



Arbitration CAS 2008/A/1521 VfB Admira Wacker Modling v. A.C. Pistoiese s.p.A., award of 12 December 2008

Panel: Mr Stuart C. McInnes (United Kingdom), President; Prof. Massimo Coccia (Italy); Mr. Goetz Eilers (Germany).

Football

Compensation for training

Interpretation of the FIFA rules by a CAS panel

Exceptions from the right to claim compensation for training for intra-EU/EEA transfers

Compensation for training and contract offer

Interpretation of the “contract offer in writing”

1. The role of a CAS panel is not to revise the content of the applicable FIFA rules, but only to interpret and apply them. As to the interpretation of the rules, Swiss law provides, under art. 1 of the Swiss Civil Code, that a rule must be interpreted according to its wording and its purpose. The historical background of the rule matters only when such rule is not clear or incomplete.
2. For transfers occurring within the EU/EEA, Article 6 para. 3 of Annex 4 to the 2005 Transfer Regulations is *lex specialis*, to be read as qualifying any general principle elsewhere in the regulations dealing with the obligation to pay training compensation
3. One cannot expect a club, notably an amateur club, to focus on all its amateur players for whom training compensation might be paid by a third football club and consequently to make formal offers to all those players. On the contrary, there is no reason why a club which hires professionals, among them professionals which were trained by this club, should not follow the formal requirements set by FIFA. Accordingly, if the training club does not offer a new professional contract in writing to one of its professional players whose contract is expiring, and such player signs a new professional contract with another club, the training club should not be entitled to training compensation.
4. FIFA regulations do not define the meaning of “in writing”. According to Swiss law that applies complementarily to the FIFA Regulations (Articles 13, 14 and 16 of the Swiss Code of Obligations) a contract – or an offer – is deemed to be made “in writing”, when it is signed with the original signature of the party or the parties that are contractually bound by the document.

VfB Admira Wacker Modling (“Admira Wacker” or the “Appellant”) is a football club with its registered office in Mödling, Austria. It is affiliated to the Austrian Football Association and takes part to the Austrian Football First League, in German “Erste Liga”, which is the second highest professional division in Austrian football. In 2005-2006, its first team was still playing in the highest Austrian professional division, in German “Bundesliga”.

A.C. Pistoiese S.p.A. (“Pistoiese” or the “Respondent”) is a football club with its registered office in Colle di Val d’Elsa, Italy. It is affiliated to the Italian Football Association and takes part to the Serie C/1 Italian Championship (3rd division championship).

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

As a result, Admira Wacker and Pistoiese are subject to and bound by the applicable rules and regulations of FIFA.

The Appellant asserts that, following the transfer of the player W. (the “Player”) from the Appellant to the Respondent, the Respondent must pay to the Appellant an amount of EUR 300,000 as a training compensation pursuant to the FIFA Regulations for the Status and Transfer of Players.

The Player was born on 4 May 1985 and was registered with the Appellant from 6 August 1991 until 7 May 2002, as an amateur, i.e. between the ages of 6 and 17. He then signed an employment agreement with the Appellant which was effective from 7 May 2002 until 31 May 2005, i.e. between the ages of 17 and 20, with an option to extend the agreement for one additional year. The option was exercised by the Appellant and the Player. The employment agreement was therefore extended until 31 May 2006. The Player was thus aged 21 at the end of the extension period.

According to the terms and conditions of the employment agreement and to the Player passport, the Player was registered on 19 June 2004 as a professional with the Appellant after having been registered as a professional with LASK Linz, an Austrian football club to which the Player had been loaned from 2 February 2004 until 19 June 2004.

From mid-March 2006 until 31 May 2006 the Appellant and the Player apparently discussed a potential execution of a new agreement. Those discussions, did not however, lead to the signing of a new agreement.

On 8 September 2006, upon request from the Italian Football Association, the Austrian Football Federation issued the Player’s International Transfer Certificate and the Player was registered in September 2006 with the Respondent. The Appellant is however not longer playing for the Respondent.

On 18 September 2006 the Appellant addressed an invoice of EUR 300,000 to the Respondent for training compensation in relation to the Player. As no payment was made, the Appellant requested payment of the Player's training compensation before FIFA.

On 30 November 2007, the FIFA Dispute Resolution Chamber (the DRC) passed a decision (the "Decision").

The DRC stated the following, in the relevant part of its Decision:

"(...)

1. *Subsequently, the members of the Chamber analyzed which edition of the Regulations for the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred to Article 26 para. 1 and 2 of the Regulations for the Status and Transfer of Players (edition 2005) in accordance with the FIFA circular n° 995, dated 23 September 2005. Furthermore, it acknowledged that the professional had been registered for his new club, the Respondent, in September 2006. Equally the Chamber took note that the claim of the Claimant was lodged at FIFA on 10 October 2006. In view of the aforementioned, the Chamber concluded that the 2005 edition of the FIFA Regulations for the Status and Transfer of Players is applicable on the case at hand as to the substance.*

2. *Entering into the substance of the matter, the members of the Chamber started by acknowledging the above-mentioned facts of the case as well as the documentation contained in the file. In particular, the Chamber acknowledged that on the one hand, the Claimant requested training compensation amounting to EUR 300,000 based on the number of years the player spent training with the Claimant and, on the other hand, the Respondent mainly invoked that the Claimant is not entitled to receive any training compensation by means of not having offered the player a contract of at least an equivalent value to his existing one within the deadline of 60 days as provided for by Article 6 para. 3 of Annex 4 of the Regulations.*

3. *In this respect, the members of the Chamber took particular note that the Claimant maintains having offered the player W. a new contract. In this respect, in order to corroborate its statement, the Claimant presented an affidavit of its chief-coach and the assistant coach dated 11 January 2007 as well as a copy of contract offer bearing the date 12 March 2006 on which handwritten comments were included. Therefore, the Claimant deems having offered enough evidence to demonstrate that it actually offered the player a contract.*

4. *In continuation, and taking into account that, as established above, the 2005 edition of the Regulations is applicable on the matter at stake, the members of the Chamber referred to Article 6 of Annex 4 of the said Regulations, which contains special provisions regarding players moving from one Association to another inside the territory of the EU/EEA. According to para. 3 of the mentioned provision, training compensation is only payable if the former club does offer the player a contract of at least an equivalent value to the current contract in writing via registered mail at least 60 days before the expiry of his current contract, or if it can justify that it is entitled to training compensation.*

5. *At this point, the Chamber underlined that, considering the divergent statements of the Claimant and the Respondent, the core issue between the parties to the present dispute is therefore whether the Claimant has satisfied the formal criteria of Article 6 para. 3 of Annex 4 of the Regulations in order to be entitled to training compensation, i.e. to offer the player an employment contract of at least an equivalent value to the current contract and, in particular that such offer has to be made at least 60 days before the expiry of the player's current contract.*

6. *In this respect, first and foremost, the Chamber unanimously acknowledged that uncontestedly the Claimant had not offered the player W. a contract of at least an equivalent value to the current contract in writing via registered mail at least 60 days before the expiry of his existing contract.*
7. *However, in this context, the Chamber deemed it appropriate to emphasize that due to the often experienced difficulties by the relevant clubs concerned to demonstrate that they indeed had proceeded to offer a player a new contract under the previous edition 2001 of the Regulations, when revising the Regulations it was decided to integrate in the 2005 edition of the Regulations some formal preconditions in order to facilitate the evidence that a contract offer was effectively made. In particular, the Chamber emphasized that the implemented new preconditions are not formal requirements stricto sensu but a requirement to evidence the fact of having made such an offer to a particular player. This should, therefore, ease the burden of proof laying on training clubs. This is the actual aim of the relevant formalities.*
8. *Based on this consideration, the Chamber deemed it appropriate to clarify that, contrary to the Respondent's position, the written offer made via registered mail is not the only possible evidence for a club to document the relevant offer and thus its entitlement to training compensation. If the club is in a position to prove by other means that an offer of at least an equivalent value to the current contract was actually made to the player in due time, this must be accepted and cannot just be dismissed by the fact that it was not a registered letter.*
9. *As a consequence, the Chamber went on to examine whether the Claimant had provided other unambiguous documentary evidence for the offer to have been made by the player in due time and for an adequate value.*
10. *To this end, at first, the Chamber took note that the Claimant submitted an affidavit to the file which was signed by its chief and assistant coach in order to evidence that it had offered a contract to the player of at least equivalent value to the existing contract.*
11. *In this respect, and taking into account the fact that the said affidavit was signed by persons firmly connected to the Claimant and thus not independent from the Claimant in connection with the present matter, the deciding authority held that this document does not constitute sufficient documentary evidence to corroborate the allegations of the Claimant for having offered the player a contract.*
12. *In continuation, the Chamber referred to the document allegedly constituting a contract that the Claimant offered to the player on 12 March 2006 and bearing handwritten notes which allegedly "...show the wishes for changes to the contract expressed by the player...".*
13. *In this regard, the Dispute Resolution Chamber held that the aforementioned document as such, apparently containing certain remarks made by one of the Claimant's staff members at that time, does not sufficiently provide proof that the Claimant in actual fact offered the player a contract in due time and for an adequate value. In particular, the Chamber added that the said document does nowhere contain the signature or remarks of the player himself.*
14. *Taking into account the above, the Chamber reached the conclusion that the Claimant by failing to produce evidence of having met the requirements in accordance with Article 6 para. 3 of Annex 4 of the Regulations is not entitled to claim training compensation from the Respondent".*
13. For the above-mentioned reasons, the DRC decided the following:
"The claim lodged by the Claimant, VfB Admira Wacker Mödling, is rejected".

FIFA served the Decision on the Appellant and the Respondent on 29 February 2008.

On 18 March 2008, Admira Wacker filed a statement of appeal with the Court of Arbitration for Sport (CAS), pursuant to the Code of Sports-related Arbitration (the Code), against Pistoiese. This statement of appeal contained the Appellant's complete factual and legal arguments. The Appellant challenged the Decision submitting the following request for relief:

- a. bear the witnesses G., B. and F. and take the evidence as submitted, and*
- b. find the respondent liable of paying € 300.000,00 in terms of training compensation for the transfer of the player W. to us plus 4 % interest from the date of our invoice, 18 September 2006, and the costs of the proceeding before the Court of Arbitration for Sport".*

As supporting evidence, the Appellant filed an affidavit sworn by G. and B. on 11 January 2007 where the authors state in essence that *"in the second half of March 2006 W. was offered by VfB Nordea Admira Wacker Mödling to continue to play for VfB Nordea Admira Wacker Mödling under at least the same conditions as previously"* and that *"W. was given a written contract offer to this effect by us or in our presence and in the presence of several other players, and that, at first, he requested some time for consideration whether to accept the offer or not, and eventually rejected the same"*.

The Appellant also filed a draft and unsigned contract, bearing several handwritten notes, apparently made by the Appellant's manager, F., and referring to a discussion which was alleged to have been held between F. and the Player. On the first page of this document, F. wrote that the Player had apparently "wishes of changes" and instructed G. in writing to discuss it and "eventually change it". The note is dated 12 March 2006. Further notes are indicated with regard to:

- (1) the Player's right to perform another professional activity (art. II.2 a);
- (2) the Player's fixed salary (art. III.1 a);
- (3) the amount of the Player's point premiums (art. III.2);
- (4) the gross or net amount of the Player's point premiums if he should play again as an amateur (art. III.2).

On 31 March 2008, the Appellant filed its appeal brief. The Appellant declared that its statement of appeal should be considered as the appeal brief but joined two additional documents and a formal "list of attachments".

On 28 April 2008, Pistoiese served its answer and made the following requests to CAS:

I. to declare the inadmissibility or to dismiss in full the Appeal filed by VfB Admira Wacker Modling and, consequently, to confirm in full the appealed Decision passed in this respect by the F.I.F.A Dispute Resolution Chamber Decision on 30 November 2007.

II For the effect of the above, to order that the Appellant has to pay to the Respondent any costs incurred in connection with this Appeal Arbitration Proceedings, including attorney's fee and expenses".

By means of a faxed letter dated 8 May 2008, the Appellant, requested permission to submit two new documents, namely a written affidavit from its Manager, F., together with a press article.

The press article published on 9 July 2006 refers to an interview of the Appellant's Coach, where the latter explains to a journalist that the Player "*had a good offer but did not even answer*".

By faxed letter dated 17 May 2008, the Respondent did not agree with the Appellant's submission, arguing on the basis of art. R51 and R56 of the Code that such submission was too late.

After a full exchange of written pleadings and evidence, the hearing was held in Lausanne on 7 October 2008.

The Panel asked the parties to confirm that they had no objection to the Panel's composition. The parties confirmed that they had no such objection and did not raise any prejudicial means or make any other remarks with respect to the procedure. During the hearing, the parties made full oral submissions, confirming their written submissions. The Appellant called its Club Manager, F. before the Panel, and the Respondent called the Player, who testified by conference call.

The Manager, F.

F. explained to the Panel that in March 2006 he was Manager and, as such, that he was in charge of the drafting of the new contracts, as well as of the accounting and financial matters. G. was General Manager and Coach for the Appellant's first team whereas B. was Assistant Coach. According to the witness, G. was the interface between him and the Players, with whom he had no direct contact. F. stated then that the procedure for the renewal of the employment contracts had already started during the winter of 2005/2006 and that draft contracts were issued for all the players in March 2006. F. further stated that he had actually met the Player in December to discuss his future and that he had submitted a first draft contract to him on 12 March 2006. The Player wished some changes to be made and F. handed over the draft, endorsed with his comments, to G. for finalisation.

F. further explained that similar contracts had been submitted to 4 or 5 players at the same time so that other players had witnessed the submission of the draft contract to the Player. The final terms and conditions submitted to the Player were excellent and other very good players, who are currently playing in the Austrian 1st league, had accepted equivalent contracts.

F. expressed the opinion that the new contract offered to the Player was a clear improvement to the previous one. However, according to the witness, the Player did not give any reason for rejecting the offer. F. then confirmed the content of his affidavit dated 7 March 2008.

When asked by the Respondent who had drafted the new contract, the witness confirmed that it was himself. He explained that he had the requisite level of education to issue employment agreements which are based on standard agreements issued by the Austrian Football Federation, and confirmed that in March 2006, he knew the applicable FIFA regulations. However, the witness stated that he did not know the rules of Annex 4 to the 2005 FIFA Regulations for the Status and Transfer of Players (the "2005 Transfer Regulations"), as until then there had been no transfer of a

young player abroad. The witness explained that if he had known the rules he would have paid more attention to the formalities required by FIFA.

With regard to the issue raised by the Respondent of late payment of the Player's salary by the Appellant, the witness confirmed that the Player was paid his salary at that time and referred to the bank transfers which are in the FIFA file.

As to the procedure of negotiation of a new contract with the Player, the witness thought that it was better to go through the contract with him, instead of just sending a letter. Other players were present when the Player was given the contract. However the witness confirmed that the Appellant did not think about calling one of those players at the hearing. Based on the foregoing, the witness confirmed that a first version of the contract was handed over to the Player on 12 March 2008 and that a second version was given to the Player a few days later.

The witness then provided the Panel with further explanations on the calculation of the Player's remuneration on the basis of the contract ending on May 2006 and of the draft contract, which the Appellant argues to have been offered to the Player.

The Player, W.

The Player was heard by the Panel by telephone conference. He categorically denied having been offered any contract. He admitted however that he had discussed on the pitch with G. and B. on a potential extension or renegotiation of his contract but added that he had never seen a written contract. According to the Player, that discussion did not take place before May.

The Player then explained that he had played for one year with Pistoiese and that he was now playing for Piacenza. His compensation was EUR 17,000 net per year.

The Player then confirmed that he had signed with Pistoiese in June 2006 and that there had never been any discussion about training compensation. Pistoiese was then in the 3rd league and he had decided to join this club under the recommendation of another Player, J., who had told him that it would be more profitable for his career to go and play in Italy.

The Panel asked the Player again if he was sure that he had never seen a contract and the Player answered: *"I am sure that I never saw a contract"*.

LAW

CAS Jurisdiction and admissibility of the Appeal

1. The jurisdiction of CAS, which is not disputed, derives from art. 59 ff. of the FIFA Statutes 2004 and art. R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties. Consequently, CAS has jurisdiction to decide the present dispute.
2. Under art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel, therefore, in the exercise of its jurisdiction, does not examine only the formal aspects of the appealed decision, but holds 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.
3. The appeal was filed within the deadline provided by art. 60 of the FIFA Statutes and indicated in the Decision, namely within 21 days after notification of the Decision. It complies with the requirements of art. R48 of the Code. It follows that the appeal is admissible, which is also undisputed.

Applicable Law

4. Article. R58 of the Code provides that 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.
5. Article. 60 para. 2 of the FIFA Statutes, in their version in force, further provides that CAS shall primarily apply the various Regulations of FIFA, and, additionally, Swiss law.
6. In the present matter, it is undisputed that the FIFA Regulations are applicable. Those Regulations shall thus apply primarily, together with the other applicable rules of FIFA, and Swiss law will be applied complementarily.

Merits

A. *The Position of Admira Wacker*

7. Admira Wacker submits, in support of its request for relief, that Article 3 of the Appendix 4 of the Regulations on the Status and transfer of Players should be construed to require a formal written offer to the Player only in order to facilitate the proof of such offer, but not to jeopardise the right of the training club to request a training compensation. The Appellant

refers to CAS jurisprudence 2006/A/1152 where CAS admitted in the case of an amateur player turning professional, that the training club could prove its “*good faith and genuine interest*” in keeping a player by means of a written letter sent in copy to the national football federation, where the club stated that it wished to retain the player. The Appellant further explains that obviously the Player did not move to Italy because the Appellant’s offer was not satisfactory but because the Player wanted to increase his career’s chances by playing in another championship.

B. *The Position of Pistoiese*

8. Pistoiese’s answer can be summarized as follows:

(1) The Appellant produced a draft agreement which was not signed and contained handwritten notes made by its manager. The Appellant claims that a second contract was drafted but cannot prove it to the Panel.

(2) The Player is an independent witness who is not part to the procedure. He obviously left the Appellant because he had no contract with it and because his salary would be increased if he played in Italy.

(3) The evidence produced by the Appellant does not offer any certainty. No explanation can be found for the Appellant not having sent a registered letter to the Player. In this respect, the Respondent finds it curious that the Appellant insists on having fulfilled the 60 days deadline set by the Annex 4 of the 2005 Transfer Regulations but could not meet the requirement of the registered mail.

(4) As to the calculation of the compensation, the Respondent notes that the Player had played 13 games with the Appellant’s first team in 2004/2005 which tends to prove, that his period of training was over. Furthermore, the Respondent explains that its first team plays in the 3rd division Italian championship and that according to FIFA regulations, any calculation should be based on EUR 30,000 per year and not EUR 45,000.

C. *The Evaluation of the Panel*

a) Interpretation of the FIFA regulations

9. The Panel carefully reviewed all the arguments raised by the Parties. The Panel used the usual sources including the FIFA regulations and CAS jurisprudence in order to correctly determine the scope of application of the FIFA rules on the training compensation.

10. In this respect, the Panel asserts that its role is not to revise the content of the applicable rules, but only to interpret and apply them (CAS 2005/A/955&956, para. 7.3.10). As to the interpretation of the rules, Swiss law provides, under art. 1 of the Swiss Civil Code, that a rule must be interpreted according to its wording and its purpose. The historical background of

the rule matters only when such rule is not clear or incomplete (Decisions of the Swiss Federal Court, notably, ATF 122 I 253 and ATF 112 II 1).

b) Relevant FIFA regulations

11. The Panel deemed the following FIFA regulations to be relevant in the present case:

(1) Article 20 of the 2005 Transfer Regulations reads as follows:

“Training Compensation shall be paid to a player’s training club(s): (1) when a player signs his first contract as a Professional, and (2) on each transfer of a Professional until the end of the Season of his 23rd birthday. The obligation to pay Training Compensation arises whether the transfer takes place during or at the end of the player’s contract. The provisions concerning Training Compensation are set out in annex 4 of these Regulations”.

(2) Article 1.1 of Annex 4 to the 2005 Transfer Regulations reads as follows:

“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, Training Compensation shall be payable until the end of the Season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between 12 and the age when it is established that the player actually completed his training”.

(3) Article 2 of Annex 4 to the 2005 Transfer Regulations reads as follows:

“Training Compensation is due:

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

Training Compensation is not due:

- i) if the Former Club terminates the player’s contract without just cause (without prejudice to the rights of the previous clubs); or*
- ii) if the player is transferred to a Category 4 club; or*
- iii) if a Professional reacquires Amateur status on being transferred”.*

(4) Article 6 of Annex 4 to the 2005 Transfer Regulations reads as follows:

“1. For players moving from one Association to another inside the territory of the EU/EEA, the amount of Training Compensation payable shall be established based on the following:

- a) If the player moves from a lower to a higher category club, the calculation shall be based on the average of the training costs of the two clubs.*
- b) If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower category club.*

2. *Inside the territory of the EU/EEA, the final Season of training may occur before the Season in which the player had his 21st birthday if it is established that the player completed his training before that time.*

3. *If the Former Club does not offer the player a contract, no Training Compensation is payable unless the Former Club can justify that it is entitled to such compensation. The Former Club must offer the player a contract in writing via registered mail at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the rights to Training Compensation of the player's previous club(s)".*

c) The General Principle: Training Compensation is due when a player signs his first professional contract

12. It is undisputed that the Player was under a professional contract with the Appellant before joining the Respondent. His professional contract, which started in May 2002 ended on May 31, 2006 after it was extended by the Player and the Appellant for one additional football season.

13. As a general principle, training compensation must be paid to a player's training club(s) when a player signs his first professional contract and on each further transfer until the end of the football season of his 23rd birthday (Article 20 of the 2005 Transfer Regulations).

14. As already mentioned in CAS 2006/A/1152, the *rationale* of the above general principle is explained in the FIFA Principles for the amendment of the FIFA rules regarding international transfers, agreed in 2001 by FIFA, UEFA and the European Commission:

"In order to promote player talent and stimulate competition in football it is recognized that clubs should have the necessary financial and sportive incentives to invest in training and education of young players".

15. In CAS 2006/A/1152, the Player had played as an amateur with his training club for eight seasons. He then signed his first professional contract with the new club. In the present case, the Player was registered as a professional in 2004 with his training club and played for two seasons. At the moment of the transfer, he was under the age of 23. In principle, in accordance with Article 20 of the 2005 Transfer Regulations, the Appellant would be entitled to the payment of training compensation. However, the 2005 Transfer Regulations set out certain exceptions to such general principle.

d) The EU/EEA Exception to the General Principle

16. Article 6 para. 3 of Annex 4 to the 2005 Transfer Regulations – see above at para. 11(4) – sets out an exception which applies specifically to players moving from one football association to another inside the territory of the EU/EEA, which nowadays includes twenty-seven member States of the European Union plus three States pertaining to the European Economic Area. In other terms, for transfers occurring within the EU/EEA – such as that of a Player, moving from Austria to Italy – Article 6 para. 3 is *lex specialis*, to be read as qualifying any general

principle elsewhere in the regulations dealing with the obligation to pay training compensation (CAS 2006/A/1152).

- e) Application of Article 6 para. 3 of Annex 4 to the 2005 Transfer Regulations to Professional Players
17. It is undisputed that the Player was a professional when he left the Appellant and signed a contract with the Respondent. The Panel accepts that Article 6 para. 3 is clearly applicable and no further development is required in this respect, which is undisputed by the Parties.
18. The second and third sentences of Article 6 para. 3 of Annex 4 to the 2005 Transfer Regulations apply to situations where a professional contract is already in existence, setting out certain requirements which the training club must meet in order to retain a right to compensation if a player moves to another club: (i) an offer in writing for a new contract 60 days before the expiry of the current contract; (ii) a notice of the offer sent by registered mail; (iii) financial terms of the offer at least as favourable as those in the current contract. In this respect, the Panel notes that the language itself of Article 6 para. 3 makes clear that the first sentence covers both players with and players without a contract (i.e. both professionals and amateurs), whereas the second and third sentences cover only players who are already under contract, i.e. only professionals (see CAS 2006/A/1152 nr. 8.9). The standards in terms of formal requirements are thus higher for professional players than for amateurs. This appears legitimate to the Panel as, by becoming professionals in their training clubs, players join a limited circle of players to whom the training club must pay particular attention. As correctly mentioned in CAS 2006/A/1152 one cannot expect a club, notably an amateur club, to focus on all its amateur players for whom training compensation might be paid by a third football club and consequently to make formal offers to all those players. On the contrary, there is no reason why a club which hires professionals, among them professionals which were trained by this club, should not follow the formal requirements set by FIFA. Accordingly, if the training club does not offer a new professional contract in writing to one of its professional players whose contract is expiring, and such player signs a new professional contract with another club, the training club should not be entitled to training compensation.
19. Article 6 para. 3 of Annex 4 of the 2005 Transfer Regulations requires that the contract or the offer to be made “in writing” by the training club to the player. There is no definition in the FIFA regulations of the meaning of “in writing”. As mentioned above, Swiss law applies complementarily to the FIFA Regulations. The Panel is therefore entitled to look at the meaning of “in writing” under Swiss law. The Panel notes that according to Articles 13, 14 and 16 of the Swiss Code of Obligations (SCO), which apply not only to contracts but as well to offers (ATF 1001 III 65), a contract – or an offer – is deemed to be made “in writing”, when it is signed with the original signature of the party or the parties that are contractually bound by the document.
20. In the instant case, the Player declared at the hearing that an offer had never been submitted to him. According to the Player, the Appellant, acting through its trainers only mentioned to

him the possibility to sign a new contract, without going into many details. The Player claims that this informal meeting took place in May 2006. On the other side, the Appellant produced as evidence a draft contract and claims that this draft was made in March 2006 and submitted to the Player by its administrative manager F. on March 12, 2006. This draft contract, which is not signed by any of the Appellant's representatives, contains comments made by F. and apparently reflects the result of a meeting held between F. and the Player. The comments were made for the attention of B. who was requested to discuss the contract further with the Player and eventually amend the contract. According to the Appellant, a second contract was issued but could not be filed before CAS.

21. The Panel is thus faced with two conflicting statements, one from the Player and one from the Appellant's manager, which are completely contradictory. The Panel will revert later in this award to the consequences to be drawn from this situation. At this stage, the Panel notes, however, that no offer in writing was made by the Appellant, as there is no document in the file which the Appellant signed with contractually binding effect. The first of the cumulative conditions of Article 6 para. 3 of Annex 4 of the 2005 Transfer Regulations is therefore clearly not met.
22. In reference to CAS 2006/A/1152, the Panel notes, however, that the last part of the first sentence of Article 6 para. 3 of Annex 4 of the 2005 Transfer Regulations provides an "exception to the exception" when it states that the training club is not entitled to training compensation, if it does not offer the Player a contract "(...) *unless the Former Club can justify that it is entitled to such compensation*". Therefore, if the training club can justify that it is entitled to training compensation – and the burden of proof lies with the training club – the exception to the exception is triggered and the new club which hired the trained player would be obliged to pay the training compensation to the former club.
 - f) The Justification for the Entitlement to Training Compensation
23. The Panel must now determine what – short of offering a professional contract – can be considered as a justification for the entitlement to receive payment of training compensation, under the last part of the first sentence of Article 6 para. 3. In order to determine it, it is necessary to interpret the meaning of the term "*justify*" in light of the purpose of Article 6 para. 3 itself as well as of the whole set of FIFA rules on transfers.
24. In this respect, the Panel notes that in CAS 2006/A/1152, the CAS panel distanced itself from strict adherence to the formal requirement of a written offer for the reasons (1) that the player was an amateur player and not a professional, (2) that the training club had sent a letter to the player where it expressed its interest in signing a professional contract with him, and (3) that the training club had sent to the Dutch Football Association a copy of the letter sent to the player and the Dutch Football Association had confirmed receipt of such letter.
25. Based on the foregoing, CAS declared that, "*if a club wants to retain the right to training compensation in respect of one of its amateur (red.) players, it must "justify" it under Article 6 para. 3 by taking a proactive*

attitude vis-à-vis that individual player so as to clearly show that the club still counts on him for the future season(s). Accordingly, the training club must either offer the concerned player a professional contract or, short of that, it must show a bona fide and genuine interest in retaining him for the future. In other words, a training club not immediately offering a professional contract to one of its trainees can still justify its entitlement to training compensation if it proves that it desires to keep the player on the club's roster or in its youth academy, with a view to keeping alive the option of granting him a professional contract at a later stage".

26. In the present case, the Player was not an amateur, but a professional since June 2004 and, in any event, the Appellant did not produce any letter or similar written document – within the meaning of Swiss law – showing that it had expressed its interest in keeping the Player in its team.
27. The Panel considers, therefore, that the Appellant cannot assert any right to training compensation on the CAS jurisprudence expressed in CAS 2006/A/1152. Moreover, the Panel emphasises that the Player and the Appellant's staff, namely its manager and trainers, gave conflicting evidence. Based on the foregoing, the Panel would require unambiguous and formal evidence in order to ground its decision. In this respect, the Appellant could only bring an unsigned commented draft contract. In the Panel's opinion, the DRC was right to find this evidence unpersuasive for the reason that *"the aforementioned document as such, apparently containing certain remarks made by one of the Claimant's staff members at that time, does not sufficiently provide proof that the Claimant in actual fact offered the player a contract in due time and for an adequate value. In particular, the Chamber added that the said document does nowhere contain the signature or remarks of the player himself"*.
28. The Panel also notes that the Appellant could not show the "final" offer that it claims to have submitted to the Player. Further, the Appellant did not adduce testimony of totally independent third parties. The players who, according to the Appellant, were present when the Player was given the Appellant's "final" offer could have made reliable witnesses but the Appellant apparently did not consider their testimony as worthy.
29. In other words, the Panel considers that it needed much stronger evidence in order to consider granting to the Appellant the right to a training compensation on the basis of the "exception to the exception" provided by the last part of the first sentence of Article 6 para. 3 of Annex 4 of the 2005 Transfer Regulations (*"(...) unless the Former Club can justify that it is entitled to such compensation"*).
30. The Panel also considered that the liability to pay training compensation rests not with the Player but the Respondent. When considering granting a right to the training compensation on the basis of the "exception to the exception", the Panel should thus also take into consideration the difficult position of the new clubs, which are not party to the negotiations between training clubs and players. Yet, those new clubs need to know with some degree of certainty whether training compensation is due or not, when they sign a contract with an available player or, in other words, whether a player carries an additional "price tag". The formal requirements of Article 6 para. 3 of Annex 4 of the 2005 Transfer Regulations provide such certainty and, in this particular respect, the "exception to the exception" must thus be

used only with circumspection. In the present case, there is no doubt that the Respondent was not at all aware of any negotiations conducted between the Appellant and the Player. The Respondent had therefore no reason to consider that it might be liable to pay the Appellant training compensation after the transfer of the Player.

31. The Panel thus notes that its statements are in line with the convincing explanations of the DRC in relation with the reasons for the formal requirements of Article 6 para. 3 of Annex 4 of the 2005 Transfer Regulations, namely when under points 10 and 11 of its Decision the DRC emphasizes that *“due to the often experienced difficulties by the relevant clubs concerned to demonstrate that they indeed had proceeded to offer a player a new contract under the previous edition 2001 of the Regulations, when revising the Regulations it was decided to integrate in the 2005 edition of the Regulations some formal preconditions in order to facilitate the evidence that a contract offer was effectively made”*. The DRC added that *“the implemented new preconditions are not formal requirements stricto sensu but a requirement to evidence the fact of having made such an offer to a particular player. This should, therefore, ease the burden of proof laying on training clubs. This is the actual aim of the relevant formalities”*.
32. Based on the foregoing, the Panel decides that in the present case the principle of *“bona fides and genuine interest”* developed in CAS 2006/A/1152 does not apply because the Player was already a professional at the moment of the transfer. The Panel further considers that *“the exception to the exception”* does not apply in the present case as the Panel lacked unambiguous evidence and was actually served with clearly conflicting evidence. To the Panel, this situation is a clear example of the need to adhere to the formal requirements of Article 6 para. 3 of Annex 4 of the 2005 Transfer Regulations. The Appellant had thus to send to the Player a formal written contractual offer, which it did not do.

D. Conclusion

33. The Panel concludes that the Appellant did not meet the formal requirements of Article 6 para. 3 of Annex 4 of the 2005 Transfer Regulations and that it therefore cannot claim any right against the Respondent for training compensation in relation with the transfer of the Player. As no training compensation is due, the Panel does not need to review the arguments of the Parties on the calculation of the training compensation.
34. Based on all the above, the appeal must be dismissed and the Decision confirmed.

The Court of Arbitration for Sport rules:

1. VfB Admira Wacker Modling’s appeal against the decision dated 30 November 2007 of the FIFA Dispute Resolution Chamber is dismissed.
(...)
4. All other motions or requests for relief are dismissed.