Training compensation and the importance of a valid waiver

Introduction

In the daily practice of international football, professional football clubs still face difficulties with regards to the system of training compensation. As result of insufficient expertise regarding the applicable rules and jurisprudence of FIFA in that respect, sometimes clubs rely too easily on statements of agents, players or clubs that a training compensation will not be due. This article focusses on this issue, more specifically on how a club can be sure that a former club validly waived its right for training compensation. In this article, the most important cases before the DRC will be discussed. At the end, clubs will be provided with a legally correct provision as result of which the new club can be ascertained that no training compensation is due.

DRC cases

In a decision of the DRC of 9 November 2004 (no. no. 114461), the DRC decided that despite the existence of a document in which parties agree that no transfer fee would be due in the case of a future acquisition of the player’s federative rights after 30 June 2002 and in which no reference is made to the right of the former club to claim the relevant training compensation, the former club is still entitled to receive training compensation. The player was born in 1982 and registered for a club during three sporting seasons, from the 1999/2000 season until the 2001/02 season, between the age of 17 and 20. On 13 August 2002, he signed a non-amateur contract with another club. His former club then claimed training compensation from his new club. The latter was of the opinion that it did not have to pay training compensation for the player concerned to the former club as the latter signed confirmation on 21 June 2002 to the attention of the representative of the player with the following wording: "We hereby confirm that the contract of ... (the player) expires on 30 June 2002 and that no more transfer fees exist."

The former club was of the opinion that because of this confirmation, it did not waive its right for training compensation for the player concerned in accordance to the FIFA regulations, but that it only confirmed that no transfer sum had to be paid in respect to the expiry of the employment contract. The DRC committee finally concluded that that such document only mentioned that no transfer fee would be due in the case of a future acquisition of the player’s federative rights and therefore underlined that no reference was made to the right of the former club to claim training compensation.
As said, parties are entitled to exclude their entitlement for training compensation by stipulating this in an agreement. In the following decision of the DRC of 4 February 2005 (no. 25528a), the DRC had to decide with regards to this issue. The player concerned was born on 22 September 1984 and was registered as an amateur player with a German club from 19 July 2000 until 29 June 2003. The German club claimed payment of an amount of money relating to training compensation. The new Turkish club was of the opinion that it only had to pay training compensation to the relevant clubs and submitted a document signed by the German club on 3 January 2004. The DRC concluded that although it was undisputed that the player had been trained and educated at the German club, the document dated 3 January 2004 that had been presented by the Turkish club in its defence, had to be seen as a waiver. By having signed such document, which refers to the player in question and states, inter alia, that the German club will have no claims against the Turkish club, the German club had waived its right to claim from the new club payment of an amount of money relating to training compensation. However, it must be noted that in this decision, FIFA invited the German club to give its opinion on the relevant document, but the club did not present any comments on the before-mentioned documents.

In a decision of the DRC of 2 November 2005 (no. 115377), the Chamber concluded that only the club which is officially entitled to receive training compensation can waive its right to training compensation. This cannot be excluded by an agreement between the player and the new club. The player, who was born on 12 May 1985, was registered with a club as non-amateur for the 2003/04 season between the ages of 18 and 19. In August 2004, the player was registered with another club. His former club now claimed training compensation, but the new club informed FIFA that the player and his agent had given notice to the former club, following which the two parties, the player and the new club had agreed that the player would give up his financial demands against the former club and in return the latter would not ask for any transfer or training compensation. In this respect, the new club provided a player’s statement dated 1 February 2005, according to which he affirmed that he had given notice to the former club that he would give up his financial demands and in return the former club would neither ask for any transfer or training compensation nor raise financial demands against him. As a consequence, the new club was of the opinion that it did not owe any training compensation to the former club. The DRC concluded that the argumentation of the new club could not be upheld since any possible financial settlement concluded between the former club and the player cannot in any sense abolish the former club’s entitlement to receive training compensation. Therefore, the DRC concluded that the former club was still entitled to receive training compensation for the training and education of the player concerned.
In a decision of the DRC of 18 August 2006 (no. 86130B), the Chamber concluded that an agreement between the new club and the player does not have legal effect with respect to the entitlement of the former club(s) to claim training compensation. The player concerned was born on 14 January 1983 and was registered for his club from 22 October 1999 until 16 August 2001, the seasons of his 17th to his 18th birthday. In July/August 2005 the player signed his first professional contract with a club from another country, for which he was registered on 30 August 2005. The player also concluded a covenant with his new club by which he completely accepted responsibility for possible claims related to transfer payments or training compensation. The covenant concerned contained a clause which stipulated that neither the player nor the training clubs were entitled to demand payment from the new club. Furthermore, it was agreed by the two parties concerned that no legal action would be taken against the new club. However, on 5 December 2005 his former club lodged a claim with FIFA requesting the payment of training compensation. During this procedure, the new club stated that it was not responsible for paying the requested training compensation on the basis of the before-mentioned covenant. The DRC unanimously concluded that the argumentation of the new club could not be supported since the covenant had been concluded between the new club and the player concerned and thus, according to the DRC, it could not in any sense deprive the former club of its entitlement to receive training compensation.
In a decision of the DRC of 26 October 2006 (no. 106574), the DRC had to decide whether the term “financial compensation” contained in the waiver of the club X also referred to its possible right to receive training compensation. The DRC stressed that the notion “financial compensation” was a general and unspecific term which, in principle, could not be understood to only include transfer compensation. The DRC considered that the term rather encompassed any kind of monetary compensation which, the club X could have possibly requested from the club Y in connection with the player, thus also training compensation.

The DRC had to examine a written confirmation, dated 30 January 2004 and signed by the president of the former club at that time, according to which this club waived its right to receive any "financial compensation" from the new club for the player concerned. The DRC took note of the statement of the former club, according to which the waiver only referred to its alleged right to receive transfer compensation for the player in question, whereas the new club was of the opinion that the former club had also renounced any right to receive training compensation. The DRC proceeded to deliberate whether the term financial compensation contained in the waiver of the former club also referred to its possible right to receive training compensation. The Chamber stressed that the notion financial compensation was a general and unspecific term which, in principle, could not be understood to only include transfer compensation. Therefore, the DRC committee considered amongst others that the term rather encompassed any kind of monetary compensation which, in the specific case at hand, the former club might have requested from the new club in connection with the player, including training compensation. The DRC finally had to assume that the former club’s waiver dated 30 January 2004 also referred to its possible right to receive training compensation.
In a case before of 8 June 2007 (no. 67516), the DRC once again confirmed that an agreement between two clubs can have legal effect with respect to the entitlement of one of that clubs to claim training compensation. In this case the Chamber acknowledged that, without prejudice to the rights of any other club that contributed to the player's training in the event of the registration of the player as a professional for the first time, two clubs could indeed agree upon not to apply the provisions governing training compensation in a specific case. However, training compensation being a right stipulated in the regulations, the members of the DRC were of the unanimous opinion that the existence of a waiver of this right could only be assumed in case it was unmistakable that the renouncing club had indeed intended to waive its right to training compensation under the applicable regulations. In the matter at hand, the DRC deemed that it had no alternative but to doubt that this club had in fact intended to renounce its right to payment of training compensation from the other club. In this respect, the panel emphasized that the document did not constitute an agreement between the two clubs. Further, the DRC deemed that the document's paragraph 8 a) concerning the compensation for the player was drafted in very general terms. In this document no mention was being made with regards to the FIFA regulations regarding training compensation. Therefore, according to the DRC, it could not be understood as a waiver.

In a decision of the DRC of 13 June 2008 (no. 68836a), two clubs argued with regards to the entitlement of training compensation. In this case a player had been registered with the club T as professional during the 2003-2005 seasons, the club N as an amateur as of 9 August and the club B as an amateur as from 7 June 2006 until 1 February 2007. The Turkish Football Federation had confirmed that the player was registered with the club M on 1 February 2007. On 14 December 2007 the club N lodged a claim for training compensation against the club M maintaining that the player signed his first professional contract with the club M and that it therefore was entitled to receive training compensation. The club M pointed out that the player had declared to the club that no training compensation would be payable. The DRC decided that any declaration made by the player in cannot and does not affect any entitlement of the club N to training compensation.
In a decision of 21 May 2010 (no. 510425), the DRC confirmed in line with its earlier jurisprudence that it is only the former club that can waive its rights to training compensation under the applicable regulations. The DRC explicitly underlined that the document, according to which the agent was responsible to pay the training compensation to any third clubs, does not have any legal effect and does not discharge the new club to pay the training compensation to the former club. In line with earlier jurisprudence, the DRC decided that the entitlement for training compensation cannot be excluded by an agreement between the new club and an agent. It is only the former club, and thus not an agent, that is officially entitled to receive training compensation can waive its right to training compensation.

Conclusion

Following the above decisions of the DRC, we can conclude that parties are entitled to exclude their entitlement for training compensation by stipulating this in an agreement. However, for the new club it is of the utmost importance that provisions in that respect are drafted in a legally correct manner and in accordance with the basic principles of the well-established jurisprudence of the DRC. For example, the decisions of the DRC show us that the entitlement for training compensation cannot be excluded by an agreement between the new club and a player, an agent or any other third party, not being the club that is entitled to receive training compensation. This is constant jurisprudence. It is only the former club that is entitled to receive training compensation, that can validly waive its right for training compensation. Any possible financial settlements concluded with any other parties cannot in any sense abolish the former club’s entitlement to receive training compensation. However, as said in the introduction, it is of the utmost importance to draft a waiver very precisely. Before the new club concludes a player’s contract with a player, the former club of that player must explicitly waive its right for training compensation. The following provision will suffice and is “DRC-proof”: “<The former club> herewith explicitly confirms that it renounces and waives any possible right to training compensation as mentioned in Article 20 and Annex 4 of the FIFA Regulations on the Status and Transfer of Player. Therefore, <the former club> will not, neither now nor in the future, claim any amount of training compensation from <the new club> for the player concerned in case the player signs a professional contract with <the new club>.”