Arbitration CAS 2006/A/1181 FC Metz v. FC Ferencvarosi, award of 14 May 2007

Panel: Prof. Ulrich Haas (Germany); President; Mr Jean-Philippe Rochat (Switzerland); Mr Gyula Dávid (Hungary)

Football
Transfer
Applicable law
Prohibition of rules having a retrospective effect
Reduction of the training compensation due to the failure to prove the existence of an offer to the player

1. **The prohibition of issuing rules having retrospective effect, which were developed first and foremost for the state legislator, are applicable *mutatis mutandis* to a sports federation such as FIFA, because, firstly, this prohibition is an expression of a general legal principle which is not limited to the state legislator. Secondly, insofar as FIFA, as a monopoly federation, is exercising autonomy in issuing regulations and is shaping the world of football, FIFA is acting in a manner that is comparable to a state legislator.**

2. **The applicable regulations have to be determined by an analogous application of R58 of the Code. These are the regulations, with which the facts of a case have the closest connection.**

3. **The failure to offer a contract is only a factor to be taken into account when calculating the compensation payable for training and education. Art. 5(5) RSTP 2001 does not explain how that factor is to be taken into account, or what weight it should be given. The Regulations appear to have taken the view that this question should be left to the discussion of the DRC or the CAS, as the case may be. The burden of proof of the existence of an offer is on the club claiming for training compensation.**

4. **An element justifying the reduction of the training compensation is the failure to evidence that a firm and binding offer has been made to the Player. This consideration might be counterbalanced by other elements speaking for the allocation of the training compensation: the undisputed successful training of the Player during several years and the existence of negotiations between the Player and a Club.**

The Appellant, FC Metz ("the Appellant"), is a football club in the city of Metz in France and a member of the French Football Federation which in turn is a member of the Fédération

Internationale de Football Association (FIFA). The latter is an association established in accordance with Art. 60 of the Swiss Civil Code and has its seat in Zurich (Switzerland).

FC Ferencvarosi ("the Respondent") is a football club in the city of Budapest. The Respondent is a member of the Hungarian Football Federation which in turn is also a member of FIFA.

The player H. ("the Player") was born on 18 April 1983. He has been trained and educated by the Respondent from June 1997 until 30 June 2005 (except for the period from 17 February to 20 July 2004).

On 27 August 2004 the Player wrote to the Respondent a letter that reads as follows:

> *"I wish to express my appreciation to Mr. Furulyás and Mr Tepszics for offering me the extension of our contract two times. In the interest of my development, however, I have decided to accept the offer of a team of the English Premier League, thus I cannot accept the extension of the contract offered by FTC Football Plc. I believe that with this act, i.e. to transfer to a foreign club before the expiration of my contract, I am able to help FTC Plc. I thank you for the unbroken confidence that you have shown me and I hope that you will consent to my leaving the club. In the future I will do my best to spread and strengthen the fame of FTC".*

In December 2004 the FIFA Congress decided to amend the Regulations for the Status and Transfer of Players 2001 (the "RSTP 2001") and to replace them with the FIFA Regulations for the Status and Transfer of Players 2005 (the "RSTP 2005"). The latter came into force on 1 July 2005 (see Art. 29(2) of the RSTP 2005).

The RSTP 2001 read *inter alia*:

> Art. 13: *"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. …".*
>
> Art. 16: *"The amount of compensation to be paid for training and education shall be calculated in accordance with parameters set out in the Application Regulations, which shall also set out how the compensation amount shall be allocated between the clubs involved in the training and education of the player".*
>
> Art. 5 (5) of the Regulations governing the Application of the RSTP 2001: *"In the EU (EEA), if the training club does not offer the player a contract, this shall be taken into account in determining the training compensation payable by the new club, without prejudice to the rights to compensation of the previous training club".*

The RSTP 2005 read *inter alia*:

> Art. 20: *"Training compensation shall be paid to a player's training club(s): … 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".*
>
> Annex 4 Art. 6 (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 the 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 clubs".

On 22 July 2005 the Player signed a contract with the Appellant and was registered with the French Football Federation on 29 July 2005.

On 12 October 2005 the Respondent lodged a claim with FIFA against the Appellant for training compensation in the amount of EUR 505,000.

On 25 August 2006, the Dispute Resolution Chamber of FIFA (hereinafter referred to as "the DRC") issued a decision in English on the claim presented by the Respondent (hereinafter referred to as "the Decision"), stating as follows in relevant parts:

" (…)

4. (…) 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 art. 26 par. 1 and 2 of the Regulations 2005 in the modified version in accordance with the FIFA circular no. 995 dated 23 September, 2005. Furthermore, it acknowledged that the professional had been registered for his new club on 29 July, 2005. Equally the Chamber took note that the claim was lodged at FIFA on 12 October, 2005. In view of the aforementioned, the Chamber concluded that the Regulations 2005 are applicable to the case at hand as to the substance.

(…)

13. (…), the Chamber stated that (…) the Regulations 2005 integrate some formal requirements regarding such contractual offer, which were not contained in the Regulations 2001 (offer must be made in writing via registered mail at least 60 days before the expiry of his current contract).

14. In this respect, the Chamber acknowledged that, apparently, Ferencvarosi had not respected these formal requirements.

15. In view of this, the Chamber emphasised, however, that at the time Ferencvarosi should have made the contractual offer to the player in question, the formal requirements provided by the Regulations 2005 were not yet in force. Therefore, the possible non-fulfilment of such formal requirements cannot be reproached to Ferencvarosi. In other words, Ferencvarosi could not have complied with the formal requirements foreseen in the Regulations 2005 before they even came into force. To claim that Ferencvarosi would have to comply with the formal requirements will constitute a retroactive application of the said formal requirements (…).

16. (…) the Chamber concluded (…) that the offer which Ferencvarosi had to make in the present case in order that training compensation becomes payable was not subject to any formal requirement. (…).

(…)

19. (…) the Chamber concluded that it is to be presumed that the player indeed had received an offer from Ferencvarosi of at least an equivalent value as his former contract. This seems to be confirmed by the abovementioned letter issued by the player. As the player mentioned in the said letter that he «appreciated the contractual offer he received from Ferencvarosi», it is to be understood that the offer was at least an equivalent value as his former contract".

Based on the abovementioned reasons, the DRC calculated the relevant amount to be paid by the Appellant to the Respondent, paying the relevant provisions of Annex 4 of the Regulations 2005. The DRC concluded that the Respondent should be paid an amount of EUR 10,000 for the season 1997/98 and EUR 425,000 for the other 5 and 2/3 seasons spent with the Respondent. On these grounds, the DRC decided the following:

> *"1. The claim of the Hungarian club Ferencvarosi FC is partially accepted.*
>
> *2. The French club Metz FC has to pay the amount of EUR 435.000,- to the club Ferencvarosi FC.*
>
> *3. The amount due to the club Ferencvarosi has to be paid by the club Metz FC* ***within the next 30 days*** *as from the date of notification of this decision.*
>
> *4. If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
>
> *5. If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5 % per year will apply as from the first day after the aforementioned deadline.*
>
> *6. The club Ferencvarosi FC is directed to inform the club Metz FC immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
>
> *7. Any further claim of Ferencvarosi FC is rejected.*
>
> *8. According to art. 61 par. 1 of the FIFA Statutes this decision may be appealed before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of received notification of this decision and has to contain all elements in accordance with point 2 of the directives issued by the CAS, copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for the filing of the statement of appeal, the appellant shall file with the CAS a brief stating the facts and legal arguments giving rise to the appeal (cf. point 4 of the directives)".*

By fax dated 22 November 2006, the DRC served the Decision on the parties.

By letter dated 5 December 2006 the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (CAS) against the decision rendered by the DRC. The appeal was filed in French and directed against FIFA and the Respondent.

In its letter dated 14 December 2006 the Appellant requests the CAS to quash the decision of the DRC dated 25 August 2006 and to declare that the Respondent is not entitled to any training compensation according to the applicable regulations.

In its Answer dated 8 January 2007 the Respondent requests CAS *"to approve the first instance decision"* dated 25 August 2006.

LAW

1. Art. R27 of the Code provides that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of a contract containing an arbitration clause, or be the subject of a later arbitration agreement. *In casu* the jurisdiction of CAS is based on Art. 60 *et seq.* of FIFA's Statutes and is confirmed by the signature of the order of procedure dated 15 February 2007 whereby the parties have expressly declared the CAS to be competent to resolve the dispute. Moreover, in their correspondence with the CAS, the parties have at no time challenged the CAS's general jurisdiction.

2. The mission of the Panel follows from Art. R57 of the Code, according to which the Panel has full power to review the facts and the law of the case. Furthermore, Art. R57 of the Code provides that the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

3. The statement of appeal filed by the Appellant was lodged within the deadline provided by Art. 60 of the FIFA Statutes, namely 21 days from notification of the decision. It further complies with the requirements of Art. R48 of the Code.

4. Art. 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. In the present case it is disputed between the parties which regulations are the "applicable regulations" for the purposes of Art. R58 of the Code, in particular whether the RSTP 2001 or the RSTP 2005 apply.

6. Art. 26 RSTP 2005 makes the question of whether the old or the new regulations apply dependent on when the case was "brought" before FIFA. If the case was brought before FIFA prior to the entry into force of the RSTP 2005 on 1 July 2005 then the previous regulations apply (Art 26(1) RSTP 2005). For all other cases Art. 26(2) RSTP 2005 provides that the new regulations prevail. If one were to apply Art. 26(2) RSTP to the present case, the "new" regulations, i.e. the RSTP 2005 would apply.

7. By circular letter no. 995 dated 23 September 2005, FIFA amended the transitional regulation in Art. 26 RSTP 2005. The modified wording of Art. 26(2) RSTP 2005 (hereinafter referred to as "the modified Art. 26 RSTP 2005") now reads:

   "As a general rule, all other cases shall be assessed according to these Regulations, with the exception of the following:

   a. Disputes regarding training compensation

   b. Disputes regarding the solidarity mechanism

   c. Labour disputes relating to contracts signed before 1 September 2001

Any cases not subject to this general rule shall be assessed according to the regulations that where in force when the contract at the centre of the dispute was signed, or when the disputed facts arose".

It is not very clear which regulations apply in the present case in the light of the modified Art. 26 RSTP 2005. The subject matter of the dispute at hand is the question whether or not the Appellant must pay training compensation to the Respondent. Elements for determining the training compensation are – inter alia – whether or not a player has been trained by his former club, whether there is an *"offer of a contract"* by said club and, finally, whether the player has moved to another club. The problem in the present case is, however, that the Player moved to the Appellant after the RSTP 2005 entered into force, but that the Respondent was trained and received the – alleged – offer at a time prior to the entry into force of the RSTP 2005.

8. In the Panel's opinion neither Art. 26(2) RSTP 2005 nor the modified Art. 26(2) RSTP 2005 apply in the present case, for the application of said provisions in the present case violates the so-called *"prohibition of issuing rules having retrospective effect"*. This is understood to be a prohibition – aimed first and foremost at the state legislator – of applying statutory amendments retrospectively to events completed in the past. Both parties expressly consented in the oral hearing that the question of whether and to what extent FIFA must comply with a prohibition of issuing rules having retrospective effect, must be measured against with Swiss law.

9. Under Swiss law the prohibition of issuing rules having retrospective effect covers the following: according to the case law of the Swiss Supreme Court, a rule of law can be given a retrospective effect if this retrospective effect is expressly mentioned in the statutes which contain the rule, if the retrospective effect is limited in terms of time, if it does not lead to serious unequality, it is justified by relevant grounds and if it does not infringe vested rights (see decision of the Swiss Supreme Court published in ATF 119 Ia p. 254, especially p. 258). The Panel notes that the transition system set by Art. 26(2) RSTP 2005 is generally applied to formal rules, for instance civil procedural rules. The Court usually applies to a litigation of the formal rules in force at the time the claim is introduced. As concerns the material rules, the situation is however different and the date of any judicial proceedings is not considered as relevant to the application of a new set of rules.

10. In the Panel's opinion these principles, which were developed first and foremost for the state legislator, are applicable *mutatis mutandis* to a sports federation such as FIFA, because, firstly, the prohibition of issuing rules having retrospective effect is an expression of a general legal principle which is not limited to the state legislator. Secondly, insofar as FIFA, as a monopoly federation, is exercising autonomy in issuing regulations and is shaping the world of football, FIFA is acting in a manner that is comparable to a state legislator. In any event, from the point of view of those who are subject to the regulations – whose protection is the very purpose of the prohibition of issuing rules having retrospective effect – it makes little difference whether a provision has been issued by a monopoly federation or by a state legislator. However, if the rules of a monopoly federation are measures having an equivalent effect, then there is no

reason not to apply the prohibition of issuing rules having retrospective effect developed for the state legislator to a sports federation such as FIFA.

11. In the present case, both Art. 26(2) RSTP 2005 and the modified Art. 26(2) RSTP violate the prohibition of issuing rules having retrospective effect because both provisions interfere with a closed set of facts. Although – as shown above – there are exceptions to the prohibition, no such exceptions apply in this case. Neither the transitional rule in Art. 26(2) RSTP 2005 or in the modified Art. 26(2) RSTP 2005 respectively is sufficiently certain, nor is the retrospective effect of the rules sufficiently limited in terms of time. Said transitional rules cannot therefore apply in the present case.

12. If neither Art. 26(2) RSTP 2005, nor the modified Art. 26(2) RSTP 2005, stand up to review in the light of the Swiss prohibition of issuing rules having retrospective effect, the Panel must determine the applicable regulations according to other principles. In so doing, it in principle assumes that either the new regulations (RSTP 2005) or the old regulations (RSTP 2001) apply to the present dispute as a whole, but not a combination of both sets of regulations. There can be no cherry-picking in this regard. Otherwise the Panel is of the opinion that the applicable regulations have to be determined by an analogous application of R58 of the Code. Therefore, the regulations, which the Panel deem to be most appropriate apply. These are the regulations, with which the facts in the present case have the closest connection. In the Panel's opinion these are the RSTP 2001. An argument in support of this is the fact that the Player received its training and education by the Respondent at the time when the RSTP 2001 were still in force. In addition, the Respondent made the alleged offer before the RSTP 2005 entered into force. Another argument in support is that the contact between the Appellant and the Player, which finally resulted in the conclusion of a contract, was made at a time when the RSTP 2001 still applied. On the other hand, the connections which the facts have to the RSTP 2005 are weaker. Therefore, the better reasons support applying the RSTP 2001 in the present case.

13. It is also questionable whether and which state law applies subsidiarily to the RSTP 2001 according to Art. R58 of the Code. The parties have not expressly chosen any specific rules of law to apply to the matter in dispute. They have only consented to the application of Swiss law as to the question whether or not a sports federation can issue regulations retrospectively. As the seat of the CAS is in Switzerland, this arbitration is subject to the rules of Swiss private international law (PIL). Article 187 para. 1 PIL provides that the arbitral tribunal decides in accordance with the law chosen by the parties or, in the absence of any such choice, in accordance with the rules, with which the case has the closest connection. Although the parties have not expressly chosen any specific law, there is, in cases of appeals against decisions issued by FIFA, a tacit and indirect choice of law, in accordance with Art. R58 of the Code and Art. 60 para. 2 of the FIFA Statutes. Such tacit and indirect choice of law is considered as valid under Swiss law and complies in particular with Art. 187 para. 2 PIL (see for instance KARRER P., *Basler Kommentar zum Internationalen und Privatrecht*, 1996, N. 92 & 96, ad Art. 187 LDIP; POUDRET/BESSON, *Droit comparé de l'arbitrage international*, 2002, N. 683, page 613; DUTOIT B., *Droit international privé suisse, Commentaire de la Loi fédérale du 18 décembre 1987*, Bâle, N. 4 ad Art. 187 LDIP, page 657; CAS 2004/A/574). Indeed, these rules provide for the application of the FIFA Regulations and, subsidiarily, Swiss law.

14. The main issues to be resolved by the Panel are:

    a) Is the existence of an offer for a new contract a condition to claim for compensation?

    b) Is the Respondent deemed to have offered the Player a new contract?

    c) If any, what is the amount to be paid to the Respondent as compensation for training the Player?

15. According to Art. 5(5) of the Regulations Governing the Application of the RSTP 2001, in the EU/EEA, if the training club does not offer the player a contract this should be taken into account (emphasis added) in determining the training compensation payable by the new club. On the face of it, this provision clearly does not set that the existence of an offer of a new contract is an absolute condition to claim for training compensation. The failure to offer a contract is only a factor to be taken into account when calculating the compensation payable for training and education (see also CAS 2006/A/1125; CAS 2006/A/1027). Art. 5(5) does not explain how that factor is to be taken into account, or what weight it should be given. The Regulations appear to have taken the view that this question should be left to the discussion of the DRC or the CAS, as the case may be.

16. This construction is in line with the FIFA Circular No. 769, dated 24 August, 2001, which was sent to all of FIFA's member associations ("the Circular"). The Circular was stated to summarize and explain the main points of the new Regulations, especially the Application Regulations. Paragraph 2a of the Circular is entitled *"When is training compensation due?"*. It contains the following passage:

    "Furthermore, within the EU/EEA, in case a player younger than 23 years does not receive a contract from the club where he has trained, and this player moves to another non-amateur club, this factor must be taken into account when deciding whether any training compensation should be due, and what the amount of this compensation should be. As a matter of principle, the player's training club will not be entitled to receive training compensation unless this training club can demonstrate to the Dispute Resolution Chamber that it is entitled to training compensation in derogation of this principle. This possibility to derogate is not applicable where national collective bargaining agreements do not envisage it.

    In case a player younger than 23 having come to the end of his contract does not receive a new contract from a non-amateur club which is equivalent in remuneration to his previous contract with the club, this club will be deemed not to have offered a contract to the player for purposes of calculating training compensation".

17. In calculating the amount of compensation payable to a club, the fact that that club has not offered a player a contract is an important factor to be taken into account. If an offer is made, the club will generally be entitled to full compensation, calculated in accordance with the parameters, for the education and training it has provided. In that respect, the Panel is of the opinion that the Circular No. 769 does not go further than Art. 5(5) of the Regulations governing the Application of the RSTP 2001. In particular, the Circular does not set the principle that the failure to offer a new contract would bar the training club from claiming any training compensation, under the regime of the RSTP 2001. Firstly, the wording of the Circular does not expressly link the claim for the training compensation to the existence of an

offer. Secondly, and according to the jurisprudence of the CAS in *CAS 2006/A/1125* and *CAS 2004/A/794*, the Circular No. 769 should be ignored insofar as it appears to go further than Art. 5(5) of the Regulations governing the Application of the RSTP 2001. The Circular is a purely administrative act of FIFA's executive, as considered by the CAS in *CAS 2003/O/506*, so that the Circular No. 769 has no other effect than explaining how the failure to the offer a contract should normally be *"taken into account"*.

18. Unlike what is provided by the RSTP 2005, especially in Annex 4 Art. 6(3), there is in Art. 5(5) of the Regulations governing the Application of the 2001 RSTP no indication that a written offer would be required. It is nevertheless obvious that the burden of proof of the existence of an offer is on the club claiming for training compensation. In order to ensure the validity of such a claim, it would be quite sensible to have made an offer in writing, to avoid any discussions as regards the evidence of the existence of such an offer. An offer in writing is also capable to cut any discussion about the content of this offer, which, according to the Circular, has to be equivalent in remuneration to the previous contract with the club.

19. The Respondent relies on a letter written by the Player, on 27 August, 2004, to establish that an offer has been made. In this letter, the Player expresses his intention to thank two persons of his Club *"for offering me the extension of our contract"*. According to the Respondent, this declaration from the Player should be taken as absolute evidence as regards the existence of an offer. The Panel does not share this opinion. At first, the Panel considers that the words used by the Player in his letter cannot be construed as binding. Even if the player uses the term of *"offering a contract"*, one cannot deduct from these words the existence of what could be legally construed as an offer. According to Swiss Law, which applies to the merits of the present case, an offer is a firm proposal to enter into a contract (ENGEL P., *Traité des obligations en droit suisse"*, 2nd edition, 1997, p. 194). Swiss Law distinguishes between a firm proposal, that is to say an offer, and declarations of intent expressed during negotiations. It is not to be confused between an offer and *"a declaration with which one party expresses to the other the fact that it is interested in the conclusion of a contract"* (TERCIER P., *Droit des obligations*, 3rd edition, Zurich 2004, p. 119 and 120). The letter written by the Player is clearly not able to evidence with the necessary level of certainty that the Respondent had gone a step further than expressing the intention to enter negotiations and that the Club had made a firm offer, in which every *essentiala negotii* had been defined.

20. On the top of that, the Respondent has failed to establish that any offer made to the Player would have been equivalent in remuneration to the previous contract with the club. There is absolutely nothing in the letter written by the Player as to the content of any proposal made by the club. Finally, the Respondent has provided no information as to the ability of Mr Furulya's or Mr Tepszics to make firm offers binding for the club.

21. The Panel is of the opinion that the Respondent cannot be deemed to have offered a contract to the player, as required by Art. 5(5) of the Regulations governing the Application of the RSTP 2001.

22. When the training club cannot evidence the fact that a contract has been offered, this should be taken into account in determining the training compensation payable by the new club. According to the Regulations, it appears that the DRC or the CAS have a great discretion to determine to which extent the absence of an offer should be taken into account (see also CAS 2006/A/1126). If an offer is made, the club will generally be entitled to full compensation, calculated in accordance with the parameters, for the education and training it has provided.

23. Neither the Appellant, nor the Respondent, challenged the decision of the DRC as regards the elements taken into account to calculate the full training compensation to be paid for the Player. The DRC considered that the Respondent was entitled to training compensation for six seasons and eight months of the seventh season. The DRC then applied Annex 4 of the Regulations 2005 and the FIFA Circular No. 959 to conclude that the Appellant had to pay the amount of EUR 435,000, as full training compensation. On every point considered by the DRC as to the calculation of the full amount of the training compensation, the RSTP 2005 are not different from the RSTP 2001 which, as explained before, should apply in the present case. The Panel will thus base the next considerations on the assumption that in case it would have been entitled to be fully compensated for the training of the Player, the Respondent would have received EUR 435,000.

24. The Panel has lengthy considered how to exercise its discretion as regards the amount of the training compensation to be paid in the present case. The main element justifying the reduction of the training compensation is the failure to evidence that a firm and binding offer has been made. The Panel considers it as a lack of professionalism, not to have taken the precaution to establish firm offers, in writing. For the preservation of the interests of the Player and of the Respondent, it is clearly not sufficient to rely on oral discussions concerning the prolongation of the Player's contract, even if these discussions are referred to in writing in a letter sent by the Player.

25. This consideration is counterbalanced by other elements speaking for the allocation of the training compensation to the Respondent. Firstly, it is undisputed that the Respondent has trained the Player during several years and that the result of this training has been successful. The Player has been playing for the National Team, transferred to the Appellant at the time it was a club playing in the First League of the French Championship and is now playing in the First League of the German Championship. The Panel is also of the opinion that the existence of negotiations between the Player and the Respondent has to be taken into account. At a certain moment in time, before the expiration of the contract, the Respondent expressed its interest in the Player. In that respect, the Panel is of the opinion that a particular importance has to be given to the fact that the Player, from the outset, expressed his preference not to renew his contract with his club, but to be transferred abroad and to play in a foreign championship. Even if this element is in no way able to discharge the Respondent from its obligation to make an offer under Art. 5(5) of the Regulations governing the application of the RSTP 2001, it has to be taken into account mitigate any reduction of the training compensation based on a failure to make an offer. Finally, as regards the Appellant, the Panel notes that no steps were made, between the end of the Player's contract and the signing of the

new contract, in order to approach the Respondent and to clarify whether or not conditions for the payment of the training compensation seemed to be fulfilled.

26. Based on the above mentioned considerations, the Panel is of the opinion that the amount of the training compensation due to the Respondent should be reduced by 30 %, that is to say to EUR 304,500.

27. The Panel further considers that this decision is subsidiarily supported by the application of Art. 42(1)(b) of the RSTP 2001, which gives the DRC a discretion to adjust the training fee *"if it is clearly disproportionate to the case under review"*. Would the Panel have come to the conclusion that an offer has been made to the Player, orally, in August 2004, the allocation of the full amount of the training compensation to the Respondent would have been clearly disproportionate according to the above mentioned provision, considering the elements set out here above, especially the failure for the Respondent to clearly express the existence and the content of the offer.

28. Accordingly, and to the extent stated above, Metz's appeal is partially upheld and the decision of the DRC is reduced in the sense that the Appellant is ordered to pay EUR 304,500 to the Respondent, as compensation for the training and education of the Player.

29. The decision of the DRC has not been challenged on the question of the interests. This decision provided for a deadline for the payment of the amounts due to the Respondent, that is, 30 days from receipt of the decision of the DRC. In the event the Appellant would not comply with such deadline, as it was indeed the case, an interest rate of 5 % per annum had to be credited in favour of the Respondent. It is undisputed that the Respondent received the DRC decision on 22nd November, 2006. Accordingly, the thirty-day deadline should have expired on 22nd December 2006. The Respondent did not claim a higher interest rate or an earlier due date. The decision of the DRC is consequently to be confirmed with regard to the interest rate of 5 % per annum and such interest should accrue as from 22 December 2006.

The Court of Arbitration for Sport rules:

1. The appeal filed on 5 December 2006 by FC Metz against the decision issued on 22 November 2006 by the FIFA Dispute Resolution Chamber is partially upheld.
2. The decision issued on 22 November 2006 by the FIFA Dispute Resolution Chamber is partially reformed in the sense that FC Metz is ordered to pay to FC Ferencvarosi EUR 304,500 (three hundred and four thousand five hundred Euros), plus 5 % interest per annum starting on 22 December 2006.
3. (…).