



**Arbitration CAS 2015/A/4257 Calcio Catania S.p.A. v. Montevideo Wanderers FC, award of 1 December 2016**

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

*Football*

*Training compensation*

*Element triggering the payment of training compensation*

*Purpose of training compensation*

*Period to be considered to establish training compensation*

*Reassessment of procedural costs imposed by FIFA Dispute Resolution Chamber*

- 1. While Article 20 of the FIFA Regulations on the Status and Transfer of Players (RSTP) refers to the signing of the first professional agreement as the triggering element for the payment of training compensation, Article 2 para. 1 and Article 3 para. 1 of Annex 4 RSTP refer to the first registration as a professional as the respective triggering element. In light of the inconsistency in the wording used, CAS panels have held that the time when the first professional contract was signed should be the decisive point in time for the start of the payment of training compensation.**
- 2. The system of training compensation is designed to promote solidarity within the world of football. The aim is to discourage clubs from hiring young players in some foreign countries only because the training costs in these countries are lower. Therefore, the clubs that have the resources to sign players from abroad must pay the foreign training clubs according to the costs of their own country. In this way the clubs are rewarded for their work done in training young players, and not simply reimbursed for the actual costs incurred in cultivating youth teams. It follows that training compensation appears to be a reward and an incentive rather than a refund.**
- 3. The period to be considered when establishing training compensation owed is the time during which a player was effectively trained by a club. In calculating the indicative amount of training compensation, a part of a month only has to be calculated as a full month in the event a club has provided training to a player throughout more than half of the month. A club seeking to have the amount of training compensation awarded by the FIFA Dispute Resolution Chamber (DRC) to be increased based on the argument that it trained the player in question longer than acknowledged by the FIFA DRC bears the burden of proof for its allegations with respect to the period of effective training provided to the player.**
- 4. A club seeking a reduction of the procedural costs imposed on it by a first instance decision of the FIFA DRC is directing its claim against FIFA. Therefore the club in question, in its appeal proceedings at CAS against the FIFA DRC decision, has to (also)**

**direct its appeal against FIFA. In case FIFA is not made party to the respective CAS proceedings CAS has no legal ability to modify the respective portion of the FIFA DRC decision, *i.e.* reassessment of the procedural costs.**

## **I. PARTIES**

1. Calcio Catania S.p.A (“Catania”) is a football club with its registered office in Catania, Italy. It is a member of the Italian National Football Association (Federazione Italiana Giuoco Calcio – “FIGG”), itself affiliated to the Fédération Internationale de Football Association (“FIFA”) since 1905.
2. Montevideo Wanderers FC (“Montevideo”) is a football club, registered in Montevideo, Uruguay. It is a member of the Uruguayan Football Association (Asociación Uruguaya de Fútbol – the “AUF”), itself affiliated to FIFA since 1923.

## **II. FACTUAL BACKGROUND**

### **A. Background facts**

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

### **B. J.’s background**

4. J. (the “Player”) is of Uruguayan nationality and was born on 1 September 1996.
5. According to the passport issued by the AUF (the “AUF passport”), the Player was registered as an amateur with Montevideo from 17 February 2012 until 2 July 2014.
6. It is undisputed that the football season in Uruguay for amateur players runs from 1 January until 31 December of each year.
7. On 31 January 2014, the Player signed with Catania his first professional employment contract (the “Employment Contract”). The main characteristics of this document can be summarised as follows:
  - It is a fixed-term agreement, effective from 31 January 2014 up to 30 June 2016.

- According to its heading, the contract covers the 2013/2014 season.
  - Article 1 of the Employment Contract states that *“The Player undertakes, as registered F.I.G.C. member, to provide his services to the Club starting from 31/01/2014 up to 30/06/2016”*.
  - Pursuant to Article 2 a) of the Employment Contract, Catania undertook to pay to the Player the following gross amounts:
    - “SPORT SEASON 2013/2014 FEDERAL MINIMUM – consisting in € 8.350 (...)*
    - SPORT SEASON 2014/2015 FEDERAL MINIMUM – consisting in € 20.000 (...)*
    - SPORT SEASON 2015/2016 FEDERAL MINIMUM – consisting in € 20.000 (...).”*
8. According to Catania’s submissions made in the appeal brief filed in the present arbitral proceedings, the Player moved from Uruguay to Italy on 18 January 2014. He returned to Uruguay for the first time on 20 May 2014. *“[From] January 2014 onwards the Player attended the I. NEWTON Comprehensive School, located in Tremestieri Etneo, Catania, Italy”*. During the same period, the Player trained with Catania and stayed at Catania’s sporting center. The costs related to the Player’s travel, schooling and housing were covered by the club.
9. According to the passport issued by the FIGG (the “FIGG passport”), the Player was registered as a professional with Catania on 3 July 2014.
10. On 29 January 2016, FIFA Transfer Matching System GmbH confirmed that Catania was a category I club (under the terms of the applicable FIFA Regulations on the Status and Transfer of Players – the “RSTP”) from 31 October 2010 until 27 November 2014, a category II club from 27 November 2014 until 31 August 2015 and, from then on, a category III club.

### **C. The Proceedings before the FIFA Dispute Resolution Chamber**

11. On 4 February 2015, Montevideo filed a claim with FIFA against Catania, requesting the payment of training compensation plus interest as well as procedural costs.
12. In a decision dated 7 July 2015, the FIFA Dispute Resolution Chamber Judge (the “DRC Judge”) awarded training compensation to Montevideo based upon the following considerations:
- The Player was registered for the first time as a professional with Catania on 3 July 2014, *i.e.* before the end of his 23<sup>rd</sup> birthday.
  - According to the information contained in the Transfer Matching System (“TMS”), Catania belonged to a category I club (under the terms of the RSTP) *“during the season when the Player was registered with it”*.
  - Pursuant to the parameters reflected in Annex 4 to the RSTP as well as in the FIFA circular no. 1418 dated 2 May 2014, the indicative amount within UEFA for category I clubs is of EUR 90,000 per year.

- The relevant number of months to be taken into account are those during which the Player had been registered with Montevideo:
  - o from 17 February 2012 until 31 December 2012; *i.e.* during 10 months of the season of the Player's 16<sup>th</sup> birthday (EUR 75,000);
  - o from 1 January until 31 December 2013; *i.e.* during 12 months of the season of the Player's 17<sup>th</sup> birthday (EUR 90,000);
  - o from 1 January until 2 July 2014; *i.e.* during 6 months of the season of the Player's 18<sup>th</sup> birthday (EUR 45,000).
- *"in conformity with the DRC's longstanding practice, interest at 5% p.a. over the amount payable as training compensation as of the 31st day of the registration of the player with the [Catania], i.e. as of 3 August 2014, until the date of effective payment"*.

13. As a result, on 7 July 2015, the DRC Judge decided the following:

1. *The claim of [Montevideo] is partially accepted.*
2. *[Catania] has to pay to [Montevideo] **within 30 days** as from the date of notification of this decision, the amount of EUR 210,000 plus 5% interest p.a. as of 3 August 2014 until the date of effective payment.*
3. *In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
4. *Any further claim lodged by [Montevideo] is rejected.*
5. *The final amount of costs of the proceedings in the amount of CHF 25,000 are to be paid by the [Catania] within 30 days as from the date of notification of the present decision as follows:*
  - 5.1 *The amount of CHF 20,000 has to be paid to FIFA (...).*
  - 5.2 *The amount of CHF 5,000 has to be paid to the [Montevideo].*
6. *The [Montevideo] is directed to inform [Catania] immediately and directly of the account number to which the remittances under point 2. and 5.2. above are to be made and to notify the DRC judge of every payment received.*

14. On 2 October 2015, the Parties were notified of the decision issued by the DRC Judge (the "Appealed Decision").

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

15. On 23 October 2015, Catania filed a statement of appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). Within its statement of appeal, Catania requested that this procedure be referred to a Sole Arbitrator.

16. On 29 October 2015, the CAS Court Office acknowledged receipt of Catania's statement of appeal and of its payment of the CAS Court Office fee. It noted that Catania chose English as the language of the arbitration. In this respect, it informed Montevideo that, unless it objected within three days, the procedure would be conducted in English. The CAS Court Office also invited Montevideo to comment within five days on Catania's request to submit the present matter to a sole arbitrator.
17. On 2 November 2015, Catania filed its appeal brief in accordance with Article R51 of the Code.
18. On 3 November 2015, Montevideo informed the CAS Court Office that it agreed to submit the present dispute to a Sole Arbitrator and also agreed to hold proceedings in English.
19. On 10 November 2015, FIFA confirmed to the CAS Court Office that it had renounced on its right to request to intervene in the present arbitration proceedings.
20. On 30 November 2015, Montevideo filed its answer in accordance with Article R55 of the Code.
21. On 1 December 2015, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.
22. On 2 December 2015, Montevideo confirmed to the CAS Court Office that it preferred for the matter to be decided solely on the basis of the Parties' written submissions. However, it reiterated its application to be granted the opportunity to file further arguments once the evidence requested in its answer had been provided.
23. On 4 December 2015, Catania asked the CAS Court Office to suspend the proceedings as the Parties "*entered into negotiations for a possible amicable solution of the matter at stake*".
24. On 11 December 2015, Montevideo objected to the suspension of the procedure, which therefore followed its normal course.
25. On 28 December 2015, the CAS Court Office advised the Parties that the President of the Appeals Arbitration Division appointed Prof. Petros C. Mavroidis, professor, Commugny, Switzerland as Sole Arbitrator.
26. On 6 January 2016, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to accept Montevideo's request for additional documents as set forth in its answer. In this context, it granted five days to Catania to provide a copy of the Employment Contract. Likewise, FIFA and FIFA Transfer Matching System GmbH were invited to disclose an "*official confirmation of the categorization of [Catania] for training compensation purposes on 31 January 2014 and on 3 July 2014, respectively, as well as during the sporting seasons 2007/2008 to 2013/2014*".
27. On 14 January 2016, the CAS Court Office acknowledged receipt of the copy of the Employment Contract filed by Catania.

28. On 8 February 2016, the CAS Court Office acknowledged receipt of FIFA's reply (which also enclosed the determination of FIFA Transfer Matching System GmbH) to its letter of 6 January 2016.
29. On 23 February 2016, and on behalf of the Sole Arbitrator, the CAS Court Office asked a number of questions to the Parties, which the Parties answered within the granted deadline.
30. On 21 March 2016, the Parties were advised that the Sole Arbitrator deemed himself sufficiently informed to render a decision in the present arbitral proceedings without the need of a hearing.
31. On 30 March 2016 and 4 April 2016, the Respondent and Appellant, respectively, signed and returned their signed Order of Procedure. By signing the Order of Procedure, the Parties confirmed their agreement that the Sole Arbitrator may decide this matter based on their written submissions.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Appeal

32. Catania submitted the following requests for relief:

*Calcio Catania S.p.A. respectfully requests the CAS to rule as follows:*

- I. *The appeal filed by Calcio Catania Sp.A. is upheld;*
  - II. *The challenged decision issued by the FIFA Dispute Resolution Chamber on 7 July 2015 is annulled and set aside;*
  - III. *The training compensation that Montevideo Wanderers FC is entitled to receive from Calcio Catania Sp.A. in connection with the international transfer of the player [J.] is recalculated and established according to all the facts and the legal arguments contained in the present appeal or the elements that the Panel shall consider appropriate;*
  - IV. *The correct amount of the costs of the proceedings before the FIFA Dispute Resolution Chamber are recalculated and, consequently, the amount of CHF 5,000 due by Calcio Catania Sp.A. to Montevideo Wanderers FC is cancelled and Montevideo Wanderers FC is ordered to reimburse Calcio Catania S.p.A. the difference between the amount payable by Calcio Catania S.p.A. to FIFA and the correct amount of the FIFA procedural costs;*
  - V. *Montevideo Wanderers FC is ordered to bear all the procedural costs of this arbitration procedure;*
  - VI. *Montevideo Wanderers FC is ordered to cover the legal costs and expenses of Calcio Catania Sp.A. relating to this arbitration procedure in an amount to be determined at the discretion of the Panel.*
33. Catania's submissions, in essence, may be summarized as follows:
    - The DRC Judge miscalculated the training compensation because it erroneously took into consideration the indicative amounts established for a category I club instead of a category II club. As a matter of fact, it "appears proved that Catania, during the 2014/2015

*season when the Player was registered with it, always belonged to Category II – and not Category I – within UEFA”.*

- As regards to the training period, the DRC Judge wrongly assumed that the Player was still trained by Montevideo during the first semester of 2014. During that period of time, the Player was already in Italy and, accordingly, Montevideo “*stopped training the Player in **December 2013***”.
- In view of the circumstance of the case, the DRC Judge imposed upon Catania excessive procedural costs. As a matter of fact, “*it is evident that the FIFA DRC addressed a very limited number of issues which do not imply any particular factual or legal difficulty*”.

## **B. The Answer**

34. Montevideo filed an answer, with the following requests for relief:

*On the basis of the foregoing arguments, Respondent respectfully requests the Sole Arbitrator of CAS to rule as follows:*

- a) That the appeal filed by Calcio Catania S.p.A. is dismissed;*
- b) Consequently, that the decision of FIFA’s Dispute Resolution Chamber on 7 July 2015 (...) is upheld, late payment interest being granted as from the day training compensation was due (3 August, 2014);*
- c) That Calcio Catania is ordered to pay Montevideo Wanderers the amount of CHF 5.000 as reimbursement of the advance of costs incurred in the proceeding before FIFA;*
- d) That Calcio Catania is ordered to pay FIFA the procedural costs in the amount of CHF 20.000 or, additionally, in the amount determined by the Sole Arbitrator.*
- e) That Calcio Catania is ordered to bear all the procedural costs of this arbitration;*
- f) That Calcio Catania is ordered to cover the legal costs and expenses incurred by Montevideo Wanderers in relation to the present arbitration procedure in the amount to be determined by the Sole Arbitrator.*

35. Montevideo’s submissions, in essence, may be summarized as follows:

- According to Article 20 RSTP, the date of the signature of the contract is the pertinent moment in time for assessing the category to which belongs the Player’s new club. At the moment it signed the Employment Contract with the Player, Catania belonged unquestionably to a category I club.
- As regards the determination of the category to which belongs a club, the date of registration of the Player is irrelevant. Another conclusion would offer the potential for abuses as clubs could be tempted to “[play] with the registration dates, specifically in cases dealing with potential relegations, where a difference in the registration dates could lead to harm significantly the legitimate rights of the training clubs of the player”.

- In any event, it has been confirmed by FIFA that Catania belonged to a category I club on 3 July 2014, *i.e.* when it registered the Player. This is consistent with the indications contained in the TMS, which is mandatory and binding as regards the categorisation of clubs.
- With reference to the calculation of the period for which training compensation is due, the Player's passport is the only reliable document. According to the AUF passport, the Player was registered with Montevideo from 17 February 2012 until 2 July 2014. This is the period for which Montevideo is entitled to receive a training compensation. The evidence submitted by Catania to prove that the Player moved to Italy in January 2014 is not convincing and must be disregarded.
- The procedural costs imposed upon Catania were calculated in accordance with the applicable regulations and are fair considering the circumstance of the case.

## V. JURISDICTION

36. The jurisdiction of the CAS, which is not disputed, derives from Articles 66 *et seq.* of the applicable FIFA Statutes and Article R47 of the Code.
37. Moreover, it is noted that no party has objected to CAS jurisdiction.
38. It follows that the CAS has jurisdiction to decide on the present dispute.
39. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

## VI. ADMISSIBILITY

40. The appeal is admissible as Catania submitted it within the 21-day deadline provided by Article R49 of the Code as well as by Article 67 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

41. 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.*



42. The present case was submitted to FIFA on 4 February 2015, *i.e.* after 1 August 2014, 11 August 2014 and 1 December 2012, which are the dates when a) the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber ("Procedural Rules"), b) the FIFA Statutes, edition August 2014 (hereinafter the "applicable FIFA Statutes") and c) the RSTP, edition 2012, came into force.
43. Pursuant to Article 66 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".
44. In their respective briefs, both Catania and Montevideo confirmed that they agreed on the application of the relevant FIFA regulations, and accessorially, Swiss law.
45. As a result and in light of the foregoing, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily, whenever warranted.

### VIII. MERITS

46. It is undisputed that the Player signed his first professional contract with Catania and that Montevideo is entitled to training compensation. However, the Parties cannot agree on two of the parameters needed for the purposes of calculating the training compensation, namely, the classification of Catania in one of the FIFA categories for clubs (category I, II etc.), and the period of time during which the Player had effectively been trained by Montevideo. The procedural costs before the FIFA bodies are also an issue of contention between the Parties.
47. The main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following:
  - What is the pertinent moment in time for assessing the category to which belonged Catania for training compensation purposes?
  - What is the period for which training compensation is due?
  - What is the training compensation to which Montevideo is entitled?
  - Is there any reason to adjust the procedural costs incurred before the FIFA Body?

#### A. What is the pertinent moment in time for assessing the category to which belonged Catania for training compensation purposes?

48. For the purposes of calculating the training compensation, Catania claims that the judging authority must take into account the category to which it belonged at the moment of the registration of the Player (*i.e.* 3 July 2014), whereas Montevideo is of the view that the relevant moment is the date of the signature of the Employment Contract (*i.e.* 31 January 2014).
49. Catania further contends that during the whole 2014-2015 sporting season (which started on 1 July 2014), it was a category II club and not a category I club as wrongly indicated in the TMS.

1. *In general*

50. Article 20 of the RSTP provides the following:

**20 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. 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.*

51. Article 2 para. 1 of Annex 4 to the RSTP reads as follows:

**2 Payment of the training compensation**

1. *Training compensation is due when:*

- i. a player is registered for the first time as a professional; or*
- ii. a professional is transferred between clubs of two different associations (whether during or at the end of his contract)*  
*before the end of the season of his 23rd birthday.*

52. Article 3 para. 1 of Annex 4 to the RSTP states the following:

**3 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. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club.*

53. Article 4 of Annex 4 to the RSTP reads as follows:

**4 Training costs**

- 1. In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.*
- 2. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website ([www.FIFA.com](http://www.FIFA.com)). They are updated at the end of every calendar year. Associations are required to keep the data regarding the*

*training category of their clubs inserted in TMS up to date at all times (cf. Annexe 3, article 5.1 paragraph 2)”.*

54. As put in evidence in a previous CAS case (CAS 2009/A/1781; para. 49), there is an inconsistency in the wording used in the RSTP: While Article 20 refers to the signing of the first professional agreement as the trigger element for the paying of training compensation, Article 2 para. 1 and Article 3 para. 1 of Annex 4 to the RSTP refer to the first registration as a professional as the trigger element for payment. In this CAS precedent, the Sole Arbitrator held that the provisions contained in the Annex 4 to the RSTP are mainly focused on the procedure for payment and therefore refer to registration, as an easily identifiable element. The Sole Arbitrator thus, in CAS 2009/A/1781 held that the time when the first professional contract was signed should trigger the payment of training compensation.
2. *In particular*
55. In the present case, there is no reason to depart from the line of reasoning of CAS 2009/A/1781.
56. As a matter of fact and according to Article 2 para. 2 of the RSTP, “*A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs*”. In other words, the players are either amateur or professional. There is no space for a third, or hybrid category in the relevant FIFA Regulations (See DUBEY J.-P., The jurisprudence of the CAS in football matters (except Art. 17 RSTP), in CAS Bulletin 1/2011, page 4, and numerous references). The definition of “*professional*” in the RSTP is clear (see FIFA Commentary on the RSTP, ad Article 2 of the edition 2005 RSTP, which has a similar wording to Article 2 para. 2 of the edition 2012 RSTP).
57. Article 20 RSTP unequivocally specifies that “*Training compensation shall be paid to a player’s training club(s): (1) when a player signs his first contract as a professional*”. This provision makes the liability for training compensation dependent on a) the first contract, b) signed by a player, c) who “*is paid more than the expenses he effectively incurred in order to perform his footballing activity*”. This is consistent with the purpose of training compensation. As a matter of fact, this system is designed to promote solidarity within the world of football. The aim is to discourage clubs from hiring young players in some foreign countries only because the training costs in these countries are lower. Therefore, the clubs that have the resources to sign players from abroad must pay the foreign training clubs according to the costs of their own country. So the clubs are rewarded for their worthy work done in training young players and not simply reimbursed for the actual costs incurred in cultivating youth teams. The training compensation thus appears to be a reward and an incentive rather than a refund (See DUBEY J.-P., op. cit., page 8 and numerous references).
58. In the present case, Catania does not dispute the fact that it entered into a labour relationship with the Player on 31 January 2014 and, from that moment onwards, it paid for his wages and enjoyed his services. The Employment Contract specifically states that “*The Player undertakes, as registered F.I.G.C. member, to provide his services to the Club starting from 31/01/2014 up to 30/06/2016*”. As from 31 January 2014 and as far as the Player’s training is concerned, Catania

incurred the costs of a category I club. Under these circumstances, there is no valid reason for delaying the right of the former club (*i.e.* Montevideo) to obtain training compensation until the new club decides to register the player. In other words, the motive behind the non-registration of the player by the new club, cannot be opposed to the former training club. The Sole Arbitrator does not see the rationale that would justify another conclusion.

59. In addition, if the obligations to pay training compensation were triggered by the registration of the player:
- it would actually introduce a hybrid category of players: professional players who are registered and professional players who are not registered. Article 20 of the RSTP does not make such a distinction.
  - it could lead to uncertainty. Think of the following illustrations:
    - o What if the new club signed a professional contract with a player, never registered him and, eventually, transferred him to a third club, which would register the player? Which club should pay for training compensation?
    - o What if the new club signed a professional contract with a player and registered him only after two years? Are the former training clubs deprived of the right to claim training compensation as the *“Players’ Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not bear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute”* (See Article 25 para. 5 RSTP)?
  - It could open the door to abuses. A club (which is facing the possibility to be relegated to a lower division) could want to secure the services of a promising player by entering into a labour contract with him and, thus, preventing other clubs from hiring the player. It could then wait for the most opportune moment to register the player, in order to minimize its costs.
60. In light of the foregoing and of the specific circumstances of the case, the Sole Arbitrator concludes that the liability for training compensation arises at the moment of the signature of the contract, provided - of course - that the Player enters simultaneously at the services of the new club *“as a professional”*; *i.e.* as someone who *“is paid more than the expenses he effectively incurred in order to perform his footballing activity”*.
61. In the case at hand the Player signed the Employment Contract and started working for Catania on 31 January 2014. At that time, the club belonged to a category I club (under the terms of the “RSTP”), which is the category to take into account for the purposes of calculating the training compensation payable to Montevideo.
62. This conclusion makes it unnecessary for the Sole Arbitrator to address whether Catania was a category II club on 3 July 2014, contrary to the indications provided by FIFA Transfer Matching System GmbH, which confirmed that Catania was a category I club from 31 October 2010 until

27 November 2014, a category II club from 27 November 2014 until 31 August 2015 and, from then on, a category III club.

**B. What is the period for which training compensation is due?**

63. With reference to the calculation of the period for which training compensation is due, the DRC Judge took into account the time that elapsed between 17 February 2012 and 2 July 2014; *i.e.* the period during which the Player was registered with Montevideo.

1. *In general*

64. The compensation due for training and education costs is calculated in accordance with the principles set forth in Articles 4 and 5 of Annex 4 to the RSTP, as well as in the FIFA circular letter n° 1418, dated 2 May 2014.

65. Article 5 para. 1 and 2 of Annex 4 to the RSTP reads as follows:

**5 Calculation of training compensation**

1. *As a general rule, to calculate the training compensation due to a player's former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.*

2. *Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player's 12th birthday to the season of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.*

2. *In particular*

66. Consistent with the case law of CAS, the period to be considered when establishing training compensation owed is the time during which a player was effectively trained by a club (CAS 2013/A/3119, para. 115, CAS 2008/A/1705 para. 40).

67. In the present case, Catania claims that the Player moved to Italy in January 2014 and, since then, attended an Italian school, trained with Catania and was hosted by it. In support of its assertion, Catania submitted the Employment Contract, which entered into force on 31 January 2014, the copy of plane tickets under the name of the Player, which confirms the travel itinerary between Montevideo and Catania on 18 January 2014, a certificate of an Italian school that the Player was registered "*in the school year 2014-2015*".

68. Montevideo contends that the evidence filed by Catania does not establish in a convincing manner the fact that the Player moved to Italy in January 2014. In this regard, the Sole Arbitrator observes that Montevideo did not adduce any evidence that it trained the Player during the first semester of 2014 and/or that the latter stayed in Uruguay during that period of time.

69. Under these circumstances, the Sole Arbitrator has no difficulty to accept that the Player was not effectively trained by Montevideo in 2014. At least, this club did not prove otherwise, bearing in mind its “burden of proof”, *i.e.* its onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to the period of effective training it provided to the Player (See Article 8 of the Swiss Civil Code (“CC”) – ATF 127 III 519, consid. 2 a) and references).
70. In light of the foregoing and bearing in mind a) that Catania does not dispute the fact that the Player was trained by Montevideo until 31 December 2013 and b) that Montevideo did not establish in any manner that it trained the Player in 2014, the Sole Arbitrator concludes that the period to be considered when establishing training compensation owed is the time which elapsed between 17 February 2012 and 31 December 2014.
71. In calculating the indicative amount of training compensation, CAS jurisprudence shows that a part of a month has to be calculated as a full month, only in the event a club has provided training to a player throughout more than half of the month (CAS 2013/A/3119, para. 130). The Sole Arbitrator endorses this CAS precedent as a different interpretation could lead to a situation in which over the course of one month multiple clubs would be entitled to a full month of training compensation. This would impose a disproportionate burden on any club interested in acquiring the services of the player.
72. For the purposes of calculating the training compensation, the Sole Arbitrator holds that Montevideo effectively trained the Player for 10 months in 2012 and 12 months in 2013.

**C. What is the training compensation to which Montevideo is entitled?**

73. For the purposes of calculating the training compensation, the following elements have been established:
- Catania belonged to a category I club under the terms of the RSTP;
  - Montevideo effectively trained the Player for 1 year and 10 months.
74. Pursuant to the FIFA circular no. 1418 dated 2 May 2014, the indicative amount within UEFA for category I clubs is of EUR 90,000 per year.
75. The calculating of the training compensation is the following:
- |                                      |                     |
|--------------------------------------|---------------------|
| - Year 2012: (EUR 90,000 ./ 12) x 10 | EUR 75,000          |
| - Year 2013:                         | <u>EUR 90,000</u>   |
| <b>Total</b>                         | <b>EUR 165,000.</b> |
76. As regards the payment of interest, the DRC Judge held that *“in conformity with the DRC’s longstanding practice, interest at 5% p.a. over the amount payable as training compensation as of the 31st day of the registration of the player with the [Catania], i.e. as of 3 August 2014, until the date of effective payment”*.

77. None of the Parties contested the starting point set by the DRC Judge for calculating interest, in particular, none of them argued that the date from which interest should run is the signature of the Employment Contract. Under these circumstances and under the *ultra petita* principle, the Sole Arbitrator must refrain from going beyond the Parties' request for relief by awarding interest with an earlier starting point.
78. Under these circumstances, the Sole Arbitrator observes that the DRC Judge's finding is consistent with Article 3 para. 1 of Annexe 4 to the RSTP applied concurrently with Swiss law:
- According to Article 3 para. 1 of Annexe 4, "*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*".
  - Article 104 of the Swiss Code of obligations foresees that the debtor, on notice to pay an amount of money, owes an interest at the rate of 5 % per annum. Where a deadline for performance of the obligation has been set by agreement, a notice is not necessary (see article 102 CO; THÉVENOZ L.; in THÉVENOZ/WERRO (eds.), Commentaire romand, Code des obligations I, 2ème edition, 2012, ad art. 102 CO, N. 26).
79. As a consequence, Montevideo is entitled to the payment of EUR 165,000 plus interest of 5% *p.a.* starting on 3 August 2014.

**D. Is there any reason to adjust the procedural costs incurred before the FIFA body?**

80. Catania submits that the procedural costs imposed by the DRC Judge are excessive in relation to the limited number of issues raised by the present dispute and to the straightforward factual and legal aspects of the case. Montevideo claims that the costs were calculated in accordance with the applicable regulations and are fair.
81. Pursuant to Article 25 para. 2, first sentence, of the RSPT "*The maximum cost of proceedings before the Players' Status Committee, including the single judge, as well as before the DRC, including the DRC judge, in relation to disputes regarding training compensation and the solidarity mechanism shall be set at CHF 25,000 and shall normally be paid by the unsuccessful party*".
82. Article 18 para. 1 of the Procedural Rules states that "*Costs in the maximum amount of CHF 25,000 are levied in connection with proceedings of the Players' Status Committee and the single judge (with the exception of proceedings relating to the provisional registration of players), as well as for proceedings before the DRC relating to disputes regarding training compensation and the solidarity mechanism. Costs are to be borne in consideration of the parties' degree of success in the proceedings. In special circumstances, the costs may be assumed by FIFA. Should a party generate unnecessary costs on account of its conduct, costs may be imposed upon it, irrespective of the outcome of the proceedings*".
83. According to Annex A to the Procedural Rules, "*The procedural costs to be levied in accordance with these rules are based upon the following:*

<i>Amount in dispute</i>	<i>Procedural costs</i>
<i>up to CHF 50,000</i>	<i>up to CHF 5,000</i>
<i>up to CHF 100,000</i>	<i>up to CHF 10,000</i>
<i>up to CHF 150,000</i>	<i>up to CHF 15,000</i>
<i>up to CHF 200,000</i>	<i>up to CHF 20,000</i>
<i>from CHF 200,001</i>	<i>up to CHF 25,000”.</i>

84. In the Appealed Decision, the DRC Judge awarded to Montevideo training compensation in the amount of EUR 210,000 plus interest. In light of Annex A of the Procedural Rules, he determined the costs of the proceedings to the amount of CHF 25,000 to be borne by Catania in its entirety. Out of this amount, Catania was ordered to pay CHF 5,000 to Montevideo as reimbursement of its advance of costs incurred in the proceeding before FIFA.
85. The Sole Arbitrator observes that Annex A to the Procedural Rules only establishes the maximum amount of procedural costs to be imposed in consideration of the parties' degree of success and of the amount in dispute.
86. In the present case, Catania's appeal before the CAS must be partially accepted and the awarded training compensation must be reduced from EUR 210,000 to EUR 165,000. However, in the present arbitral proceedings, Montevideo sought for the payment of the awarded training compensation, *i.e.* EUR 210,000. In other words, the amount in dispute falls in the category of amounts "*in dispute from CHF 200,001*", which can trigger procedural costs in the maximum sum of CHF 25,000.
87. In light of the above consideration, it appears that the DRC Judge did not exceed the maximum limit laid down in the Procedural Rules. In this respect, it cannot be claimed that the DRC Judge went beyond the limit set by the applicable regulations.
88. Under these circumstances, the only issue to be resolved by the Sole Arbitrator is whether he can reduce the costs of proceedings imposed by the DRC Judge, namely on the grounds that the appeal is partially upheld.
89. It appears that such a decision of reducing the costs would have a direct impact on FIFA. Whereas Montevideo has standing to be sued with respect to the awarded training compensation, it is clearly not the case as regards to the procedural costs. By seeking the reduction of these costs, Catania is not claiming anything against Montevideo but against FIFA, which is not a party in the present arbitration proceedings. As Catania has only directed its appeal against Montevideo and not against FIFA, it cannot seek relief for the reduction of the procedural costs.
90. The Sole Arbitrator could only reassess the procedural costs if FIFA were a party to the present dispute, which is not the case. As a consequence, the Sole Arbitrator has no legal ability to modify this portion of the award. It therefore seems that such reassessment must be resolved between Catania and FIFA.
91. Catania also requests that the "*contribution of CHF 5,000 towards [Montevideo] imposed by the*



*Challenged Decision be annulled*". The Sole Arbitrator does not see any reason to annul or to reduce this amount as it corresponds to the advance of costs incurred by Montevideo to initiate the proceedings before FIFA in order to obtain the payment of the training compensation to which it was entitled. It must also be observed that no interest has been claimed for in Catania's written submissions. The payment of the amount of CHF 5,000 is therefore awarded without interest.

## ON THESE GROUNDS

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

1. The appeal filed by Calcio Catania S.p.A against the decisions issued on 7 July 2015 by the FIFA Dispute Resolution Chamber Judge is partially upheld.
  2. The decision issued on 7 July 2015 by the FIFA Dispute Resolution Chamber Judge is reformed in the sense that Calcio Catania S.p.A is ordered to pay to Montevideo Wanderers FC the amount of EUR 165,000 (one hundred and sixty-five thousands Euros), plus interest at 5% (five percent) as from 3 August 2014.
  3. The remainder of the decision issued on 7 July 2015 by the FIFA Dispute Resolution Chamber Judge is confirmed.
- (...)
6. All other claims are dismissed.