



Arbitration CAS 2005/A/811 Galatasaray SK v. MSV Duisburg GmbH & Co. KGaA, award of 19 December 2005

Panel: Mr. Lars Halgreen (Denmark), President; Mr. Jean-Jacques Bertrand (France); Mr. Michele Bernasconi (Switzerland)

Football

Admissibility of the appeal

Transfer

Training compensation

Principle of trust

1. When it has not been proven that the fax number used by FIFA to send the DRC decision was the Appellant's appropriate fax number, the decision should not be considered as served on the Appellant until the recognition by Appellant of the receipt of the DRC decision by mail. The Appellant's appeal has then to be filed within the 10 days time limit set by art. 60 of the FIFA Statutes on receiving the challenged decision.
2. When all circumstances, known by the Appellant, surrounding the transfer of the player are leading to the findings that a training compensation was due, the Appellant's conclusion that the Respondent waived its right to a training compensation is not appropriate.
3. According to Swiss law, once the addressee of a declaration does not understand the statement contained in the declaration in the sense wished by its sender, one have to rely on an interpretation based on the principle of trust ("*principe de la confiance*"; "*Vertrauensprinzip*") which stems from art. 2 al. 1 of the Swiss Civil Code. According to this principle, a declaration has to be interpreted in the sense that the addressee could and should have given to it, taking in account all circumstances of the case and the rules of good faith.

The player, G. ("the player"), has been registered with MSV Duisburg GmbH & Co. KGaA ("the Respondent"), a football club with its registered office in Duisburg, Germany for three years from the sporting season 1999-2000 until the season 2001-2002 as an amateur player. He was 17 years old as he started playing for MSV Duisburg and 20 years old when he left the first team squad.

On June 21, 2002, Galatasaray SK ("the Appellant"), a football club with its registered office in Istanbul, Turkey, issued a document stating:

“Hiermit bestätigen wir, dass der Vertrag von Herrn G. zum 30.06.2002 ausläuft und keine Transferansprüche mehr bestehen”.

translated by the Appellant:

“We hereby confirm that the contract of Mr. G. expires on 30.06.02 and there are no further claims with respect to his transfer”.

and the Respondent:

“We hereby confirm that Mr G’s contract expires as of 30 June 2002 and no transfer claims exist anymore”.

The document was signed by Mr. L., employed in the Respondent’s accountant department, and issued on the request of the player’s attorney, i.e. Dr. H. and transmitted to him.

On August 13, 2002, the player entered into a contract as professional player with the Appellant.

On June 11, 2003, the Respondent asked the Appellant for a training compensation to be paid. The total amount claimed was of EUR 234’900.-

On July 3, 2003, the Appellant answered by sending the document dated June 21, 2002 stating that transfer of the player had been concluded *“under definite condition of no transfer related fees”*. Therefore, no training compensation should be paid.

On December 3, 2003, the German Football Federation sent a letter to the Turkish Football Federation with the request of the payment of EUR 234’900.- by the Appellant.

As the parties could not reach an agreement, on November 9, 2004, the DRC rendered its decision which, *inter alia*, states that:

- “1. The Respondent, Galatasaray SK has to pay the amount of EUR 210’000 to the Claimant MSV Duisburg.*
- 2. The amount due to MSV Duisburg has to be paid by Galatasaray SK within 30 days as from the date of notification.*
- 3. If Galatasaray SK fails to comply with the above-mentioned deadline, an interest rate of 5% per year will apply”.*

The decision was sent by fax to the parties on December 17, 2004, and by registered mail.

A statement of appeal was filed before the Court of Arbitration for Sport (CAS) on December 30, 2004 by the Appellant.

The Appellant filed its appeal brief on January, 10, 2005.

The Appellant submits that the translation of the document dated June, 21, 2002 was inaccurate and led to an unjust decision by the DRC.

According to the Appellant, the Respondent waived its right to training compensation. Therefore, no further claim could be raised.

The Appellant asks the Panel to reverse the decision of the DRC issued on November 9, 2004.

The Respondent filed its answer brief on January 28, 2005.

The Respondent submits that the appeal against the DRC decision was lodged after the 10 days time limit set by art. 60 of the FIFA Statutes and therefore the CAS shall refuse to hear the appeal filed by the Appellant.

The Respondent claims that the document issued on June 21, 2002 did not waive the training compensation owed by the Appellant for the player. The employee who signed the document was not entitled to bind the Respondent as he had no power to sign on behalf of the Club and he was not in a position that could authorise him to make such statement. Furthermore, according to the applicable FIFA regulations, training compensations are due for young players until the player's training ends and the wording itself of the statement includes only *transfer payment* and not *training compensation*. In other words, the document issued on June 21, 2002 cannot be considered as a waiver and a training compensation is due for the player.

The Respondent requests the Panel to reject the appeal and confirm the DRC decision.

A hearing was held in Lausanne on October 17, 2005.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS to act as an appeal body is based on art. R47 of the Code which provides that:

“A party may appeal from the decision of a disciplinary tribunal of similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body”.

and on article 60 para. 1 of the FIFA Statutes.

2. Moreover, the jurisdiction of the CAS is explicitly recognised by the parties in their briefs and in the order of procedure they have signed.

3. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial de novo, evaluating all facts, including new facts, which had not been mentioned by the parties before the DRC and all legal issues involved in the dispute.

Applicable law

4. The art. R58 of the Code provides:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in absence of such choice, according to the law of the country in which the federation, association or sports 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”.
5. Such provision was expressly mentioned in the Order of Procedure signed by both parties.
6. The *“applicable regulations”* in this case are the applicable FIFA rules and regulations.
7. Further, Art. 59 para. 2 of the FIFA Statutes provides as follows:
“The CAS Code of Sports-Related Arbitration governs the arbitration proceedings. With regards to substance, CAS applies the various regulations of FIFA or, if applicable, of the Confederations, Members, Leagues and clubs and, additionally, Swiss law”.
8. The parties have not expressly or impliedly agreed on a choice of law applicable to these proceedings before the CAS. Therefore, the rules and regulations of FIFA shall apply primarily, and Swiss law shall apply subsidiarily.

Admissibility

9. The Appeal is admissible for the following reasons:
10. The DRC decision was sent by fax to the parties on December 17, 2004.
11. The Appellant submits that the fax was not received on this latter date, the fax number used by the FIFA being not the one of the administration of the Club but rather the one of the sales department.
12. The Panel notes that the fax number used by FIFA does not match the fax numbers found on the official website of the Appellant and the Appellant’s fax number set on its letterhead. It does match the one set on UEFA’s website under the Club’s page and the one found in UEFA’s directory, though. No fax number of clubs could be found on the FIFA website.
13. Accordingly, the Panel considers that under due consideration of all the evidence submitted to the Panel, it has not been proven that the fax number used by FIFA to send the DRC

decision was the right and appropriate fax number of the Appellant. Therefore, the decision should not be considered as served on the Appellant on December 17, 2004.

14. The Appellant nevertheless recognises to have received the DRC decision on December 20, 2004 by mail.
15. The Appellant's appeal was filed on December 30, 2004, therefore within the 10 days time limit set by art. 60 of the FIFA Statutes.
16. In the case, the Appellant has met the deadline set by the FIFA Statutes.
17. Besides, the appeal complies with all other requirements of Art. R47 of the Code.

Examination of the contested decision

A. The status of the player

18. Article 17 of the FIFA Regulations for the Status and the Transfer of Players (the "FIFA Regulations") provides:
"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".
19. It is admitted by both parties that the player, Mr. G. signed a contract as a professional player with the Appellant before he reached the age of 23 years old.
20. As a matter of principle, a training compensation is owed by the Appellant.

B. The document dated June 21, 2002

21. The Appellant submits that the Respondent waived its right in relation to training compensation in issuing a statement whereby the Respondent acknowledges that he had no further claims with respect to the transfer of the player. The Appellant adds that the wording of the document leads inevitably to the fact that the waiver includes a possible training compensation. Therefore, the Respondent is barred from claiming the amount of EUR 210'000.- that corresponds to the three seasons spent by the player in one of the Respondent's squad before reaching the age of 23 years.
22. The Respondent argues that the document does not contain a waiver in relation to the training compensation, as it only mentions that no transfer payment is owed. In addition, the person who signed the document was not authorised to issue such statement as he was not

competent to do so and he did not have the power to bind the Respondent. Therefore, the training compensation has to be paid.

23. The Panel notes that the document is drafted in German and both translations provided by the parties lead to different meanings.
24. In order to understand its meaning, the said statement has to be interpreted.
25. According to Swiss law, which the Panel considers to be the relevant law according to which this question should be decided, cf. Art. 59, para 2 of the FIFA Statutes, once the addressee of a declaration does not understand the statement contained in the declaration in the sense wished by its sender, one have to rely on an interpretation based on the principle of trust (*principe de la confiance; Vertrauenprinzip*) which stems from art. 2 al. 1 of the Swiss Civil Code. (GAUCH/SCHLUEP/TERCIER, *Partie générale du droit des obligations*, T. I, Zurich 1982, p. 38).
26. According to this principle, a declaration has to be interpreted in the sense that the addressee could and should have given to it, taking in account all circumstances of the case and the rules of good faith.
27. The relevant circumstances of the case at hand are the following:
 - The Appellant is a football club which is and has been participating for many years in famous international competitions. It has been involved in many international transfers of football players.
 - The Appellant (same as the Respondent) was at the time aware of the rules related to training compensation.
 - The Appellant hired a player who was less than 23 years old and who was regular member of the Respondent's first team.
 - The Appellant was in touch with two of the three former clubs of the player, i.e. Karlsruher SC and SV Waldhof Mannheim when the contract was signed.
 - These two clubs raised claims about training compensations.
 - At the time, the Appellant could have calculated the training compensation that amounted to EUR 210'000.-.
 - Most likely, it is the representatives of the player who transmitted to the Appellant the document dated June 21, 2002.
 - The translation of the document, written in German, leads to different meanings.
28. The Panel notes that all circumstances surrounding the transfer of the player are leading to the findings that a training compensation was due. All these circumstances were known by the Appellant as it received the document dated June 21, 2002. Nevertheless, on the basis of this latter document and ignoring the other circumstances, the Appellant concluded that the

Respondent waived its right to a training compensation without further investing or regarding additional information from the Respondent.

29. This reaction appears to the Panel as not appropriate, given the fact that the Appellant did not contact the Respondent for a confirmation of this document, as it was not addressed directly to the Appellant, but rather was transmitted by somebody whose interests were contradictory to the one of the Respondent.
30. This Panel is of the opinion that, according to the above mentioned "*principe de la confiance*", and taking in due consideration all the evidence produced by the parties during the proceedings with CAS, the Appellant should have understood the statement in the sense that no transfer fees were due, but a training compensation could still be claimed. Or at least, the Appellant should have checked this latter point with the Respondent as the question, in fact, remained undecided and contradictory to all the circumstances.
31. For these reasons, the Panel does not consider the document dated June 21, 2002 as a "full" waiver. Accordingly, the Respondent can validly claim a training compensation for the three seasons spent by the player in its squad.
32. The argument in relation to the fact that the document was signed by Mr L. fades to the periphery, as the document cannot be interpreted as a waiver.

C. *The statute of limitation*

33. Art. 19 of the FIFA Regulations provides :
"If a link between the player and his former club cannot be established, or if the training club does not make itself known within two years of the player signing his first non-amateur contract, training compensation is paid to the national association of the country where the player was trained. (...)"
34. According to this rule, the club which trained a certain player must claim the training compensation within a time limit of two years. Otherwise, the training compensation has to be paid to the national association of the country where the player was trained.
35. In the case at hand, the claim was made by the Respondent one year after the player was transferred, so within the time limit set by article 19 of the FIFA Regulations.

D. *The amount of training compensation*

36. According to Circular letter No 826, applicable at the time the transfer occurred:
"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 a non-amateur status (...)"

37. In the case at hand, the player was trained by the Respondent during the sporting seasons 1999/2000, 2000/2001 and 2001/2002, i.e. from 17 to 19 years old.
38. The Respondent belonged to Category 1 in Europe during the sporting season 1999/2000 and to Category 2 during the sporting seasons 2000/2001 and 2001/2002.
39. As a consequence, EUR 90'000.- is due for the 1999/2000 sporting season as well EUR 60'000.- for 2000/2001 and 2001/2002 sporting seasons.
40. Under the circumstances of the case, the fact that only 11 months out of 12 of the 1999/2000 sporting season were covered by the player is not relevant as this time period shall be considered as one year of training.
41. Therefore, the Appellant shall pay EUR 210'000.- to the Respondent as training compensation for the player.
42. The Panel has not been presented with other evidence suggesting that the indicative remaining amount should not be applied.

The Court of Arbitration for Sport rules:

1. The appeal filed by Galatasaray SK is dismissed.
2. The decision of the Dispute Resolution Chamber is confirmed.
3. (...)