Arbitration CAS 2016/A/4721 Royal Standard de Liège v. FC Porto (Player C.), award of 19 May 2017

Panel: Prof. Ulrich Haas (Germany), President; Prof. Luigi Fumagalli (Italy); Mr Mark Hovell (United Kindom)

Football
Training compensation
Offer of contract or genuine and bona fide interest in retaining the services of the player
Validity of an offer to enter into a contract under Swiss law
Reception of non-picked up letter sent by registered mail
Establishment of a lack of genuine and bona fide interest in retaining the services of the player

1. **The *"contract offer"* and the *"bona fide interest in retaining the services of the player"* alternatives serve a common purpose, *i.e.* to make the payment of training compensation subject to the condition that the club wanted to retain the services of the player. Only if the club sincerely and honestly pursued this goal shall the free movement of the player be impeded by an automatic price tag calculated as a lump sum. It is in light of this common purpose that both alternatives must be interpreted and that CAS established its jurisprudence in relation to the second alternative, whereby the club must demonstrate, absent any offer, that it had a *"genuine and bona fide interest in retaining the services of the player"* in order to be entitled to a training compensation. No formalistic approach is warranted, but both alternatives must be read and construed in light of the very purpose of the provision, *i.e.* that in both alternatives there must be evidence, be it through an offer or some other means, of a *"genuine and bona fide interest in retaining the services of the player".***

2. **Under Swiss law, which shall be referred to in order to interpret and construe the meaning of art. 6 para. 3 of Annexe 4 of the FIFA Regulations on the Status and Transfer of Players, an offer to enter into a contract is a declaration of intent which becomes complete upon receipt by the other party only.**

3. **According to Swiss law, receipt of a declaration between absentees implies that the declaration enters into the sphere of influence of the addressee. A letter sent by registered mail is however deemed to have been received by the addressee if a notice of failure of delivery is left in the addressee's mail box, even if the latter fails to pick up the registered letter from the post office.**

4. **A club's lack of genuine and *bona fide* interest in retaining the services of a player is to be established *inter alia* on the basis of the claiming club's behaviour towards a player, prior and after the emission of the contract offer, the contents of said offer as well as the**

timing of its sending, or based on witnesses' testimonies in relation to the (latest) developments of the club's and player's relationship.

I. THE PARTIES

1. Royal Standard de Liège (hereinafter the "Appellant" or "Liège") is a professional football club with its registered headquarters in Sclessin/Liège, Belgium. The Appellant is registered with the Union Royal Belge des Sociétés de Football-Association (hereinafter the "URBSFA"), which in turn is affiliated to the Union Européenne de Football Association (hereinafter "UEFA") and the Fédération Internationale de Football Association (hereinafter "FIFA").

2. FC Porto (Futebol Clube do Porto) (hereinafter the "Respondent" or "Porto") is a professional football club with its registered headquarters in Porto, Portugal. The Respondent is registered with the Federação Portuguesa de Futebol (hereinafter the "FPF"), which in turn is affiliated to UEFA and FIFA.

II. FACTUAL BACKGROUND

3. The present dispute concerns the claim for payment of "training compensation" regarding the Belgian player C., born in 1995 (hereinafter the "Player").

4. Below is a brief summary of the main facts and allegations based on the Parties' written submissions, the CAS file and the content of the hearing that took place in Lausanne, Switzerland on 7 February 2017. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in other parts of this award.

5. From 13 June 2008 until 30 June 2014, the Player was registered with the Appellant, since 1 July 2011 as a professional player.

6. On 28 April 2014, the Appellant sent a draft employment contract for the two upcoming seasons 2014/2015 and 2015/2016 by registered mail to the home address of the Player's father, L. The draft contract was accompanied by an official letter signed by the Appellant's Sports Director and CEO. The delivery of the registered mail failed, because no member of the family was home. Thus, the documents were returned to post office. Neither the Player nor his father ever collected these documents from the post office. Consequently, the documents were returned to the Appellant on 16 May 2014 at the very latest.

7. On 16 May 2014, the Player signed an employment contract with the Respondent for three seasons, *i.e.* 2014/2015 to 2016/2017. However, he was registered with the Respondent only on 11 August 2014.

8. On 11 August 2014, the Appellant contacted the Respondent in order to claim the payment of training compensation.

9. By letter dated 27 August 2014, the Respondent replied to the Appellant that it was not obliged to pay any training compensation to the Appellant. In its response dated 28 August 2014, the Appellant indicated that it had always been its desire to keep the Player. The Respondent restated its position that it would not make any payment to the Appellant.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

10. On 14 September 2015, the Appellant filed a claim with the FIFA Dispute Resolution Chamber (hereinafter the "FIFA DRC") requesting that the Respondent pay EUR 270,000 for training compensation. The Respondent contested the Appellant's claim.

11. On 18 February 2016, the FIFA DRC issued its decision in relation to the Appellant's claim. Following a request of the Appellant, the FIFA DRC forwarded its motivated decision to the Parties by fax on 21 June 2016 (hereinafter the "FIFA Decision"). The FIFA Decision reads – *inter alia* – as follows:

> *"**III. Decision of the Dispute Resolution Chamber***
>
> *1. The claim of the Claimant, Royal Standard de Liège, is rejected.*
>
> *2. (…)".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 12 July 2016, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter the "CAS") directed against the Respondent with respect to the FIFA Decision (hereinafter the "Statement of Appeal"). The Appellant requested that the case be submitted to a sole arbitrator and, in the event that the case be submitted to a Panel of three arbitrators, nominated Mr Luigi Fumagalli as arbitrator.

13. On 19 July 2016, the Appellant filed its Appeal Brief (hereinafter the "Appeal Brief").

14. By letter of 27 July 2016, the CAS Court Office invited the Respondent to inform within five days whether it agreed to the appointment of a sole arbitrator. In addition, the CAS Court Office referred in its letter to the Appellant's request to submit the present dispute and the matter CAS 2016/A/4720 to the same panel. It invited the Respondent to inform it within the same time limit whether the Respondent agreed with such further request.

15. By fax letter of 5 August 2016, the Respondent objected to the appointment of a sole arbitrator, but agreed that this matter be submitted together with CAS 2016/A/4720 to the same panel.

16. By letter of 5 August 2016, the CAS Court Office advised the Parties that pursuant to article R50 of the Code of Sports-related Arbitration (the "Code") the Deputy President of the CAS Appeals Arbitration Division had decided to submit the dispute to a panel of three arbitrators. Furthermore, the CAS Court Office informed the Parties that the Deputy President had decided to submit both proceedings (CAS 2016/A/4720 and CAS 2016/A/4721) to the same panel. In accordance with article R53 of the Code, the Respondent was invited to nominate an arbitrator from the list of CAS arbitrators within ten days.

17. By letter of 15 August 2016, the Respondent nominated Mr Mark Hovell as arbitrator.

18. By letter of 21 September 2016, the CAS Court Office informed the Parties that the Panel had been constituted as follows: Prof. Ulrich Haas, President of the Panel; Prof. Luigi Fumagalli and Mr Mark Hovell, arbitrators. The Parties did not raise any objection as to the constitution and composition of the Panel.

19. By letter of 27 September 2016, the Appellant made further submissions with regard to CAS 2016/A/4720, *inter alia* providing a copy of a decision of the FIFA DRC of 18 August 2016 concerning a dispute for payment of training compensation between the Appellant and the English club Stoke City FC.

20. By letter of 30 September 2016, the CAS Court Office advised the Parties that Mr Karsten Hofmann had been appointed *ad hoc* Clerk in this matter. The Parties did not raise any objection as to his appointment.

21. On 17 October 2016 the Respondent filed its answer (hereinafter the "Answer").

22. On 18 October 2016, the Parties were invited to inform the CAS Court Office by 25 October 2016 whether they preferred a hearing to be held or for the Panel to issue an award based solely on the Parties' written submissions.

23. By letter of 23 October 2016, the Respondent informed the CAS Court Office of its preference *"for a (single) hearing to be held"*. By letter of 25 October 2016, the Appellant informed the CAS Court Office that it *"prefers a hearing being held* […] *either simultaneously or at least on the same day"* with the case CAS 2016/A/4720. In addition, the Appellant requested *"to be authorized to supplement its arguments and requests"*, in particular regarding the decision of the FIFA DRC of 18 August 2016 concerning a dispute for payment of training compensation between the Appellant and the English club Stoke City FC.

24. By letter of 3 November 2016, on behalf of the Panel, the CAS Court Office invited Respondent to comment on the Appellant's request *"to be authorized to supplement its arguments and requests"*.

25. By letter of 9 November 2016, the Respondent objected to the Appellant's request of 25 October 2016 to be allowed to file further submissions.

26. On 26 January 2017, the CAS Court Office forwarded to the Parties an Order of Procedure and invited them to return a signed copy by 2 February 2017. The Respondent returned a signed copy on 26 January 2017. The Appellant returned its signed copy on 1 February 2017.

27. On 7 February 2017, a hearing was held at the CAS Court Office in Lausanne, Switzerland. The Panel was assisted by Mr Karsten Hofmann (*ad hoc* Clerk) and Mr Daniele Boccucci (Counsel to the CAS).

28. In addition, the following persons attended the hearing:

    i. for the Appellant: Mr Pierre Locht (Appellant's in-house counsel); Mr Alexander Vantyghem (counsel).

    ii. for the Respondent: Mr Nuno Santos Rocha (Respondent's in-house counsel); Mr David Casserly (counsel); Mr Nicolas Zbinden (counsel); Ms Pirot Starr (interpreter).

29. At the hearing, the Parties made submissions in support of their respective cases. The following witnesses were heard on behalf of the Respondent:

    i. C.: the Player (in person);

    ii. T.: the Player's brother, football player (in person);

    iii. L.: the Player's father and representative (in person).

30. At the closing of the hearing, the Parties confirmed that they had no objections in respect to their right to be heard and that they had been given the opportunity to fully present their cases.

V. THE POSITIONS OF THE PARTIES

31. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Panel has thoroughly considered in its discussion and deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

A. The Appellant: Royal Standard de Liège

32. The Appellant submitted, in essence, the following:

    (a) On 28 April 2014, the Appellant offered the Player a contract as a professional player for two seasons which is a prerequisite in order to be entitled to training compensation in accordance with the FIFA Regulations on the Status and Transfer of Players (hereinafter the "FIFA RSTP").

(b) The transfer of the Player from the Appellant to the Respondent is a transfer of a professional player between clubs of two different associations within the territory of the EU/EEA before the end of the season of his 23rd birthday. Therefore, the Appellant is entitled to training compensation on the basis of article 2 para. 1 lit (ii) of Annexe 4 to the FIFA RSTP.

(c) The contract offer of 28 April 2014 meets all requirements provided for in article 6 of Annexe 4 to the FIFA RSTP, in particular:

i. the contract offer was presented to the Player in writing;

ii. the contract offer was sent to the Player by registered mail and to the correct address; the fact that the Player did not collect the letter is of no relevance;

iii. the contract offer was sent to the Player on 28 April 2014, *i.e.* within the prescribed 60-day time period before the end of the football season on 30 June 2014;

iv. the contract offer provided for a higher value than the previous contract (monthly gross salary of EUR 2,500 instead of EUR 2,200); and

v. the FIFA RSTP do not provide for the contract offer to be signed; however, the accompanying letter to the contract offer that was sent to the Player was signed by the Appellant's Sports Director and CEO. This is clear evidence of the Appellant's will to enter into an employment contract. The FIFA DRC was, thus, wrong in holding that the contract offer did not bind the Appellant; any reference to the case CAS 2008/A/1521 is irrelevant, because the circumstances in both cases differ completely.

(d) Even if the contract offer of 28 April 2014 should be held invalid, the Appellant would be entitled to training compensation according to article 6 para. 3 of Annexe 4 to the FIFA RSTP. In light of the CAS jurisprudence (CAS 2012/A/2890, CAS 2009/A/1757 and CAS 2006/A/1152), a training club is entitled to training compensation, if it can demonstrate that it clearly had the intention to benefit from the player's services despite the fact that no contract was offered. It follows – *inter alia* – from internal email correspondence that the Appellant's intent was to keep the Player. Furthermore, the financial benefits granted to the Player's parents throughout the seasons 2011/2012 and 2012/2013 show the Appellant's *bona fide* intention to continue the contractual relationship with the Player.

(e) The 2012 edition of the FIFA RSTP is applicable. According to the decision of the FIFA DRC of 18 August 2016 in the case of Stoke City FC, a training compensation dispute must be assessed pursuant to the regulations that were in force at the time when the contract at the centre of the dispute was signed. The contract between the Player and the Respondent was signed on 25 July 2014. However, the 2014 edition of the FIFA RSTP entered into force only on 1 August 2014.

(f) On the basis of article 5 para. 3 of Annexe 4 of the FIFA RSTP, the training compensation for the first three seasons (*i.e.* seasons 2007/2008 to 2009/2010) is EUR 10,000 per season and for the following four seasons (*i.e.* seasons 2010/2011 to 2013/2014) EUR 60,000 per season. Thus, the total amount of training compensation due is EUR 270,000.

(g) Article 3 para. 2 of the Annexe 4 to the FIFA RSTP explicitly states that payment of training compensation is due 30 days after the registration of a player with his new club. Despite various requests by the Appellant, the Respondent has not yet paid any such amounts. Consequently, the Appellant is entitled to interest on the amount of training compensation due as of 30 days after the registration of the Player with the Respondent at the default interest rate of 5% *per annum*.

(h) At the hearing, the Appellant further argued that Belgian law applies with regard to the validity of the Appellant's *"offer"* to the Player dated 28 April 2014. According to article R58 of the Code, the Panel would be permitted to take into consideration any *"appropriate law"*. Belgian employment law would have governed the employment contract and, therefore, also applies to the question of the validity of the contract offer. According to Belgian law, no signature is needed for the validity of an employment contract.

33. In light of the above, the Appellant submitted the following prayers for relief in its Appeal Brief:

"- The decision of the FIFA Dispute Resolution Chamber of 18 February 2016 is annulled;

- The Respondent is ordered to pay an amount of EUR 270.000 (or any other amount as calculated in accordance with the FIFA RSTP) to the Appellant as training compensation in relation to the player C.;

- The Respondent is ordered to pay interest on the training compensation due as of 30 days from the registration of the Player with the Respondent at a rate of 5% per annum;

- The Respondent is ordered to pay all costs of the present arbitration procedure;

- The Respondent is ordered to pay a substantial contribution to the legal fees and costs incurred by the Appellant".

B. The Respondent: FC Porto

34. The Respondent submitted, in essence, the following:

(a) The jurisprudence of the FIFA DRC and the CAS (e.g. CAS 2009/A/1757 and CAS 2006/A/1152) provides for the only relevant factors for the purpose of claiming training compensation. According thereto, training compensation can only be claimed if the

former club was *"genuinely interested"* in keeping the player and if it adopted a *"proactive attitude"* to attain that said goal. The burden of proof lies with the Appellant, who failed to demonstrate a respective intention and approach. In particular, the Appellant's internal emails do not constitute evidence that the Appellant wished to retain the services of the Player. In contrast, the evidence in this dispute suggests that the Appellant sent the draft offers of 28 April 2014 in bad faith with the sole purpose to collect training compensation.

(b) The Player did not feature in the Appellant's sportive plans for the future. This is evidenced by the Player's demotion from the A team to the U21 team and then to the U19 team during the 2013/2014 season. In addition, the Appellant's Sports Director, Mr Jean-François De Sart, indicated that the Appellant did not have a place for the Player. At the time of the winter transfer season, Mr De Sart informed the Player's father that he should send the Player to the Hungarian club Ujpest PC, which is a club owned by the Appellant's CEO. When the Belgian club KV Mechelen expressed interest in signing the Player, Mr De Sart's intention was to sell the Player or sending him on loan to KV Mechelen, rather than the Player going to KV Mechelen as a free agent.

(c) The draft offer was not made *"in writing"*: article 2 para. 2 of the FIFA RSTP requires that professional employment contracts be entered into in writing. According to the applicable Swiss law, an offer in writing must be signed by the club and the player. The draft employment contract sent by the Appellant on 28 April 2014 was not signed. It was a non-binding document and just an invitation to the Player to make an offer to the Appellant. The fact that the accompanying letter (and not the draft contract) was signed is insufficient to consider the draft employment contract a firm offer. This is supported by CAS jurisprudence (CAS 2008/A/1521 and TAS 2014/A/3587).

(d) The Player and his family were unaware of the contract offer because of the failed delivery of the Appellant's letter of 28 April 2014. Neither the Player nor another member of the family had been informed by the Appellant that documents had been sent to the Player. The Player did not decline acceptance of the documents sent by the Appellant. Instead, the documents never reached the Player because no member of the family was at home at the time of the attempted delivery. Whether a *"missed delivery note"* was left in the post-box is not totally clear. While the Respondent stated so in its Answer, the father of the Player indicated in his testimony that he was not aware of such notice and had not seen it. In any event, the Respondent submitted that in Belgium the sender is not identified on a missed delivery note if it is a registered letter. The Appellant did not make any further or other attempts to contact the Player or his father. This holds even true once the Appellant's letter of 28 April 2014 had been returned and when it was clear that delivery of the documents had failed.

(e) On a subsidiary basis the Respondent submitted that the Appellant's calculation of the training compensation is incorrect. The Player was not trained for the entire 2007/2008 season and a pro rata calculation according to article 3 para. 1 of Annexe 4 to the FIFA RSTP results in the total amount of EUR 260,493 instead of EUR 270,000.

(f) The Respondent disputed the Appellant's submissions made at the hearing in relation to the applicability of Belgian law. Instead, the Respondent submitted that Swiss law applies with regard to the validity and interpretation of the Appellant's (alleged) *"offer"*.

35. The Respondent submitted the following prayers for relief:

"i. Reject the appeal filed by Royal Standard de Liege;

ii. Order Royal Standard de Liege to pay the full amount of the CAS arbitration costs; and

iii. Order Royal Standard de Liege to pay a contribution towards the legal costs and other related expenses of FC Porto, at least in the amount of €20,000 (twenty thousand euros)".

VI. JURISDICTION AND MANDATE OF THE CAS

36. The jurisdiction of the CAS derives from article R47 of the Code in connection with article 67 para. 1 of the FIFA Statutes. Furthermore, reference to CAS jurisdiction is made also on the last page of the FIFA Decision.

37. Article R47 para. 1 of the Code provides as follows:

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

38. Article 67 para. 1 of the FIFA Statutes reads 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".

39. Moreover, according to the *"Note relating to the motivated decision (legal remedy)"* on the last page of the FIFA Decision, "*this decision may be appealed against before the Court of Arbitration for Sport (CAS)*".

40. The Respondent did not object to the jurisdiction of the CAS but – instead – agreed to it in para. 8 of its Answer (*"In light of the above, we may conclude that the CAS is competent to resolve the present dispute"*). Furthermore, all Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure dated 26 January 2017.

41. It follows from all of the above that the CAS has jurisdiction to decide the present dispute.

42. Under article R57 of the Code and in line with the consistent jurisprudence of the CAS, the Panel has full power to review the facts and the law. The Panel therefore dealt with the case *de novo*, evaluating all facts and legal issues involved in the dispute.

VII. ADMISSIBILITY

43. Article R49 of the Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".*

44. Article 67 para. 1 of the FIFA Statutes provides that appeals *"shall be lodged with CAS within 21 days of notification of the decision in question"*. The same 21-day deadline is mentioned on the last page of the FIFA Decision (*"The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision (…)"*).

45. The FIFA Decision was rendered on 18 February 2016, however, the grounds of the decision were notified to the Parties only by fax on 21 June 2016. The Appellant's Statement of Appeal was filed on 12 July 2016, *i.e.* before the expiry of 21 days after notification of the motivated decision. It follows that the appeal is admissible.

46. The Appeal Brief was sent to the CAS Court Office on 19 July 2016 and was, thus, submitted within the 10-day deadline stipulated in article 67 para. 1 of the FIFA Statutes, *i.e.* 10 days following the expiry of the time limit for filing the statement of appeal. Therefore, it was filed in due time.

VIII. APPLICABLE LAW

47. Article R58 of the Code provides as follows:

> *"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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

48. Article 66.2 of the FIFA Statutes further provides as follows:

> *"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".*

49. These provisions are in line with article 187 para. 1 of the Swiss Private International Law Act (PILA), which in its English translation states as follows: *"The arbitral tribunal shall rule according*

to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected".

50. Thus, the Panel applies the FIFA regulations as the "applicable regulations" within the meaning of article R58 of the Code. In light of article 66.2 of the FIFA Statutes the Panel will apply Swiss law for the interpretation and construction of the respective FIFA regulations. Whether there is room to apply any other law to questions not covered by the FIFA regulations will be discussed where relevant.

51. The Parties are in dispute regarding the applicable version of the FIFA RSTP, namely whether the 2012 version (in force as of 1 December 2012) or the 2014 version (in force as of 1 August 2014) apply to the case at hand. The Appellant argued that the 2012 version is applicable because these were the regulations in force at the time the contract between the Player and the Respondent was executed, *i.e.* on 25 July 2014. The Respondent argued that the 2014 version applies because these were the regulations in force at the time of the Player's registration with the Respondent, *i.e.* on 10 November 2014. In the case at hand this question can be left unanswered because it is not decision-relevant. Insofar as the Panel takes recourse to the FIFA RSTP, both versions of the regulations are identical.

IX. MERITS OF THE APPEAL

52. The Appellant claimed training compensation according to article 20 of the FIFA RSTP. The provision reads (identical in the 2012 and the 2014 versions) as follows:

> *"Training compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a professional, and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations".*

53. Article 2 para. 1 of Annexe 4 to the FIFA RSTP (identical in the 2012 and the 2014 versions) reads as follows:

> *"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".*

54. It is undisputed that the Player was transferred from the Appellant to the Respondent in summer 2014 when the Player was 19 years old. This was a transfer of a professional player

between clubs of two different associations before the end of the season of his 23rd birthday. Thus, article 2 para. 1 lit (ii) of Annexe 4 to the FIFA RSTP applies.

55. There is a special rule in the FIFA RSTP dealing with a case where players move from one football association to another inside the territory of the EU/EEA. The rule is contained in article 6 of Annexe 4 to the FIFA RSTP and acts as a *lex specialis*. According to constant CAS jurisprudence the provision *"has to be read as qualifying any general principle elsewhere in the FIFA RSTP dealing with the obligation to pay training compensation"* (cf. CAS 2010/A/2316, para. 55; CAS 2008/A/1521, para. 16 and CAS 2006/A/1152, para. 11). Given that the Player moved from the Appellant to the Respondent, both being registered with associations inside the territory of the EU/EEA (the URBSA and the FPF), article 6 of the Annexe 4 to the FIFA RSTP (identical in the 2012 and the 2014 versions) applies. The provision reads as follows:

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

56. In line with CAS jurisprudence (and the jurisprudence of the FIFA DRC), the Panel finds that the first sentence of article 6 para. 3 of Annexe 4 to the FIFA RSTP covers both players with and players without a contract, *i.e.* professionals and amateurs, whereas the second sentence covers – on the face of it – only players who are already under contract, *i.e.* only professionals (see, *inter alia*, CAS 2014/A/3587, para. 79 *et seq*, CAS 2010/A/2316, para. 55 and CAS 2006/A/1152, para. 12 *et seq*). This follows from the wording of article 6 para. 3 *("current contract"*) and from the fact that an agreement between a club and an amateur does not qualify as a *"contract"* within the meaning of article 2 para. 2 of the FIFA RSTP (see also CAS 2006/A/1152, para. 14).

57. Thus, in light of the above the Appellant is only entitled to training compensation, if one of the following alternative situations is satisfied, *i.e.* if

- it offered the Player a professional contract, or if

- it can otherwise justify that it is entitled to training compensation.

A. Purpose and relationship between both alternatives

58. The purpose of article 6 para. 3 of Annexe 4 to the FIFA RSTP has been described in the decision CAS 2006/A/1152, para. 22 *et seq* as follows:

> *"(…) the purpose of the above provision is to ensure that no player, whether amateur or professional, in whom the club has no interest is impeded to accept the offer of another club because he carries some sort of "compensation price tag".*
>
> *Indeed, in case a club is not interested any more in the services of one of its (…) players and decides to write off the investment made for its training, the player should be free to move to another club with no strings attached. In other terms, the application of an automatic compensation price tag to all amateur players should be deemed unreasonable".*

59. This Panel adheres to the above finding. Furthermore, this Panel finds that it follows from the above that both alternatives serve a common purpose, *i.e.* to make the payment of training compensation subject to the condition that the club wanted to retain the services of the player. Only if the club sincerely and honestly pursued this goal shall the free movement of the player be impeded by an automatic price tag calculated as a lump sum. This reasoning is also supported when looking to article 6 para. 3 FIFA RSTP which makes explicit reference to the club's *"real intention to continue to its relationship"* (emphasis added) with a player. It is in light of this common purpose that both alternatives must be interpreted and that CAS established its jurisprudence in relation to the second alternative, whereby the club must demonstrate (absent any offer) that it had a *"genuine and bona fide interest in retaining the services of the player"* in order to be entitled to a training compensation (see, *inter alia*, CAS 2012/A/2890 at para. 69 and CAS 2006/A/1152 at para. 23).

60. Thus, the Panel finds that no formalistic approach is warranted, but that both alternatives must be read and construed in light of the very purpose of the provision, *i.e.* that (in both alternatives) there must be evidence (be it through an offer or some other means) of a *"genuine and bona fide interest in retaining the services of the player"*. The Panel refers in this respect to the decision CAS 2014/A/3497, para. 65, where the panel stated that the aims of sporting justice should not be defeated by an overly formalistic interpretation of the FIFA RSTP, which would deviate from their original purpose:

> *"The Panel also took into account the case CAS 2009/A/1757 to which the Parties were referred in the course of the hearing. It bears in mind that the aims of sporting justice should not be defeated by an overly formalistic interpretation of the FIFA Regulations which would deviate from their original purpose, appreciating that the standards in formal requirements are higher in the case of professionals than amateurs. However, it notes that section 6.3 of Annex 4 of the 2005 Regulations does impose an onus of proof on the former club (in this case the Appellant). This reflects the need to balance the interests of*

the club involved in being compensated for its effort and expenditure on training a young player on the one hand and the interests of the young player in being able to advance his career on the other hand".

B. Did Royal Standard de Liège offer the Player a professional contract?

61. The Appellant submits that it offered the Player a professional contract by sending a draft employment contract and an accompanying letter to the Player on 28 April 2014. In fact the Appellant sent the documents via registered mail to the address of the Player. However, for there to be an *"offer"* within the meaning of article 6 para. 3 of Annexe 4 to the FIFA RSTP the declaration must have been received by the Player. This follows from Swiss law in light of which the FIFA regulations must be interpreted and construed (see supra). According thereto an offer to enter into a contract is a declaration of intent which becomes complete upon receipt by the other party only (SFT 4A_559/2012, E. 5.2.1).

62. According to Swiss law, receipt of a declaration between absentees implies that the declaration enters into the sphere of influence of the addressee (SFT 4C.159/2002/ngu, E. 2.2; SFT 118 II 42, E. 3 b)). It is undisputed that the documents were not handed over to the Player or to his representative. Due to the absence of the family, the registered letter was stored at the post office. The latter, however, does not belong to the Player's sphere of influence. The registered letter did not enter into the Player's sphere of influence at a later point in time either, since the Player never picked up the letter from the post office before it was sent back to the Appellant on 16 May 2014. According to Swiss law, however, a letter sent by registered mail is deemed to have been received by the addressee if a notice of failure of delivery is left in the addressee's post-box even if the latter fails to pick up the registered letter from the post office (SFT 4A_525/2009, E. 7.1). According to the Appellant, Belgian law points in the same direction. Whether this principle is applicable in the case at hand appears, however, questionable, since the Player's father, L., in his oral testimony before this Panel declared that he did not find a notice of failure of delivery in his post-box.

63. Be it as it is, the Panel can leave this question open, because even if receipt and further formalistic prerequisites (*e.g. "in writing"* and 60-day-period) of the alleged offer were assumed, the Panel finds that this offer was not made in a genuine and *bona fide* attempt to retain the services of the Player. Instead, it appears to the Panel that the sole motivation of the offer was to obtain training compensation, because it was made at a time where the Appellant had written off its investment in the Player. The Panel follows this from a variety of circumstances in this case:

(a) The alleged offer sent by the Appellant to the Player contained a cover letter and the draft contract. In order for there to be an offer the latter must be binding and definitive so that an acceptance of the offer automatically leads to the execution of the contract without any further act to be taken. Whether this is the case here, appears questionable, since the draft contract was not signed by a representative of the club. If, however, the draft provides for a formal signature by a club's representative and such signature has not been affixed, it appears – at least from the view of the Appellant – that the final act that brings the contract into existence is not the acceptance of the *"offer"* by the Player, but the outstanding

signature by itself. Such business practices appear to leave open a back door not to retain the services of the player. This is all the more true, considering that the window for deregistration was about to expire and the Parties needed legal certainty with respect to their legal situation.

(b) Further evidence of the Appellant's ambivalent attitude can be found in the behaviour displayed by the Appellant towards the Player and his father prior to the sending of the alleged offer. The Appellant's Sports Director, Mr Jean-François De Sart, made it clear to the Player's father that there was no place for the Player with the Appellant. Mr. De Sart, however, suggested to transfer the Player to the Hungarian club Ujpest PC (taking into consideration that the Hungarian league is weaker than the Belgian league) or to send the Player on loan to KV Mechelen, after KV Mechelen expressed an interest in signing the Player as free agent after the 2013/2014 season. These legal constructions, however, cannot disguise that the Appellant itself had no interest in the Player. Furthermore, the Player was downgraded to the Appellant's U21 team and later to the U19 team for the rest of the 2013/2014 season. Due to the Player's demotion, he was no longer invited to train and play with Belgian national team. All of these incidents rather speak against a genuine and *bona fide* intention of the Appellant to retain the services of the Player.

(c) The Panel sees itself comforted in its view when looking at the timeline of the events. The Appellant's letter containing the alleged offer is dated 28 April 2014. Thus, the letter was sent some days before the end of the 60-day time limit provided for in article 6 para. 3 second sentence of Annexe 4 to the FIFA RSTP. In addition, the date of the letter coincides with the date of de-registration of the Player's brother, T. According to the testimonies heard at the hearing, the Player's father sent a registered letter to the URBSFA and a copy of the letter to the Appellant both on 27 April 2014. The URBSFA must have received the father's letter on 28 April 2014, because it uses an online management system called *"e-kick off"*, in which the de-registration of the Player's brother was entered on 28 April 2014. The Panel also takes note of the statement of the Appellant's in-house counsel at the hearing where he confirmed that the sending of the "offer" on 28 April 2014, *inter alia*, served the purpose to protect the Appellant's rights for training compensation.

(d) The view held by the Panel is further backed by the testimony of the witnesses. The Player in his testimony declared that he would have liked to stay with the Appellant, but that nobody from the Appellant ever approached him to tell him that he should to stay with club. This is all the more surprising considering that the Player stayed with the Appellant until the end of the 2013/2014 season, *i.e.* even after the failed notification of the so-called *"offer"* and even after the documents had been returned to the Appellant mid-May 2014. During all this time nobody from the club ever spoke with the Player about the alleged contract or his future career in the club. The Player heard of the Appellant's offer for the first time when he was already with Porto. He convincingly stated that he was surprised by said *"offer"* since he did not feel appreciated by the Appellant while he was still playing and staying with the Appellant.

(e) The testimony of the Player was corroborated by the testimony of the Player's father who acts also as the Player's representative. He explained that *"certain events"* took place which lead to a deterioration of the relationship between him and his sons on the one hand and the Appellant on the other hand. According to the father, representatives of the Appellant had made unsubstantiated allegations of doping vis-à-vis his sons. Furthermore, the Player's father felt unhappy that his sons were being sportively downgraded. This resulted also in a tense relationship with the Appellant's Sports Director. Furthermore, the father stated that he was never informed or contacted in person by the Appellant with respect to the alleged offer. This is rather surprising considering that – according to the father's testimony – he kept in close contact with the club until the end of the 2013/2014 season. Thus, there were opportunities to discuss the matter.

(f) Once the documents were returned to the Appellant, the latter decided to do nothing. It did not resent the offer or contact the Player or his father by any other means. Thus, the Appellant failed to take any proactive stance or attitude vis-à-vis the Player to retain his services. The latter, however, would be the expected normal business behaviour in case a club was genuinely and *bona fide* interested in retaining the services of a player. The Appellant did not display any behaviour be it before or after the offer that would clearly indicate an interest in the Player to stay and play for the Appellant. The Appellant's argument that the Player signed his new contract with the Respondent on 16 May 2014 and that, therefore, any further attempts to secure the services of the Player were bound to fail (once the documents were returned to the Appellant on 28 April 2014) is not convincing, because the Appellant was not aware that the Player had signed with the Respondent in May.

64. In coming to its conclusion the Panel has not ignored the (scarce) evidence submitted by the Appellant. According to the Appellant, it follows from internal email correspondence, the Player's participation in events of the Appellant's A team and benefits provided to the Player and his family that the Appellant was always keen and interested to keep the services of the Player.

65. The internal emails to which the Appellant refers date from end-January 2014. It follows from the email of 24 January 2014 that the Appellant internally discussed a salary proposal of EUR 3,000 for the 2014/2015 season and EUR 3,500 for the 2015/2016 season for the Player. Furthermore, it follows from the email of 28 January 2014 that the Appellant internally discussed to *"augment"* that proposal. In this context, the Panel has taken note that the *"fixed monthly allowance"* contained in the offer of 28 April 2014 was only EUR 2,500 gross. This is far less than the internally discussed proposal and only a very moderate increase compared to the Appellant's salary under the old contract (EUR 2,200 gross) signed three years prior. If the club was genuinely interested to retain a player one would have expected a higher salary offer or – in any event – an offer not below the (internally) discussed amounts.

66. The email of 24 January 2014 also shows that the Appellant had been contacted by the Belgian club KV Mechelen which was interested to sign the Player and his brother. In the Panel's view, the internal email communication was a reaction to Mechelen's interest in the Player and his

brother, but no genuine attempt to keep their services. This is supported by the Appellant's intention expressed in the email of 24 January 2014, namely to propose to the Player a new contract but *"to then loan him out to Mechelen"*. In the view of the Panel, the Appellant's internal correspondence is, thus, far from any proof of a *bona fide* and genuine interest in the Player.

67. The Appellant argues that its interest in the Player is evidenced by the Player's pre-season participation in the Appellant's A team and by the fact that the Player was fielded in a friendly match of the Appellant's A team. Furthermore, the Appellant points to the fact that it submitted the Player's name to the UEFA Europa League Player List B at the beginning of the 2013/2014 season. All of this – according to the Appellant – demonstrates its genuine interest in the Player. The Panel notes that the above facts to which the Appellant refers took place in the summer of 2013. It is uncontested that the relationship between the Player, his father and the Appellant deteriorated only thereafter. Evidence of this is that the Player was demoted to the U21 after the summer 2013. The demotion to the U19 team occurred at the end of January 2014 (for the rest of the 2013/2014 season). The Panel, therefore, finds that the events alluded to by the Appellant from summer 2013 do not constitute evidence of a genuine and *bona fide* interest of the Appellant at the time the *"offer"* was made (28 April 2014).

68. The Appellant also argued that it treated the Player and his family preferentially, *inter alia*, by providing a car and a driver to the family and that such special treatment was evidence for a genuine interest in the Player. Any preferential treatment, however, is disputed by the Respondent which submits that the Player was not treated any differently from other players in the Appellant's teams. The Panel finds that any amenities provided to the Player or his father were based on the still existing agreements (as mentioned in the Appellant's internal email of 25 September 2012 with regard to transportation costs) and did not serve the purpose to retain the services of the Player for the 2014/2015 and 2015/2016 season. Therefore, in the Panel's view these submissions are not relevant for the question in dispute.

C. Conclusion

69. The Panel is not persuaded that the Appellant's alleged offer was received by the Player. In any event, the Panel finds that the alleged offer was not made for the purpose of retaining the services of the Player. Instead, the Panel finds that the letter was motivated to put an automatic price tag on a player even though the Appellant was no longer interested in the Player and had written off its investment. Contrary to the very purpose of the FIFA RSTP, according to which such players shall move within the EU/EEA freely with no strings attached, the Appellant tried to reap training compensation from the Respondent. Consequently, the Panel finds that the Appellant is not entitled to any training compensation according to article 20 of the FIFA RSTP in correspondence with article 2 para. 1 of Annexe 4 to the FIFA RSTP and dismisses its appeal.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Royal Standard de Liège on 12 July 2016 against the decision issued on 18 February 2016 by the Dispute Resolution Chamber of FIFA is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of FIFA on 18 February 2016 is upheld.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.