010 seasons. There is no evidence that the Player played a match for FC Tranzits since his transfer to that club in 2007.

During the season 2007/2008, FC Tranzits was a category 4 club and FK Ventspils a category 3 club in the meaning of the FIFA rules on training compensations.

On 25 April 2008, FC Stefan cel Mare lodged a claim against FC Tranzits and FK Ventspils before FIFA claiming that the Player had been registered for the first time as a professional with FC Tranzits and that the two Latvian clubs in fact tried to circumvent the application of the provisions on training compensation by registering, in the first place, the Player with a category 4 club and thus avoiding to pay any training compensation, before registering the Player three months later with a category 3 club. FC Stefan cel Mare therefore claimed the payment of an amount of EUR 120,000 as training compensation, plus 5% interest, from FC Tranzits and FK Ventspils.

On 22 July 2010, the FIFA Dispute Resolution Chamber (“the FIFA DRC”) issued a decision (“the Appealed Decision”) as follows:

- “1. The claim of the Claimant, FC Stefan cel Mare, is partially accepted.*
- 2. The Respondent 2, FK Ventspils, has to pay to the Claimant, FC Stefan cel Mare, the amount of EUR 100,000.-, as well as 5% interest per year on the said amount as from 15 September 2007 until the date of effective payment, within 30 days as from the date of notification of this decision.*
- 3. If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.*
- 4. Any further claims lodged by the Claimant, FC Stefan cel Mare, are rejected.*
- 5. The Claimant, FC Stefan cel Mare, is directed to inform the Respondent 2, FK Ventspils, 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”.*

The Appealed Decision with grounds was notified to the parties on 3 August 2011.

On 22 August 2011, the Appellant filed a statement of appeal with the CAS directed against FC Stefan cel Mare and FIFA. It challenged the Appealed Decision, submitting the following request for relief:

- “[W]e kindly as[k] [you] to cancel the decision of FIFA Dispute Resolution Chamber [...].  
We herewith kindly ask [you] to stay the execution of the decision made by FIFA Dispute Resolution Chamber [...].”*

On 26 August 2011, the Appellant informed the CAS Court Office of its decision to withdraw its application for the stay of the FIFA DRC financial sanctions.

On 2 September 2011, the Appellant filed an Appeal Brief, complementing its statement of appeal.

On 12 September 2011, the Appellant informed the CAS Court Office of its decision not to maintain FIFA as a respondent to its appeal. Consequently, FC Stefan cel Mare is the sole respondent in this procedure.

On 16 September 2011, the Respondent filed an Answer, with the following request for relief:

*“As we totally agree with the DRC Decision we reiterate our position and we claim from FC Ventspils the Training Compensation for A. in value of 100 000 EUR plus 20 000 EUR which represent 5% interest per year on the said amount as from 15.09.2007”.*

Pursuant to Article R57 par. 2 of the Code of Arbitration for Sport (“the Code”), the parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held or for an award to be rendered on the basis of the parties’ written submissions only. On 14 November 2011, the Appellant replied to the CAS Court Office stating and explaining his wish that a hearing be held.

The Panel, given the lack of complexity of the case and the absence of any witness statement submitted by the Appellant with its appeal brief, decided to proceed on the basis of written submissions alone, considering itself to be sufficiently well informed.

As per the Order of Procedure signed by FC Stefan cel Mare and the Appellant respectively on 30 November 2011 and 1 December 2011, both parties expressly agreed to waive a hearing. The parties further confirmed that their right to be heard has been respected.

## LAW

### CAS jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from articles 62 *et seq.* of the FIFA Statutes and Article R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the parties.
2. It follows that CAS has jurisdiction to decide on the present dispute.
3. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

### **Admissibility**

4. The appeal was filed within the deadline provided by the FIFA Statutes and stated in the Appealed Decision. Further, it complied with all the other requirements of Article R48 of the Code.
5. It follows that the appeal is admissible.

### **Applicable law**

6. 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”.*
7. Pursuant to 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”.*
8. In this case, accordingly, the FIFA regulations will be applied primarily, and Swiss law shall apply complementarily.
9. Consistently with the Appealed Decision which remained unchallenged in that regard, the version of the FIFA Regulations on the Status and Transfer of Players that is applicable to this dispute is the 2005 edition.

### **Merits**

10. The issue to be decided by the Panel is whether FK Ventspils tried to circumvent FIFA’s rules on training compensation and to avoid paying any such compensation for the Player and whether consequently it should pay to FC Stefan cel Mare such compensation.
11. It is undisputed that the Player was transferred from FC Stefan cel Mare to FK Tranzits, a category 4 club, with which the Player signed his first professional contract. Normally, according to article 2.2.ii of Annex 4 of the FIFA Regulations on the Status and Transfer of Players, in such situation, no training compensation is due as the player is transferred to a category 4 club.
12. It is undisputed that the Player was subsequently loaned by FC Tranzits to FK Ventspils. Yet, while there is uncertainty regarding the exact dates of the loan periods, it appears that the Player was either on loan or had “clearance” to play with FK Ventspils during most of the 2007/2008 and 2008/2009 seasons. The Panel notes that the Appealed Decision stressed the fact that FK Ventspils and FC Tranzits never tried to demonstrate with convincing documentary evidence

that the Player had indeed played matches for FC Tranzits. In fact, the Panel notes that while the Respondent provided evidence, in particular extracted from FK Ventspils' website, that the Player was playing for FC Ventspils during the 2007/2008, 2008/2009 and 2009/2010 seasons, the Appellant did not provide any evidence that the Player ever played any match for FC Tranzits.

13. Similarly, the Appealed Decision stressed the fact that there was confusion regarding the existence of FC Tranzits and FK Ventspils being one or two legal entities. Again, the Appellant did not bring any convincing evidence establishing that the two clubs are in fact distinct legal entities. On the contrary, numerous pieces of evidence indicate that the two clubs are closely connected and might have been *de facto* a single legal entity at the time of the Player's transfer and subsequent loan. In particular, the Panel notes that the two clubs seemed to share the same bank account, wrote letters on the same letterhead, signed by the same person, and shared the same address and telephone number.
14. It should have been very easy for the Appellant, in view of the Appealed Decision, to bring forward with its appeal undisputable evidence, if any, showing that the Player actually played matches for FC Tranzits and that the two clubs are and were in fact distinct legal entities in 2007. Given the lack of evidence submitted by FK Ventspils on those issues, the findings on which the FIFA DRC based its decision remain undisputed.
15. It is not the understanding of the Panel that when a player who signed his first professional contract with a category 4 club is subsequently loaned to a club which would have had to pay a training compensation had the player signed his first professional contract with the latter, the latter club should automatically have to pay such training compensation. However, based on the circumstances of the case and on the evidence submitted by the parties, the Panel considers that FK Ventspils, for which the Player exclusively played subsequently to the signing of his first professional contract and which effectively benefited from the efforts of training the Player invested by FC Stefan cel Mare, tried to circumvent the application of the provisions regarding the payment of training compensation. Therefore, lacking any submitted convincing counterevidence, the Panel can only confirm the Appealed Decision and decides that FK Ventspils shall be liable for the payment of training compensation to FC Stefan cel Mare.
16. The Panel notes that the Appellant did not challenge the amount of the training compensation awarded by the Appealed Decision and that the Respondent's request for relief is that the Appealed Decision be confirmed. Consequently, the Panel decides that the training compensation due by FK Ventspils to FC Stefan cel Mare shall be as determined in the Appealed Decision, i.e., of EUR 100,000 plus 5% interest per year on that amount as from 15 September 2007 until the date of effective payment.
17. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

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

1. The Appeal of SIA Futbola Klubs Ventspils (“FK Ventspils”) against the decision issued on 22 July 2010 by the FIFA Dispute Resolution Chamber is dismissed.
  2. The decision issued on 22 July 2010 by the FIFA Dispute Resolution Chamber is fully confirmed. Consequently, SIA Futbola Klubs Ventspils (“FK Ventspils”) shall pay Clubul de Fotbal Pentru Copii si Tineret “Stefan cel Mare” ONG the amount of EUR 100,000 as well as 5% interest per year on the said amount as from 15 September 2007 until the date of effective payment.
- (...)
5. All other or further claims are dismissed.