



**Arbitration CAS 2018/A/5733 Koninklijke Racing Club Genk (KRC Genk) v. Manchester United Football Club, award of 15 November 2018**

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Frans de Weger (The Netherlands); Prof. Ulrich Haas (Germany)

*Football*

*Training compensation*

*Offer of a contract under Art. 6 para. 3 Annexe 4 RSTP and compatibility with Belgian law*

*Exception to the exception to the general principle of training compensation*

*Obligation of clubs to justify that they are entitled to training compensation*

1. **Belgian law prohibits the execution of an employment contract with a minor below the age of 16. The purpose of the provision is clear, i.e. to protect youngsters and to ensure that they finish education first before entering onto the labour market. Nothing in the rules points into the direction that an employer is prevented to make a (binding) offer to the minor, e.g. to employ him/her – subject to his/her or his/her representative’s consent – once s/he turns 16. Such offer – evidently – does not adversely affect the interests of the minor, since it would be to his/her (sole) advantage and in his/her sole discretion whether s/he accepts such offer at the age of 16 or not.**
2. **Article 6 para. 3 of Annexe 4 of the Regulations on the Status and Transfer of Players (RSTP) does not require that a club offers a professional contract to all its young amateur players for fear of losing all right to training compensation. Such an obligation would have been too costly for the clubs and would have contravened the spirit and purpose of the FIFA transfer rules, which are set out in order to grant to clubs the necessary financial and sportive incentives to invest in training and education of young players. Even if the player was not offered a contract, the training club is entitled to training compensation provided that it *“can justify that it is entitled to such compensation”*. Therefore, even without offering a professional contract, clubs have an opportunity to protect their investment on young players.**
3. **According to Article 6 para. 3 of Annexe 4 RSTP, a club can claim training compensation provided that one of these two alternative requirements is met: it offered the player a professional contract (“First Alternative”) or it can otherwise justify that it is entitled to training compensation (“Second Alternative”). The fact that Belgian clubs are prohibited from offering the player a contract because of their national legislation (*i.e.* they cannot meet the requirements of the First Alternative), does not exempt them from the obligation to prove that the Second Alternative is triggered; *i.e.* that they *“can justify that [they are] entitled to such compensation”*. 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. It must take a proactive**

**attitude *vis-à-vis* the player so as to clearly show that it still counts on him/her for the future season(s).**

## **I. PARTIES**

1. Koninklijke Racing Club Genk (“Genk”) is a football club with its registered office in Genk, Belgium. It is a member of the Royal Belgian Football Association (“Union Royale Belge des Sociétés de Football-Association” - “URBSFA”), which has been affiliated with the Fédération Internationale de Football Association (“FIFA”) since 1904. It is a category II club, under the terms of the applicable FIFA Regulations on the Status and Transfer of Players (the “RSTP”).
2. Manchester United Football Club (“MU”) is a football club with its registered office in Manchester, United Kingdom. It is a member of the English Football Association LTD, affiliated with FIFA since 1905. It is a category I club under the terms of the applicable RSTP.

## **II. FACTUAL BACKGROUND**

### **A. Background facts**

3. Below is a summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings, and evidence adduced in these proceedings. References to additional facts and allegations found in the Parties’ written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it deems necessary to explain its reasoning.

### **B. Mr Indy Boonen’s background**

4. Mr Indy Boonen, born on 4 January 1999 (the “Player”), is a football player of Belgian nationality, who started to train with Genk on 18 May 2006.
5. According to the passport issued by the URBSFA, the Player was registered as an amateur with Genk from 1 July 2010 until 30 June 2014; *i.e.* from season 2010/2011 until season 2013/2014 (four seasons).
6. It is undisputed that the football season in Belgium for amateur players runs from 1 July of a year until 30 June of the following year.
7. During his time with Genk, the Player’s performances were assessed and transcribed in unsigned forms. These documents have the following content:

Season 2009/2010 - evaluation of 19 December 2009

This evaluation enumerates - with keywords - the physical, technical, tactical and mental qualities/shortcomings of the Player. The paper concludes as follows (as translated from Dutch into English by Genk):

*“After a hesitating start Indy played a very good first period and is considered to be a very important player for the team. He stands out above the average, which sometimes leads to negative reactions. We will raise the bar in the next period and we will work on his shortcomings to make this top player even better!”*

Season 2010/2011 - evaluation of April 2011

This evaluation contains a list of characteristics, from “Physical competences” (such as “Jump power”; “Explosiveness”; “Agility”; “Running speed”, etc.), to “Technical competences” (such as “General ball control”; “Dribbling”; “Assist”; etc.), “Mental competences” (such as “Ambition”; “Concentration”; “Teampayer”; etc.) and “Tactical competences” (such as “Ball possession - pass receiving ability”; “Ball possession - coaching”; “Ball possession - play on small space on field”; etc.).

Each of the Player’s characteristics is graded with a score of 1 to 4. This evaluation does not contain any specific comment.

Season 2011/2012 - evaluation of December 2011

This evaluation has an identical format as the one of April 2011 but, in addition, contains the following conclusion (as translated from Dutch into English by Genk):

*“Indy is playing on a level that we may expect from a player with his talents.  
He has difficulties when playing against more physical players = he needs to play quicker and smarter.  
Talent that will need to progress a lot on a mental and tactical level as he is lacking physical strength at the moment”.*

Season 2011/2012 - evaluation of April 2012

This evaluation has an identical format as the two previous ones and contains the following conclusion (as translated from Dutch into English by Genk):

*“Indy played an outstanding 2nd period and has developed both tactically as mentally (playing for the team).  
Improving movement between the lines and speed of action.  
The player is considered to be very important for the team and he is now better coping with this role (he now realizes that he needs other players around him in order to succeed). The next two seasons will be defining = how will he be coping with the increasing importance of physical strength?”*

Season 2012/2013 - evaluation of April 2013

This evaluation has an identical format as the three previous ones and contains the following conclusion (as translated from Dutch into English by Genk):

*“Indy is the leading player of the group. This season he made progression on his personality in the team and also in executing his tasks within the teamplay. Working points are still to score more and to penetrate more in the penalty area. Keep up the good work and we wish you all the best next season in the U15 team”.*

Season 2013/2014 - evaluation of December 2013

This evaluation is in the form of a table, which enumerates:

- the Player's statistics (average of playing time (66,71), assists (10), goals (3), yellow cards (3));
- his results in physical tests;
- his physical skills (pros: stamina; cons: start speed, acceleration, duel strength);
- his technical and tactical skills (pros: dribbling, control, assist, passing, vista; cons: leading, free kicks, corners) and
- his mental skills (pros: winner's mentality, optimism, passion, competitiveness; cons: needs to work on disappointment, needs to channel anger and dissatisfaction, self-control, verbal aggressiveness towards the referees).

This was the last evaluation of the Player by Genk and it does not contain any specific comment.

8. In April 2014, the Player, who was at the time 15, informed Genk of his decision to deregister from the club in accordance with Article 926 of the applicable URBSFA Regulations. This provision reads as follows (as translated from French into English by Genk):

*"(...) the affiliate has to notify his deregistration by registered mail directed to the Secretary General and his club in the period starting the 1st of April and ending the 30th of April(...)*

*The deregistration takes effect on the 1st of July. Until that date, the player remains qualified for his club".*

9. The circumstances around the Player's "deregistration" are disputed:

- At the hearing before the Court of Arbitration for Sport ("CAS"), Mr Roland Breugelmans, Youth Director of Genk, affirmed that he would have regular contacts with the Player's father. When the Panel asked him how the Player announced his intention to leave the club and if such notification was made in writing, Mr Roland Breugelmans answered that no formal requirement was to be met in order for a player to deregister. According to Mr Roland Breugelmans, a simple oral confirmation was sufficient. In the present case, Mr Roland Breugelmans explained that, in April 2014, Genk informed in writing the Player's family that it intended to keep the Player for the next season but not his brother, who was also trained by the club at the time. The Player's father urged Genk to keep his two sons and, in view of the club's inflexible position, decided to deregister both, the Player and his brother.
- MU submitted a written statement (dated 26 July 2017 and also filed within the proceedings before the sub-committee of the FIFA Dispute Resolution Chamber), whereby the Player's father affirmed the following:

*"I am informed by MU's lawyers that the key issue in this case is whether or not Genk showed a genuine interest in keeping Indy for the future before he left. I confirm they did not and I note the following facts which I hope will assist FIFA's consideration of this case:*

- a. *As Indy was a minor when he was at Genk, I was the point of contact for the Genk coaches to discuss his progress and the next steps in his career.*

- b. *Genk rarely spoke to me about Indy's future and they did not discuss any 'plan' for him beyond the 2013/14 season.*
- c. *In or around May 2014, with the end of the 2013/14 season approaching, we were in a position where there had been no communications or assurances from Genk about Indy's future, which I found concerning. I spoke with Ronald Breugelmans (technical director of Genk's academy) around this time and he seemed entirely indifferent as to whether or not Indy stayed at the Club - he made no attempt to convince me or Indy that Genk was committed to Indy or that Indy remained part of Genk's plans or that they were considering offering Indy a contract in the future. No attempts were made by anyone else at Genk to convince us of these things either.*

(...)

*I am informed by MU's lawyers that Genk are seeking to argue that Indy was clearly part of their future plans and would have been offered a contract if Genk had been legally able to do; I do not agree with this. If we had had the impression that Indy was as important to Genk as they are now making out, and that they really felt he had a future there, Indy may not have left in the first place. I am told Genk have tried to justify their interest in keeping Indy by reference to Indy's playing record with Genk and the national team. As I recall, whilst Indy did play regularly for Genk's youth teams, he played less in his final season (2013/14) due to an injury. Also, Indy did not play in a competitive match for the national team whilst he was with Genk. In any event for the reasons explained above, these statistics do not tell the full story".*

- 10. Thereafter, the Player sought opportunities to become registered elsewhere and undertook trials with various clubs, *i.e.* VfL Wolfsburg, in Germany, FC Basel, in Switzerland, Arsenal FC and MU in England.
- 11. On 1 August 2015, the Player signed a two-year scholarship agreement with MU.
- 12. On 24 August 2015, the Single Judge of the Players' Status Committee authorised the transfer of the Player, who was still a minor, from Belgium to England, where he was registered as a professional with MU as of 4 September 2015.

### **C. The contacts between Genk and MU**

- 13. It is undisputed that Genk had no contact whatsoever with the Player after June 2014.
- 14. On 20 October 2015, Genk sent a letter to MU claiming the payment of a training compensation of EUR 300'000 following its registration of the Player in September 2015.
- 15. On 4 November 2015, MU asked Genk to provide "*details / evidence to demonstrate that [it] has retained the right to claim Training Compensation in respect of the Player in accordance with Article 6 (3) of Annex 4 to the [RSTP]*".
- 16. On 20 November 2015, Genk answered the following:

*"Despite [its] clear intentions and interest [...] in retaining the services of its talented player Indy Boonen for the future, the club was unable to offer a contract to him, due to mandatory national law.*

*In particular, according to mandatory Belgian laws specific to sport, a football player cannot enter into an*

*employment agreement before the age of 16 or before he has finalized his fulltime scholar obligations”.*

Genk further explained that any employer, who would contravene these laws, would be exposed to penal sanctions, including imprisonment. Considering that it *“was legally unable to contract the player [who was only 15 years old when he resigned] or even to offer him a contract, despite its interest in retaining the services of the player”*, Genk submitted that it was entitled to the payment of the claimed training compensation.

17. On 17 February 2016, MU argued that Genk was not entitled to claim training compensation simply because it was unable to offer a contract to the Player due to mandatory national laws. According to MU, the training compensation was conditional upon Genk showing that it had a *bona fide* and genuine interest in retaining the Player for the future. MU observed that Genk merely put forward its *“clear intentions and interest of retaining the services of its talented player Indy Boonen for the future”* but failed to submit any evidence in this respect. Under these circumstances, MU asked the Belgian club to demonstrate its *“bona fide and genuine interest in retaining the Player for the future prior to the expiration of his registration with [Genk]”*.
18. On 25 March 2016, Genk submitted *“that article 6 (3) of Annex 4 [RSTP] is not applicable to this matter, as mandatory Belgian laws specific to sport prevented the club in offering an employment contract to the player. Therefore, in line with the FIFA regulations and jurisprudence on the applicability of national laws, [Genk] was not obliged to offer the player a contract, nor to show that it had a bona fide interest in retaining the player for the future”*. Nevertheless, it informed MU that it was *“gathering the necessary evidence [to establish its] clear interest in retaining the player and in offering him a contract when the club would be in the legal possibility to do so”*.
19. On 4 August 2016, Genk reiterated the position stated in its correspondence and supported its *“clear interest in retaining the services of the player for the future”* with the following:

*“(…)*

  - *The player’s selections for numerous trainings and games of the national youth team (…)*
  - *player evaluations confirming his talent (…)*
  - *number of games played for [Genk] youth teams (between 83% and 90%)*

*It should also be noted that [Genk] is a club renowned for its high level youth development program. It is no coincidence that top level players such as Kevin De Bruyne, Thibaut Courtois, Christian Benteke, Yannick Ferreira Carrasco and Divock Origi were all trained and developed by [Genk]. Indy Boonen enjoyed the same high level training.*

*Taking into account these circumstances, it would be against the rationale of the FIFA regulations on training compensation to consider that [Genk] has no right to training compensation”.*
20. On 14 September 2016, MU maintained that Genk had not made a contract offer to the Player in accordance with Article 6 para. 3 of Annexe 4 RSTP nor had shown *bona fide* and genuine interest in retaining the Player’s services. As a consequence, it refused to pay any training compensation.

**D. The Proceedings before the sub-committee of the FIFA Dispute Resolution Chamber**

21. On 5 May 2017, Genk requested FIFA to order MU to pay in its favour an amount of EUR 300,000 plus 5% interest *p.a.* as of 30 days after the Player's registration with the English club.
22. On 30 November 2017, the sub-committee of the FIFA Dispute Resolution Chamber adopted a decision (the "Appealed Decision") finding as follows:

"(...)

1. *The claim of the Claimant, KRC Genk, is rejected.*
  2. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the Claimant to FIFA, CHF 5,000 of which have already been paid as advance of costs at the start of the present proceedings. Consequently, the additional amount of CHF 15,000 is to be paid by the Claimant to FIFA **within 30 days** as from the date of notification of the present decision, to FIFA (...)* (emphasis in original).
23. In the Appealed Decision, the sub-committee of the FIFA Dispute Resolution Chamber pointed out that, according to Article 6 para. 3 of Annexe 4 RSTP, 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. It emphasized that, should the former club not offer such a contract, no training compensation was payable, unless the former club could justify that it was entitled to such compensation. The sub-committee of the FIFA Dispute Resolution Chamber accepted that, by reason of its national law, Genk was not in a position to offer a contract to the Player. Under these circumstances, it held that it was Genk's duty to provide sufficient evidence that it had a genuine and *bona fide* interest in keeping the Player in its team and that it showed a proactive attitude to clearly manifest that it intended to count on the Player for the future.
  24. In light of these considerations, the sub-committee of the FIFA Dispute Resolution Chamber examined the documentation submitted by Genk and "*highlighted that, although the player was registered with [Genk] until 30 June 2014, his last evaluation dates back to 21 December 2013. Equally, the subcommittee deemed that the comments outlined in the player's evaluations do not constitute conclusive evidence demonstrating that [Genk] had a genuine and bona fide interest in keeping the player in its team beyond the 2013-2014 season. Likewise, the sub-committee underscored that [Genk] had not provided documentation demonstrating the player's role in [its] team for the future or that it had communicated such future plans to the player and/or his parents. Consequently, the subcommittee concurred that [Genk] had not demonstrated a proactive attitude vis-à-vis the player, so as to clearly manifest that it intended to count on the player for the future*". As a result, the sub-committee of the FIFA Dispute Resolution Chamber concluded that Genk had not provided sufficient and conclusive evidence justifying that it was entitled to receive training compensation. Hence, it held that Genk failed to comply with the prerequisites of Article 6 para. 3 of Annexe 4 RSTP and rejected its claim.
  25. On 20 April 2018, the Parties were notified of the Appealed Decision.

### III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 9 May 2018, Genk filed a Statement of Appeal against the Appealed Decision with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”).
27. On 16 May 2018, the CAS Court Office acknowledged receipt of the Statement of Appeal filed by Genk as well as of its payment of the CAS Court Office fee. It took note of its nomination of Mr Frans de Weger as arbitrator and invited MU to comment within three days on Genk’s application for an extension until 31 May 2018 of its deadline to file its Appeal Brief. It advised the Parties that MU’s silence would be deemed acceptance of Genk’s request.
28. On 17 May 2018, FIFA confirmed to the CAS Court Office that it had renounced its right to request to intervene in the present arbitration proceedings.
29. On 18 May 2018, the CAS Court Office informed the Parties that MU did not provide any comment with regard to Genk’s request for an extension of its deadline to file its Appeal Brief, which was therefore granted.
30. On 31 May 2018, Genk filed its Appeal Brief in accordance with Article R51 of the Code. In the Appeal Brief, Genk indicated its intention to call Mr Filip Aerden, its financial director, to testify regarding the training period of the Player with Genk and the actual training costs incurred.
31. MU informed the CAS Court Office that it had reached an agreement with Genk concerning a short retroactive extension of its deadline to nominate an arbitrator and, on 7 June 2018, confirmed that it was appointing Prof. Ulrich Haas as arbitrator in these proceedings.
32. On 29 June 2018, MU applied for a 5-day extension of its deadline to file its Answer, which was eventually granted in accordance with Article R32 of the Code.
33. On 3 July 2018, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel, Mr Frans de Weger and Prof. Ulrich Haas, arbitrators.
34. On 5 July 2018, MU filed its Answer. One of the exhibits to the Answer was the witness statement signed on 26 July 2017 by Mr Jacky Boonen, the father of the Player, submitted in the proceedings before FIFA.
35. On 9 July 2018, the CAS Court Office acknowledged receipt of the Answer filed on 5 July 2018 and invited the Parties to state whether their preference was for a hearing to be held.
36. On 17 July 2018, MU confirmed that it preferred for the matter to be decided solely on the basis of the Parties’ written submissions, whereas Genk applied for a hearing to be held.
37. On 27 July 2018, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing, which was eventually scheduled for 12 October 2018, with the agreement of the Parties.

38. On 22 August 2018, Genk requested the Panel's approval to hear Mr Roland Breugelmans, Genk Youth Director, as witness instead of Mr Aerden, originally indicated as a witness in the Appeal Brief.
39. On 30 August 2018, Genk indicated that the hearing of 12 October would be attended by Mr Roland Breugelmans, as "*Witness*". No mention was made of Mr Aerden.
40. On 3 September 2018, the CAS Court Office sent to the Parties the Order of Procedure, which was returned duly signed by MU and Genk on 10 and 14 September 2018, respectively.
41. On 6 September 2018, MU objected to the deposition of Mr Breugelmans.
42. On 9 September 2018, Genk insisted in its request that the deposition of Mr Breugelmans be admitted.
43. On 11 September 2018, the CAS Court Office informed the Parties that the Panel had noted that Mr Breugelmans was an official of Genk. Accordingly, the Parties were advised that Mr Breugelmans would be allowed to attend the hearing as a party representative and not as a witness, and that, pursuant to Article R56 of the Code, Mr Breugelmans was not allowed to supplement or amend the Genk's argument or introduce new facts.
44. The hearing was held on 12 October 2018 at the CAS premises in Lausanne. The Panel members were present and assisted by Mrs Delphine Deschenaux-Rochat, Counsel to the CAS, and by Mr Patrick Grandjean, acting as *ad hoc* Clerk.
45. The following persons attended the hearing:
  - Genk was represented by its Youth Director, Mr Roland Breugelmans, assisted by its legal counsels, Mr Leander Monbaliu and Mr Luca Smacchia.
  - MU was represented by its legal counsel, Mr Stuart Baird.
46. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the composition of the Panel. Some preliminary discussions on procedural points, then, took place. Genk, in fact, requested the Panel to discard the witness statement of Mr Boonen filed by MU, since Mr Boonen had not been called as a witness in the CAS proceedings and Genk had been deprived of the opportunity to cross-examine him. MU, on its side, insisted that the witness statement of Mr Boonen be kept in the file, noting that Genk had not requested that Mr Boonen appeared and therefore MU could not arrange for his presence. The Panel, on such, decided to keep the witness statement of Mr Boonen in the file as one of the documents submitted by MU, as it was part of the FIFA proceedings.
47. After the Parties' final arguments, the Panel closed the hearing, and announced that its award would be rendered in due course. At the conclusion of the hearing, the Parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Appeal

48. In its appeal brief, Genk submitted the following requests for relief:

*“[Genk] respectfully requests that the CAS sets aside the decision passed by the FIFA DRC on 30th November 2017 and issues a new decision whereby:*

*(1) [MU] is ordered to pay [Genk] the amount of EURO 300.000, plus interest of 5% per annum as of 30 days following the date of the Player’s first registration as a professional with Manchester United.*

*(2) Alternatively, [MU] is ordered to pay an amount corresponding to the actual training costs incurred by [Genk], established by the CAS panel based on the evidence provided by [Genk], plus interest of 5 % per annum as of 30 days following the date of the Player’s first registration as a professional with Manchester United.*

*(3) More alternatively, [MU] is ordered to pay an amount of EURO 40.000, plus interest of 5 % per annum as of 30 days following the date of the Player’s first registration as a professional with Manchester United.*

*(4) In all cases, to fix a sum, to be paid by [MU] to [Genk], in order to pay its legal fees in the amount to be determined at the full discretion of the Panel, and to condemn [MU] to reimburse any and all advance of costs and court office fee paid by [Genk].”*

49. Genk’s submissions, in essence, may be summarized as follows:

- It is undisputed that Genk has trained the Player from 18 May 2006 until 30 June 2014. MU benefited from all the considerable amounts of money and efforts invested by Genk in the Player. Under these circumstances, it is only fair that MU contributes towards the costs incurred by Genk in this respect.
- Pursuant to the applicable Belgian legislation, an employment contract with a football player can only be signed after the latter has reached the age of 16. The Belgian Criminal Code for Employment and Social Security law sanctions any deviation from this particular requirement with fines and/or imprisonment.
- In view of the specificity of the Belgian legislation, Article 6 para. 3 of Annexe 4 RSTP is not applicable to Genk, which is therefore automatically entitled to training compensation.
- According to the jurisprudence, when a club is legally unable to offer a contract to a player, it can nevertheless justify its entitlement to training compensation provided that it establishes a genuine and *bona fide* interest in retaining the services of the player. However, in such situations, the burden of proof required is much lower since the training club only has to convince the judging body that it would have offered a contract if it had the legal possibility to do so.
- In the present case, it was impossible for Genk to offer a contract to the Player, who was 15 when he communicated his decision to leave the club and when his deregistration took effect. If it were not for the Belgian mandatory law, Genk would have offered a contract

to the Player. In support of this assertion, Genk relied on the following evidence:

- Genk is well-known for its state of the art training facilities as well as for its policy aimed at social integration and education of its young players. Several internationally distinguished players have been trained in its academy.
  - The Player’s evaluation reports drafted between December 2009 and December 2013 confirm his talent, his positive development as well as Genk’s interest to retain his services for the future. *“The advice by the club included in the detailed evaluation reports show the specific attention that was given to the player and his development, with the aim to prepare him for professional football”*.
  - An interview with a Belgian journalist, Mr Kristof Terreur, who declared that he was told that *“he’s like all those small skilful guys (...). [The player] was one of the best players in [Genk’s] U14s and U15s (...). He left this summer after a dispute, not that [Genk] thought he was not good enough (...). From what I’m told [Genk] wanted to keep [the Player], but they had some reservations about [his brother], who isn’t the tallest for his age - [Genk has] a policy of wanting tall goalkeepers. [The Player’s father] wanted both boys at the same club, so that’s why they decided to leave [Genk]”*.
  - An article published by mailOnline on 19 February 2015, referring to the Player as the *“Belgian wonderkid”*.
  - An article published by the Mirror on 30 August 2016, entitled *“Indy Boonen might be a name worth remembering”*.
  - An article published by the Guardian on 5 October 2016, placing the Player among the 60 best talents in world football.
- The training compensation must be calculated pursuant to Article 5.3 of Annexe 4 of the RSTP, in their version applicable in the period from 2009 until 2014. On this basis, Genk is entitled to the payment of EUR 300,000 as training compensation for the Player. Should the more recent version of the RSTP be applicable, Genk would be entitled to the payment of EUR 40,000, which is clearly disproportionate considering the effective costs it incurred for the Player’s training and education. This amount is estimated at EUR 520,888.12. *“Therefore, in the unlikely event the panel would consider that the wording of article 5.3. of the 2015 FIFA Regulations is applicable, quod non, [Genk] requests the panel to apply article 5.4. of the FIFA Regulations in order to adjust the amount payable to a more justified and just amount, bearing in the actual training costs incurred by the Appellant”*.

## B. The Answer

50. MU submitted the following requests for relief:

“(…)

*MU requests that the Panel decides in an award:*

76.1 *This Answer is admissible and well-founded; and*

76.2 *Genk’s appeal is dismissed in its entirety and the Decision is upheld; or*

76.3 *In the alternative, in the event that Genk is successful on liability, Genk’s appeal on quantum*

*is dismissed and its Training Compensation entitlement is €40,000; and*

76.4 *Genk must pay in full, or, in the alternative, a contribution towards, the costs and expenses, including MU's legal costs and expenses, pertaining to these appeal proceedings before the CAS".*

51. The submissions of MU, in essence, may be summarized as follows:

- It is undisputed that Genk did not offer the Player a contract. In the absence of a contract offer in accordance with Article 6 para. 3 of Annexe 4 RSTP, Genk is required to justify its entitlement to training compensation by showing a *bona fide* and genuine interest in retaining the Player for the future and by demonstrating a proactive attitude vis-à-vis the Player, so as to clearly manifest that it intends to count on him for the future.
- Genk has never discussed with the Player or his father about his future with the club beyond the 2013/14 season.
- After he informed Genk of his decision to deregister, the Player did not receive any subsequent assurances from the Belgian club that it would offer him a contract as soon as it was legally able to do so. Genk also did not even attempt to encourage the Player to remain registered with it for the 2014/15 season.
- *"Following the end of the 2013/14 season, having still not received any approach from Genk to invite him to re-register with it for following season, the Player reasonably concluded that he was no longer wanted by Genk and therefore proceeded to leave Genk and seek opportunities to become registered elsewhere".*
- *"In summary, based on the evidence adduced by Genk, it is abundantly clear that Genk has failed to discharge the burden of proof in accordance with the principles set out in previous precedent cases because it has failed to provide any evidence of: (i) a proactive attitude vis-à-vis the Player so as to clearly manifest that the Club intends to count on the Player for the future; (ii) a bona fide and genuine interest in retaining the Player for the future; (iii) an unambiguous interest in continuing its co-operation with the Player to keep alive the option of granting him a professional contract at a later stage; (iv) communications to the Player / his parents of its interest in retaining him; or (v) documentary evidence corroborating its interest in retaining the Player".*
- The triggering event for the payment of the claimed training compensation is the registration of the Player as a professional for the first time with MU in September 2015. The contract at the centre of the dispute was signed on 1 August 2015. Thus and in accordance with Article 26 para. 2 of the RSTP, the training compensation must be calculated in accordance with the 2014 edition of the RSTP. Pursuant to this set of rules, the training and education costs of category 4 clubs belonging to the UEFA Confederation is set at EUR 10,000 per season. Under these circumstances and in any event, the claimed training compensation may not exceed the amount of EUR 40,000.
- Genk has not satisfied its burden of proof that the amount of EUR 40,000 is clearly disproportionate to the effective costs it incurred for the Player's training and education between the 2010/2011 and the 2013/2014 seasons.

## V. JURISDICTION

52. The jurisdiction of the CAS, which is not disputed, derives from the Articles 57 et seq. of the applicable FIFA Statutes and Article R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the Parties.
53. It follows that the CAS has jurisdiction to decide on the present dispute.
54. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

## VI. ADMISSIBILITY

55. The appeal is admissible as Genk submitted it within the deadline provided by Article R49 of the Code as well as by Article 58 para. 1 of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

## VII. APPLICABLE LAW

56. Article R58 of the 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

57. Pursuant to Article 57 para. 2 of the applicable FIFA Statutes, “[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
58. As a result, and in light of the foregoing, subject to the primacy of the applicable FIFA regulations, Swiss Law shall apply complementarily, whenever warranted.
59. The Parties disagree as to which edition of the RSTP applies to the present dispute. In view of the outcome of these proceedings, of the fact that the matter must be assessed in the light of Article 20 RSTP and Articles 1 para. 1; 2 para. 1; 3 para. 1 and 6 para. 3 of Annexe 4 RSTP, of the fact that these provisions remain unchanged in the editions in force between 2010 and 2018, the question as to which version of the RSTP is applicable can remain unanswered.

## VIII. PROCEDURAL ISSUE - ADDITIONAL SUBMISSION

60. Article R56 para. 1 of the Code provides as follows:

*“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument,*

*to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer”.*

61. At the hearing before the CAS, Genk filed a paper copy of the PowerPoint presentation it referred to in support of its oral pleadings. MU agreed with this production. Under these circumstances, the President of the Panel decided to allow this additional document.

## **IX. MERITS**

62. It is undisputed that Genk’s entitlement to the payment of training compensation is at the centre of the debate.
63. In this light, the relevant provisions are the following ones:

### Article 20 RSTP – Training compensation

*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. (...).*

### Article 1 para. 1 Annexe 4 RSTP - Objective

*A player’s training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. (...).*

### Article 2 para. 1 Annexe 4 RSTP – Payment of training compensation

*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.*

### Article 3 para. 1 of Annexe 4 RSTP – Responsibility to pay training compensation

*“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. (...).*

### Article 6 para. 3 of Annexe 4 RSTP – Special provisions for the EU/EEA

*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).*

64. In the present case, it has been established that the Player was registered as an amateur with Genk from season 2010/2011 until season 2013/2014 and that he signed his first contract as a professional with MU on 1 August 2015. Hence, the Player's transfer occurred between two associations inside the territory of the EU/EEA.
65. It is also undisputed that, pursuant to Belgian laws, it is impossible for Genk to enter into an employment contract with a minor under the age of 16, without facing criminal prosecution (see Belgian Labour Act of 16 March 1971, Belgian Law of 29 June 1983, Belgian Law of 24 February 1978 regarding the employment of professional sportsmen, the Royal Decree of 18 July 2001 and the Belgian Criminal Code for Employment and Social Security law).
66. Genk is of the opinion that, in view of the specificity of its national legislation, Article 6 para. 3 of Annexe 4 RSTP is not applicable to Belgian clubs, which are not in a position to "*offer the player a contract*", without being exposed to criminal charges. As a consequence and according to Genk, Belgian clubs are automatically entitled to training compensation, whenever one of their players, who is under the age 16, moves to another association inside the territory of the EU/EEA.
67. The Panel cannot agree with Genk that there is some kind of "Belgian exception", releasing Belgian clubs from the requirements set forth under Article 6 para. 3 of Annexe 4 RSTP. The reasons are the following:
  - This provision sets out some specific principles, which apply as *lex specialis* for players moving from one national association to another inside the territory of the EU/EEA. It is an exception to the general principle of training compensation (CAS 2011/A/2682; CAS 2006/A/1152). Belgium is part of the EU and EEA and as such cannot escape the obligations laid down by Article 6 para. 3 of Annexe 4 RSTP.
  - The wording of Article 6 paragraph 3 of Annex 4 RSTP does not support Genk's position. The last part of the first sentence of this provision provides for an "*exception to the exception*" (*inter alia* CAS 2016/A/4721; CAS 2011/A/2682). Even if the player was not offered a contract, the training club is entitled to training compensation provided that it "*can justify that it is entitled to such compensation*". This is supported by constant CAS jurisprudence (*inter alia* CAS 2016/A/4721; CAS 2014/A/3497; CAS 2009/A/1757; CAS 2006/A/1152).
  - According to CAS jurisprudence, Article 6 para. 3 of Annexe 4 RSTP does not require that a club offers a professional contract to all its young amateur players for fear of losing all right to training compensation. Such an obligation would have been too costly for the clubs and would have contravened "*the spirit and purpose of the FIFA transfer rules, which are set out in order to grant to clubs the necessary financial and sportive incentives to invest in training and education of young players*" (CAS 2006/A/1152, para. 8.15). This line of reasoning was confirmed in several other CAS cases (DUBEY J-P, The jurisprudence of the CAS in football matters (except Art. 17 RSTP), in CAS Bulletin, 1/2011, page 7 and references).

Therefore, even without offering a professional contract, clubs have an opportunity to protect their investment on young players (CAS 2014/A/3497).

- Finally, the Panel is not convinced that there is even a rationale to claim a “Belgium exception”. Belgian law only prohibits the execution of an employment contract with a minor below the age of 16. The purpose of the provision is clear, i.e. to protect youngsters and to ensure that they finish education first before entering onto the labour market. Nothing in the rules and in the evidence submitted by the Appellant points into the direction that an employer is prevented to make a (binding) offer to the minor, e.g. to employ him – subject to his or his representative’s consent – once he turns 16. Such offer – evidently – does not adversely affect the interests of the minor, since it would be to his (sole) advantage and in its sole discretion whether he accepts such offer at the age of 16 or not. Thus, the very starting point of the Appellant’s line of argumentation, i.e. that Belgian law forbids any kind of employment offers below the age of 16 does not appear very convincing.
68. Hence, according to Article 6 para. 3 of Annexe 4 RSTP, a club can claim training compensation provided that one of these two alternative requirements is met: it offered the player a professional contract (“First Alternative”) or it can otherwise justify that it is entitled to training compensation (“Second Alternative”). With regard to the Second Alternative, the Panel wishes to add that this justification may be very difficult to prove and limited to extraordinary circumstances (FIFA Commentary, Annex 4, explanation Art. 6 par. 3, p. 125, under point 3).
  69. The fact that Belgian clubs are prohibited from offering the player a contract because of their national legislation (*i.e.* they cannot meet the requirements of the First Alternative), does not exempt them from the obligation to prove that the Second Alternative is triggered; *i.e.* that they “*can justify that [they are] entitled to such compensation*”.
  70. The purpose of the two alternative requirements set under Article 6 para. 3 of Annexe 4 RSTP “*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*” (CAS 2006/A/1152, para. 22 *et seq.*). The panel in the CAS 2016/A/4721 (para. 59) further held 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. (...). 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)*”. According to the CAS constant jurisprudence, the training club must prove that it desires to keep the player on the club’s roster or in its youth academy, with a view to keeping alive the option of granting him a professional contract at a later stage (CAS 2006/A/1152 para. 23). It must take a proactive attitude *vis-à-vis* the player so as to clearly show that it still counts on him

for the future season(s) (CAS 2014/A/3497, para. 63).

71. The Panel, which fully adheres to the above findings, must determine whether Genk has proven in these proceedings that it is entitled to training compensation, albeit not offering a contract to the Player. To this effect, Genk has submitted the following evidence:

- 6 reports evaluating the Player's performance between the 2009/2010 and the 2013/2014 seasons as well as some statistical data. These documents do not constitute conclusive evidence that Genk had a genuine and *bona fide* interest in keeping the player in its team beyond the 2013/2014 season. Their content do not lead the Panel to hold that it would be "*contrary to common sense*" to conclude that Genk was not interested in keeping the Player any longer, had it been able to do so (see *inter alia* CAS 2009/A/1757 para. 19 and references and CAS 2012/A/2890 para. 69). The Player's last evaluation dates back to December 2013 and does not contain specific comments. The grades contained therein underline the Player's qualities but also his shortcomings and, in no manner, suggest that the Player was in some way exceptional. In this regard, Genk did not file any evaluation from other players, which could have established how special the Player was, in comparison with others. The Panel also observes that none of the evaluations submitted by Genk are signed. These papers seem to be for purely internal use and nothing indicates that the Player was aware of their existence. In other words, these evaluations do not prove that Genk took a proactive attitude *vis-à-vis* the Player so as to clearly show that it still counts on him for the future seasons.
- To justify its entitlement to training compensation, Genk also relies on the fact that it is well-known for its state of the art training facilities as well as for its policy aimed at social integration and education of its young players. Such an argument does not address the Player's specific situation and in particular does not prove Genk's genuine and *bona fide* interest in keeping the Player. This is all the more confirmed by the situation of the Player's brother, who was also trained in Genk's academy but in whose services the club admittedly had no interest for the 2014/2015 season.
- Genk further supports its claim with various press articles, published between February 2015 and 5 October 2016; *i.e.* between 10 and 30 months after the Player had communicated his decision to leave Genk. Given the time that had elapsed, the press articles appear already to have very little relevance for the case at hand:
  - The first article referred to by Genk is an interview published in February 2015 of Mr Kristof Terreur, a "*Premier League correspondent for Belgium's leading newspaper Het Laatste Nieuws*". Mr Terreur confirmed that he had never seen the Player in action but heard that "*he's like all those small skilful guys*" and also affirmed that the Player "*was one of the best players in Genk U14s and U15s*". Mr Terreur also declared that the Player "*has a talented brother, Seppe*".  
The Panel observes that Mr Terreur's judgment is based on hearsay and does not suggest that the Player's performances were so exceptional that it would be "*contrary to common sense*" to deny Genk's interest in keeping the Player. He described the Player as a "*small, skilful attacking midfielder with a good left foot*" and confirmed the Player was talented but does not suggest that he stood clearly above the rest of his teammates

(“he’s like *all those small skilful guys*”; the Player “*was one of the best players in Genk*”). Much more, he tempered some of the expectations placed in the Player (“*I read somewhere he’s the new Janzquaj but let’s not exaggerate. Not every young Belgian is the new Hazard or the new Janzquaj*”).

Finally, this article demonstrates that Genk does not keep all of its gifted players. In this respect, it is undisputed that Genk did not want to keep the Player’s brother, whom Mr Terreur described as being “*talented*” as well.

- The second article relied on by Genk was published by mailOnline on 19 February 2015. This document is entitled “[MU] complete signing of Belgian wonderkid Indy Boonen” and its headlines state “*Boonen impressed enough to earn himself a three-year contract*”; “*Indy’s brother, Seppe, a goalkeeper, has also attracted interest from United*”.

The Panel observes that Genk did not submit the full article but just its headlines, which is perplexing, as it does not give a full and accurate picture of the journalist’s account of the facts. Here too, the article seems to place Seppe Boonen at a same or similar level as the Player. Under these circumstances, Genk cannot simply claim that, as a matter of common sense, it was interested in retaining a player as talented as the Player, when it admits that it had no intention of keeping his brother.

- An article published by the Mirror on 30 August 2016, entitled “*Indy Boonen might be a name worth remembering*” and an article published by the Guardian on 5 October 2016, placing the Player among the 60 best talents in world football.

Again, Genk did not submit the full articles but just their headlines. These papers seem to confirm the Player’s talent as observed in August and October 2016, *i.e.* over two years after he left Genk. When these articles were published, the Player had been training with MU for more than a year. These papers do not provide any evidence of Genk’s intention to retain the Player, when the latter announced his departure in April 2014.

72. The evidence provided by Genk does not ascertain its real intention of keeping the Player in its team. In particular, it does not support that Genk adopted a proactive attitude *vis-à-vis* the Player so as to clearly show a *bona fide* and genuine interest in retaining him for the future. Above all, Genk did not demonstrate that, when the Player announced that he was leaving the club, it took all the necessary measures to persuade him to stay. There is not any evidence that Genk sought to make any contact with the Player or his father after the end of the 2013/2014 season, even though the Player was not registered with MU until the beginning of September 2015. Genk did not even submit internal notes or reports suggesting that it was disappointed by the Player’s departure or that his deregistration was considered as a big loss for the club. Likewise, there is no letter from Genk to the Player asking him to reconsider his decision of leaving the club. There is not even any witness statement from any director or official of Genk to support its assertions of interest in the Player. At the hearing before the CAS and for the first time, Mr Roland Breugelmans confirmed that, in April 2014, he had a heated discussion with the Player’s father, who wanted both of his sons to remain with Genk. Given the club’s refusal to keep Seppe Boonen, the Player’s father decided to deregister both of his sons, which - at the hearing before the CAS - did not seem to have affected Mr Roland Breugelmans, who apparently did nothing more than simply acknowledge the decision of the Player’s father. At least, he did not

assert otherwise before the Panel.

73. The Panel is of the opinion that the evidence produced by Genk is insufficient to unambiguously ascertain its real interest in keeping the Player in its team. Genk failed to discharge its burden of proof in showing that it is entitled to training compensation. It is not enough for Genk to simply claim that, as a matter of common sense, it intended to retain the Player's services. On the basis of the evidence produced by Genk, any other conclusion would open the doors to legal uncertainty, would certainly deter any new club from registering an amateur player and would render Article 6 para. 3 of Annexe 4 RSTP devoid of purpose.
74. In light of all the above considerations, Genk did not show persuasive evidence of a *bona fide* and genuine interest in retaining the Player on its team for the 2014/2015 season. As a consequence, the Panel holds that Genk has not justified that it is entitled to training compensation as provided under Article 6 para. 3 of Annexe 4 RSTP and consequently accepted "*to write off the investment made for its training, the player [being therefore] free to move to another club with no strings attached*" (CAS 2006/A/1152, para. 22 et seq.). The Panel thus concludes that the appeal must be dismissed.
75. This conclusion makes it unnecessary for the Panel to consider the other requests and submissions submitted by the Parties. Accordingly, all other prayers for relief are rejected.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed by Koninklijke Racing Club Genk against the decision issued by the sub-committee of the FIFA Dispute Resolution Chamber on 30 November 2017 is dismissed.
2. The decision issued by the sub-committee of the FIFA Dispute Resolution Chamber on 30 November 2017 is confirmed.
3. (...).
4. (...).
5. All other or further claims are dismissed.