

**Arbitration CAS 2012/A/2929 Skeid Fotball v. Toulouse FC, award of 11 April 2013**

Panel: Prof. Massimo Cocchia (Italy), Sole Arbitrator

*Football**Solidarity contribution**Conditions for granting the solidarity contribution**Interpretation of the “compensation paid” by the new club to the former club according to the FIFA Regulations**Circumventions of the solidarity rules according to the FIFA rules on solidarity**Same legal reasoning used for the payment of training compensation and the payment of solidarity contribution**Relevance of the market value of a player for the purposes of solidarity contribution*

- 1. The solidarity mechanism comes into play when two conditions are met: (i) a player transfers to a foreign club during the course of his contract; (ii) a payment of a transfer compensation by the new club to the former club.**
- 2. The purpose of the solidarity mechanism is to reward and encourage clubs that invest in the training and education of young players. Therefore, the rules concerning the solidarity mechanism must be interpreted in order to foster their purpose and to avoid that they are circumvented. As a result, the term “compensation” is to be interpreted as including not only the payment of a sum of money but also of other forms of valuable consideration, such as the rights over other players, as long as those distinct forms of consideration are quantifiable through clear and convincing evidence.**
- 3. Any circumvention of the solidarity rules, intended to reduce or avoid the payment of compensation, should be dissuaded, since it contradicts the aim to promote more and better training of young football players. The requirements set out in the FIFA rules on solidarity, therefore, must be interpreted in ways that give effect to the solidarity mechanism and prevent any circumvention thereof. This is also in line with previous CAS case law, according to which 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.**
- 4. The same legal reasoning used for the payment of training compensation can be used in reference to the payment of solidarity contribution, since both mechanisms share the same rationale, that is, to promote the formation of young players by financially rewarding the clubs (particularly grassroots clubs) that invest in their training and education.**
- 5. The player’s market value is irrelevant for the purposes of solidarity contribution. The only relevant value is that actually attributed to the player by the parties to the transfer.**

I. PARTIES

1. Skeid Fotball (“Appellant” or “Skeid”) is a Norwegian football club with headquarters in Oslo, Norway. Skeid is affiliated with the Football Association of Norway (the *Norges Fotballforbund*, “NFF”) and currently plays in the Norwegian 2. *divisjon* football league, which is the third level league in Norway.
2. Toulouse Football Club (“Respondent” or “Toulouse”) is a French football club with headquarters in Toulouse, France. Toulouse is affiliated with the French Football Association (the *Fédération Française de Football*, “FFF”) and currently plays in *Ligue 1*, which is the highest football league in France.

II. BACKGROUND FACTS

3. This section of the award sets out a brief summary of the main relevant facts, as established on the basis of the parties’ written and oral submissions. Additional facts ascertained by the Sole Arbitrator may be set out, where material, within other sections of this award.
4. The player D. (also the “Player”), born on 25 May 1982, was registered with Skeid from the 1994/1995 football season to the 2004/2005 football season.
5. In the middle of the 2004/2005 football season, the Appellant transferred the Player to the Norwegian football club Rosenborg Ballklub (“Rosenborg”).
6. Rosenborg signed an employment contract with the Player. This contract was due to expire at the end of the 2006/2007 football season.
7. On 31 July 2007, Rosenborg transferred the Player to the English club Bolton Wanderers Football Club (“Bolton”) for a sum of GBP 425,000, approximately equivalent to EUR 475,000.
8. During the 2007/2008 football season, the Player only played 6 matches for Bolton.
9. Towards the end of the 2007/2008 football season, the Respondent contacted Bolton in order to explore the possibility of acquiring the Player through a transfer.
10. Bolton communicated to Toulouse that it was willing to transfer the Player to the Respondent. At the same time, Bolton expressed its interest in one of the players registered with Toulouse – J. (“J”).
11. As a consequence, on 23 June 2008 Bolton and Toulouse signed an agreement (the “First Agreement”) where the parties agreed that the compensation due for the transfer of the Player would be contingent on whether J. signed with Bolton before 31 July 2008 and, where no signing occurred, on the reason for his failure to transfer. The relevant contractual provisions read as follows:

“1. If the player J., registered with Toulouse, signs a contract with Bolton prior to the 31st July 2008 then compensation payable by Toulouse to Bolton for the transfer of registration of D. shall be nil.

2. *If the player J., registered with Toulouse, doesn't sign a contract with Bolton prior to the 31st July 2008 due to J. deciding not to sign with Bolton then compensation payable by Toulouse to Bolton for the transfer of registration of D. shall be Euro 600,000 (Six hundred thousand).*
 3. *If the player J., registered with Toulouse, does not sign a contract with Bolton prior to the 31st July 2008 due to the non agreement of Toulouse to sign J. for Bolton then compensation payable by Toulouse to Bolton for the transfer of registration of D. shall be Euro 1,000,000 (One million)".*
12. Subsequently, two other agreements regarding the Player and J. (also referred to collectively as the "Players") were signed by Bolton and Toulouse.
 13. In particular, on 23 June 2008, the same day on which the First Agreement was signed, Bolton and the Respondent signed a transfer agreement regulating the transfer of the Player from Bolton to the Respondent (the "D. Transfer Agreement"), in which they agreed that the fee *"for the transfer of registration of the above player is nil"*.
 14. On 25 June 2008, the Player signed a three-year contract with the Respondent.
 15. On 30 June 2008, one week after the signing of the D. Transfer Agreement, the Respondent and Bolton entered into a second transfer agreement (the "J. Transfer Agreement"), the subject of which was the transfer of J. from the Respondent to Bolton for a sum of EUR 10,500,000, to be paid in three instalments.
 16. On 11 July 2008, Bolton and the Respondent signed an annex to the J. Transfer Agreement in order to revise the date of the first instalment.
 17. As attested by the French Football Federation ("FFF") in a letter to FIFA dated 15 December 2011, on 17 July 2008 the FFF received from the English Football Association the Player's International Transfer Certificate; on 23 July 2008, the Player's contract was ratified by the French professional football league and the Player was thus officially registered for the Respondent.
 18. On 22 April 2009, the Respondent received a letter from the Appellant's counsel, claiming the amount of EUR 190,000 as Skeid's relevant share of solidarity contribution in connection with the transfer of the Player from Bolton to Toulouse, invoking Article 21 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA Regulations").
 19. In this respect, the Appellant's counsel claimed that the obligation to pay a solidarity contribution had arisen out of the Player's transfer, which in Skeid's opinion had formed part of a "cash plus player" deal where the Player's value was reflected in the transfer fee Bolton and the Respondent finally settled upon for J.
 20. On 18 May 2009, the Appellant's counsel reiterated the claim for the solidarity contribution in connection with the transfer of the Player from Bolton to Toulouse.
 21. On the same day, the Respondent's counsel rejected the claim arguing, in particular, that the Player did not form part of any "cash plus player" deal.
 22. On 23 June 2009, Skeid lodged a claim in front of the Dispute Resolution Chamber of FIFA (the "DRC") requesting the following:

- “(1) To determine the value of D. in the D./J. deal, and require Toulouse to pay the solidarity contribution including interest at a rate of 12,75 % for 2008 and 10,00 % for 2009, or at least 5 %, from the solidarity contribution was due until the solidarity contribution was paid.*
- “(2) Impose disciplinary measures on Toulouse in the event that Toulouse fails to comply with the Decision of the Dispute Resolution Chamber”.*

23. With the decision dated 1 February 2012 (the “Appealed Decision”) the DRC rejected the Appellant’s claim and held that no obligation to pay a solidarity contribution had arisen out of the transfer of the Player from Bolton to the Respondent. The DRC ordered Skeid to pay CHF 5,000 to cover procedural costs.
24. The Appealed Decision was based, in particular, on the consideration that the Appellant had not provided enough evidence to support its allegation that a transfer compensation was actually paid from the Respondent to Bolton for the transfer of the Player. According to the DRC, the Appellant did not discharge its burden of proof with regard to the “cash plus player” nature of the aforementioned transfer. Furthermore, the DRC stated that it was not competent to impose disciplinary measures.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 19 September 2012, Skeid filed with the Court of Arbitration for Sport (“CAS”) the statement of appeal with 5 exhibits. It challenged the Appealed Decision, submitting the following requests for relief:

- “1. To determine the value of D. in the D./J. deal, and require Toulouse to pay the solidarity contribution including interest at a rate of 12,75 % for 2008 and 10,00 % for 2009, or at least 5 %, from the solidarity contribution was due until the solidarity contribution is paid.*
- 2. The Toulouse Football Club is ordered to pay the costs of the case to Skeid Fotball”.*

26. On 28 September 2012, Skeid filed its appeal brief, accompanied by 11 exhibits.
27. On 23 October 2012, Toulouse filed its answer, with 13 exhibits, submitting the following requests for relief:

“ON THE MAIN HEAD:

- *TO NOTE the absence of any transfer fee paid by TFC to Bolton on the occasion of the transfer of D.;*
- *NOTE in consequence that the solidarity mechanism provided for in Article 21 of the Regulation is inapplicable;*

And consequently,

- *CONFIRM the Decision rendered by the FIFA Dispute Regulations Chamber on 1 February 2012, and DISMISS all the claims submitted by Skeid;*

ON AN INFINITELY SECONDARY HEAD:

- *SET the amount of the compensation due by TFC to Skeid in application of the solidarity mechanism at the definitive overall sum of 25,500 euros;*
- *DISMISS Skeid' claim concerning interest or, failing this, rule that the official interest rate applicable in France shall be applied;*
- *DISMISS all Skeid's other requests and claims.*

AT ALL EVENTS:

- *SENTENCE Skeid to pay TFC the sum of €10,000 on the score of the costs and fees defrayed in the context of these arbitration proceedings”.*

28. Neither party requested any oral evidence.
29. On 26 October 2012, the parties were invited to inform the CAS Court Office whether they preferred that a hearing be held. Moreover, the parties were advised that the President of the CAS Appeals Arbitration Division had decided to submit the case to a Sole Arbitrator.
30. On 31 October 2012, the Respondent informed the CAS that it preferred a hearing to be held.
31. On 7 November 2012, the Appellant requested the Sole Arbitrator to issue an award based on the parties' written submissions and to allow the Appellant to submit a reply to the Respondent's Answer.
32. On 12 November 2012, the Respondent wrote a letter in which it insisted that a hearing be held and objected to the Appellant's request to file a written reply.
33. On 23 November 2012, the CAS communicated that the Sole Arbitrator appointed for this case would be Mr Massimo Coccia, Professor and Attorney at law in Rome, Italy.
34. On 11 December 2012, the CAS communicated to the parties that the Sole Arbitrator, having noted that no oral evidence was being requested by either party, had for the moment deemed a hearing unnecessary as he would probably be sufficiently well informed to decide the case after a second round of written submissions. Accordingly, the Sole Arbitrator, taking into account articles R56 and R57 para. 2 of the Code of Sports-related Arbitration (“the CAS Code”) and CAS practice, granted the parties a new round of written submissions.
35. On 10 January 2013, the Appellant filed its reply submitting the following requests for relief:
 - “(1) *To confirm the applicability of article 21 cfr. Article 1 to annex 5 in FR.STP [i.e. the FIFA Regulations] and determine the value of D. in the transfer to Toulouse.*
 - “(2) *To calculate and oblige Toulouse to pay the solidarity contribution including an interest at a rate of 5 % according to Swiss law, from the solidarity contribution was due until the solidarity contribution is duly paid.*

Or on a secondary head:

To calculate and oblige Toulouse to pay the solidarity contribution including an interest of the European Central Bank, plus 10 percent points, from the solidarity contribution was due until the solidarity contribution is duly paid.

(3) *Toulouse Football Club is obliged to pay the costs of the case Skeid Fotball*".

36. On 11 February 2013, the Respondent filed its rejoinder, confirming the already submitted motions for relief (see *supra* at para. 27).
37. On 8 March 2013, having examined the new round of written submissions and having noted that, again, no oral evidence was requested, the Sole Arbitrator communicated to the parties that it deemed himself sufficiently well informed and that he had definitively decided not to hold a hearing pursuant to article R57 para. 2 of the CAS Code.
38. Finally, both parties confirmed that their right to be heard has been duly respected by signing and returning to the CAS Court Office the Order of Procedure on 19 March, respectively 4 April 2013.

IV. OVERVIEW OF THE PARTIES' POSITIONS

39. The following discussion of the parties' positions is in summary form and does not purport to include every contention put forward by the parties. However, the Sole Arbitrator has carefully considered all of the submissions put forward by the parties, even if there is no specific reference to those submissions in the award.

IV.1 The Appellant: Skeid

40. The Appellant's submissions, in essence, may be summarized as follows:
 - The Appealed Decision, according to which Skeid has no right to a solidarity contribution arising out of the transfer of the Player from Bolton to the Respondent, is the result of errors both in the assessment of evidence and in the application of the FIFA Regulations.
 - The Appellant argues that the DRC's conclusion that the D. Transfer Agreement and the J. Transfer Agreement were two separate transactions is erroneous. The Appellant believes that the DRC has incorrectly assessed the submitted documentary evidence and wrongly detached the First Agreement from the two transfer agreements and the two transfer agreements from each other.
 - According to the Appellant, the First Agreement and the two transfer agreements constitute a set of connected contracts concerning the Players, namely a unitary "cash plus player" deal where the Player's value was reflected in the reduced transfer fee that Bolton had agreed to pay for J.
 - Moreover, in the Appellant's view, the DRC misinterpreted article 21 and Annex 5 of the FIFA Regulations. It argues that the DRC applied the principle of burden of proof too rigorously, especially since a club entitled to solidarity contribution always has to rely on

third-party information concerning the transaction from which solidarity contribution arises. In other words, the burden of proving the conditions requested by Article 21 of the FIFA Regulations is a very high hurdle to overcome and that should have been taken into due consideration by the DRC.

- The Appellant submits that the word “*compensation*” contained in Article 21 of the FIFA Regulations should not be interpreted restrictively. By following a teleological interpretation of the rule, the word “*compensation*” includes not only remuneration in the strict sense, but also the sporting qualities of players, which represent a financial value in the football employment market; such an interpretation is corroborated both by the Black’s Law Dictionary, which defines “*compensation*” as “*remuneration and other benefits received in return for services rendered...*”, and by DRC case-law.
- In light of the above, and in view of the fact that Toulouse certainly received a benefit represented by the Player’s value, the Appellant argues that a duty to pay the solidarity contribution arose out of the Player’s transfer from Bolton to Toulouse, which formed a part of a “cash plus player” deal.
- Having established that a solidarity contribution is due, the Appellant assumes that, since the D. Transfer Agreement provides that the transfer fee is nil, the Sole Arbitrator should focus his attention on the First Agreement, which provides the basis to determine the Player’s value.
- In this regard, the Appellant underscores that Bolton and the Respondent agreed that the Player’s value was of EUR 1,000,000 if J. did not sign with Bolton due to a non-agreement of Toulouse. On the other hand, if J. himself decided not to sign with Bolton, the price for the Player would be of EUR 600,000.
- In the Appellant’s view, Toulouse’s reluctance to comply with the solidarity mechanism should be taken into account in the assessment of the Player’s value; thus, the Appellant asks that the sum of at least EUR 1,000,000 forms the basis for the determination of the Player’s value at the time he joined the Respondent.
- In conclusion, the Appellant requests that the Respondent be obliged to pay the solidarity contribution related to the transfer of the Player and interest at a rate of at least 5%, commencing from the moment the solidarity contribution was due until it is paid. In addition, it requests Toulouse to be sentenced to pay the costs of the proceedings.

IV.2 The Respondent: Toulouse

41. The Respondent’s submissions, in essence, may be summarized as follows:

- The solidarity mechanism comes into play only when the following two conditions are both met: (i) a change of club during the course of a contract; (ii) the payment of a transfer fee by the new club to the former club. In the case at stake the second condition was not met because no transfer fee was agreed between Bolton and Toulouse in the D. Transfer Agreement.

- Moreover, the Respondent underscores that Skeid did not provide any proof of the payment of any transfer fee whatsoever.
- The First Agreement simply represented a particular phase of the negotiation process and has no contractual value insofar as its effects have been cancelled by the conclusion of the subsequent J. Transfer Agreement, which “*constitutes the entire agreement and understanding between Toulouse and Bolton with respect to the subject matter of this agreement*”.
- The Respondent contends that it is misleading to affirm, as the Appellant does, that Article 21 of the FIFA Regulations takes into account the intrinsic value of a player. On the contrary, it only takes into account the amount of the transfer fee which was indeed paid. In this regard, no transfer fee was paid for the Player and thus the solidarity mechanism does not come into play.
- On a secondary head, if “*the Sole Arbitrator were to consider that the solidarity mechanism ought to be applied*”, Toulouse highlights the exorbitant nature of the Appellant’s claim. In this regard, it draws attention to the fact that the Player had been transferred one year before the signing of the D. Transfer Agreement from Rosenborg to Bolton for a fee of about EUR 475,000 and that it is thus preposterous to claim that the value of the Player had increased so much in less than a year.
- In addition, the Respondent draws attention to the fact that the Player, before joining Toulouse, had played with Bolton only six matches during the 2007/2008 football season for a total of 142 minutes on the pitch.
- Concerning the amount of the solidarity contribution, the value of the Player at the time of his signing an employment contract with the Respondent ought to be assessed at a maximum sum of EUR 600,000, which is the agreed assessment of the Player’s value in the First Agreement in the case J. himself decided not to “*sign a contract with Bolton prior to the 31st July 2008*”.
- In the Respondent’s view, the amount of EUR 1,000,000 mentioned in clause 3 of the First Agreement should not be taken into account, since such a sum includes a penalty which was destined to sanction Toulouse in the event it decided to give another club priority for the transfer of J.
- In application of Article 1 of Annex 5 to the FIFA Regulations, the value of the Player having been estimated at EUR 600,000, the amount of the solidarity contribution payable to Skeid could come to the total sum of EUR 25,500, as shown in the table contained in both Respondent’s written submissions.
- Lastly, the Respondent focuses on the absence of any fault or unlawful intention on its part and, as a consequence, asks the Sole Arbitrator to dismiss Skeid’s claim concerning a penalty interest or, in the alternative, to rule that the official interest rate in force in France shall be applied.

V. ADMISSIBILITY

42. The Appellant submitted his statement of appeal within the deadline provided for by Article R49 of the Code and complied with all the other requirements set forth by Article R48 of the CAS Code.
43. It follows that the appeal is admissible.

VI. JURISDICTION

44. The jurisdiction of the CAS in the present case is based on Article R47 of the CAS Code and Article 67.1 of the FIFA Statutes.

45. Article R47 of the CAS Code reads as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

46. Article 67 para.1 of the FIFA Statutes (July 2012 edition) provides as follows:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

47. The Sole Arbitrator notes that neither party disputed the jurisdiction of the CAS and that both parties confirmed the jurisdiction of the CAS by signing the Order of Procedure. It follows that the CAS has jurisdiction to decide the present dispute.

VII. APPLICABLE LAW AND DE NOVO REVIEW

48. With regard to applicable law, Article R58 of the CAS Code reads as follows:

“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”.

49. Article 66 para. 2 of the FIFA Statutes provides as follows:

“The provisions of the CAS Code of Sport-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

50. The Sole Arbitrator must first point out that the “applicable regulations” mentioned by Article R58 of the CAS Code in this instance refer to and encompass all FIFA rules material to the dispute at stake. Secondly, the Sole Arbitrator notes that the parties are members of their national

federations and are thus indirect members of FIFA; therefore, both clubs have contractually accepted and are bound by FIFA rules; in particular, both parties are bound by Article 66 para. 2 of the FIFA Statutes, which provides that “CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”. In light of the above, the Sole Arbitrator holds that the dispute must be decided in accordance with all pertinent FIFA rules and, additionally, in accordance with Swiss law. With regard to FIFA rules, the Sole Arbitrator finds that, due to the dates of the relevant facts, the case at hand is governed by the 2008 edition of the FIFA Regulations.

51. The applicable procedure in this case is the appeal arbitration procedure provided in Articles R47 *et seq.* of the Code. The Sole Arbitrator, pursuant to Article R57 of the Code, has “full power to review the facts and law” and may thus review *de novo* the case. As is well-established in CAS jurisprudence, this means that the arbitration proceeding entails a *de novo* review and that the Sole Arbitrator shall not be confined to merely deciding whether the body that issued the Appealed Decision is right or wrong.

VIII. RELEVANT FIFA RULES ON SOLIDARITY MECHANISM

52. Article 21 of the FIFA Regulations reads as follows:

“If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations”.

53. Annex 5 of the FIFA Regulations, entitled “Solidarity Mechanism” and specifically its corresponding Article 1, read as follows:

“If a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years. This solidarity contribution reflects the number of years (calculated pro rata if less than one year) he was registered with the relevant club(s) between the seasons of his 12th and 23rd birthdays, as follows:

- *Season of 12th birthday: 5% (i.e. 0.25% of total compensation);*
- *Season of 13th birthday: 5% (i.e. 0.25% of total compensation);*
- *Season of 14th birthday: 5% (i.e. 0.25% of total compensation);*
- *Season of 15th birthday: 5% (i.e. 0.25% of total compensation);*
- *Season of 16th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 17th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 18th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 19th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 20th birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 21st birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 22nd birthday: 10% (i.e. 0.5% of total compensation);*
- *Season of 23rd birthday: 10% (i.e. 0.5% of total compensation)”.*

54. Article 2 of Annex 5 to the FIFA Regulations reads as follows:

“1. The new club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player’s registration or, in case of contingent payments, 30 days after the date of such payments.

2. It is the responsibility of the new club to calculate the amount of the solidarity contribution and to distribute it in accordance with the player’s career history as provided in the player passport. The player shall, if necessary, assist the new club in discharging this obligation.

3. If a link between the professional and any of the clubs that trained him cannot be established within 18 months of his transfer, the solidarity contribution shall be paid to the association(s) of the country (or countries) where the professional was trained. This solidarity contribution shall be reserved for youth football development programmes in the association(s) in question.

4. The Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this annexe”.

IX. MERITS

55. To adjudicate the dispute at hand, the Sole Arbitrator must address the following main issues:

- Is the Appellant entitled to solidarity contribution?
- If so, what is the amount of solidarity contribution?
- If so, is the Appellant entitled to interest and, if any, at what rate and since when?

IX.1 Is the Appellant entitled to solidarity contribution?

56. The main issue in the case at hand is whether the transfer of the Player from Bolton to the Respondent generated the Respondent’s obligation to pay a solidarity contribution in favour of the Appellant.

57. The solidarity mechanism comes into play when two conditions are met:

- (i) a player transfers to a foreign club during the course of his contract;
- (ii) there is a payment of a transfer compensation by the new club to the former club.

58. The Sole Arbitrator notes that the occurrence of the first condition in the case at hand is common ground between the parties. It is clear and undisputed that the transfer of the Player from Bolton to the Respondent occurred while he was under contract with Bolton.

59. As to the second condition of the solidarity mechanism, the parties have different opinions. In the Appellant’s view, the Player was transferred by Bolton to the Respondent in the context of a “cash plus player” deal directly tied to the transfer of J. from the Respondent to Bolton. In contrast, the Respondent argues that the transfers of the two Players were not connected and that the Player was transferred for free, without any transfer fee.

(a) Interpretation of the term “compensation” set forth in the FIFA rules

60. Pursuant to Article 21 of the FIFA Regulations any club that has contributed to the education and training (until the age of 23) of a professional player must receive solidarity contribution, i.e. a share of the “*compensation paid*” by the new club to the former club, any time that player is transferred. More specifically, Article 1 of Annex 5 to the FIFA Regulations specifies that the new club must pay to the club(s) which educated and trained the transferred player an amount corresponding to “*5% of any compensation*”.
61. In the Sole Arbitrator’s view, the language “*compensation paid*” and “*5% of any compensation*” must be interpreted in light of the purpose of the solidarity mechanism. The Sole Arbitrator notes that the *FIFA Commentary on the Regulations for the Status and Transfer of Players* (the “FIFA Commentary”) states that “*the solidarity mechanism is meant to foster the training of young players*” (comment to Article 21) and constitutes “*an efficient means to support grassroots football*”.
62. Accordingly, there can be no doubt that the purpose of the solidarity mechanism is to reward and encourage clubs that invest in the training and education of young players (see CAS 2008/A/1751). Therefore, the rules concerning the solidarity mechanism must be interpreted in order to foster their purpose and to avoid that they are circumvented.
63. In the Sole Arbitrator’s view, any circumvention of the solidarity rules, intended to reduce or avoid the payment of compensation, should be dissuaded, since it contradicts the aim to promote more and better training of young football players. The requirements set out in the FIFA rules on solidarity, therefore, must be interpreted in ways that give effect to the solidarity mechanism and prevent any circumvention thereof.
64. It is to be noted that other CAS Panels interpreted the FIFA rules in order to avoid their circumvention (see CAS 2009/A/1757; CAS 2011/A/2477). In particular, the panel in CAS 2011/A/2477 stated as follows:
- “Any circumvention of the rules on training compensation, intended to reduce or avoid the payment of training compensation, contradicts the aim to encourage more and better training of young football players, and especially violates the solidarity among clubs. Such circumvention of the rules on training compensation shall be prevented. The formal requirements set out in the respective provisions, therefore, have to be interpreted in a way that gives meaning and effect to the provisions”.*
65. Moreover, the panel in CAS 2009/A/1757 stated as follows:
- “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”.*
66. Although those CAS Panels dealt with the payment of training compensation, the same legal reasoning can be used in reference to the payment of solidarity contribution, since both mechanisms share the same rationale, that is, to promote the formation of young players by financially rewarding the clubs (particularly grassroots clubs) that invest in their training and education.
67. Therefore, having in mind the purpose of the solidarity mechanism, the Sole Arbitrator is of the view that the quoted language “*compensation paid*” and “*5% of any compensation*” used by the FIFA Regulations does not necessarily require the actual payment of cash. A club may transfer

a player to another club in exchange for various forms of consideration, which may consist in a sum of money and/or in some other valuable benefit. For example, a club may acquire a strong player by paying a compensation composed of a sum of money and of another player, whose worth is useful to decrease the amount of cash to be paid (a so-called “cash plus player” deal). In such a case, the determinable value of the player traded in addition to cash is to be taken into account, in order to calculate the amount of solidarity contribution owed to the training clubs.

68. In view of the above, the Sole Arbitrator finds that the term “*compensation*” is to be interpreted as including not only the payment of a sum of money but also of other forms of valuable consideration, such as the rights over other players, as long as those distinct forms of consideration are quantifiable through clear and convincing evidence.
69. Accordingly, should the Sole Arbitrator come to the conclusion that Bolton transferred the Player to the Respondent for some consideration, the Appellant would be entitled to receive the solidarity contribution from the Respondent.

(b) *The connection between the three agreements*

70. Article 1 of the D. Transfer Agreement provides that the “*fee agreed between the parties for the transfer of registration of the above player is nil*”. If the D. Transfer Agreement were construed in isolation, without taking into account the First Agreement and the J. Transfer Agreement, the solidarity mechanism would not come into play and the Respondent would not have to pay any solidarity contribution, as the 5% of nil is obviously zero. However, in the Sole Arbitrator’s view, there is clear and convincing evidence that the D. Transfer Agreement has been part of a single commercial transaction, comprising the First Agreement, the D. Transfer Agreement and the J. Transfer Agreement.
71. In fact, the First Agreement, dated 23 June 2008, expressly governs the transfer of the Player from Bolton to the Respondent, setting out three alternative scenarios with respect to the consideration owed by Toulouse to Bolton for the Player (see *supra* at para. 11):
 - (i) if J.’s transfer from the Respondent to Bolton occurs before 31 July 2008, the Player is transferred from Bolton to the Respondent for free;
 - (ii) if J.’s transfer to Bolton does not occur before 31 July 2008 due the refusal of J., the Respondent must pay to Bolton EUR 600,000 as transfer fee for the Player;
 - (iii) if J.’s transfer to Bolton does not occur before 31 July 2008 due to the refusal of the Respondent, the Respondent must pay to Bolton EUR 1,000,000 as transfer fee for the Player.
72. It is clear from the text of the First Agreement that the Respondent and Bolton attributed some value to the transfer of the Player, because if the transfer of J. had not come through and the transfer of the Player had occurred alone, the Respondent would have been obliged to pay a transfer fee.
73. The first scenario occurred exactly as set forth by the First Agreement, as J.’s transfer to Bolton occurred on 30 June 2008 and the Respondent did not pay any transfer fee for the Player.

74. In the Sole Arbitrator's view, the First Agreement represents a framework agreement that has been implemented by the two subsequent transfer agreements. Indeed, neither transfer agreement provides that the First Agreement is repealed; as a consequence, the three agreements must be construed in the sense that they are all valid and enforceable and are part of the same commercial transaction.
75. This view is supported by the fact that the First Agreement and the D. Transfer Agreement were signed on the same day, while the J. Transfer Agreement was signed a week later. Such sequence of events renders it very unlikely that the Respondent and Bolton decided "*to totally dissociate the two operations from one another*", as the Respondent argues. The timing of the three agreements is in itself clear and convincing evidence of the fact that Bolton and the Respondent linked the transfers of the two Players. When the First Agreement was signed, clearly the parties were not sure about the fact that J. would accept to move to Bolton; this uncertainty impeded them to close the operation immediately. One week later, when J. accepted the transfer, Bolton and the Respondent executed the J. Transfer Agreement and definitively closed the operation.
76. Interestingly, while there is an "*entire agreement clause*" in the J. Transfer Agreement (Article 4: "*This agreement constitutes the entire agreement and understanding between Toulouse and Bolton with respect to the subject matter of this agreement and may not be changed or modified except by a separate written agreement signed by both Toulouse and Bolton*"), there is no such clause in the D. Transfer Agreement. In the Sole Arbitrator's view, this confirms that the covenants set forth in the D. Transfer Agreement had to be completed on the basis of the subsequent conditions of J.'s transfer. In particular, this means that the Player was not truly transferred for free, but that he was traded in exchange for consideration that was later to be quantified, depending on the occurrence and circumstances of J.'s transfer. Once the consent of J. was obtained and his transfer could be implemented, the two clubs drafted the J. Transfer Agreement and inserted in it the quoted "*entire agreement clause*" to attest that the operation was closed and that no other covenants were needed.

(c) *The Appellant's right to receive the solidarity contribution*

77. The three connected agreements provide clear and convincing evidence, in the Sole Arbitrator's opinion, that a composite J.-D. plus cash transaction took place, and that Bolton and the Respondent attributed an economic value to the Player. Had J. not transferred to Bolton, that economic value would have been paid in cash by the Respondent to Bolton. As J. did accept to transfer to Bolton, the Player's economic value ended up being part of the consideration given by Bolton to the Respondent. In other words, the Player's economic value lessened the amount of the transfer fee that Bolton paid to the Respondent for J. This appraisal of the facts is corroborated by the official website of Bolton (<http://www.bwfc.co.uk>), where the news was posted on 27 June 2008 that J. had joined Bolton "*with Norwegian international D. moving the other way in a cash plus player deal*".
78. The fact that the Player was not transferred for free but was part of the consideration given by Bolton to the Respondent means that the Appellant has the right to receive the solidarity contribution. Otherwise, the FIFA rules on the solidarity mechanism would be easily circumvented with cash plus player operations.

79. Therefore, the Sole Arbitrator finds that the Respondent must pay to the Appellant 5% of the economic value attributed to the Player by the Respondent and Bolton, as solidarity contribution deriving from the Player's transfer.

IX.2. What is the amount of solidarity contribution?

80. The Appellant has the burden to clearly and convincingly prove the economic value attributed to the Player by Bolton and the Respondent in the cash plus player operation. The Sole Arbitrator finds that the Appellant's submissions with respect to the Player's value are not supported by clear and convincing evidence. The Appellant attributes an excessive value to the Player without the needed evidence; indeed, press articles reporting the alleged value of a deal do not constitute reliable evidence. The Appellant is also mistaken when it tries to assess the so-called "market value" of the Player, as the Player's market value is irrelevant for the purposes of solidarity contribution. The only relevant value is that actually attributed to the Player by the parties to the transfer, i.e. Bolton and the Respondent.
81. As the Respondent correctly acknowledges (although only *eventualiter*, as a subordinate argument), in the case at hand the economic value attributed to the Player is clearly and convincingly proven by the First Agreement itself. Indeed, if J. had decided not to move to Bolton, the Respondent would have paid EUR 600,000 for the Player's transfer. The Sole Arbitrator thus finds that such amount is the pecuniary value that Bolton and the Respondent ascribed to the Player; accordingly, the solidarity contribution must be calculated on that amount.
82. In the Sole Arbitrator's view, the sum of EUR 1,000,000 indicated in the third scenario of the First Agreement (see *supra* at para. 71) is not to be taken into account, as such sum clearly includes a penalty designed to sanction the Respondent in the event it had eventually decided to keep J. or to transfer him to another club.
83. Therefore, given that the pecuniary value ascribed to the Player by Bolton and the Respondent is EUR 600,000, pursuant to Article 1 of Annex 5 to the FIFA Regulations, the amount of solidarity contribution owed to the Appellant, as correctly calculated by the Respondent in its written submissions (although only *eventualiter* "*on an infinitely secondary head*"), is EUR 25,500.
84. As a result, the Sole Arbitrator holds, and so orders, that the Respondent must pay EUR 25,500 (twenty-five thousand and five hundred Euros) to the Appellant as solidarity contribution for the Player's transfer.

IX.3. Is the Appellant entitled to interest and, if any, at what rate and since when?

85. The Sole Arbitrator notes that the parties differ in relation to the law under which the Appellant's claim concerning default interest must be assessed.
86. The Appellant invoked different interest rates in its various submissions, such as the rate provided by Swiss law or that set by the European Central Bank plus 10 percent points. On the other hand, the Respondent is of the view that the interest rate provided by French law should be applied, since the payment obligation "*must be fulfilled within the territory of France*".

87. The Sole Arbitrator is of the view that the issue of interest must be assessed on the basis of Swiss law. Indeed, as already mentioned (see *supra* at para. 50), the parties to the dispute at hand are bound by the FIFA rules, which provide that “CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law” (Article 66 para. 2 of the FIFA Statutes).
88. The Sole Arbitrator notes that Article 104 para.1 of the Swiss Code Obligations (“CO”) provides that the interest rate for late payments is 5% *per annum* and is thus going to apply such rate.
89. With regard to the date on which the interest must start to run, the Appellant claims that the interest is due from the date on which the solidarity contribution was due until the date on which the solidarity contribution is paid. On the other hand, the Respondent has not indicated any specific starting date.
90. The Sole Arbitrator notes that, pursuant to Article 2 of Annex 5 to the FIFA Regulations, the Respondent had to pay the solidarity contribution to the Appellant no later than thirty days after the Player’s registration. As FIFA rules contractually bind the parties (see *supra* at para. 50), the Arbitrator finds that, pursuant to Article 108 para. 3 CO, interest must start to run thirty days after the registration of the Player. As the Player was registered for the Respondent on 23 July 2008 (see *supra* at para. 17), the interest must start to run on 22 August 2008.
91. Therefore, the Sole Arbitrator holds, and so orders, that the Respondent must pay to the Appellant, in addition to the principal of EUR 25,500, a yearly interest rate of 5% as of 22 August 2008 until the effective date of payment.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Skeid Fotball against the decision adopted on 1 February 2012 by the FIFA Dispute Resolution Chamber is partially upheld.
2. The decision of the FIFA Dispute Resolution Chamber dated 1 February 2012 is set aside.
3. Toulouse Football Club is ordered to pay to Skeid Fotball a solidarity contribution in the amount of EUR 25,500, plus interest of 5% p.a. on such sum as of 22 August 2008 until the effective date of payment.
- (...)
6. All other or different requests or motions submitted by the parties are dismissed.