



Arbitration CAS 2006/A/1029 Maccabi Haifa FC v. Real Racing Club Santander, award of 2 October 2006

Panel: Mr George Abela (Malta), President; Mr Efraim Barak (Israel); Mr Bård Racin Meltvedt (Norway)

Football

Res judicata

Distinction between the “Training period” and the development of a player

Determination of the point of termination of the training period for the purposes of the calculations of a training compensation

1. The person who is not a party to a previous CAS proceedings, cannot be bound by the judgement linked to this proceedings, hence its right to claim training compensation from Respondent is not prejudiced by the pronouncement of the mentioned judgement (*res judicata*).
2. The *training period* and the development of a player are two different concepts. The *training period* is ruled and limited by FIFA with specific regulations and Circular Letters while the development of a player is not. Therefore what needs to be established is the point of termination of the training period and not the extent of the subsequent development of the Player as a professional football Player.
3. According to CAS jurisprudence a player that regularly plays in the “A” team of a club can be deemed as having completed his training. According to FIFA Circular Letter no. 801, the element which triggers the end of a player’s training and/or education is a question of proof. The burden of proof is on the club that is claiming this fact. The decision must be taken on a case-by-case basis. Several factors can be considered to determine the completion of the Player’s training: the reference to the Player as “a regular player for the club” and the Loan of a player for significant sums of money tend to lend credence to the argument that the player is “effectively trained” and hence will be (is) a regular player.
4. The contribution for the further development of a Player after he terminated his training period according to FIFA Regulations is not considered as a factor in the calculation of training compensation and does not entitle the Club to such compensation.

Maccabi Haifa Football Club (the “Appellant” or “Maccabi Haifa”) is a Football Club registered in Israel.

Real Racing Club de Santander, Spain (the “Respondent”) 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 FIFA Dispute Resolution Chamber (DRC) dated 23 November 2005. It concerns a claim by the Appellant for compensation due by the Respondent to the Appellant for training the player Y., a professional football player who was born in 1980. The player was originally bound to Hapoel Beer Sheva (Israel) by an employment contract valid from 1st July 1997 until 30th June 2002. Prior to signing this contract he was registered as an amateur player with the same club. The Player was transferred on a loan basis from Hapoel Beer Sheva to Maccabi Haifa FC (Appellant), where he rendered his services during the 1998/99 – 1999/00 and 2000/01 – 2001/02 seasons. On 1 July 2002 the player signed on with Real Racing Club de Santander in Spain (Respondent). The Appellant is now claiming training compensation from Respondent for the period of time that the Player was registered at the club on a loan basis during these seasons.

On 1 March 2005 the Court of Arbitration for Sport delivered an award in the names Hapoel Beer-Sheva FC vs Real Racing Club de Santander (Respondent in the present proceedings) (CAS 2004/A/594) and confirmed the decision of the FIFA Dispute Resolution Chamber dated 24 March 2004. The dispute concerned the quantum of compensation due from Real Racing Club de Santander to Hapoel Beer-Sheva FC, a Football Club registered with the Football Association in Israel, for the training and education of Y. – the Player in question. The Player had been registered with and played for Hapoel Beer-Sheva FC since he was 12 years old in 1992. During 1992 to 1998 he played for and trained with Hapoel Beer-Sheva’s youth, youngsters and adult team consecutively.

In its decision delivered on 1 March 2005, the Court of Arbitration for Sport concluded that the Player is to be deemed to have completed his training at the end of the 1996-1997 season and ordered Real Racing Club de Santander S.A.D to pay Hapoel Beer-Sheva the sum of (EUR 90,000) ninety thousand Euros. The Appellant in the present proceedings presented an application to participate in the above mentioned dispute which application was refused principally on the ground that the parties did not consent to the Appellant’s participation in accordance with Art R41.4 of the Code.

The present case is concerned with Maccabi Haifa Football Club which instituted proceedings before the FIFA Dispute Resolution Chamber claiming for training compensation for the specific period of time that the player was registered with the Club on a loan basis. Maccabi Haifa FC maintains that it educated and trained the player in question, turned him into a professional player playing in Israel’s first league and gave him the opportunity to participate in international tournaments. Furthermore, Maccabi Haifa FC asserted that it is the leading club in Israel, well known for its highly professional standard including the education and training of players.

On 23 of November 2005 the FIFA Dispute Resolution Chamber rejected the Appellant’s claim to receive training compensation from Respondent for the training and education of the football player

Y. in the football seasons 1998/99-2001/02.

The FIFA Dispute Resolution Chamber decided to reject the claim of the Claimant, Maccabi Haifa F.C on 23 November 2005 on the following considerations:

- “1. The present dispute having been lodged in front of the Dispute Resolution Chamber (hereinafter referred to as “DRC” or “Chamber”) prior to the coming into force of the current Regulations for the Status and Transfer of Players on 1 July 2005, the members of the DRC firstly proceeded to confirm that the September 2001 edition of the FIFA Regulations for the Status and Transfer of Players (hereinafter referred to as the “Regulations”) applies to the case in hand.*
- 2. As established in art. 42 S 1 (b) (iv) of the Regulations, it falls within the purview of the Dispute Resolution Chamber to decide on disputes concerning the compensation for the training and education of young players and to adjust training compensation fees.*
- 3. Once its competence was thus established, the DRC went on to deal with the substance of the case.*
- 4. The Chamber took into account that the DRC passed a formal decision in the matter Hapoel Beer-Sheva vs Real Racing Club de Santander concerning training compensation in connection with the Player in question, Y.*
- 5. According to that decision, Hapoel Beer-Sheva was not entitled to receive training compensation for the period of time that the player was transferred on a loan basis to Maccabi Haifa FC.*
- 6. In the case in hand, the club that accepted the player on a loan basis, Maccabi Haifa FC, is claiming training compensation for the specific period of time that the player was registered with Maccabi Haifa FC on such a loan basis.*
- 7. The Chamber agreed that, in principle, the club that accepts a Player on a loan basis could be entitled to training compensation according to Chapter VII of the said Regulations. The answer to the question as to whether such a club indeed has a right for training compensation, however, depends on the circumstances surrounding the matter.*
- 8. The present matter has the particular circumstance that the decision passed by the DRC was dealt with by the CAS in the appeal procedure initiated by Hapoel Beer-Sheva against the aforementioned DRC decision.*
- 9. In its considerations, the CAS established that the player in question, Y., was deemed to have completed his training when he signed his professional contract with Hapoel Beer Sheva in July 1997, i.e. prior to being transferred on a loan basis to the Claimant, Maccabi Haifa FC. From the CAS award, it can also be noted that, inter alia, a considerable fee having been agreed upon for the loan of the player, the CAS felt confirmed in its believe that the player, Y., completed his training in the summer of 1997.*
- 10. The members of the DRC agreed that the Chamber could not pass a formal decision in the present matter without taking into consideration the findings and the award of the CAS, which are directly related to the training of the player under discussion.*
- 11. After careful study of the relevant file, the DRC noted that the Claimant has not presented any documentation which would demonstrate that the player, Y., would not have completed his training prior to his transfer on a loan basis to Maccabi Haifa FC*
- 12. Furthermore, the members of the Chamber fully disagreed with the interpretation by Maccabi Haifa FC of the relevant CAS award.*

13. On account of all of the above, and especially the fact that the player completed his training in 1997, the Chamber decided that Maccabi Haifa FC is not entitled to receive training compensation for the player, Y., for the period of time that Mr. Y. was registered at the club on a loan basis, i.e. from the 1998-1999 season until and including the 2001-02 season”.

On 22 January 2006, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (CAS) against the decision of the Dispute Resolution Chamber of the FIFA Players Status Committee taken in Zurich, Switzerland on 23 November 2005.

The parties have been called to attend a hearing on 27 June 2006 in Lausanne, Switzerland.

LAW

CAS Jurisdiction

1. The jurisdiction of the Court of Arbitration for Sport in this case is based on article 60 of the FIFA Statutes. 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 Code the Panel has full power to review the facts and the law. 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 present dispute.

Admissibility

4. 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. It follows that the appeal is admissible, which is also undisputed.
5. Following the statement of appeal dated 22 January 2006, filed by Maccabi Haifa, the Appellant, against Real Racing Club Santander, the Respondent, the Panel has been appointed to adjudge the appeal in its capacity as an Arbitral Tribunal and to render an award in compliance with the Code and with the terms and conditions set out in the Order of Procedure.

Applicable law

6. 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 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 the FIFA Statutes.

Merits

7. The main issues to be resolved by the Panel are:
 - *Res Judicata* claim.
 - When did the Player complete his “training period” for the purposes of the calculations of entitlement to training compensation?
 - Is the Appellant entitled to receive training compensation?
8. Applicable legal instruments:
 - The September 2001 edition of the FIFA Regulations for the Status and Transfer of Players (the Regulations);
 - The Applications Regulations;
 - FIFA Circular letter no. 826.
9. 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.
10. The Appellant, in its Appeal Brief maintains that the FIFA Dispute Resolution Chamber based its decision mainly upon the decision passed by the Court of Arbitration for Sport on the 1st of March 2005 in the case Hapoel-Beer Sheva v. Real Racing Club Santander S.A.D which established that the player’s training period ended in the year 1997 when the player was 17 years old. The Appellant submits that it was not a party to Hapeol-Beer Sheva proceedings and hence was not given an opportunity to raise its arguments and reject the Respondent’s claims regarding the player’s training period and the date of its termination.
11. The Appellant argues that in paragraph 7.4.6 of the above referred to decision, it was outlined that the Player was loaned from the Appellant (Hapoel-Beer Sheva) to Maccabi Haifa FC during the 1998-1999, 1999-2000, 2000-2001, and 2001-2001 seasons at a fee of USD 220,000 per season, and furthermore that the Appellant (Hapoel-Beer Sheva) is not entitled to any

compensation for this loan period since they did not train him during this time. The Appellant in these proceedings submits that this decision does not in any way prejudice its rights to claim training compensation from Respondent since the Court of Arbitration for Sport did not pronounce itself as to whether Maccabi Haifa FC did or did not train the player in question during these four seasons.

12. On the other hand, Respondent pleads that the object of the matter at bar has been already decided by this Court and that as stipulated in article 71 of the Loi fédérale de procédure civile fédérale, applicable to this case by virtue of article R58 of the Code of Sports-related Arbitration, a judgement has legal force as soon as it is rendered – “*Le jugement acquiert force de chose jugée dès qu’il est prononcé*”. Therefore, according to Swiss Law, if CAS concluded that the player ended his training period at the end of the season 1996/1997, this pronouncement should be considered as *res judicata*.
13. This Panel notes that the issue to be decided in the present dispute is not whether a judgement has legal force as soon as it is rendered but whether it has legal force only between the parties in the dispute before the Courts or also in relation to third parties not involved in the dispute. Legal jurisprudence establishes the three elements of a *res judicata*, namely:
 - The same persons – *eadem personae*;
 - The same object – *eadem res*;
 - The same cause – *eadem causa petendi*.
14. For the *exceptio res judicata* to be successfully admissible, it is necessary that all three elements be concurrently present. In the absence of one of these elements, it cannot be said that the object is the same – *nisi omnia concurrunt, alia res est*. The plea of *res judicata* is founded on the principle of public interest – *interest rei publicae ut sit finis litium*. It was founded to safeguard the certainty of rights which have already been adjudicated upon and defined by a judgement. *Res judicata* eliminates the possibility of pending disputes prejudicing the rights which have already been established by a judgement. The principle of *res judicata* ensures that whenever a dispute has been defined and decided upon, it becomes irrevocable, confirmed and deemed to be just – *res judicata pro veritate habetur*.
15. The three elements of *res judicata* are of equal fundamental importance and relevance. The element of the same persons (*eadem personae*) is therefore as important as the other two elements. Its absence is enough to exclude the plea of *res judicata* since who was not present in the judicial proceedings, could not be considered as bound by a sentence which has been rendered *res judicata*.
16. The Appellant in the present dispute, that is Maccabi Haifa FC was not a party to the Hapoel Beer-Sheva proceedings. Although both proceedings refer to the claim for training compensation with regard to the same player, Y., and hence the requirement of the elements of object and cause are satisfied, the element of *eadem personae* is missing. It therefore follows that since Appellant was not a party to the Hapoel Beer-Sheva proceedings, it could not be bound by the judgement delivered on the 1st March 2005 (CAS 2004/A/594) in the names

Hapoel Beer-Sheva v. Real Racing Club Santander S.A.D and hence its right to claim training compensation from Respondent is not prejudiced by the pronouncement of the mentioned judgement (CAS 2004/A/594).

17. Accordingly, this Panel dismisses the plea of *res judicata* raised by the Respondent.
18. The Panel will therefore proceed in evaluating whether Appellant's claim to receive training compensation from the Respondent is justified or not.
19. In its Appeal Brief, the Appellant submits that the player played for the Appellant during four football seasons (1998/1999, 1999/2000, 2000/2001, 2001/2002), since he was 18 years of age and until he was 22 years of age on a basis of loan agreements signed between the Appellant and Hapoel Beer Sheva Club. During this period, the Appellant argues that it had educated, promoted, nurtured, trained and improved the player's football skills turning him into a professional Player.
20. Article 13 of the Regulations provides as follows:

"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".
21. According to Article 13 of the Regulations, the amount of compensation payable shall be based on the years between 12 and the age when it is established that the player actually terminated his training period. The Appellant in its Appeal Brief submits that the player's professional level at the age of 17 was considerably lower than his level at the age of 22. Appellant presented Avraham Grant's affidavit, who was at the time he submitted the affidavit the coach of the Israel National Football Team who states that he was the coach of the Player in Maccabi Haifa FC and that his period in Maccabi Haifa FC covered the seasons 2000/2001, 2001/2002. He emphasizes that in the beginning of the football season 2000/2001 the Player was a great talent but far from terminating his football training. He confirms that due to Maccabi's professional training the player improved his football skills and became a professional football player:

"I am confident that Maccabi's contribution as specified above had been the main factor in the player's improvement, success and eventually in his becoming a professional football player".
22. Avraham Grant also testified in the oral hearing held on 27 June 2006 and in essence he confirmed his evidence given in his affidavit.
23. However, as Respondent correctly submits, the training period and the development of a player are different concepts. The training period is ruled and limited by FIFA with specific regulations and Circular Letters while the development of a player is not. The aim and the spirit of FIFA Regulations is to regulate the training and not the development of the Player.

Therefore what needs to be established is the point of termination of the training period and not the extent of the subsequent development of Y. as a professional football player. There is no contestation between the contending parties as to the fact that the Player did improve his skills since 1997.

24. According to CAS jurisprudence a player that regularly plays in the “A” team of a club is to be deemed as having completed his training. In the case CAS 2003/O/527, it was stated that:

“L. signed his first non-amateur contract with the Respondent on 1 October 1996. During season 1996-1997, he played five times with the Respondent’s “A” team. During season 1997-1998, he was engaged more regularly and played 15 times with the “A” team. At that time, he already spent many years with the Respondent’s club and was noticed for his good technical skills and speed. L. can therefore be considered as having completed his training period before the beginning of season 1997-1998, in view of the scale, the characteristics and the level of game the Respondent’s club at that time”.

25. According to FIFA Circular Letter no. 801 dated 28th March 2002, the burden of proof is on the Respondent to show that the player has terminated his training period before the age of 21:

“The Committee was asked to determine what triggers the end of a player’s training and/or education. It maintained that it is a question of proof, which is at the burden of the club that is claiming this fact. A player who regularly performs for the club’s “A” team could be considered as having accomplished his training period. The decision on this will have to be taken on a case-by-case basis”.

26. It is therefore the Respondent which has the burden of proof that the Player terminated his training at the age of 17. Respondent, in its answer remarks that Y. was already considered by Hapoel Beer-Sheva as a regular player in the season 1996-1997. Moreover, during the following seasons 1997-1998, the Player took part in 25 official matches with Hapoel Beer-Sheva. In 1997-1998, being 17 years old, he became the leader of his team, Hapoel Beer-Sheva. He was one of the top scorers of the team with 15 goals in 25 matches and was considered by everybody as one of the most valuable players of the Championship. Respondent doubts how would a leading club like the Appellant acquire the services of a non-professional player and pay 220,000 USD per year for the same player. Respondent contends that the Player in 1997 was ready to perform at the highest level in the first division of Israel and in the National Team.

27. The Panel considered several factors to assess and determine when the Player’s training has been completed and whether the Respondent satisfied or not the burden of proof that the Player terminated his training period at the age of 17 years. The Hapoel Contract, agreed upon in July 1997 referred to the Player as *“a regular player for the club”*. The Loan Agreement(s) between Hapoel Beer-Sheva FC and Maccabi Haifa FC involved significant sums of money. The loan of an athlete for hundreds of thousands of US dollars per annum tends to lend credence to the argument that the player is *“effectively trained”* and hence will be (is) a regular player. The evidence given by Avraham Grant, while it did not highlight any new facts or circumstances showing that the training period continued during these four seasons, confirms that Maccabi Haifa F.C.’s contribution helped to improve the Player’s football skills and in his becoming a professional football player.

28. The Panel therefore considers that Maccabi Haifa FC did contribute to the development of the Player in question, but the contribution for the further development of a Player (after he terminated his training period) according to FIFA Regulations is not considered as a factor in the calculation of training compensation and does not entitle the Club to such compensation.
29. In view of all the above, it is to be deemed that the Player completed his “training period” in the meaning of the FIFA regulations at the end of the 1996-1997 season.
30. The Player played for the Appellant during four football seasons (1998/1999, 1999/2000, 2000/2001, 2001/2002) since he was 18 years of age and until he was 22 years of age on a basis of loan agreements signed between the Appellant and Hapoel Beer-Sheva Club. The Panel considered that during this period, the Appellant developed and improved the player’s football skills turning him into a professional Player.
31. However, since the Player has completed his training period at the age of 17 in the end of the 1996-1997 season, it therefore follows that the Appellant is not entitled to receive training compensation from the Respondent.

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 22 January 2006 by Maccabi Haifa FC against the decision of the FIFA Dispute Resolution Chamber dated 23 November 2005 is dismissed and such decision is confirmed.

(...).