



Arbitration CAS 2007/A/1272 Cork City FC v. FIFA (Healy), award of 15 October 2007

Panel: Mr Luigi Fumagalli (Italy), President; Mr Bard Racin Meltvedt (Norway); Mr Raymond Hack (South Africa)

Football

Eligibility to play

Registration of a player

Conditions to grant an exception to art. 5 para. 3 of the FIFA Regulations

Alleged breach of the player's rights under EC Law

1. In order to offer flexibility and take into account particular circumstances on a case-by-case basis, conditions for an exception to Art. 5 para. 3 of the FIFA Regulations for the Status and Transfer of Players (2005 version) have been created by the Players' Status Committee in a consistent jurisprudence. Three cumulative conditions must be fulfilled: the football seasons of the clubs for which a player already played and the football season of the third club for which the player would like to play must overlap; the player must have complied with the applicable rules concerning transfer periods; the player must have complied with the applicable rules concerning duration of employment contracts. Being exceptions to a clear rule, these conditions must be construed narrowly.
2. Although it has the power and duty to ensure that the rules comply with applicable law and are applied in accordance with such law and with the rules themselves, CAS must not interfere with a private association's power to set up its own rules and define exceptions to such rules.
3. Art. 18 para. 2 of the Regulations clearly provides that the minimum length of a contract shall be from the date of its entry into force to the end of the season. The clause in this article stating that "*contracts of any other length shall only be permitted if consistent with national laws*" only applies to contracts that exceed five years.
4. Art. 5 para. 3 of the Regulations, together with the exceptions developed by related jurisprudence, seek to find a balance between players' right to free movement and the principles of stability of contracts together with the legitimate interest of integrity of the sport and the stability of championships.
5. When proceedings are based on the lack of transparency of a federation's applicable rules and on the fact that the jurisprudence of this federation, to which the latter referred to in the course of the proceedings, is neither published nor readily available to the other party, the federation may be compelled to bear some of the costs of the arbitration even though it has prevailed in the arbitration.

Cork City FC (“the Appellant”, “Cork City” or “the Club”) is an Irish football club existing under the laws of Ireland and has its headquarters in Cork, Ireland.

The Fédération Internationale de Football Association (FIFA, “the Respondent”) is the governing body of international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players, worldwide. FIFA is an association under Swiss law and has its headquarters in Zurich, Switzerland.

The Club is affiliated to the Football Association of Ireland (FAI), which in turn is a member of FIFA. As a result, the Club is subject to and bound by the applicable rules and regulations of FIFA.

Mr Colin Healy (“the Player”) is a professional football player. He was registered with the English club Sunderland FC from 16 December 2005 until 16 January 2006.

From 9 March 2006 until 8 May 2006, the Player was registered with the Scottish club Livingston FC.

The Player then signed an employment agreement with the English club Barnsley FC. He was registered with this club from 11 August 2006 until 31 January 2007, when his employment contract, initially scheduled to expire on 30 June 2007, was mutually terminated.

The Player was also registered with the English club Bradford City FC from 10 November 2006 until 9 December 2006, on the basis of an "emergency loan".

On 25 February 2007, the Appellant and the Player signed an employment contract.

On 2 March 2007, Cork City applied to FIFA for an exception to FIFA’s Regulations for the Status and Transfer of Players with respect to the Player. Cork City acknowledged that the Player had played in official matches for two clubs since 1 July 2006, but submitted that the particular circumstances of the case would justify that an exception to the principle set out in Article 5 paragraph 3 of the FIFA Regulations for the Status and Transfer of Players (“the Regulations”) be granted.

In its application, the Appellant explained that the Player was willing to relocate his young family in Ireland and revive his career with his hometown club. Cork City also stated that it believed the signing of the Player, an Irish international player, would help raise the standard and profile of the League of Ireland. The Club also mentioned that the football season in Ireland commences in March of each year and finishes in November, which creates an element of overlapping seasons between the relevant associations, i.e., the FAI and England’s Football Association (FA).

On 6 March 2007, FIFA wrote to Cork City to inform them that, based on the elements at FIFA’s disposal, the Player would in principle not be eligible to play in official matches until 30 June 2007. However, FIFA also mentioned that the Club could nevertheless file a written and substantiated petition, together with documentary evidence, with the competent body.

On 8 March 2007, Cork City wrote again to FIFA, repeating its request for an exception and providing additional information in support thereof.

By decision dated 30 March 2007 (“the Decision”), the Single Judge of the Players’ Status Committee of FIFA (“the Single Judge”) rejected the Appellant’s request.

In the Decision, the Single Judge mentioned that in application of a strict interpretation of Article 5 paragraph 3 of the Regulations, the Player would be prevented from participating in official matches for Cork City, since it had already played for two other clubs in official matches since 1 July 2006. The Single Judge nevertheless stated that it was necessary to examine whether, by taking into account the specific situation in the present case, it was in fact justifiable to preclude the Player from participating in official matches with the Appellant. However, he stressed that an exception to the strict application of Article 5 paragraph 3 of the Regulations could only be granted under very restrictive conditions and on a case-by-case basis.

In its decision, the Single Judge explained the rationale of Article 5 paragraph 3 of the Regulations, insisting on the fact that this provision was necessary to maintain the contractual stability in football and to preclude a distortion of championship competition between clubs.

He then analysed the specific circumstances of the matter. In particular, he took into account the fact that the FAI season extends beyond 1 July, the date set as the starting point of the decisive period for the application of Article 5 paragraph 3 of the Regulations. On this issue, he pointed out that this particular key date had been deliberately decided upon after due consideration, although it could potentially lead to unintended results if applied in cases where a player is transferred between Associations that operate different and overlapping football seasons. The Single Judge mentioned, however, that “*according to the relevant jurisprudence*”, overlapping seasons was not in itself sufficient to justify an exception to the Regulations.

The Single Judge further pointed out that in the particular case of the Player, other applicable rules had not been complied with. In particular, the mandatory provisions pertaining to the registration of players had not been respected when the Player was transferred to Barnsley FC on a loan basis. In addition, the contract between the Player and Bradford City FC did not comply with the rules related to the minimum duration of employment contracts, as stipulated in Article 18 paragraph 2 of the Regulations. According to the Single Judge, it is not appropriate to grant an exception to Article 5 paragraph 3 of the Regulations where other mandatory provisions of the Regulations were not respected.

The Single Judge concluded that, “*according to the established jurisprudence*”, at least two of the essential elements that must be cumulatively met were not fulfilled. He therefore rejected the Club’s request.

On 19 April 2007, the Appellant lodged a statement of appeal with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the “Code”). In its statement of appeal, it made the following prayer for relief:

“The Appellant seeks the annulment of the Decision. Further, the Appellant requests for an expedited procedure to be used as there is extreme urgency to the appeal”.

In its statement of appeal, the Appellant also made an application for a stay of the Decision.

On 30 April 2007, the Respondent filed its answer to the request for stay of execution. The Respondent requested the following:

- “1. *To reject the Appellant’s request for stay of execution of the decision passed by the Single Judge of the Players’ Status Committee on 30 March 2007.*
2. *Subsidiarily, not to provisionally authorise the player Colin Healy to be eligible to play in official matches for the Appellant with immediate effect, irrespective of the decision on the request for stay of execution of the challenged decision.*
3. *To order the Appellant to bear all the costs incurred with the present procedure.*
4. *To order the Appellant to cover all legal expenses of the Respondent related to the present procedure”.*

On 30 April 2007, the Appellant filed its appeal brief, together with supporting exhibits. In this submission, the Appellant repeated the request for relief, the request for an expedited decision and the request for a stay as set out in the statement of appeal.

According to the Appellant, the Single Judge incorrectly rejected Cork City’s application for derogation from Article 5 paragraph 3 of the Regulations.

First, concerning the duration of the Players’ contract with Bradford City, the Appellant cites FIFA Circular No. 867 of 18 September 2003, which provides that “[Article 5.2 of the Regulations] must [...] not stand in the way of players who have fully complied with the contractual terms of their previous contracts and who wish to enter an engagement and register with a new club, once the relevant transfer window has reopened”.

The Appellant also refers to Article 18 paragraph 2 of the Regulations, which provides that “[t]he minimum length of a contract shall be from the date of its entry into force to the end of the Season, while the maximum length of a contract shall be five years. Contracts of any other length shall only be permitted if consistent with national laws”. Hence, according to the Appellant, FIFA rules do not prohibit a player from having a contract of any length where allowed by national law. In this respect, the Appellant contends that English law allows employment contracts of the duration which the Player had with Bradford City FC, i.e., one month. According to the Appellant, the Single Judge would have decided otherwise if he had known this essential fact. On this basis, the Appellant submits that the Decision is invalid “as it omitted a fundamental fact of English law which was in favour of the Player”.

Second, concerning the overlap of the football seasons between the FA and the FAI, the Appellant submits that, due to such overlapping, the effect of the Decision is to prohibit Cork City from engaging the Player in football activity in official matches, and to stop the player from competing in football matches.

In this respect, the Appellant stresses that the 2007 FAI season runs from March until November 2007 and that the 2006/2007 FA season ran from August 2006 until May 2007. Therefore, the Appellant states, the FAI season which started on March 2007 relates to a completely new period of competition.

According to the Appellant, the Regulations, as interpreted in the Decision, would have the effect of

prohibiting players from joining any club to play competitive football where the new season for 2007 begins before 1 July 2007 and where the player has already played for two other clubs in another jurisdiction in different competitions not affecting the club for which such player is newly registered. This would represent an undue interference in the contractual relations between the Appellant and the Player and would be a violation of Article 39 of the EC Treaty.

The Appellant thus contends that “*to give effect to the Regulations and the norms which the Regulations seek to achieve, Article 5, paragraph 3 of the Regulations in this case must be interpreted so that the 1 July date is here construed as being subject to the circumstance where the player concerned transfers to a different club to play under the auspices of a different association in a different competition for a full season*”. According to the Appellant, this would be consistent with paragraph 6 of Circular No. 867.

On 3 May 2007, CAS made a proposal to the parties concerning an expedited procedure. Such proposal was accepted by the Appellant on 3 May 2007, and refused by the Respondent on 4 May 2007.

On 18 May 2007, CAS refused the Appellant’s application for a stay of the Decision. The complete decision was notified to the parties on 8 June 2007.

On 22 May 2007, the Respondent filed its answer to the Appellant’s appeal brief. The Respondent made the following prayers for relief:

- “1. *To reject the present appeal as to the substance and to confirm, in its entirety, the decision passed by the Single Judge of the Players’ Status Committee on 30 March 2007.*
2. *To order the Appellant to bear all the costs incurred with the present procedure.*
4. *To order the Appellant to cover all legal expenses of the Respondent related to the present procedure”.*

In its answer, the Respondent first refers to the wording of Article 5 paragraph 3 of the Regulations and states that this provision clearly prevented the Player from participating in any official match for the Appellant prior to 1 July 2007, as he had already been registered with and fielded in official matches by two different clubs, Barnsley FC and Bradford City FC, since August 2006.

The Respondent stresses that Article 5 paragraph 3 of the Regulations, which created additional flexibility compared to the previous version of this provision (Article 5 paragraph 2 of the prior version of the Regulations) is directly linked to the paramount importance of maintenance of contractual stability in football, which constitutes one of the pillars of the Regulations and which is one of the principles contained in the agreement signed between FIFA/UEFA and the European Commission in March 2001. In addition, according to the Respondent, Article 5 paragraph 3 of the Regulations is consistent with the spirit of Circular No. 867.

The Respondent acknowledges that there exists a “*consistent and well-established jurisprudence*” concerning the grant of exceptions to the restrictions set out in Article 5 paragraph 3 of the Regulations. According to this jurisprudence, several conditions must be fulfilled, “*which are related, on the one hand, to the elements of the duration and the positioning of the relevant sport seasons as well as to the respect of the registration periods and, on the other hand, to the specific duration and respect of the employment contracts concerned*”. Therefore,

in addition to the condition of overlapping seasons, other conditions must be met, including compliance with the rule about minimum duration of employment contracts provided in Article 18 paragraph 2 of the Regulations and with the rule about transfer of players provided in Article 6 paragraph 1 of the Regulations.

According to the jurisprudence mentioned by the Respondent, a player that did not comply with the Regulations should not *“be rewarded by obtaining an exception to the rule contained in art. 5 par. 3 of the Regulations”*.

Applying these rules to the present case, the Respondent considers that the Single Judge was correct in refusing to grant the exception requested by the Appellant. Indeed, the Player did not comply with the provision of Article 18 paragraph 2 of the Regulations when signing a contract with Bradford City FC valid between 10 November and 9 December 2006, whereas the relevant season of the FA was to end in May 2007. In addition, registration of the Player with Bradford City FC, on 10 November 2006, and again with Barnsley FC, on 10 December 2006, was made outside of the registration period fixed by the FA, which had ended on 31 August 2006. In this respect, the Respondent stresses that the institution of the *“emergency loan”*, based on which the FA authorized the Player’s transfer on loan from Barnsley FC to Bradford City FC, contravenes the Regulations.

As a consequence, the Respondent submits that the Decision is correct and must be confirmed.

The Panel held a hearing on 12 June 2007 at the CAS premises, in Lausanne.

LAW

CAS Jurisdiction

1. Article 60 of the FIFA Statutes reads as follows:

“1 FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents.

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

2. In addition, Article 62(1) of the FIFA Statutes provides:

“The Confederations, Members and Leagues shall agree to recognize CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS. The same obligation shall apply to licensed match and players’ agents”.

3. It follows that CAS has jurisdiction to decide on the present dispute.

Applicable law

4. As the seat of CAS is in Switzerland, this arbitration is subject to the rules of Swiss private international law (“LDIP”) governing international arbitration. According to Article 187(1) LDIP, the arbitral tribunal decides in accordance with the law chosen by the parties or, in the absence of any such choice, in accordance with the rules with which the case has the closest connection. Although the parties have not expressly chosen any specific law, there is, in cases of appeals against decisions issued by FIFA, an indirect choice of law, in accordance with Article R58 of the Code and Article 60(2) of the FIFA Statutes. Such indirect choice of law is valid under Swiss private international law rules.
5. According to Article R58 of the Code,
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.
6. Article 60 paragraph 2 of the FIFA Statutes reads as follows:
“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
7. In the present matter, as the parties have not specifically agreed on the application of any particular law, the Panel shall enforce the parties’ choice of law made by reference and apply the rules and regulations of FIFA, in particular the Regulations for Transfer and Status of Players, edition July 2005 (“the Regulations”) and, additionally, Swiss law.

Merits

8. Article 5 paragraph 3 of the Regulations provides as follows:
“Players may be registered for a maximum of three clubs during the period from 1 July until 30 June of the following year. During this period, the player is only eligible to play in Official Matches for two clubs”.
9. In the present case, it is not disputed that when the Player was transferred to the Appellant, on 25 February 2007, he had already played in official matches for two other clubs, namely Barnsley FC and Bradford City FC, since 1 July 2006. As a consequence, pursuant to the wording of Article 5 paragraph 3 of the Regulations, the Player was not eligible to play for the Appellant before 1 July 2007. The relevant issue in these proceedings is therefore whether the Appellant should be granted an exception to Article 5 paragraph 3 of the Regulations, taking into account the particular circumstances of the case.
10. First, the Panel notes that the Regulations do not provide for any exceptions to the rule set out in Article 5 paragraph 3 of the Regulations. Thus, based on the applicable rules, it appears *prima facie* that the Decision is correct and that no exceptions may be granted.

11. However, as mentioned in the Decision itself and as acknowledged by the Respondent in its answer, there apparently exists a *“consistent and well-established jurisprudence”* allowing the Respondent to grant exceptions to Article 5 paragraph 3 of the Regulations. In this respect, in the Decision, *“the Single Judge emphasized that while dealing with several similar cases a jurisprudence has been established according to which such permission can only be granted provided several cumulative preconditions related, on the one hand, to the aforementioned elements of the duration and the positioning of the relevant sports seasons, but also to the respect of the registration periods, and, on the other hand, also to the duration and respect of the employment contracts concerned, are fulfilled”*.
12. Based on the prior decisions issued by the Single Judge, produced by the Respondent, exceptions may be granted, *“but only under very restrictive preconditions and one a case-by-case basis”*. These decisions identify the three following conditions that must be fulfilled before an exception can be granted:
 - The football seasons of the clubs for which a player already played and the football season of the third club for which the player would like to play must overlap.
 - The player must have complied with the applicable rules concerning transfer periods.
 - The player must have complied with the applicable rules concerning duration of employment contracts.
13. As set out above, Article 5 paragraph 3 of the Regulations sets out a clear rule, preventing the Player from playing for the Appellant until 1 July 2007. In order to offer flexibility and take into account particular circumstances on a case-by-case basis, where there are overlapping football seasons, conditions for an exception to Article 5 paragraph 3 of the Regulations were created by the Players’ Status Committee.
14. The Panel considers that these conditions, being exceptions to a clear rule, must be construed narrowly and that the Panel, although it has the power and duty to ensure that the rules comply with applicable law and are applied in accordance with such law and with the rules themselves, must not interfere with a private association’s power to set up its own rules and define exceptions to such rules.
15. In the present case, the Panel considers that the conditions for an exception under the jurisprudence mentioned above are not met, for the reasons set out below.
16. Concerning the first condition, it is undisputed that the football seasons of the FA (to which both Barnsley FC and Bradford City FC are affiliated) and of the FAI (to which the Appellant is affiliated) overlap. Indeed, the 2006/2007 FA season ran from August 2006 until May 2007 and the 2007 FAI season runs from March 2007 until November 2007. There was therefore an overlap between March 2007 and May 2007. The first condition is thus fulfilled.
17. Concerning the second condition, Article 6 paragraph 1 of the Regulations provides that players may only be registered during one of the two annual registration periods fixed by the relevant association. Players may, however, be registered outside of such registration period if their

contract has expired prior to the end of a registration period. In the present case, the Appellant argues that the Player had a contract with Barnsley FC which was due to expire on 30 June 2007, but which was terminated by mutual agreement on 31 January 2007; then the Player signed a contract with Cork City on 31 January 2007, i.e. within the relevant registration period. According to the Appellant, the Player's contract with Bradford City was terminated within the registration period of the FA and the contract between the Player and the Appellant was signed within the registration period of the FAI. Therefore, all requirements of each association were met.

18. However, as set out above, the Player was registered with Bradford City FC on 10 November 2006, and then registered again with Barnsley FC on 10 December 2006, outside of the FA registration period, which ended on 31 August 2006, with the next period to open in January 2007. Registration of the Player for Bradford City FC and for Barnsley FC did therefore not comply with the rules applicable to transfer periods.
19. Concerning the third condition, Article 18 paragraph 2 of the Regulations provides that “[t]he minimum length of a contract shall be from the date of its entry into force to the end of the Season, while the maximum length of a contract shall be five years. Contracts of any other length shall only be permitted if consistent with national laws. Players under the age of 18 may not sign a professional contract for a term longer than three years. Any clause referring to a longer period shall not be recognised”.
20. In the present case, as pointed out by the Single Judge, the Player's contract with Bradford City FC, which was valid between 10 November 2006 and 9 December 2006, did not comply with this provision since the end of the FA season was May 2007. As a consequence, the third condition is not fulfilled.
21. In this respect however, the Appellant contends that the Single Judge did not take into account the fact that English law does not impose any minimum duration to employment contracts. According to the Appellant, the Player's one-month contract with Bradford City FC actually complied with Article 18 paragraph 2 of the Regulations, which provides that “[c]ontracts of any other length shall only be permitted if consistent with national laws”.
22. On this issue, the Respondent states that the Regulations do not prohibit a one-month employment agreement, or even a shorter contract, provided however that the contract must at least be valid from the date of its entry into force until the end of the season. In the present case, the employment contract between the Player and Bradford City FC did not comply with the Regulations not because of its length, but because it was only valid until 9 December 2006, whereas the relevant season of the FA ended in May.
23. The Panel notes that Article 18 paragraph 2 of the Regulations clearly provides that the minimum length of a contract shall be from the date of its entry into force to the end of the season. The Player's contract with Bradford City FC did not comply with this rule.
24. Concerning the provision in Article 18 paragraph 2 of the Regulations that “[c]ontracts of any other length shall only be permitted if consistent with national laws”, the Panel notes that according to the

Commentary on the Regulations for the Status and Transfer of Players, this clause applies to contracts that exceed five years.

25. The question nevertheless arises as to whether a Player entering into a contract for a period ending before the end of the relevant season would comply with Article 18 paragraph 2 if such duration was imposed by national law or other national regulations, e.g. in cases where national rules would impose maximum contract duration in certain circumstances. It is however not necessary to answer this question in the present case, as the duration of the contract between the Player and Bradford City FC did not correspond to a defined period imposed by national rules.
26. Taking into account the facts mentioned above, which are clearly established by the elements on record and both parties' submissions, the conditions – according to FIFA's jurisprudence – for an exception to the rule set out in Article 5 paragraph 3 of the Regulations are not met.
27. However, the Appellant additionally submits that by not granting the requested exception, the Single Judge issued a decision that restricts the ability of clubs and players to enter into loan arrangements and exercise their legal rights to trade and to engage in gainful employment. According to the Appellant, the Decision undermines the Player's inherent right to earn a livelihood and the regulations, as interpreted in the Decision, violate Article 39 of the EC Treaty, which mandates the free movement of workers within the Member States of the European Union. In addition, the Appellant contends that its rights are compromised as its ability to engage in cross-border trade is breached.
28. Therefore, according to the Appellant, *“to give effect to the Regulations and the norms which the Regulations seek to achieve, Article 5 paragraph 3 in this case must be interpreted so that the 1 July date is here construed as being subject to the circumstance where the player concerned transfers to a different club to play under the auspices of a different association in a different competition for a full season”*.
29. The Appellant further stresses that, in the matter at hand, allowing the Player to play for Cork City would cause no distortion of championship competition between clubs.
30. The Panel agrees with the Appellant that the rule contained in Article 5 paragraph 3 of the Regulations may result in a restriction of the ability of football clubs and players to organize their contractual relationships. However, this does not necessarily violate EC law.
31. In a decision of 13 April 2000 (Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v Fédération royale belge des sociétés de basket-ball ASBL (FRBSB)), cited by the Appellant, the European Court of Justice stated that *“[t]he Treaty provisions concerning freedom of movement of persons do not preclude rules or practices excluding foreign players from certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only [...]. The Court has, however, stated that that restriction on the scope of the Treaty must remain limited to its proper objective, and may not be relied on to exclude therefrom the whole of a sporting activity [...]”*.
32. In the present case, the rule contained in Article 5 paragraph 3 of the Regulations, together with

the exceptions developed by related jurisprudence, seek to find a balance between players' right to free movement and the principles of stability of contracts together with the legitimate interest of integrity of the sport and the stability of championships. It has been established in accordance with the agreement signed between FIFA/UEFA and the European Commission in March 2001.

33. Taking into account this agreement between FIFA/UEFA and the European Commission, the Lehtonen case cited above, the purpose of Article 5 paragraph 3 of the Regulations, as well as the exceptions that were created by FIFA's jurisprudence to this provision in order to limit potentially excessive restrictions, the Panel considers that the Appellant has not established that, in the present matter, application of the Regulations resulted in a breach of its rights under EC law.
34. In accordance with the foregoing, the Panel decides that the Appellant's appeal must be dismissed.

Costs

35. Article R64.4 of the Code provides that at the end of the proceedings, the Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. In accordance with the Order on request for a stay of 8 June 2007, the final amount of the costs shall also cover costs related to such Order. The final account of the arbitration costs may either be included in the award or communicated separately to the parties. Article R64.5 of the Code further states that the arbitral award shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them.
36. The Panel has reviewed all the circumstances of the case, including the outcome of the proceedings, and rules that the costs of the arbitration, to be determined and served on the parties by the CAS Court Office, shall be borne equally by the parties.
37. This decision is based on the finding that although the Respondent prevailed in the arbitration, the very existence of these proceedings is partly based on the lack of transparency of the rules applicable to enforcement of Article 5 paragraph 3 of the Regulations and the impossibility for the Appellant to establish such rules with certainty and, hence, to determine whether or not it was entitled to the exception requested from FIFA.
38. In a letter of 28 February 2007 sent to the FAI, the Respondent expressly mentioned that "*if a party considers that due to the particular circumstances of his/her concrete situation an exception to the above-mentioned principle stipulated in art. 5 par. 3 of the mentioned Regulations should be granted, the party concerned may request that his/her specific case shall be submitted for consideration and decision to the competent decision-making body, i.e. the Single Judge of the Players' Status Committee*". However, this letter did not set out

the conditions applicable to the granting of exceptions to Article 5 paragraph 3 of the Regulations.

39. Following this letter, the Appellant wrote to the Single Judge of the Players' Status Committee on 2 March 2007, requesting that an exception to Article 5 paragraph 3 of the Regulations be granted.
40. On 6 March 2007, the Respondent answered that the Appellant should request a formal decision and provide further documents and information, the nature of which was detailed in the Respondent's letter. In particular, the letter mentioned that the request should "*refer to the employment contracts concluded between the player in question and all the clubs concerned, to the length of time of the seasons and championships of the Associations of the previous clubs as well as to the registration periods of all Associations concerned, i.e. those of the former as well as those of the third club. Equally, the relevant petition should contain information on the specific and exact duration of the player's previous registration history*".
41. The Respondent's letter also emphasized that exceptions can only be granted "*under very restrictive preconditions*", but did not spell out what these conditions are.
42. It appeared in the course of these proceedings that the Respondent had developed a jurisprudence concerning exceptions to Article 5 paragraph 3 of the Regulations, according to which very precise conditions have to be fulfilled before an exception can be granted. However, the Respondent's detailed letter of 6 March 2007 does not spell out these conditions, thus making it difficult, if not impossible, for the Appellant to determine whether or not the circumstances of the case satisfied the conditions for an exception.
43. The Panel considers that, on this basis, the Appellant could legitimately believe that its request would be assessed on the basis of all circumstances of its case, and that the review of such request would not necessarily be limited to whether or not certain precisely identified and restrictive conditions were met.
44. This element, added to the fact that the jurisprudence to which the Respondent referred in the Decision and that the Respondent produced in the course of these proceedings, is neither published nor readily available to the Appellant, leads the Panel to consider that the Respondent shall bear half of the costs of the arbitration.
45. Furthermore, as a general rule, the award grants the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. However, having taken into account the outcome of the arbitration and the conduct and financial resources of the parties, as required by Article R65.3 of the Code, and in the light of all of the circumstances of the case, in particular the elements set out above, the Panel is of the view that the each party shall bear its own legal costs and all other expenses incurred in connection with this arbitration.

The Court of Arbitration for Sport rules:

1. The appeal filed by Cork City Football Club on 19 April 2007 in the matter CAS 2007/A/1272 Cork City FC v. FIFA (Healy) is dismissed.
2. The decision issued by the FIFA Players' Status Committee on 30 March 2007 is confirmed.
3. (...)
4. (...)
5. All other prayers for relief are dismissed.