



Arbitration CAS 2013/A/3119 Dundee United FC v. Club Atlético Vélez Sarsfield, award of 20 November 2013

Panel: Mr Hendrik Willem Kesler (the Netherlands), President; Mr Michael Beloff QC (United Kingdom); Mr Efraim Barak (Israel)

Football

Compensation for training

Interpretation of Article 20 FIFA Regulations

Interpretation of Article 6 of Annex 4 FIFA Regulations

Relevant period of training and education

Difference between loans and transfers with regard to the relevant training period

Entitlement to training compensation of a club which is loaned a player

Calculation of the training compensation

Adjustment of the indicative amounts of training compensation

- 1. A proper reading of article 20 of the FIFA Regulations leads to the conclusion that whether a player is transferred to a third club immediately at the end of a player's contract or whether a certain period has elapsed before the player signs an employment contract with such third club is irrelevant as in either event, the obligation to pay training compensation is, in principle, engaged subject to the various provisions (and exceptions) of Annex 4 to the FIFA Regulations. "At the end of" does not connote a single moment in time, but differentiates between a period prior to, and one post the player's contract with the training club. Whether the player is a free agent or whether any transfer fee was paid by the third club does not depend upon the occurrence of a transfer. Therefore, the existence of a contractual relationship between a training club and a player at the time of the transfer is not a *conditio sine qua non* of the training club's entitlement to training compensation.**
- 2. Although article 6(3) Annex 4 FIFA RSTP itself does not specifically in its actual wording provide that its scope is limited to transfers occurring within the EU/EEA, nevertheless such is the case. In this respect, the heading of article 6 stipulates "Special provisions for the EU/EEA" and both article 6(1) and 6(2) specifically provide that its territorial scope is limited to transfers inside the territory of the EU/EEA. Consequently, article 6 as a whole is only applicable to transfers occurring within the territory of the EU/EEA, *i.e.* a transfer of a player moving from one association to another inside the territory of the EU/EEA, regardless of the fact whether the player concerned is an EU citizen or not.**
- 3. If an amateur player is offered a professional contract with the same club, no training compensation is payable. In such event, if the player is transferred for the first time to a third club, this third club would have to pay training compensation for the entire**

period of registration of the player with the training club, both the period when the player was registered as an amateur as well as the period when the player was registered as a professional.

4. The loan of a player to another club does not interrupt the continuing training period of the player. As a consequence, the club which transferred the player on a loan basis to another club is entitled to training compensation for the period of time during which it effectively trained the player, however excluding the period of time of the loans to the other club. On the other hand, this principle is not applicable in cases in which the player was definitively transferred to another club and then was transferred back to the original training club. In such cases the period of training for purposes of calculating the training compensation will indeed be interrupted. Therefore, if the training club transfers the player again after his return from the club to which he was first transferred, the training club will be entitled to training compensation from the new club only for the “new training period” i.e. the training period which started at the return of the player.
5. A club which is loaned a player, and thus effectively trains that player, is in principle entitled to training compensation corresponding to the period it provided training to the player, unless the loaning club can demonstrate that it bore the costs for the player’s training for the duration of the loan.
6. In calculating the indicative amount of training compensation, CAS jurisprudence shows that a part of a month has to be calculated as a full month. This jurisprudence should be interpreted in the sense that a part of a month has to be calculated as a full month, only in the event a club has provided training to a player throughout more than half of the month.
7. The onus of establishing that the indicative amount of training compensation is clearly disproportionate in a specific case lies on the party raising such argument. However, in the case of a transfer falling outside the territorial scope of transfers inside the territory of the EU/EEA, the “*Special provisions for the EU/EEA*” are not applicable and the party cannot claim that the calculation of the training compensation should be based on the average training costs of the two clubs as opposed to solely on the training costs of that party.

I. PARTIES

1. The Dundee United Football Company Limited (hereinafter: the “Appellant” or “Dundee United”) is a football club with its registered office in Dundee, Scotland. Dundee United is registered with the Scottish Football Association (hereinafter: the “SFA”), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: “FIFA”).

2. Club Atlético Vélez Sarsfield (hereinafter: the “Respondent” or “Vélez Sarsfield”) is a football club with its registered office in Buenos Aires, Argentina. Vélez Sarsfield is registered with the Argentine Football Association (hereinafter: the “AFA”), which in turn is affiliated to FIFA.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the written and oral submissions of the parties and the evidence examined in the course of the proceedings and during the hearing. It is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 11 March 2005, D. (hereinafter: the “Player”), a football player of Argentinean and Italian nationality, born on 6 June 1987, was registered as an amateur football player with Vélez Sarsfield.
5. On 25 June 2008, the Player was registered as a professional football player with Vélez Sarsfield.
6. On 13 August 2008, the Player was loaned from Vélez Sarsfield to the Argentinian football club Atlético Platense and was registered with that club as a professional football player.
7. On 7 April 2009, the Player was again registered with Vélez Sarsfield as a professional football player.
8. On 30 June 2009, Vélez Sarsfield and the Player mutually terminated the latter’s employment contract. This mutual termination was formalised by the parties by means of an agreement (hereinafter: the “Termination Agreement”) in which it was, *inter alia*, determined that “[b]oth parties declare that they have nothing to claim mutually by any concept or matter inherent to the employment contract that would bind both, and by this act it is no longer applicable”.
9. On 3 July 2009, AFA issued the International Transfer Certificate (hereinafter: the “ITC”) of the Player to the SFA in order for the Player to be registered with Dundee United.
10. According to a player passport issued by AFA on 15 July 2009 (hereinafter: “Player Passport A”), which was submitted by AFA to the SFA shortly after the issuance of the ITC to the SFA, the Player was registered with the following clubs up to that date:

<i>Temporada /Season</i>	<i>Club</i>	<i>Pais /Country</i>	<i>Condición /Status</i>	<i>Fecha /Date</i>
1999	AFA	ARGENTINA	Amateur	
2000	AFA	ARGENTINA	Amateur	
2001	AFA	ARGENTINA	Amateur	
2002	AFA	ARGENTINA	Amateur	
2003	AFA	ARGENTINA	Amateur	
2004	AFA	ARGENTINA	Amateur	
2005	Vélez Sarsfield	ARGENTINA	Amateur	11/03/2005
2006	Vélez Sarsfield	ARGENTINA	Amateur	
2007	Vélez Sarsfield	ARGENTINA	Amateur	
2008/2009 ¹	Vélez Sarsfield	ARGENTINA	Profesional	25/06/2008
2008/2009	Platense	ARGENTINA	Profesional	13/08/2008 Prestamo
2008/2009	Vélez Sarsfield	ARGENTINA	Profesional	07/04/2009 Reintegro
2009/2010	Dundee United	ESCOCIA	Profesional	03/07/2009

11. On 20 July 2009, the Player was registered as a professional football player with Dundee United.
12. On 7 September 2009, Vélez Sarsfield sent a letter to Dundee United, requesting it to pay training compensation in an amount of EUR 400,000 “[s]ince the contract with your club is the first as a professional, we are now asking you the payment of the training compensation, as provided in the FIFA Regulations”. This request was not acceded to.

B. Proceedings before the Dispute Resolution Chamber of FIFA

13. On 14 October 2009, accordingly, Vélez Sarsfield filed a claim with FIFA, claiming payment of training compensation from Dundee United. In particular, Vélez Sarsfield requested payment of EUR 400,000, plus default interest of 5% *per annum* as from 21 August 2009. Together with its claim, Vélez Sarsfield provided FIFA with another player passport (hereinafter: “Player Passport B”), also dated 15 July 2009, according to which the Player was not registered with AFA between 1999 and 11 March 2005, but with Vélez Sarsfield.
14. On 18 December 2012, the Dispute Resolution Chamber of FIFA rendered its decision (hereinafter: the “Appealed Decision”), deciding that Dundee United had to pay training

¹ It appears to the Panel that the Player and Vélez Sarsfield concluded a professional employment contract halfway during the 2008 amateur season (amateur seasons in Argentina run from 1 January until 31 December). Although it does not appear from the player passport issued by AFA, other than by the date mentioned on the “Fecha/Date” column, the Panel assumes that the Player was registered as an amateur with Vélez Sarsfield during the first half of the amateur season of 2008, before signing a professional contract.

compensation to Vélez Sarsfield over the period between 11 March 2005 and 20 July 2009. The Appealed Decision contains, *inter alia*, the following operative part:

1. *“The claim of [Vélez Sarsfield] is partially accepted.*
 2. *[Dundee United] has to pay to [Vélez Sarsfield], within 30 days as from the date of notification of this decision, the amount of EUR 230,000 plus default interest of 5% p.a. on said amount as from 21 August 2009 until the date of effective payment”.*
15. On 27 February 2013, upon the request of both clubs, the FIFA DRC communicated the grounds of the Appealed Decision to the parties and found, *inter alia*, the following:
1. Dundee United submitted that the claim of Vélez Sarsfield had to be partially rejected because the Player is a citizen of the EU, maintaining that the special provisions for transfers of players within the EU/EEA, contained in the FIFA Regulations for the Status and Transfer of Players (hereinafter: the “FIFA Regulations”) had not been complied with as Vélez Sarsfield did not offer any contract to the Player. In this respect, the Chamber remarked that *“the nationality of the player is actually irrelevant with regard to the applicability of art. 6 of Annex 4 of the [FIFA Regulations]. Said provision is limited to a well-defined geographical scope of the associations between which the player is being transferred, this is, it is limited to players moving from one association to another inside the territory of the EU/EEA. Since Argentina is neither a member of the European Union (EU), nor of the European Economic Area (EEA), the Chamber found it evident that art. 6 of Annex 4 of the [FIFA Regulations] does not apply in the present case as lex specialis. Hence, [Dundee United] cannot invoke non-compliance of [Vélez Sarsfield] with art. 6 of Annex 4 and all arguments presented by [Dundee United] in this respect are therefore rejected by the Chamber”.*
 2. Dundee United further maintained that the Player and Vélez Sarsfield had signed a termination agreement waiving their rights to claim anything from the other party and that the registration of the Player with Dundee United did not take place either during or at the end of the Player’s contract with Vélez Sarsfield. In this respect, *“the Chamber was eager to emphasize that, according to art. 2 par. 1 lit. ii) of Annex 4 of the [FIFA Regulations], the transfer of the player can take place either during or at the end of his contract. Thus, the members of the Chamber highlighted the fact that the wording “at the end of the player’s contract” includes that the relevant transfer of the player can occur after the expiry, mutual or justified termination of the player’s previous employment contract, without the club losing its entitlement to training compensation”.* Furthermore, *“the Chamber pointed out that the pertinent agreement did i) not explicitly stipulate that [Vélez Sarsfield] would waive its entitlement to training compensation, ii) merely indicated that [Vélez Sarsfield] and the [Player] would no longer have any claims towards each other in relation to the employment contract previously concluded between them, and iii) that said agreement was concluded between [Vélez Sarsfield] and the [Player] and not between [Vélez Sarsfield] and [Dundee United]. As such, the Chamber considered that [Dundee United] could not derive any rights from the relevant agreement and deemed that said document could not be considered as a document by means of which [Vélez Sarsfield] had indeed waived its right to claim training compensation from [Dundee United]”.*

3. In respect of Dundee United's argument that due to the loan of the Player to Atlético Platense, the chain for calculating training compensation was broken and that it would only be payable for the period of registration of the Player with Vélez Sarsfield between 7 April 2009 and 2 July 2009, the FIFA DRC "(...) *came to the firm conclusion that for the purposes of the provisions of the [FIFA Regulations] governing training compensation, the loan of a young player from his club of origin to other clubs does not interrupt the ongoing training period of the player and the obligation to pay training compensation arises only in case a player is transferred on a definitive basis, with the effect that, at that moment, the club which transferred the player on a loan basis to another club is entitled to training compensation for the entire period of time during which it effectively trained the player, however, excluding the period of time of the loan*".
4. Vélez Sarsfield for its part contended that, based on a player passport issued by AFA, the Player was registered with it as from 1 March 1999 until 24 June 2008 as an amateur, and as from 25 June 2008 until 12 August 2008 as well as from 7 April 2009 until 2 July 2009 as a professional and that accordingly a total amount of training compensation of EUR 400,000 had to be paid. Dundee United challenged this amount, based on a player passport issued by AFA, maintaining that the first registration date of the Player with Vélez Sarsfield was in March 2005, instead of March 1999. In this respect, *"the Chamber, taking into consideration the arguments with regards to the first registration date of the [Player] set forth by [Dundee United], acknowledged the good faith of [Dundee United] when assuming that the first registration date of the [Player] with [Vélez Sarsfield] was on 11 March 2005, as the AFA had confirmed when issuing the relevant [ITC]. The Chamber considered that there were valid reasons for [Dundee United] to assume that the dates disclosed in the player passport issued by the AFA at the time of the transfer, were the correct dates. This is, the members of the Chamber agreed on the good faith of [Dundee United] when interpreting the player passport sent by the AFA.*
5. *Consequently, the Chamber duly noted that, according to the documentation on file, it could be established that the [Player] had been registered with [Dundee United] on 20 July 2009, that [Dundee United] belonged to the club category II (indicative amount of EUR 60,000 per year) and that [Vélez Sarsfield] is only entitled to training compensation for the period as from 11 March 2005 until 12 August 2008. Therefore, and while taking into account that due to change of the [Player's] status from amateur to professional in June 2005 [sic]² and the subsequent change of the starting and ending dates of the seasons in Argentina, [Vélez Sarsfield] is entitled to training compensation for 10 months of the season of the player's 18th birthday and for the complete seasons of the player's 19th, 20th and 21st birthday, whereby, due to the earlier mentioned change of the season dates, the season of the player's 21st birthday only lasted 6 months.*
6. *Consequently, and in light of the above-mentioned considerations, the Chamber decided to partially accept [Vélez Sarsfield's] claim and decided that [Dundee United] is liable to pay training compensation to [Vélez Sarsfield] in the amount of EUR 230,000.*

² This is obviously a typographical mistake in the Appealed Decision, it is not disputed by the parties that the Player signed his professional employment contract with Vélez Sarsfield in June 2008.

7. *Furthermore, for the sake of completeness, the Chamber referred to the burden of proof contained in art. 12 par. 3 of the Procedural Rules, and deemed that [Dundee United] had not provided any compelling evidence which would support that the amount payable as training compensation was clearly disproportional to the matter at hand (cf. art. 5 par. 4 of Annex 4 of the [FIFA Regulations]).*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 18 March 2013, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter: the “CAS”). The Appellant nominated the Hon. Michael J. Beloff QC, barrister in London, England, to be appointed as arbitrator.
17. On 26 March 2013, the Appellant filed its appeal brief. This document contained a statement of the facts and legal arguments. The Appellant challenged the Appealed Decision taken by the FIFA DRC on 18 December 2012, submitting the following requests for relief:
- “6.3.1.1. *that the decision appealed against be quashed;*
- 6.3.1.2. *that the CAS issue a new decision refusing the Respondent’s claims for payment of training compensation.*
- 6.3.1.3. *that the CAS order that the Respondent shall bear the arbitration costs and pay the legal fees and other expenses incurred by the Appellant incurred in connection with the CAS proceedings”.*
18. On 27 March 2013, the Respondent nominated Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel, to be appointed as arbitrator.
19. On 28 March 2013, FIFA renounced its right to request its possible intervention pursuant to Article R54 and Article R41.3 of the CAS Code of Sports-related Arbitration (hereinafter: the “CAS Code”).
20. On 2 May 2013, pursuant to article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:
- Mr Hendrik Willem Kesler, attorney-at-law in Enschede, the Netherlands, as President;
 - The Hon. Michael J. Beloff, QC barrister in London, England; and
 - Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel, as arbitrators.
21. On 22 May 2013, the Respondent filed its answer, whereby it requested CAS to decide as follows:
- “1. *We request that the Appellant’s claim be dismissed and that the decision reached on 18th December 2012 by the Dispute Resolution Chamber be upheld in its entirety.*

2. *In any case, we request this Honourable Court to order the Appellant to bear all cost incurred with these proceedings.*
 3. *In any case, we request this Honourable Court to order the Appellant to cover all legal expenses of the Respondent related [sic] these proceedings”.*
22. On 29 May 2013, the Appellant requested the Panel to hold a hearing for the Appeal.
 23. On 30 May 2013, further to a request of the President of the Panel, AFA submitted a copy of its file related to the Player to the CAS Court Office.
 24. Also on 30 May 2013, the Respondent confirmed that it would be willing to attend a hearing if the Panel considered it appropriate to hold one.
 25. On 4 June 2013, the CAS Court Office informed the parties that the Panel had decided to hold a hearing.
 26. On 10 June 2013, upon the request of the President of the Panel pursuant to article R57 of the CAS Code, FIFA produced a copy of its file related to the matter.
 27. On 9 and 10 July 2013 respectively, the Appellant and the Respondent returned duly signed copies of the Order of Procedure.
 28. On 22 August 2013, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they had no objection to the constitution and composition of the Panel.
 29. In addition to the Panel and Mr Brent Nowicki, Counsel to the CAS, the following persons attended the hearing:
 1. For the Appellant:
 1. Mr Rod McKenzie, Counsel;
 2. Mr Paul-Silviu Manolache, Counsel; and
 3. Mr Stephen Thompson, Chairman of Dundee United
 2. For the Respondent:
 1. Mr Cristian Germán Ferrero, Counsel;
 2. Mrs Marisol Crespo, Interpreter
 30. The Panel heard evidence from Mr Stephen Thompson, Chairman of Dundee United. Mr Thompson was invited by the President of the Panel to tell the truth subject to the sanctions of perjury. Each party and the Panel had the opportunity to examine and cross-examine the witness. The parties then had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

31. Although the Respondent intended to call as witness [the] former President of the Respondent, and arrangements were made by the Panel and the CAS Court Office to hear him by conference call, at the hearing itself the Respondent indicated to the Panel that it did not wish to question this witness who was accordingly [with agreement of the Appellant] not heard.
32. Before the hearing was concluded, both parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their right to be heard had been respected.
33. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

34. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties.
35. The submissions of the Appellant may be summarized, as follows:
 - Dundee United maintains that Player Passport B, as submitted by Vélez Sarsfield, is false and that the Player was only registered with Vélez Sarsfield for the first time on 11 March 2005.
 - Dundee United contends that “[i]he only potentially relevant period for payment of training compensation is the period from 7 April 2009 until 3 July 2009 when in fact no training and development was given to the Player as disclosed in the Player’s signed statement which accompanies [the appeal brief]. No payment of training compensation should be made in respect of any period when no training and development was provided”.
 - Dundee United also submits that by concluding the Termination Agreement “the Player and the Respondent effectively discharged any and all claims that might arise out of or be connected in any way with the contract of employment between the Player and the Respondent”.
 - Furthermore, Dundee United, referring to article 5(4) of Annex 4 to the FIFA Regulations, argues that because Vélez Sarsfield had acted in bad faith in relying on false documentation no training compensation is payable or that it must be adjusted as disproportionate given the circumstances of this case.
 - Dundee United also avers that no training compensation is payable based on article 20 of the FIFA Regulations, as the Player’s registration did not take place during or at the end of the Player’s contract. In this respect by reference to article 6 of Annex 4 to the FIFA Regulations Dundee United claims also that no training compensation is payable as Vélez Sarsfield did not offer a new contract to the Player.

- Finally, Dundee United contends that no training compensation is due to Vélez Sarsfield at all because the Player is an Italian citizen and as such he is entitled to all the rights and protections of EU law. In this respect Dundee United argues that the Player's freedom of movement rights would be inhibited by any requirement to pay training compensation to a former club of a player, and that the imposition of such requirement also contravenes EU competition law.
- Alternatively, Dundee United submits that if any training compensation is payable at all the training compensation should be based on the average of the training costs of each of the Respondent and the Appellant which are understood to be EUR 60,000 in respect of the Appellant and USD 30,000 in case of the Respondent.

36. The submissions of the Respondent may be summarised as follows:

- Vélez Sarsfield starts by stating that *“due to time and cost reasons, [Vélez Sarsfield] did not consider it opportune at that point to appeal the [Appealed Decision]. Therefore, “we must take as valid that the [Player] was registered with [Vélez Sarsfield] for the first time on 11 March 2005. For the purposes of the relevant calculation therefore, the Player received training [with Vélez Sarsfield] from the 11 March, 2005 until 12 August, 2008 and from the 7 April 2009 until 30 June, 2009”*.
- Vélez Sarsfield contends that all the criteria to be entitled to training compensation pursuant to article 20 and Annex 4 of the FIFA Regulations were met: *“a) effective training of the player b) transfer of a player between clubs of two different associations; c) transfer took place during or at the end of his contract and d) before the end of the season of his 23rd birthday”*.
- Vélez Sarsfield relies on the analysis of the FIFA DRC in its Appealed Decision when it decides that a *“transfer on a loan basis does not interrupt the ongoing claims regarding training rights; only the definitive transfer has these effects”*.
- Vélez Sarsfield submits that the Player received effective training from 7 April 2009 until 3 July 2009 and that this assumption cannot be displaced by the mere assertion without supporting evidence from the Player.
- In respect of the Termination Agreement concluded between Vélez Sarsfield and the Player, Vélez Sarsfield maintains that it did *“i) not explicitly stipulate that [Vélez Sarsfield] would waive its entitlement to training compensation, ii) merely indicated that [Vélez Sarsfield] and the Player would no longer have any claim towards each other in relation to the employment contract previously concluded between them, and iii) that said agreement was concluded between [Vélez Sarsfield] and the [Player] and not between [Vélez Sarsfield] and [Dundee United]”*.
- In respect of Dundee United's allegation that training compensation is a right dependent on the employment contract, Vélez Sarsfield relies on CAS jurisprudence in order to submit that training compensation is a right that is independent of the existence of an employment contract.

- Vélez Sarsfield contends that article 20 of the FIFA Regulations is not applicable. It argues that training compensation “*is applicable if the player is registered as a professional in the new club without prejudice to the existence of valid contract with the former club. The only exceptions are expressly listed in article 2 of Annex 4 of Regulation*” and it submits that none of these three exceptions is applicable in the present matter.
- In respect of Dundee United’s arguments based on EU law, Vélez Sarsfield claims that “*the rationale of the right contained in art. 20 of the [FIFA Regulations] is explained in the FIFA principles for the amendment of the FIFA rules regarding international transfers, agreed in 2001 by FIFA, UEFA and European Commission (...). This right recognized in favor of training clubs cannot in any sense be construed as erecting a barrier to the free movement of players within the territory of the European Unión*”. With respect to Dundee United’s line of reasoning on freedom of movement, Vélez Sarsfield maintains that “*any such argument would have been available to the individual Player, not to the Appellant*”.
- Finally, Vélez Sarsfield argues based on CAS jurisprudence that article 6 of Annex 4 of the FIFA Regulations is not applicable to this case.

V. ADMISSIBILITY

37. The appeal was filed within the deadline of 21 days set by article 67(1) of the FIFA Statutes (2012 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.
38. It follows that the appeal is admissible.

VI. JURISDICTION

39. The jurisdiction of CAS, which is not disputed, derives from article 67(1) of the FIFA Statutes as it determines that “*[a]ppeals 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*” and article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.
40. It follows that CAS has jurisdiction to decide on the present dispute.
41. Under Article R57 of the CAS Code, the Panel has full power to review the facts and the law and it may issue a new decision that replaces the decision challenged.

VII. APPLICABLE LAW

42. Article R58 of the CAS Code provides the following:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

43. The Panel notes that article 66(2) of the FIFA Statutes stipulates the following:

“The 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”.

44. The parties themselves agreed that the various regulations of FIFA and Swiss law additionally applied. The Panel is therefore prepared to proceed on that basis.

VIII. MERITS

A. The Main Issues

45. In view of the above, the main issues to be resolved by the Panel are:

- a) Is Vélez Sarsfield entitled to training compensation for the Player?
- b) If training compensation is payable, what would be the relevant period of training and education to be taken into account?
- c) If training compensation is payable, what would be the correct calculation of the indicative amount of training compensation?
- d) Are there any reasons to adjust the indicative amount of training compensation?

a. Is Vélez Sarsfield entitled to training compensation for the Player?

46. In its Appealed Decision, the FIFA DRC decided that Dundee United had to pay an amount of training compensation of EUR 230,000 to Vélez Sarsfield.

47. The Panel notes that Dundee United’s primary request for relief is that Vélez Sarsfield should not be awarded any training compensation at all, basing itself on certain arguments, considered below by the Panel, which are said to lead to that conclusion.

48. In light of the above, the Panel will first assess whether Vélez Sarsfield is entitled to training compensation before turning its attention to the amount of training compensation to be awarded, if any, and finally whether any such amount would have to be reduced.

i. Transfer “during or at the end of the player’s contract”

49. Dundee United submits that Vélez Sarsfield is not entitled to training compensation because Vélez Sarsfield and the Player mutually terminated the employment contract by virtue of the Termination Agreement and that the Player signed an employment contract with Dundee United when he was a free agent.
50. In this respect, Dundee United refers to article 20 of the FIFA Regulations which provides that the obligation to pay training compensation arises “(...) whether the transfer takes place during or at the end of the player’s contract”. According to Dundee United, the registration of the Player with Dundee United did not take place either during or at the end of the Player’s contract but “on a date following the end of the Player’s Contract” in that context. Dundee United argues that the Player was registered with Vélez Sarsfield as a professional football player and that its right to seek training compensation arose out of and was dependent on the existence of that contractual relationship which had however expired before Vélez Sarsfield claim was made.
51. Vélez Sarsfield submits that such argument must be dismissed on the basis of the interpretation and application of the relevant regulations by FIFA DRC and CAS jurisprudence. Vélez Sarsfield contends that training compensation is due when a player is registered as a professional with a new club, without prejudice to the subsistence of a valid contract with the former club. According to Vélez Sarsfield, all of the exceptions to the entitlement to training compensation are listed in article 2 of Annex 4 to the FIFA Regulations and none of these exceptions apply in the present matter.
52. The Panel observes that the general provision in the FIFA Regulations concerning training compensation is article 20, which stipulates:
- “Training compensation shall be paid to a player’s training club(s): (1) when a player signs his first contract as a professional, and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player’s contract. The provisions concerning training compensation are set out in Annex 4 of these regulations”.*
53. The Panel finds whether a player is transferred to a third club immediately at the end of a player’s contract or whether a certain period has elapsed before the player signs an employment contract with such third club to be irrelevant. In either event, the obligation to pay training compensation is, in principle, engaged subject to the point made in paragraph 54 below. “At the end of” does not connote a single moment in time, but differentiates between a period prior to, and one post the player’s contract with the training club whether the player is a free agent or whether any transfer fee was paid by the third club does not depend upon the occurrence of a transfer. Therefore, the existence of a contractual relationship between a training club and a player at the time of the transfer is not a *conditio sine qua non* of the training club’s entitlement to training compensation.
54. The Panel wishes to stress that this does not mean that training compensation is always due whenever a player is transferred after the expiry of his employment contract. Each particular situation would have to be examined on the basis of the various provisions (and exceptions)

of Annex 4 to the FIFA Regulations pursuant to which a new club may be able to argue that no training compensation is due.

55. Consequently, the Panel proceeds to assess whether Vélez Sarsfield is entitled to training compensation on the basis of Annex 4 to the FIFA Regulations.

56. The Panel observes that article 2 of Annex 4 to the FIFA Regulations, reads as follows:

1. *Training compensation is due when:*
 - i. *a player is registered for the first time as a professional; or*
 - ii. *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.*
2. *Training compensation is not due if:*
 - i. *the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs); or*
 - ii. *the player is transferred to a category 4 club; or*
 - iii. *a professional reacquires amateur status on being transferred.*

57. The Panel observes that it is undisputed that the Player was transferred between clubs of two different associations before the end of the season in which his 23rd birthday occurred. The Player was born on 6 June 1987 – thus, the Player was 22 years of age at the time he was registered with Dundee United. As such, pursuant to article 2(1)(ii) of Annex 4 to the FIFA Regulations, training compensation is, in principle, due.

58. Annex 4 to the FIFA Regulations however, contains certain exceptions to a club's entitlement to training compensation.

59. In this respect, the Panel notes that it is also undisputed by the parties that the three exceptions expressly set out in article 2(2) of Annex 4 to the FIFA Regulations are not applicable.

60. The Panel furthermore observes that article 6(3) of Annex 4 to the FIFA Regulations provides another exception:

“If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player's previous club(s)”.

61. The Panel observes that the parties' positions differ regarding the relevance of this provision to the question whether Vélez Sarsfield is entitled to training compensation despite the fact that the employment relationship with the Player was terminated. Therefore, the Panel will first assess the applicability of article 6 of Annex 4 to the FIFA Regulations before determining whether the fact that the Player signed an employment contract with Dundee United as a free agent has any consequences for Vélez Sarsfield's claim to training compensation.

ii. The applicability of article 6 of Annex 4 to the FIFA Regulations

62. Dundee United contends that based on article 6 of Annex 4 to the FIFA Regulations, Vélez Sarsfield was obliged to offer the Player a contract, failing which it would no longer be entitled to training compensation.
63. Dundee United asserts that the Player, as an EU citizen entering a Member State, is entitled to all of the rights and protections of EU law, in particular the right to free movement of workers. In this respect, Dundee United refers to several decisions of the European Court of Justice (hereinafter: the “ECJ”) which further explain the right of free movement of workers, the provisions of EU competition law and the scope of the respective rules under each category.
64. Dundee United alleges that employers as well as employees can rely on the EU provisions regarding free movement of workers and that on the basis of the jurisprudence of the ECJ, the general provisions of Annex 4 to the FIFA Regulations regarding the calculation of training compensation are disproportionate and thus an impediment to the free movement of workers. Dundee United submits that the requirement to pay training compensation to a former club also constitutes a contravention of EU competition law.
65. In reliance on the ECJ decision in *Olympique Lyonnais v. Bernard C-325/08*, Dundee United asserts that a measure which causes an obstacle to freedom of movement of workers can be accepted only if it pursues a different objective compatible with the EU treaty and is justified by overriding reasons of public interest. Moreover, the measure would have to be a proportionate means of achievement of that objective.
66. Dundee United submits that article 6 of Annex 4 to the FIFA Regulations was introduced in order to align the FIFA Regulations in accordance with EU Law and therefore requires to be read as applicable to all EU citizens and thus not only to transfers between different associations within the EU/EEA. It argued that if article 6 of Annex 4 to the FIFA Regulations is not construed in this way, it would mean that the principles of this provision are not applicable to all EU citizens. In short, Dundee United submits that article 6 of Annex 4 of the FIFA Regulations applies to the present matter and, properly construed, means that Vélez Sarsfield is not entitled to training compensation.
67. Vélez Sarsfield responds that article 6 of Annex 4 to the FIFA Regulations is only applicable in case of a transfer between two clubs belonging to different associations within the European Union (hereinafter the “EU”) or the European Economic Area (hereinafter the “EEA”), and not in case of a player transferring from a country outside the EU/EEA to a country within the EU/EEA. For this purpose Vélez Sarsfield relies on previous CAS jurisprudence to that effect.
68. In the Appealed Decision, the FIFA DRC remarked that the nationality of a player is irrelevant to the application of article 6 of Annex 4 to the FIFA Regulations. The FIFA DRC found that the said provision has a well-defined geographic limitation and concerns transfers of players from one association to another inside the territory of the EU/EEA. Consequently, the FIFA

DRC found it to be clear that article 6 of Annex 4 to the FIFA Regulations does not apply in the present case as a *lex specialis*.

69. The Panel endorses the Appealed Decision and the position contended for by Vélez Sarsfield. The Panel finds that, although article 6(3) itself does not specifically in its actual wording provide that its scope is limited to transfers occurring within the EU/EEA, the Panel finds nevertheless that such is the case. In this respect, the Panel refers to the fact that the heading of article 6 stipulates “*Special provisions for the EU/EEA*” and that both article 6(1) and 6(2) specifically provide that its territorial scope is limited to transfers inside the territory of the EU/EEA.
70. Consequently, the Panel finds that article 6 as a whole is only applicable to transfers occurring within the territory of the EU/EEA, *i.e.* a transfer of a player moving from one association to another inside the territory of the EU/EEA, regardless of the fact whether the player concerned is an EU citizen or not. Since the Player was transferred from a club from outside the territory of the EU/EEA to a club inside the territory of the EU/EEA, article 6 of Annex 4 to the FIFA Regulations is not applicable to the present transfer.
71. The Panel feels comforted in this conclusion by consistent CAS jurisprudence on this issue (DUBEY, The jurisprudence of the CAS in football matters, CAS Bulletin 1/2011, p.10, with references to CAS 2009/A/1810-1811, CAS 2010/A/2069 and CAS 2010/A/2075). More specifically, the Panel adheres to the reasoning in the first of those CAS Award referred to by Vélez Sarsfield, which determines, *inter alia*, the following:

“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 rationale 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).

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”.

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".

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)".

72. As such, and particularly because of the understanding reached between FIFA and UEFA on the one hand and the European Union on the other in March 2001 regarding the proposed transfer system of FIFA, the Panel does not deem it necessary to assess whether indeed Vélez Sarsfield's entitlement to training compensation for the Player is an obstacle to the freedom of movement of workers enshrined in EU law. In the absence of any specific arguments having been submitted by Dundee United in its written submissions or at the hearing in respect of an alleged violation of EU competition law, the Panel does not feel obliged to address such argument further.
73. Turning its attention again to Dundee United's argument that Vélez Sarsfield is not entitled to training compensation because no contractual relationship existed at the time the Player was registered with Dundee United, the Panel finds that this argument must be dismissed.
74. The Panel finds that the introductory words of article 6 of Annex 4 to the FIFA Regulations make clear that this exception is not applicable to transfers that are not governed by this specific provision. The exception contemplated by article 6 is that "[t]he former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract". Since this exception is of no avail to Dundee United in the present matter, the general rules must be applied. As set out *supra*, the Panel finds that based on these general rules Vélez Sarsfield is entitled to training compensation.
75. In addition to the above, the Panel refers to article 2(2)(i) of Annex 4 to the FIFA Regulations which contemplates that "[t]raining compensation is not due if the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs)". If this provision is interpreted *a contrario*, this strengthens the opinion of the Panel that other means of termination, *i.e.* expiry, termination with just cause or mutual termination do not preclude a club from being entitled to training compensation, as these are not specifically referred to in article 2(2)(i). Furthermore, an interpretation of article 20 contended for by Dundee United is wholly at odds with the rationale of the training compensation system, indeed might well lead to the collapse of the system, given that a large number of the transfers which had hitherto been thought to entitle the training clubs to training compensation actually occur after the expiry of the employment contract between the training club and the player.

76. Consequently, the Panel finds that a proper reading article 20 of the FIFA Regulations and article 2 of Annex 4 to the FIFA Regulations, leads to the conclusion that, in accordance with the Appealed Decision, the wording “*at the end of the player’s contract*” includes the registration of a player after expiry, mutual termination or termination with just cause of the player’s previous employment contract. In these situations, the training club is, in principle, still entitled to training compensation for the period it effectively trained the player.
77. Accordingly, the Panel concludes that the fact that the Player was a free agent at the time he was registered with Dundee United does not preclude Vélez Sarsfield from being entitled to training compensation.

iii. Waiver of the right to training compensation

78. Another argument relied on by Dundee United to support the conclusion that no training compensation is due at all, is that Vélez Sarsfield renounced its entitlement to training compensation by virtue of signing the Termination Agreement dated 30 June 2009. In particular, Dundee United refers to the parties’ statement incorporated in such agreement that “*both parties declare that they have nothing to claim mutually by any concept or matter inherent to the employment contract that would bind both and by this act is no longer applicable*”.
79. Vélez Sarsfield, with reference to the Appealed Decision, dismisses this argument of Dundee United, maintaining (i) that the Termination Agreement does not explicitly stipulate that Vélez Sarsfield waived its entitlement to training compensation; (ii) that the Termination Agreement merely indicated that Vélez Sarsfield and the Player would no longer have any claim against each other in relation to the employment contract previously concluded between them; and (iii) that the Termination Agreement was concluded between Vélez Sarsfield and the Player and, not being a party thereto or even a designated beneficiary thereof Dundee United cannot rely upon it to establish that Vélez Sarsfield indeed waived its right to claim training compensation from Dundee United.
80. Vélez Sarsfield contends that even the “*widest or most flexible*” interpretation of the Termination Agreement cannot lead to the conclusion that Vélez Sarsfield waived its right to training compensation in respect of the Player. In any event, a waiver of rights would have to be interpreted restrictively.
81. The Panel finds that the Termination Agreement concluded between the Player and Vélez Sarsfield cannot be construed in such a way as to provide that Vélez Sarsfield waived its possible future entitlement to receive training compensation for the Player, particularly because in the Termination Agreement no reference to training compensation is made whatsoever.
82. The Panel finds that the intention of the parties in concluding the Termination Agreement appears to have been to ensure that no claims from the counterparty would originate after the termination of the contractual relationship. The scope of the waiver was thus limited to entitlements of the signatories of the Termination Agreement *vis-à-vis* each other deriving from the employment contract which they had previously concluded. Dundee United is not a party

to such agreement, neither did the Termination Agreement confer upon or deprive any rights of a third party.

83. The Panel finds that Dundee United could not indeed have reasonably understood from the Termination Agreement that Vélez Sarsfield waived its entitlement to training compensation.
84. At the hearing, Mr Thompson, Chairman of Dundee United, clarified that he had seen the Termination Agreement but did not consider it necessary to seek legal advice in respect of Vélez Sarsfield's entitlement to training compensation. The representatives of Dundee United appear merely to have assumed wrongly that no training compensation would have to be paid.
85. The Panel would add that Dundee United should, as a matter of common sense, at least have checked the position with Vélez Sarsfield, particularly because it is a well-experienced club in the world of football with a history of over 100 years. Without prejudice to its analysis of the Termination Agreement, itself dispositive of the point raised by Dundee United, the Panel finds that in the absence of any verification that Vélez Sarsfield renounced its right to training compensation, the risk of Dundee United's assumption that no training compensation would be payable, has to be borne by Dundee United itself.
86. Hence, the Panel finds that the Termination Agreement does not affect Vélez Sarsfield's entitlement to training compensation.

iv. Bad faith of Vélez Sarsfield

87. Dundee United further submits that Vélez Sarsfield acted in bad faith towards it and that Vélez Sarsfield therefore should not be entitled to training compensation.
88. According to Dundee United, the bad faith of Vélez Sarsfield is evidenced by the letters that were sent by Vélez Sarsfield's counsel to Dundee United on 7 and 18 September 2009. In these letters, Vélez Sarsfield claimed that it was entitled to training compensation on the premise that the Player signed his first professional contract with Dundee United and that the Player's employment contract with Vélez Sarsfield had not expired, but rather was terminated by consensual agreement.
89. At the occasion of the hearing, Vélez Sarsfield admitted that it had made a mistake in contending that the Player signed his first professional contract with Dundee United and offered its apologies to Dundee United in this respect.
90. The Panel observes that Vélez Sarsfield, in its letter dated 7 September 2009, stated the following:

"Since the contract with your club is the first one as a professional, we are now asking you the payment of the training compensation, as provided in the FIFA Regulations".
91. The Panel observes that article 3(1) of Annex 4 to the FIFA Regulations stipulates the following:

“On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players’ career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday. 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 first time he was effectively trained by that club”.

92. As determined in CAS jurisprudence, if an amateur player is offered a professional contract with the same club, no training compensation is payable. In such event, if the Player is transferred for the first time to a third club, this third club would have to pay training compensation for the entire period of registration of the player with the training club, both the period when the player was registered as an amateur as well as the period when the player was registered as a professional (CAS 2004/A/560).
93. The Panel adheres to the conclusion reached in CAS 2004/A/560 and it is in this sense that the Panel understands Vélez Sarsfield’s letter to Dundee United. The inaccuracy in the letter did therefore not have any consequences for Dundee United’s obligation to pay training compensation to Vélez Sarsfield.
94. Moreover, the Panel finds that the incorrect expression in both Vélez Sarsfield’s letters (which was regrettable) was nonetheless not of such a nature as to justify a preclusion of Vélez Sarsfield from being entitled to training compensation or to justify a reduction of the amount of training compensation due.
95. As a consequence, the Panel does not find that Vélez Sarsfield acted in bad faith towards Dundee United or that Vélez Sarsfield should for this reason be precluded from being entitled to training compensation.

v. Conclusion

96. In view of the above, the Panel concludes that Vélez Sarsfield is entitled to receive training compensation on the basis of article 20 FIFA Regulations and Annex 4 to the FIFA Regulations.
 97. Therefore, the Panel must proceed to determine the relevant amount of training compensation to be paid to Vélez Sarsfield by Dundee United.
- b. *If training compensation is payable, what would be the relevant period of training and education to be taken into account?***
98. In order to be able to calculate the relevant amount of training compensation to be paid by Dundee United, the Panel first has to establish the relevant training period. Based on this training period, an indicative amount of training compensation can be calculated, which can subsequently be adjusted by the Panel if the circumstances so require.

99. With regard to the training period, article 1 of Annex 4 to the FIFA Regulations provides, *inter alia*, that:

“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 the 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. (...)”

100. Therefore, in order to determine the relevant training period, both the date the Player’s training period with Vélez Sarsfield commenced and the date on which the Player’s training period with Vélez Sarsfield ended need to be established.

i. Commencement of the Player’s training period

101. The Panel notes that Vélez Sarsfield “*due to time and cost reasons*” no longer contests the date of first registration of the Player with Vélez Sarsfield. Consequently, it is no longer disputed that the first registration of the Player with Vélez Sarsfield was on 11 March 2005, as was established by the FIFA DRC in the Appealed Decision.

102. As the only difference between Player Passport A and Player Passport B is the date the Player was registered for the first time with Vélez Sarsfield, the Panel observes that it is irrelevant which of the two player passports is to be taken into account in this respect.

103. Nevertheless, the Panel observes that there is a disagreement between the parties with regard to the effects of the loan of the Player to Atlético Platense and thus with regard to the commencement date of the relevant training period of the Player with Vélez Sarsfield. The Panel therefore has to assess whether the training period started upon the first registration of the Player with Vélez Sarsfield on 11 March 2005, or whether the loan has the effect of interrupting the training period with the result that the relevant training period for which Dundee United should pay training compensation only started upon the return of the Player to Vélez Sarsfield on 7 April 2009.

104. The Panel observes that article 3(1) of Annex 4 to the FIFA Regulations stipulates the following:

“On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players’ career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday. 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 first time he was effectively trained by that club”.

105. Dundee United refers to article 10(1) of the FIFA Regulations which provides that “*any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and the solidarity contribution*”. On this basis, Dundee United submits that the loan of the Player triggered the entitlement of Vélez Sarsfield to training compensation and as a

consequence broke the “chain”. According to Dundee United, the loan period with Atlético Platense is to be treated as a transfer of the Player.

106. In other words, Dundee United contends that the relevant training period to be taken into account for the calculation of the amount of training compensation commenced on 7 April 2009, *i.e.* the day the Player returned from Atlético Platense and was registered as a professional with Vélez Sarsfield again.
107. In this respect, Vélez Sarsfield refers to §17-24 of the considerations of the FIFA DRC in the Appealed Decision. In these paragraphs, the FIFA DRC concluded that the loan of a player does not interrupt the continuing training period of a player.
108. Furthermore, Vélez Sarsfield alleges that the relevant date to be taken into account for the determination of the training period is 11 March 2005, the date the Player was registered with Vélez Sarsfield for the first time.
109. The Panel observes that the FIFA DRC in its Appealed Decision reasoned as follows in this respect:

“(…) [T]he Chamber acknowledged that the [Player] was, between 13 August 2008 and 6 April 2009, registered as a professional with Atlético Platense, however, considered it at the same time vital to underline that the [Player] was registered on a loan basis with Atlético Platense, i.e. the [Player] was loaned as a professional by [Vélez Sarsfield] to Atlético Platense and not transferred on a definitive basis to Atlético Platense.

In view of the above, the Chamber referred to art. 10 par. 1 of the [FIFA Regulations], which stipulates that professionals may be loaned to another club on the basis of a written agreement between the professional and the clubs concerned. Moreover, the last sentence of said article stipulates that any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and the solidarity mechanism.

Having said that, the Chamber, stressed that one of the aims of the last sentence of art. 10 par. 1 of the Regulations is to ensure that training clubs which register a player on a loan basis also benefit from the solidarity mechanism and training compensation, provided that the relevant prerequisites in the pertinent provisions of the [FIFA Regulations] are fulfilled. This approach is also in line with the Chamber’s well-established jurisprudence that all clubs which have in actual fact contributed to the training and education of a player as from the age of 12 until the age of 21 are, in principle, entitled to training compensation for the timeframe that the player was effectively trained by them.

In this respect, the Chamber deemed it at this point essential to emphasise that, as to the liability to pay training compensation, the analogy established in art. 10 par. 1 of the [FIFA Regulations] could not be extended to the case in which a player is loaned to a club and thus is not being definitely transferred to the latter club. In other words, the transfer of a player from the club of origin to the club that accepts the player on loan, as well as the return of the player from the club that accepted him on loan to the club of origin, do not constitute a “subsequent transfer” in the sense of art. 3 par. 1 sent. 3 of Annex 4 of the [FIFA Regulations]. The Chamber was eager to point out that it could not have been the intention of the legislator of the relevant

regulatory provision (i.e. art. 10 par. 1 of the [FIFA Regulations]) to trigger the consequences of art. 3 par. 1 of Annex 4 of the [FIFA Regulations] on the occasion of a transfer on a loan basis and, thus, potentially deprive the loan of its essential flexibility and, in connection with the training and education of player, its purpose of providing young players with the opportunity to gain practical experience in official matches for another club in order to develop in a positive way.

What is more, and while recalling that art. 3 par. 1 sent. 3 of Annex 4 of the [FIFA Regulations] stipulates that “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”, the Chamber, once again referring to its well-established jurisprudence, pointed out that, within the framework of loans and for the purposes of the rules governing training compensation, the period of time that the [Player] was registered with Atlético Platense on loan and the period of time that the [Player] was registered with [Vélez Sarsfield], should be considered as one entire timeframe.

Hence, the Chamber came to the firm conclusion that for the purposes of the provisions of the [FIFA Regulations] governing training compensation, the loan of a young player from his club of origin to other clubs does not interrupt the ongoing training period of the player and the obligation to pay training compensation arises only in case a player is transferred on a definitive basis, with the effect that, at that moment, the club which transferred the player on a loan basis to another club is entitled to training compensation for the entire period of time during which it effectively trained the player, however, excluding the period of time of the loan”.

110. The Panel fully adheres to this reasoning of the FIFA DRC which supported the conclusion that the entire period of time the Player was registered with Vélez Sarsfield until he was 21 should be taken into account.
111. On the basis of that reasoning the Player’s temporary transfer to Atlético Platense in this case which took place after he was 21 is wholly irrelevant for the calculation of the training compensation. Such transfer on loan cannot be considered as a transfer triggering the consequences enshrined in article 3(1) of Annex 4 to the FIFA Regulations. Consequently, the Panel finds that the relevant training period commenced on 11 March 2005.
112. The Panel wishes to add that this view is consistent with CAS jurisprudence, such as CAS 2011/A/2559, whereby it was determined that:

“(…) the obligation to pay training compensation arises only in case a player is definitively transferred from one club to another, with the effect that the club which transferred the player on a loan basis to another club is entitled to training compensation for the period of time during which it effectively trained the player, but excluding the period of time of the loans to the other club”.
113. The Panel also finds that this conclusion is consistent with the actual rationale of the training compensation system, which is to encourage the recruitment and training of young players. To hold that the loan of a player would interrupt the training period, could, in the opinion of the Panel, deter training clubs from loaning players. It occurs frequently in the world of football that young players are not proficient enough to play for the first team of their club. In order to prepare these players for the first team, or to give these players a chance to train and play in order to try and reach the required level to play for the first team, a solution

regularly used is to loan the player concerned to another team in order for the player to gain experience with another club and to prepare him or give him the chance to reach the requisite professional level for playing in the first team of the training club. However, if the making of such loan would entail the consequence that the training club would thereby waive its entitlement to training compensation, the training club might decide not to loan the player to another club merely in order to secure its entitlement to training compensation. In such situation, the player would be deprived from the very training considered to be the most suitable for him. The Panel would regard such a situation as undesirable, and endorses the view of the FIFA DRC insofar it argued that any other interpretation of the FIFA Regulations would potentially deprive young players of the opportunity to gain practical experience in official matches for another club in order to develop his footballing skills in a positive way.

114. In order to avoid any misinterpretation, the Panel finds it important to stress that the above mentioned principles reasonably apply only in cases of loan periods and will not be applicable in cases in which the “interrupting period” was a period in which the Player was definitively transferred to another club and then was transferred back to the original training club. In such cases the period of training for purposes of calculating the training compensation will indeed be interrupted. Therefore, if the training club transfers the player again after his return from the club to which he was first transferred, the training club will be entitled to training compensation from the new club only for the “new training period” *i.e.* the training period which started at the return of the player.
115. Finally, the Panel deems it important to stress that its analysis does not undermine the principle that all clubs which have actually contributed to the training and education of a young player in the period between the ages of 12 and 21, are, in principle, entitled to training compensation for the time the player was effectively trained by them. A club which is loaned a player; and thus effectively trains that player, is in principle entitled to training compensation corresponding to the period it provided training to the player, unless the loaning club can demonstrate that it bore the costs for the player’s training for the duration of the loan (CAS 2011/A/2559 & CAS 2008/A/1705).
116. Thus, the Panel concludes that the loan period with Atlético Platense did not remove the entitlement of Vélez Sarsfield to training compensation for the training period of the Player with Vélez Sarsfield. As such, the Panel concludes that the commencement date of the relevant training period to be taken into account for the calculation of the amount of training compensation to be paid by Dundee United to Vélez Sarsfield is 11 March 2005.

ii. The end of the Player’s training period

117. Turning its attention to the end of the relevant training period, the Panel notes that the parties also disagree concerning the date when the relevant training period ended.
118. Dundee United argues that the only potentially relevant period for payment of training compensation is the period from 7 April 2009 until 3 July 2009. However during that period in fact no training and development was, as disclosed in the Player’s signed statement, provided to the Player and so payment of training compensation should be made.

119. Vélez Sarsfield refers to and relies on the Appealed Decision, wherein the FIFA DRC established that Vélez Sarsfield “*is only entitled to training compensation for the period as from 11 March 2005 until 12 August 2008*”.

120. The Panel observes that article 1 of Annex 4 to the FIFA Regulations stipulates the following:

“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 the 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. (...)”.

121. In light of this provision, it appears to the Panel that both parties and the FIFA DRC erred in their conclusions regarding the end of the training period. The Panel observes that, taking into account the date of birth of the Player (6 June 1987), the Player turned 21 on 6 June 2008. According to article 1 of Annex 4 to the FIFA Regulations, “[t]raining compensation shall be payable (...) for the training incurred up to the age of 21 (...)”. *A contrario*, no training compensation is payable for training incurred after a player turns 21.

122. Hence, the Panel finds that the training provided to the Player by Atlético Platense and Vélez Sarsfield after the Player’s 21st birthday fall outside the relevant training period.

123. Consequently, the Panel concludes that the Player’s training period ended on 6 June 2008.

c. *If training compensation is payable, what would be the correct calculation of the indicative amount of training compensation?*

124. The Panel observes that article 3, 4 and 5 of Annex 4 to the FIFA Regulations provide guidance as to the calculation of the indicative amount of training compensation.

125. Article 3(1) of Annex 4 to the FIFA Regulations stipulates 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”.

126. 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”.*

127. Article 5 of Annex 4 to the FIFA Regulations is headed “*Calculation of Training Compensation*” and provides as follows:

- “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”.*

128. As Annex 4 to the FIFA Regulations does not contain the actual categorisation of clubs, but only makes reference to the FIFA website, the Panel has resort to the wording of FIFA circular no. 1223, which establishes the so-called indicative amounts of training compensation for the year 2009. Pursuant to article 5(1) of Annex 4 to the FIFA Regulations, training compensation has to be calculated on the basis of the costs that would have been incurred by the new club, *i.e.* Dundee United, as if it had trained the player itself. Since Dundee United is a European club, the indicative amounts for European clubs are to be taken into account. This FIFA circular establishes the following indicative amounts of training compensation for European clubs:

*“Category I: EUR 90.000
Category II: EUR 60.000
Category III: EUR 30.000
Category IV: EUR 10.000”.*

129. In calculating the indicative amount of training compensation, the Panel observes that the relevant training period took place between 11 March 2005 and 6 June 2008. In this respect, CAS jurisprudence shows that a part of a month has to be calculated as a full month (2008/A/1705, §47).

130. The Panel finds that this jurisprudence should be interpreted in the sense that a part of a month has to be calculated as a full month, only in the event a club has provided training to a player throughout more than half of the month. A different interpretation could lead to a situation in which over the course of one month multiple clubs are entitled to a full month of training compensation (*e.g.* in case a player is transferred from training club A to training club B during the course of a month and is subsequently transferred to club C). This would impose a disproportionate burden on any club interested in acquiring the services of the player.
131. It follows that Vélez Sarsfield is entitled to receive training compensation for the month of March 2005 because Vélez Sarsfield provided training to the Player throughout more than half of the month, but that June 2008 is not taken into account because Vélez Sarsfield only provided training to the Player for five days, *i.e.* less than half of the month.
132. Taking into account that it was undisputed that Dundee United was placed in Category II by the SFA in the season of the Player's registration with Dundee United and that the corresponding annual indicative amount of training compensation is EUR 60,000, the Panel comes to the conclusion that Vélez Sarsfield is in principle entitled to a total indicative amount of training compensation of EUR 195,000; 10 months in 2005 (EUR 50,000), 12 months in 2006 (EUR 60,000), 12 months in 2007 (EUR 60,000) and 5 months in 2008 (EUR 25,000).
133. Hence, the conclusion of the Panel to this extent deviates from the conclusion reached by the FIFA DRC in its Appealed Decision. It is not entirely clear to the Panel how the FIFA DRC awarded an amount of training compensation of EUR 230,000. The relevant training period taken into account by the FIFA DRC was only two months longer than the period taken into account by the Panel. This cannot explain the difference in training compensation of EUR 35,000.
134. In light of the above, the indicative amount of training compensation to be paid by Dundee United to Vélez Sarsfield is EUR 195,000.

d. *Are there any reasons to adjust the indicative amount of training compensation?*

135. The Panel observes that CAS jurisprudence determines that training compensation calculated on the basis of the indicative amounts is only to be considered as a general guide in determining the training compensation to be paid in the case under review. This indicative amount therefore, may be applied, increased or reduced, according to the facts and circumstances of the particular case (CAS 2011/A/2681, §117; with further references to CAS 2003/O/500).
136. It is consistent CAS jurisprudence that the onus of establishing that the indicative amount of training compensation is clearly disproportionate in a specific case lies on the party raising such argument based on general principles of the allocation of burden of proof (CAS 2011/A/2681; with further references to CAS 2009/A/1908; CAS 2009/A/1810-1811 and CAS 2003/A/506).

137. Dundee United alleges that, if training compensation is due at all it should be based on the average of the training costs of Vélez Sarsfield and Dundee United as opposed to calculating the amount solely based on the training costs of Dundee United. It is submitted that the regulatory basis for such method of calculation is to be found in article 6 of Annex 4 to the FIFA Regulations which states that:

“If the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs”.

138. However, as concluded *supra*, the Panel finds that article 6 of Annex 4 to the FIFA Regulations is only applicable in case of a transfer of a player from one association to another inside the territory of the EU/EEA. As such, in this respect also Dundee United’s reliance on this provision is of no assistance to it.

139. Also insofar as Dundee United argues that the indicative amount of training compensation must be reduced because of the bad faith of Vélez Sarsfield towards it, this argument must be dismissed for the reasons set out *supra*.

140. For the sake of completeness, the Panel notes that Dundee United did not submit any corroborating evidence such as could convince the Panel to reduce the indicative amount of training compensation.

141. In respect of interest on the award, the Panel observes that article 3(2) of Annex 4 to the FIFA Regulations determines the following:

“In both the above cases, the deadline for payment of training compensation is 30 days following the registration of the professional with the new association”.

142. Although both Player Passport A and B show that the Player was registered with the SFA on 3 July 2009, the Panel observes that it appears from the facts of the case that this date was the only date the AFA issued the Player’s ITC to the SFA and that the Player, as was also determined in the Appealed Decision, was only officially registered with the SFA on 20 July 2009.

143. Therefore, the Panel finds that the deadline for payment of training compensation commenced on 21 July 2009 and that with reference to the deadline for payment of training compensation given in article 3(2) of Annex 4 to the FIFA Regulations, interest at a rate of 5% *per annum* accrues as from 21 August 2009.

144. Hence, the Panel concludes that there is no reason to adjust the indicative amount of training compensation of EUR 195,000 and that this is the amount to which Vélez Sarsfield is entitled to, plus interest at a rate of 5% *per annum* as from 21 August 2009.

B. Conclusion

145. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:
1. Vélez Sarsfield is entitled to training compensation for the Player.
 2. The relevant training period to be taken into account for the calculation of the indicative amount of training compensation is the period from 11 March 2005 until 6 June 2008.
 3. The indicative amount of training compensation Vélez Sarsfield is in principle entitled to is EUR 195,000, plus 5% interest *per annum* as from 21 August 2009.
 4. There is no reason to adjust the indicative amount of training compensation.
146. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Dundee United Football Company Limited on 18 March 2013 against the Decision issued on 18 December 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.
2. The Decision issued on 18 December 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially confirmed.
3. Dundee United Football Company Limited is ordered to pay to Club Atlético Vélez Sarsfield an amount of EUR 195,000 (one hundred and ninety-five thousand Euro), plus 5% interest *per annum* accruing as of 21 August 2009.
4. (...)
5. (...)
6. All other motions or prayers for relief are dismissed.