

CAS 2017/A/5090 Olympique des Alpes v. Genoa CFC

Lombardi Associates represented Italian club Genoa CFC in an appeal before the Court of Arbitration for Sport. The appeal was filed by Olympique des Alpes (“Sion”) against a decision of the Dispute Resolution Chamber concerning training compensation in relation to the player Moussa Konate (“the Player”).

The Player had been on loan with the Italian club from the Russian club FC Krasnodar during the season of his 21st birthday, and was subsequently transferred on a permanent basis from FC Krasnodar to Sion the following season.

In light of the above, Genoa uploaded to the FIFA TMS a claim against Sion for training compensation relating to the period of time in which the Player was on loan with the club.

Sion never took part in the FIFA proceedings.

In his decision, the Single Judge of the sub-committee of the Dispute Resolution Chamber (“DRC”) referred to Art. 10 par. 1 of the FIFA RSTP, which reads: *“Any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation...”*

As a result, *“the Single Judge emphasised that the nature of the player’s registration with a club claiming training compensation, i.e. on a definitive or on a temporary basis, is in fact irrelevant with respect to the question as to whether such club would be entitled to receiving training compensation for the period of time that the player was effectively trained by that club.”*

However, it confirmed that *“the transfer of a player from the club of origin to the club that accepts the player on loan as well as the return of the player from the club that accepted him on loan to the club of origin do not constitute a subsequent transfer in the sense of art. 3. par. 1 sent. 3 of Annexe 4 of the Regulations”*.

Therefore, on one hand the Single Judge applied art. 10 par. 1 of the FIFA RSTP in order to equate permanent and temporary transfers for the purpose of triggering the right to claim training compensation.

However, on the other hand the deciding body did not regard the temporary transfer to Genoa as being able to “interrupt the chain” of the training period for the purpose of calculating training compensation, as a permanent transfer would do.

To this end, the Single Judge confirmed FIFA’s approach to loans in relation to training compensation: *“...within the framework of loans and for the purposes of the rules governing training compensation, the period of time that the player was registered with [Genoa] on loan and the period of time that the player was registered with FC Krasnodar, should be considered as one entire timeframe.*

As a result, the Single Judge decided that the Italian club was entitled to training compensation for the period of time that the player was on loan with the club.

Sion lodged an appeal with CAS against the decision issued by FIFA, sustaining that Genoa was not entitled to receive training compensation considering that art. 3, par. 1 of Annexe 4 of the FIFA RSTP provides that in the case of subsequent transfers, training compensation is only owed to the player's "former club".

In any case, according to Sion the Player had already terminated his training prior to joining Genoa.

In its submissions Genoa first and foremost argued that Sion presented new arguments, "*including the unexpected argument of the early end of the training period*" and new evidence, which was possibly "*submitted against the principle of good faith*", considering that Sion failed to take part in the FIFA proceedings that resulted in the decision appealed against.

In this respect, the Panel wished to issue a preliminary decision in relation to Genoa's request that Sion's new arguments and new evidence not be admitted.

In doing so, the Panel referred to art. R57(3) of the CAS Code of Sports-related Arbitration ("CAS Code"), whereby the panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered.

A distinction was therefore made by the Panel between "new arguments" and "new evidence".

In this sense, the Panel observed that pursuant to art. R57 of the CAS Code there is no limitation to the scope of a CAS panel's review with respect to legal arguments and submissions. As such, the Panel admitted Sion's (new) arguments and submissions, adding that "*Sion's argument that the Player had already ended his training period is not to be qualified as an unexpected argument in matters involving a claim for training compensation and itself falls within the boundaries of the requests for relief of the dispute before the FIFA DRC Single Judge*".

As to the new evidence, the Panel stated that the discretion to exclude evidence should be exercised only in situations where a party acted in bad faith or may have engaged in abusive procedural behaviour. In the case at stake, according to the Panel, Sion had simply renounced its right to defence and no evidence was provided by Genoa that Sion acted in bad faith or engaged in any abusive procedural behaviour before FIFA.

The Panel concluded this analysis by stating that the *de novo* review is still, in essence, the foundation of the CAS appeals system and the standard of review should not be undermined by an overly restrictive interpretation of art. R57(3) of the CAS Code. This had also been the view in CAS 2014/A/3486, as mentioned in CAS Bulletin 2015/1, p. 67.

As a result, the Panel admitted Sion's legal arguments and newly submitted evidence.

Moving on to the merits, the Panel addressed Genoa's possible entitlement to training compensation.

The Panel referred to the jurisprudence of CAS and, in particular, to *CAS 2014/A/3710* and *CAS 2013/A/3119*, which confirmed that *“the club which transferred the player on a loan basis to another club is entitled to training compensation for the entire period of time during which it effectively trained the player, however, excluding the period of time of the loan”*, and that *“[the loan] does not disconnect the chain of the training period for the purpose of the calculation of training compensation”*.

In light of the above, the Panel confirmed that Genoa was - in principle - entitled to receive training compensation from Sion in respect of the Player.

As to the second argument raised by Sion, the Panel emphasised that the burden of proof to demonstrate that the training of the Player actually ended before the Player's 21st birthday lied with Sion.

Moreover, the Panel referred to the FIFA circular letter no. 801 and to the decisions issued in the cases *2006/A/1029* and *CAS 2014/A/3486* in order to identify the relevant criteria to be considered to determine what triggers the end of a player's training and/or education.

As a result, the Panel considered both sports performances and financial criteria in order to decide whether or not the Player had already terminated his training prior to joining Genoa.

The Panel also considered the difference between the "training" of a player in the sense of the FIFA RSTP and the "development" of a player in the sense that a football player does not stop learning and may still improve as a footballer after the end of his training period, as discussed in the decisions issued in the cases *CAS 2006/A/1029* and *CAS 2011/A/2682*.

In light of all the above, and considering the evidence presented by Sion, the Panel concluded that Sion failed to successfully demonstrate that the Player had completed his training period prior to or during the 2013/2014 season while registered with Genoa.

In light of all of the above, the Panel decided that the Player had not completed his training period while playing for Genoa on loan or prior to such time, and confirmed that Genoa was entitled to receive training compensation from Sion in respect of the period in which the Player was on loan with Genoa.

If you have any questions in relation to this article please contact info@lombardi-football.com