



**Arbitration CAS 2004/A/594 Hapoel Beer-Sheva v. Real Racing Club de Santander S.A.D.,  
award of 1 March 2005**

Panel: Mr Michael Beloff (United Kingdom), President; Ms Deanna Reiss (United States); Mr Stuart McInnes (United Kingdom)

*Football*

*Compensation for training*

*Interpretation of the FIFA Regulations through Circular Letters*

*FIFA's Circular Letter no. 826 and determination of the training compensation*

*Geographical boundaries and boundaries for administration of a particular sport*

*Proportionality of the training compensation*

*Conditions for admitting a request for a joinder*

1. For the implementation of the FIFA Regulations, FIFA has issued numerous Circular Letters. Although these Circular Letters are not regulations in a strict legal sense, they reflect the understanding of FIFA and the general practice of the federations and associations belonging thereto. Thus, these Circular Letters are relevant for the interpretation of the FIFA Regulations.
2. FIFA's Circular Letter no. 826 did not create a new obligation which would not have existed otherwise. Rather, it simplified and facilitated the determination of the training compensation within the framework of the FIFA Regulations and Circular Letters which were already in existence at the time of the transfer of the Player. Before that date, FIFA had communicated the relevant parameters and criteria to calculate training compensation.
3. It is frequently the case that political or geographical boundaries do not coincide with those selected for administration of a particular sport. It is national associations which have fed in the material on which the categorization is based for the confederation to which they belong.
4. The discretion given to the FIFA DRC to vary the training compensation fee based on the tariff in the rules is limited to circumstances where such amount is "clearly disproportionate". Such clear lack of proportion has to be proven by the Appellant.
5. An application to be joined is refused if the parties to the particular matter do not consent to the participation, as is required by the Code. The Panel cannot make declarations which may purport to affect the rights of absent third parties.

The Appellant, Hapoel Beer-Sheva F.C., is a football club registered with the Football Association in Israel.

The Respondent, Real Racing Club de Santander S.A.D., is a football club registered with the Spanish Football Association. Its football team plays in the Spanish first division.

This is an appeal by the Appellant against a decision of the Dispute Resolution Chamber (DRC) of FIFA dated 24 March 2004 (“the Decision”). It concerns the quantum of compensation due from the Respondent to the Appellant for the training and education of Y. (“the Player”), a professional football player born in 1980.

The Player registered with and played for the Appellant since he was 12 years old (in 1992). During 1992 to 1998 he played for and trained with the Appellant’s children’s, youth, youngsters’ and adult teams consecutively. The Appellant had observed in its appeal brief, that he did not play for the “A” team until the 1997-98 season and then only occasionally and as a replacement. However according to the Appellant’s closing submission

*“He is a most talented player who played at all ages at the highest level in Israel and in the national team at all different ages”.*

Insofar as the two versions are discrepant, we prefer the earlier one, which was uniformed by forensic considerations.

In July 1997 the Appellant and the Player entered into a contract of five-year span effective from 1 July 1997 until 30 June 2002 (“the Hapoel Contract”).

Article 3 (m) to the Appendix to the Hapoel Contract provided, *inter alia* as follows:

*“... (m) At the end of the period the club undertakes to place on the transfer list maintained by the Association and to sell him to a club, to whom the player agrees to be transferred ... The Club also undertakes to pay the player a special bonus which shall be paid to him shortly before his transfer to the club to whom he is sold or on the date of the transfer itself, and which shall amount to 50% of the amount which the club is to receive for the sale of the player”.*

*The Player’s obligations under Article 3(e) of the Hapoel Contract itself obliged him, inter alia, “to comply fully and precisely with the instructions of the Club Management in all matters pertaining to the activity of the club”.*

The Player’s obligations under Article 3(e) of the Hapoel Contract also obliged him until its termination “not ... to conduct negotiations with any club outside Israel”, in the absence of the Appellant’s prior written consent.

At the completion of the 1997-1998 season the Appellant’s team was relegated to the Israeli second league.

At the request of the Player, who was concerned with his own professional advancement, the Appellant and Maccabi Haifa, another Israeli club then in the Israeli first league, signed two agreements (“the Loan Agreements”) for the lending of the Player from the former to the latter for the 1998-1999 and 1999-2000 seasons and then for the 2000-2001 and 2001-2002 seasons at a fee of USD 220,000 per season. During the loan period the Player remained registered with the Appellant.

Article 5 of the Loan Agreements between the two Israeli Clubs for the 1998/99, and 1999/2000 seasons, provided:

*“... When a player shall be sold, Maccabi Haifa shall be entitled to a commission on the share of Hapoel Beer-Sheva for the betterment of the player at a ratio of 10%, at a sum that shall not exceed \$200,000 ..”.*

On 8 April 2002 the Respondent informed the Appellant in writing that it was conducting negotiations with the Player with a view to signature of a contract between them (“the Santander Contract”).

On the 24 June 2002, the Respondent informed the Appellant that the Santander Contract had been signed between the Respondent and the Player with effect from 1 July 2002.

On 2 August 2002, FIFA instructed the Israeli Football Association to issue the certificate of international transfer of the Player to the Spanish Football Association for the purpose of his registration with the Respondent on the basis that the Hapoel Contract itself had expired. FIFA indicated that the compensation should be separately dealt with.

Due to the Player’s perceived misconduct in negotiating with the Respondent while the Hapoel Contract remained in force, the Appellant filed a claim to the Arbitration Institution of the Football Association in Israel. The Arbitrator determined the Player had breached the Hapoel Contract and stated that the Appellant should apply to FIFA to determine any compensation due.

On a date before 24 May 2004 the Appellant made accordingly a claim for EUR 570,000 from the Respondent.

In its decision, the DRC decided that the Respondent must pay the amount of EUR 90,000 to the Appellant, and the Appellant received notice of the decision of the DRC on 1 April 2004.

On 12 April 2004, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (CAS). It challenged the above-mentioned Decision submitting the following request for relief:

*“4.1 In conformity with art. 13 to chapter 7 of the FIFA Regulation of Status and Transfer of Players, the Appellant claimed to be entitled to compensation for the training to the player – Mr. Y., based on years starting when he was 12 years old and until reach of 21.*

*4.2 The financial principle in art. 7.3 of the Regulations governing the Application of Regulations for the Status and Transfer of player’s determines that the compensation for training shall be based on the costs of training and education in the country in which the new club is located i.e. the Respondent, i.e. Spain”.*



As an alternative answer; the Respondent sought the following relief “*in the improbable case*” that the Appellant was not found to be the previous training club, asking the Panel

- “A) To declare that the Appellant has no right to receive any training compensation and provided that he has received, for that concept, from the Respondent the amount of 90,000 euros, he owes to the Respondent the above-mentioned amount of 90,000 euros.
- B) In consequence, to condemn the Appellant to pay to the Respondent the above mentioned amount of 90,000 euros”.

The Respondent also sought in the body of the answer a declaration that the Appellant was “*the last training club of the player*” by way of pre-emptive strike against a threatened claim by Maccabi Haifa for training compensation against it (“the pre-emptive declaration”).

The Respondent’s submission, in essence, may be summarised as follows:

- That the Appellant was the club at which the Player received his training and education and that any compensation payable was confined to the Appellant and no other club.
- That the Player was trained for only 5 seasons. That he had completed his training by the 1997-1998 season when he was assigned for a fee to Maccabi Haifa at the age of 17 years and that the computation of training and educations costs should be as follows:
 

|   |                |            |
|---|----------------|------------|
| -- 1992-1993  | 12 years old = | EUR 10,000 |
| -- 1993-1994  | 13 years old = | EUR 10,000 |
| -- 1994-1995  | 14 years old = | EUR 10,000 |
| -- 1995-1996  | 15 years old = | EUR 10,000 |
| -- 1996-1997  | 16 years old = | EUR 30,000 |
| Total compensation for training and education payable = |                | EUR 70,000 |
- That the award of compensation made by the DRC was incorrectly calculated and that of the payment made by the Respondent to the Appellant EUR 20,000 was repayable to Respondent.
- That, alternatively, in the event that a finding is made that the Appellant was not in fact the club at which the player had received his training and education then the compensation award made by the DRC in the sum of EUR 90,000 and paid by the Respondent to the Appellant should be repaid to the Respondent.
- That the Appellant pay the costs of the arbitration and the total legal fees and expenses incurred by the Respondent in connection with the case.

By order of the Court of Arbitration for Sport the parties were invited to submit closing submissions by 10 September 2004.

Closing submissions were filed on 9 September 2004 by both parties.

The parties agreed to allow the Panel to render an award on the sole basis of the written submissions, without holding a hearing.

## **LAW**

### **CAS Jurisdiction**

1. The jurisdiction of CAS, which is not disputed, derives from art. 59 ff. of the FIFA Statutes and R47 of the Code of Sport-related arbitration (the “Code”). It is further confirmed by the order of procedure duly signed by the parties.
2. It follows that the CAS has jurisdiction to decide the present dispute.
3. Under art. R57 of the Court the Panel has the full power to review the facts and the law.
4. The Panel did not therefore examine only the formal aspects of the appealed decision but considered the matter *de novo*, evaluating all facts and legal issues involved in the dispute.

### **Applicable law**

5. In accordance with art. R58 of the Code, the Panel is to 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 has issued the challenged decision is domiciled, namely, in the present case, Swiss law, or according to the rules of law, the application of which the Panel deems appropriate.
6. Art. 59 para. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs, and, additionally, Swiss law.
7. In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall apply primarily and Swiss law shall apply complementarily, in accordance with art. 59 para. 2 *in fine* of the FIFA Statutes.
8. The Panel has not found any reason or need for application of other rules of law.

### **Admissibility**

9. The appeal was filed within the deadline provided by art. 60 of the FIFA Statutes and stated in the Decision, that is within 10 days after notification of such decision.
10. It follows that the appeal is admissible, which is also undisputed.

## Issues

11. The main issues to be resolved by the Panel are:
- Which of the FIFA regulations and or succession of circular letters on the issue of training compensation govern this dispute?
  - For what period should the training and education compensation be calculated?
  - Into what area did the Appellant fall for such purposes?
  - What is, accordingly, the correct calculation of the training and education compensation?
  - Is the Appellant entitled to additional compensation?
  - Does the Respondent have a sustainable Counterclaim?
  - Is the Respondent able to claim a declaration?

## Legal instruments

### *A. The Relevant Instruments*

12. The potentially relevant instruments are the following, in their chronological order:
- Regulations for the Status and Transfer of Players of 5 July 2001 (“the Regulations”).
  - Application Regulations for the Status and Transfer of Players of 5 July 2001 (“the Application Regulations”).
  - Circular Letter no. 769, 24 August 2001.
  - Circular Letter no. 799, 19 March 2002.
  - Circular Letter no. 801, 28 March 2002.
  - Circular Letter no. 826, 31 October 2002.

B. *The Application Regulations*

13. The Application Regulations provide as follows:

*Chapter III**Training compensation for young players**Art.5**Principles*

- 1 *For the purposes of calculating compensation, the training period starts at the beginning of the season of the player's 12<sup>th</sup> birthday, or at a later stage, as the case may be, and finishes at the end of the season of his 21<sup>st</sup> birthday.*
- 2 *Compensation for training is due:*
  - (a) *for the first time, when the player acquires non-amateur status according to Art. 1 of the FIFA Regulations for the Status and Transfer of Players.*
  - (b) *afterwards, for every transfer up to the age of 23, depending on the player's status, i.e.:*
    - *from amateur to non-amateur status,*
    - *from non-amateur to non-amateur status.*
- (...)
- 4 *Payment for compensation training:*
  - (a) *As a general rule, the amount due shall reflect the costs which were necessary to train the player and shall be paid for the benefit of every club which has contributed to the training of the player in question, starting from the age of 12.*
  - (b) *First payment (as mentioned in para 2)(a): The amount to be paid is for the benefit of the club which has contributed to the training of the player in question, starting from the age of 12. The money shall be distributed on a pro-rata basis depending on the full years of **proper and proven training**, and in relation to the category to which the training clubs belong.*

*Art. 6**Calculation parameters*

- 1 *In order to calculate the compensation due for training and education costs, the clubs will be categorised in accordance with their financial investments in training players.*
- 2 *Four categories shall be established according to the following guidelines:*

*Category 1 (top level, e.g. high quality training centre):*

  - *all first-division clubs of national associations investing on average a similar amount in training players. These national associations will be defined based on actual training costs, and this categorisation can be revised on a yearly basis.*

*Category 2 (still professional, but at a lower level):*

  - *all second-division clubs of national associations in category 1*
  - *all first-division clubs in all other countries with professional football*



*Category 3:*

- *all third-division clubs of national associations in category 1*
- *all second-division clubs in all other countries with professional football*

*Category 4:*

- *all fourth- and lower division clubs of the national associations in category 1*
- *all third- and lower division clubs in all other countries with professional football*
- *all clubs in countries with only amateur football.*

- 3 *National associations may propose other criteria for categorising the training and education costs incurred by clubs affiliated to them. The training and educating costs per category shall be calculated by multiplying the cost of training one player by an average player factor. The player factor determines the ratio between the number of players who need to be trained to produce one professional player.*
- 4 *Each year national associations in the EU/EEA shall determine the categories to which their clubs belong, after hearing the views of representatives of players and clubs. The national associations shall notify FIFA of this categorisation at the latest by the mid-season registration period every year and FIFA will publish this information via a circular letter and its internet sites. The categorisation shall be valid for 12 months or two registration periods.*
- 5 *National associations in the EU/EEA shall determine the criteria for calculating the training compensation, after hearing the views of representatives of players and clubs. FIFA will acknowledge these criteria, subject to their proportionality. The national associations shall notify FIFA of these criteria at the latest by the mid-season registration period every year and FIFA will publish them via a circular letter and its internet sites. These criteria may be reviewed after a lapse of 24 months or four registration periods.*
- 6 *Guidelines on what type of costs may be included in the calculation of training and education costs will be set out in a circular letter from FIFA.*

*Art. 7**Calculation of compensation for training and education*

- 1 *The compensation for training and education shall be obtained by multiplying the amount corresponding to the category of the training club for which the player was registered by the number of years of training from 12 to 21.*
- 2 *To ensure that training compensation for very young players is not set at unreasonably high levels, the amount for players aged 12 to 15 (emphasis added) shall be based on the training and education costs for category 4.*
- 3 *As a general principle, compensation for training is based on the training and education costs of the country in which the new club is located.*
- 4 *However, in the EU/EEA area, compensation for training is based on the training and education costs of the country in which the training club was located. The following rules apply:*
  - *the player moves from a lower to a higher category: calculation is the average of the training costs for the two categories;*

- *the player moves from a higher to a lower category: calculation is based on training costs of the lower category club;*
- *the player moves from a club in category 1, 2 or 3 to a club in category 4: no compensation for training is payable.*

5 *In the EU/EEA area, every national association shall notify FIFA of a ceiling for the training compensation for every club category at the beginning of the sports season; after hearing the views of representatives of players and clubs. FIFA will acknowledge such ceilings, subject to their proportionality. FIFA will publish the ceilings via a circular letter and its internet sites at the latest by the mid-season registration period every year.*

C. *The FIFA Regulations for the Status and Transfer of Players (the Regulations)*

14. The Regulations provide as follows:

*Chapter VII.*

*Training compensation for young players*

*Art. 13*

*The 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. In the latter case, compensation shall be due until the player reaches the age of 23, but the calculation of the amount of compensation shall be based on the years between 12 and the age when it is established that the player actually completed his training.*

*Art. 14*

*When a player signs his first contract as a non-amateur, a sum of compensation shall be paid to the club(s) involved in the training and education of the player.*

*Art. 15*

*Compensation shall be paid each time a player changes from one club to another up to the time his training and education is complete, which, as a general rule, occurs when the player reaches 23 years of age.*

*Art. 16*

*The amount of compensation to be paid for training and education shall be calculated in accordance with parameters set out in the Application Regulations, which shall also set out how the compensation amount shall be allocated between the clubs involved in the training and education of the player.*

*Art. 17*

*When a player signs his first contract as a non-amateur, or when a player moves as a non-amateur at the end of his contract but before reaching the age of 23, the amount of compensation shall be limited to compensation for training and education, calculated in accordance with the parameters set out in the Application Regulations.*

*Art. 18*

*If a player moves during the course of a contract but before reaching the age of 23, compensation for training and education shall be paid and calculated in accordance with the parameters set out in the Application Regulations. However, in the case of unilateral breach of contract, this provision is without prejudice to the application of Art. 22 below.*

*Art. 42 (1)(b) (iv)*

*Without prejudice to the right of any player or club to seek redress before a civil court in disputes between clubs and players, a dispute resolution and arbitration system shall be established, which shall consist of the following elements:*

*(b) (iv) In addition, the Dispute Resolution Chamber may review disputes concerning training compensation fees and shall have discretion to adjust the training fee if it is clearly disproportionate to the case under review. Furthermore, the Dispute Resolution Chamber can impose disciplinary measures on the basis of Art. 34, par. 4 of the FIFA Statutes where these regulations or the Application Regulations so provide, or pursuant to a specific written mandate by the FIFA Players' Status Committee. The Dispute Resolution Chamber shall rule within 60 days after the date on which a case has been submitted to it by one of the parties to the dispute (with the exception of those disciplinary measures referred to in Art. 23, which are covered by (ii)). These decisions shall be reasoned, and can be appealed against pursuant to (c).*

*Art. 46*

*These regulations were initially adopted in April 1991 and subsequently amended in December 1991, December 1993, December 1996, May 1997, September 1997 and July 2001 by the FIFA Executive Committee.*

*They shall come into force in their present form two weeks after official notification of the new regulations by FIFA to the national associations and at the latest on 1 September 2001.*

*Contracts between players and clubs concluded before 1 September 2001 will continue to be governed by the previous version of these regulations, which came into force on 1 October 1997, unless the clubs and the players expressly agree to subject their agreements signed after 5 July 2001 to these regulations.*

*D. Circular Letters*15. *Circular letter no. 826 provides as follows:*

*Accordingly, pursuant to Art. 45 of the Regulations for the Status and Transfer of Players, the FIFA Players Committee, as endorsed by the Executive Committee, has concluded that it is necessary to help the various participants with the calculation of training and compensation amounts by establishing indicative amounts per confederation, which are subject to review by the Dispute Resolution Chamber in individual cases.*

*Indicative amounts*

*Until a more definitive calculation system is put into place, FIFA has established the following indicative amounts on the basis of information received for all national associations on a confederation basis, also keeping in mind the many requests from interested parties for simplicity:*

[...]

- Europe
1. Category: EURO 90,000
  2. Category: EURO 60,000
  3. Category: EURO 30,000
  4. Category: EURO 10,000

*These amounts will be used when applying the provisions contained in Chapter VII of the FIFA Regulations for the Status Transfer of Players ("Basic Regulations"), as well as Chapter III of the Application Regulations, together with Circular Letter Nos. 769 and 799, subject to the calculations outlined below.*

*Any party that objects to the result of a calculation based on the rules on training compensation is entitled to refer the matter to the DRC. The DRC will then review whether the training compensation fee calculated on the basis of the indicative amounts and the principles of the revised regulations, as simplified below, is clearly disproportionate to the case under review in accordance Art. 42 1b (iv) of the Basic Regulations, while taking into account the indicative nature of these amounts. Whenever particular circumstances are given, the DRC can adjust the amounts for the training compensation so as to reflect the specific situation of a case. For this task the DRC can ask for all documents and/or information it deems necessary, such as invoices, training centres, budgets etc.*

[...]

#### Simplified Calculation Principles

[...]

*To begin with, the rule remains that training compensation will be payable to all clubs that have trained a player between the age of 12 and 21 once the player acquires non-amateur status (i.e. by signing a non-amateur contract with the club for which he has been playing as an amateur, or by signing a non-amateur contract with another club to which he transfers). This is in accordance with Article 5.2 (b) of the Application Regulations.*

*However, the principles concerning subsequent transfers will be simplified until the review of the revised regulations at the end of the 2003/2004 season has been completed. Until then, for any subsequent transfer up to the age of 23, including transfers from clubs belonging to the third and fourth categories as referred to in art. 5.2 (c) of the Application Regulations, training compensation will **only** be owed to **the previous club** of the player for the time he was **effectively trained** by that club.*

[...]

*It is recalled that, pursuant to Article 7.3 of the Application Regulations, as a general principle compensation for training is based on the costs of the country in which the new club is located. However, within the EU/EEA area, compensation for training is based on the costs of the country in which the training was located, subject to the principles set out in Article 7.4 of the Application Regulations.*

*The actual compensation fee is calculated by multiplying the amount corresponding to the category of the relevant training club by the number of years of training from 12 to 21. It will be recalled that, pursuant to Article 7.2 the amounts due for the training of players aged 12 to 15 will always be based on the training and education costs established for Category 4.*

[...]

*For greater certainty, it is reaffirmed (as already established in Circular Letter No. 799) that the Revised Regulations are applicable to all transfers of players that have occurred after the entry into force of the revised transfer regulations on 1 September 2001. All pending cases on the compensation amounts owed for the training of young players, that have transferred as from 1 September 2001 are to be calculated in accordance with the present circular.*

## Relevant jurisprudence

16. In the case CAS 2003/O/527, CAS promulgated its interpretation of the Regulations 2001 and their relationship to the circulars, which we respectfully adopt.

### A. Calculation of Training Compensation

17. The award provides as follows

7.3 *How must the training compensation be calculated?*

(a) *Application of the FIFA Regulations of 2001*

7.3.1 *This case is governed primarily by the FIFA Regulations. For the implementation of the FIFA Regulations, the FIFA has issued a number of Circular Letters. Although these Circular Letters are not regulations in a strict legal sense, they reflect the understanding of the FIFA and the general practice of the federations and associations belonging thereto. Thus, the Panel considers these Circular Letters to be relevant also for the interpretation of the FIFA Regulations.*

7.3.2 *Art. 46 par. 3 of the FIFA Regulations provides that:*

*“Contracts between players and clubs concluded before 1 September 2001 will continue to be governed by the previous version of these regulations, which came into force on 1 October 1997, unless the clubs and the players expressly agree to subject their agreements signed after 5 July 2001 to these regulations”.*

7.3.3 *FIFA Circular Letter No 826 dated 31 October 2002 further provides that:*

*“For greater certainty, it is reaffirmed (as already established in circular letter no. 799) that the revised regulations are applicable to all transfers of players that have occurred after the entry into force of the revised transfer regulations on 1 September 2001. All pending cases on the compensation amounts owed for the training of young players that have transferred as from 1 September 2001 are to be calculated in accordance with the present circular”.*

7.3.4 *L. was transferred to the Claimant on 1 July 2002. As a result, the FIFA Regulations of 2001 are applicable to that transfer and its consequences, in particular to the compensation for the education and training of the player.*

### B. Application of FIFA Circular Letter no. 826:

18. In CAS 2003/O/527 the Appellant raised the issue that FIFA Circular Letter no. 826 was not applicable because it was not yet communicated on the date of the transfer of the player.

19. The award provides as follows:

7.3.6 *The fact that FIFA Circular Letter No. 826 was not in force at the date of the transfer of L. (1 July 2002) is not determinative. Instead, it must be noted that FIFA Circular Letter No. 826 was issued well before 14 November 2003, i.e. the date when the FIFA DRC determined the training and compensation upon request of the Respondent.*

7.3.7 *Furthermore, FIFA Circular Letter No. 826 did not create a new obligation of the clubs which would not have existed otherwise. Said letter rather simplified and facilitated the determination of the training compensation within the framework of the Regulations and Circular Letters which existed already at the time of the transfer of L.. Before that date, FIFA had communicated the relevant parameters and criteria to calculate the training compensation (FIFA Regulations governing the Application of the Regulations for the Status and Transfers of Players dated 5 July 2001, Art. 6 and FIFA Circular Letter No. 799 of 19 March 2002). Thus, the Claimant must have been aware not only of the principle but also of the dimension of the training compensation.*

7.3.8 *In addition, if the application of the indicative amounts according to FIFA Circular Letter No. 826 would have lead to a disproportionate result, the Claimant was still entitled to ask the DRC for review, based on the actual training and educational costs.*

7.3.9 *The Panel had no difficulty relying on FIFA Circular Letter No. 826 as a valid basis for the calculation of the training compensation. The Panel did not share the view of the FIFA DRC that the fact that FIFA Circular Letter No. 826 was not yet issued when L. and the Claimant entered into the employment contract which would justify an adjustment from the indicative amount.*

[...]

7.3.12 *It is undisputed that the Claimant is a first division club, belonging to category 1 under the terms of the FIFA Circular Letter No. 826, for which the indicative amount of training compensation is EUR 90,000 per year. Likewise, the Respondent is a first division club, belonging to category 2, for which the indicative amount of training compensation is EUR 60,000. The average of both amounts is EUR 75,000. Between the ages of 12 and 15 years, the indicative training compensation for both the Claimant and the Respondent is EUR 10,000 per year. According to FIFA Circular Letter No. 769, the period "between 12 and 15 years" as set out in Art. 7 para. 2 of Art. 7 of the Regulations governing the Application of the FIFA Regulations must be understood as three seasons only.*

*The calculating of the training compensation is the following:*

|   |                            |
|---|----------------------------|
| <i>Season 91-92 – category 4</i>                | <i>EUR 10,000</i>          |
| <i>Season 92-93 – category 4</i>                | <i>EUR 10,000</i>          |
| <i>Season 93-94 – category 4</i>                | <i>EUR 10,000</i>          |
| <i>Season 94-95 – avg. between cat. 1 and 2</i> | <i>EUR 75,000</i>          |
| <i>Season 95-96 – avg. between cat. 1 and 2</i> | <i>EUR 75,000</i>          |
| <i>Season 96-97 – avg. between cat. 1 and 2</i> | <i>EUR 75,000</i>          |
| <i>Training compensation</i>                    | <b><i>EUR 255,000"</i></b> |

C. *Reasons to adjust the training compensation*

20. According to the Regulations and Circular Letter no. 826 as set out above, a club objecting to a training compensation calculated on the basis of the indicative amounts mentioned within Circular Letter no. 826 is entitled to prove that such compensation is disproportionate on the basis of concrete evidentiary documents, such as invoices, costs of training centers, budgets, etc. In the absence of sufficient evidence, the indicative amounts apply.
21. In CAS 2003/O/527, the Panel found [at para 7.4.6] that on the one hand the Claimant had not proven that “*the effective costs*” – referred to also as “*real and effective costs*” – incurred by the Respondent for the formation and the education of L. were lower than the ones calculated on the basis of the indicative amounts mentioned in the FIFA Circular Letter no. 826. On the other hand, the Respondent had not brought forward any factual arguments in support of its primary claim, namely that the training compensation should have been augmented, but had contented itself with a reference to the general assumption according to which the education is considered to be completed at age 21 (Art. 13 of the FIFA Regulations). It had not submitted any evidence which demonstrated that it continued to invest in the player’s education after he started to play regularly with the “A” team. In the absence of such evidence, the salary of the player had to be regarded as reflecting his actual market value and not as an investment.
22. This reasoning must inform our own approach.

## Decision

- A. *Which of the FIFA regulations and or succession of circular letters on the issue of training compensation govern this dispute?*
23. Art. 46 para. 3 of the Regulations (quoted above) provides that:  
*“Contracts between players and clubs concluded before 1 September 2001 will continue to be governed by the previous version of these regulations, which came into force on 1 October 1997, unless the clubs and the players expressly agree to subject their agreements signed after 5 July 2001 to these regulations”.*
24. As stated herein, for the implementation of the FIFA Regulations, FIFA has issued numerous Circular Letters. Although these Circular Letters are not regulations in a strict legal sense, they reflect the understanding of FIFA and the general practice of the federations and associations belonging thereto. Thus, the Panel considers these Circular Letters to be relevant for the interpretation of the FIFA Regulations (see also CAS 2003/O/527 para. 7.3.1).
25. FIFA Circular Letter no. 826 dated 31 October 2002 (quoted above) provides that:  
*“For greater certainty, it is reaffirmed (as already established in Circular Letter no. 799) that the revised regulations are applicable to all transfers of players that have occurred after the entry into force of the revised transfer regulations on 1 September 2001. All pending cases on the compensation amounts owed for the*

*training of young players, that have transferred as from 1 September 2001, are to be calculated in accordance with the present circular”.*

26. The transfer of the Player from the Appellant to the Respondent occurred on 1 July 2002 and the application for compensation was made after that date. It is the view of this Panel therefore, that compensation is to be governed by both (i) the Regulations and (ii) the Application Regulations, which came into effect before the transfer *i.e.* on 1 September 2001.
27. In particular, the Panel finds Circular Letter no. 826 to be controlling and a valid basis for the calculation of the training compensation. Circular Letter no. 826 (dated 31 October 2002) was issued before 24 March 2004, *i.e.*, the date when the FIFA DRC of the Players’ Status Committee rendered the decision of the Appellant in the case at hand.
28. Circular Letter no. 826 did not create a new obligation which would not have existed otherwise. Rather, it simplified and facilitated the determination of the training compensation within the framework of the Regulations and Circular Letters which were already in existence at the time of the transfer of the Player. Before that date, FIFA had communicated the relevant parameters and criteria to calculate training compensation (FIFA Regulations, Art. 6 and FIFA Circular Letter no. 799 of 19 March 2002).
29. The Panel’s opinion on this issue is consistent with the opinions recently rendered by other CAS Panels on similar issues (CAS 2003/O/469, p. 32; see also CAS 2003/O/527, p. 11; CAS 2003/O/506, p. 18).
30. We do not find persuasive the Appellant’s attempted reliance on Art. 46 of the Regulations. It is not applicable retroactively (in the absence of express agreement) to contracts between players and clubs signed before 1 September 2001 *e.g.*, for the purposes of computing compensation for breach of contract, the subject matter of Article 22. It does not bear on the question of compensation for training, the subject matter of Chapter VII of the Regulations which is not imposed by a player or a club contracts but by the Regulations themselves.

B. *For what period should the training and education compensation be calculated?*

31. Art. 13 of the Regulations provides in relevant part:

*“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. In the latter case, compensation shall be due until the player reaches the age of 23, but the calculation of the amount of compensation shall be based on the years between 12 and the age when it is established that the player actually completed his training”.*



32. The Application Regulations provide:

*Art. 5 para. 1*

*“For the purposes of calculating compensation, the training period starts at the beginning of the season of the player’s 12th birthday, or at a later age, as the case may be, and finishes at the end of the season of his 21st birthday”.*

*At Art. 5 para. 4*

*“As a general, rule the amount due shall reflect the costs which were necessary to train the player and shall be paid for the benefit of every club which has contributed to the training of the player in question, starting from the age of 12”.*

*At Art. 7.1 para. 1*

*“The compensation for training and education shall be obtained by multiplying the amount corresponding to the category of the training club for which the player was registered by the number of years of training from 12 to 21”.*

*At Art. 7.2*

*“To ensure that training compensation for very young players is not set at unreasonably high levels, the amount for players aged 12 to 15 shall be based on the training and education costs for category 4”.*

33. Circular Letter no. 826 provides at p. 3:

*“[...] The actual compensation fee is calculated by multiplying the amount corresponding to the category of the relevant training club by the number of years of training from 12 to 21. It will be recalled that, pursuant to Art 7,2 the amount due for the training of players aged 12 to 15 will always be based on the training and education costs established for Category 4”.*

34. The potentially ambiguous phrase “aged 12 to 15” provided by the Regulations, the Application Regulations and Circular Letter no.826 is clarified in Circular Letter no.769 which specifically limits the period to “the first 3 years” (see also CAS 2003/O/527 para 7.3.11).
35. Accordingly the Appellant’s entitled to be paid compensation for the first 3 years of the player’s training and, subject to the principle of effectiveness (see para 40 below) up to the maximum age of 21).

C. *In what area did the Appellant fall for such purposes?*

36. The Application Regulations provide:

*At Art. 7 para. 3*

*“As a general principle, compensation for training is based on the training and education costs of the country in which the new club is located”.*

*Art. 7 para. 4*

*“However, in the EU/EEA area, compensation for training is based on the training and education costs of the country in which the training club was located”.*

37. For the purpose of indicative amounts the Respondent is clearly within the category Europe (Circular Letter no. 826 p. 3). The DRC rightly considered that Israel was, for this purpose, in Europe as well (*ditto*). The Application Regulations, however, appear to differentiate in terms of which country’s costs are relevant for the purpose of computing training costs [i.e. whether the country of the training club or of the new club] between national associations in the EU/EEA area and others (Art. 7.4) – a point relied on by both parties who both aver, accordingly that Art. 7.3 applied.
  38. It is frequently the case that political or geographical boundaries do not coincide with those selected for administration of a particular sport (see *e.g.* CAS 98/201). It is national associations which have fed in the material on which the categorisation is based for the confederation to which they belong. (Art 6.4 of the Application Regulations and Circular Letter No. 826 p.6). But the Panel is not concerned with the categorisation of Israel as in Europe. It is our view and it is undisputed, Israel is not a member of the EU/EEA and for the purpose of identifying which country’s costs apply, and that those costs must therefore be determined on the basis of the costs applicable to the new club, namely the Respondent. The language of Application Regulation 7.3 and of Circular 826 is imperative.
- D. *What is accordingly the correct calculation of the training and education compensation?*
39. The quantum of compensation as a general rule must reflect the costs which are necessary to train the player (Art. 5(4)(b) of the Application Regulations and Art. 16 of the Regulations) (Circular Letter no. 826 p. 3).
  40. FIFA rules and CAS jurisprudence collectively establish that whether a player has been trained is a question of fact and degree. They deploy terms such as “effectively trained” and other synonyms as a necessary basis towards the award of compensation for training and education (Circular Letter no. 769 p. 7).
  41. According to the CAS jurisprudence, (CAS 2003/O/527, quoted above) a player that regularly plays (*i.e.* 15 times during one season in the case at hand) in the ‘A’ team of a club is to be deemed as having completed his training.
  42. There are several key factors in the case at bar which enhanced our ability to assess when the Player’s training has been completed. First, we have the Appellant’s initial averment which we have accepted that the Player Y. *“is the most talented player who played at all ages at the highest level in Israel and in the national teams at all different ages”*. Second, the Hapoel Contract, agreed upon in July 1997, which described the Player, in a preamble to Appendix 1 of the Budget Control Regulations, referred to him as a “regular player for the club”. Third, the Loan Agreement(s) between Appellant and Maccabi Haifa involved significant sums of money. The loan of an

athlete for hundreds of thousands of US dollars per annum, while not conclusive, tends to lend credence to the argument that the player is “effectively trained” and hence will be (is) a regular player.

43. In view of the conclusion of the professional Hapoel Contract in July 1997, the Player is to be deemed to have completed his training at the end of the 1996-1997 season.
44. As stated herein, the Player was loaned from the Appellant to Maccabi Haifa during the 1998-1999, 1999-2000, 2000-2001, and 2001-2002 seasons, at a fee of USD 220,000 per season. The Appellant is not entitled to any compensation for this loan period since they did not train him during this time.
45. The period for which (and the category by reference to which) compensation for training and education should be calculated, is therefore as follows:

| <i>Season</i> | <i>Age of Player</i> | <i>Category</i> |
|---------------|----------------------|-----------------|
| 1992-1993     | 12                   | 4               |
| 1993-1994     | 13                   | 4               |
| 1994-1995     | 14                   | 4               |
| 1995-1996     | 15                   | 3               |
| 1996-1997     | 16                   | 3               |

46. Consequently, for the training compensation of the player (who was born 5 May 1980) for the years 12 through 15, the Appellant is entitled to 3 years x EUR 10,000 (Europe Category 4) = EUR 30,000.
47. Furthermore the training compensation for the years in which the player was aged 15-17 the Appellant is entitled to be compensated by reference to the training costs of the country in which the Respondent is located multiplied by the amount corresponding the Category of the Appellant club (*i.e.* Europe Category 3) 2 x EUR 30,000 = EUR 60,000 (Art. 7 para. 1, para. 3 of the Application Regulations and Circular Letter no. 826).
48. Based on the foregoing, the Panel concludes that the training compensation to be awarded to the Appellant shall thus amount to EUR 90,000.

*E. Is the Appellant entitled to additional compensation?*

49. The Appellant is not entitled to any additional compensation flowing from the alleged breach of contract between the player and the Appellant or from the value of the transferred player. The discretion given to the DRC to vary the training compensation fee based on the tariff in the rules is limited to circumstances where such amount is “clearly disproportionate” (Art. 42 para. 1 (b)(ii) of the Regulations and Circular Letter no. 826). Such clear lack of proportion

has to be proven by the Appellant, which failed to bring such evidence (see CAS 2003/O/527 cited above.)

F. *Does the Respondent have a sustainable counterclaim?*

50. For the foregoing reasons, *mutatis mutandis*, the Respondent's counterclaim is unsustainable and dismissed.

G. *Is the Respondent able to claim a declaration?*

51. The Respondent's claim for a pre-emptive declaration is refused. The decision appealed from was one which adjudicated between the Appellant and the Respondent only. No third party is involved in the Appeal to us. Maccabi Haifa's application to be joined was refused on the grounds that the parties to this matter did not consent to the latter's participation, as is required by the Code (art. R41.4 of the Code). The Panel cannot make declarations which may purport to affect the rights of absent third parties. The identified issue of construction of Circular Letter no. 826 raised by the Respondent must be determined before another tribunal.

## Conclusion

52. The Panel concludes that the training compensation to be awarded to the Appellants should amount to EUR 90,000. It follows that both the appeal and the counterclaim are to be dismissed and that the Decision is to be confirmed.

## Interest

53. Since no interest on the training compensation has been claimed for in the written submissions, the training compensation is awarded without interest. See also the CAS 2003/O/527 para 7.4.8 which provides:

*"Since no interest on the training compensation has been claimed for in the Respondent's written submissions, the training compensation is awarded without interest".*

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

1. The appeal filed by Hapoel Beer Sheva against the decision issued on 24 March 2004 by the FIFA Dispute Resolution Chamber is dismissed.
  2. The counterclaim filed by Real Racing Club de Santander S.A.D. is dismissed.
  3. Real Racing Club de Santander S.A.D. is ordered to pay Hapoel Beer Sheva EUR 90,000 (ninety thousand Euros).
- (...).