



Case number: 49444

Date: 16-04-2009

Headwords:

Training compensation. Offer of contract applicable to amateurs and professionals. Prescription. Commentary on the FIFA Regulations. Burden of proof.

Relevant RSTP article: 6 par. 3 and 3 par. 1 Annex 4 (edition 2005)

Summary:

Facts

A player, born on 22 June 1989, was registered for a club F, as from 9 April 2003 until 25 August 2005 as an amateur. On 18 August 2005 the player and the club C concluded a so called "scholarship agreement", for a duration as from 18 August 2005 until 30 June 2007. The player was registered for the club C on 25 August 2005. On 13 September 2007, the club F lodged a claim in front of FIFA and claimed from the club C its proportion of the training compensation in connection with the player concerned. The club C was of the opinion the club F was not entitled to training compensation among other because the club F never offered the player a contract, as provided for in art. 6 par. 3 of Annex 4 of the Regulations. The club C in that respect stated that by referring to the jurisprudence of the DRC and the CAS as well as to the ration leges of the Regulations and to the Commentary on the Regulations, that a professional contract had only to be offered to the player if he already had concluded a professional contract with the former club.

Considerations

The DRC had to decide whether the club F had complied with the prerequisites of art. 6 par. 3 of annex 4 of the Regulations in order to be entitled to training compensation. The DRC first of all recalled that in accordance with its well-established jurisprudence, which was confirmed by the CAS, art. 6 par. 3 sent. 1 of Annex 4 of the Regulations is applicable to both amateur and professional players. In fact, according to the Chamber's jurisprudence and as confirmed by the CAS, the second and third sentence of the provision in question, however, do only apply to situations when 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. The DRC concluded that by failing to produce evidence of having met the requirements in accordance with art. 6 par. 3 sent. 1 in fine of Annex 4 of the Regulations, the club F is not entitled to receive training compensation.

Decision

The claim of the club F is rejected.



Commentary:

The DRC had to decide with respect to the question whether or not art. 6 par. 3 sent. 1 of Annex 4 of the Regulations is applicable to both amateur and professional players. In this decision the DRC confirms that in accordance with its well-established jurisprudence, which was confirmed by the CAS, art. 6 par. 3 sent. 1 of Annex 4 of the Regulations is applicable to both amateur and professional players. The DRC in this case also refers (for the first in a concrete way by making reference to the number of the case) to its decision of the DRC of 27 April 2006, no. 461185, consideration no. II./10 et sq. and CAS 2006/A/1152 Av/N FC, considerations no. 8.6, 8.8 and 8.9 et sqq.). It is important to be aware that a training club has to offer a contract to the relevant player in order to have its right for training compensation preserved, notwithstanding the fact whether or not the player is registered as an amateur or a professional for the respective club. Furthermore it is interesting that the DRC gives its opinion with respect to the Commentary of the Regulations. The DRC is of the opinion that commentaries on regulations or other legislation are utilities to facilitate the interpretation of the relevant provision but do not constitute a source of (regulatory) law and can, consequently, not be concurrent to provisions contained in regulations or the legislation.

Relevance: * * * * *

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