Arbitration CAS 2011/A/2682 Udinese Calcio S.p.A v. Helsingborgs IF, award of 25 July 2012

Panel: Mr Stuart McInnes (United Kingdom), President; Mr José Juan Pintó (Spain); Mr Markus Manninen (Finland)

Football
Training compensation
Exception to the principle for players moving from one football association to another within EU/EEA
Justification to a club's entitlement to training compensation despite the failure to make an offer to a player
Period of time to be taken into consideration to calculate the training compensation
Calculation of the training compensation

1. **For transfers occurring within the EU/EEA, Article 6 para. 3 of Annexe 4 to the FIFA Regulations on the Status and Transfer of Players (RSTP) is *lex specialis*, to be read as qualifying any general principle elsewhere in the regulations dealing with the obligation to pay training compensation. The second and third sentences of Article 6 para. 3 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. If one of the cumulative formal requirements is not met, the training club should in principle not be entitled to training compensation.**

2. **The last part of the first sentence of Article 6 para. 3 of Annexe 4 RSTP provides an "exception to the exception" if the training club can justify that it is entitled to training compensation despite the absence of any offer of contract to the player (amateur or professional). The training club must show a *bona fide* and genuine interest in retaining the player for the future. In this respect, a club which started to negotiate with a player before the end of the contract and which made several offers to the player either via emails or during meetings of a substantially greater value than the player's existing contract has shown a genuine and sincere interest in keeping the player.**

3. **According to Article 1 para. 1 of Annexe 4 RSTP, the amount of compensation payable shall be based on the years between 12 and 21, unless it is evident that a player has already terminated his training period before the age of 21. The burden of proof to show that the player has terminated his training period before the age of 21 is on the club claiming this fact. The number of games played is only one factor to be taken into consideration when assessing if a player has completed his training period, but this is an important and objective criteria which might be sufficient in the absence of other elements.**

4. According to Article 5 par. 3 of Annexe 4 RSTP, the training costs between a player's 12th and 15th birthday shall be based on the training and education costs of category IV clubs. Equally, in the case of the transfer of a professional player, training compensation is calculated on a *pro rata* basis for the time the player was effectively trained by his previous club and when a player is transferred from a lower to a higher category club, the calculation shall be based on the average of the training costs of the two clubs.

I. THE PARTIES

1. Udinese Calcio S.p.A (hereinafter "the Appellant" or "Udinese") is an Italian football club, affiliated with the Italian Football Federation (Federazione Italiana Giuoco Calcio which in turn is affiliated with the Fédération Internationale de Football Association (hereinafter "FIFA").

2. Helsingborgs IF (hereinafter "the Respondent" or "Helsingborgs IF") is a Swedish football club, affiliated with the Swedish Football Federation (hereinafter "SVFF") which in turn is affiliated with FIFA.

II. FACTUAL BACKGROUND

3. The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the written submissions of the Parties, the exhibits filed, the decision rendered by the FIFA Dispute Resolution Chamber (hereinafter "the FIFA DRC") on 7 April 2011 (hereinafter "the Appealed Decision") in the case between the Appellant and the Respondent, as well as the oral pleadings and comments made during the Hearing. Additional facts may be set out, where relevant, in the legal considerations of the present award.

4. A. is a Swedish football player, born on 17 March 1989 (hereinafter "the Player").

5. The Player has been a member of the youth teams of Helsingborgs IF since the age of five. He was registered with Helsingborgs IF as an amateur player from 1 April 2002 until 31 December 2004, and as professional, from 1 January 2005 until 31 October 2009.

6. From 2007, the Player started to be regularly fielded in the "A" team of Helsingborgs IF in the Swedish football league. In 2007, the Player played ten games (four games in the "starting 11" and six as substitute). In 2008, the Player played nineteen games (seventeen games in the "starting 11" and two as substitute). In 2009, the Player played twenty-one games (eighteen games in the "starting 11" and three as substitute).

7. From 2005, the Player was regularly called to be part of the Swedish national youth teams (U-17, U-19 and U-21).

8. On 18 January 2007, the Respondent and the Player concluded an employment agreement which comprised two separate documents:

   - A standard player contract (hereinafter, the "Player Contract"), imposed by the SVFF, in which the general terms of the contractual relationship were set out. Article 3.1 of the Player Contract states that *"[t]he Club shall pay the Player during the period of the contract in accordance with that stated in the appendices to this contract"*.
   - A financial agreement (hereinafter, the "Financial Agreement") dealing mainly with the term of the agreement and the financial remuneration of the Player. Article 2.1 of the Financial Agreement expressly states that it is an appendix of the Player Contract.

   Both documents were signed by the Respondent and the Player on 18 January 2007, but were applicable retroactively from 1 November 2006, until 31 October 2009.

9. According to the Financial Agreement, the highest monthly salary which could be paid to the Player, determined by a fixed salary and bonuses, was SEK 35,000.

10. In October 2008, the Respondent and the Player started to negotiate a new agreement. The negotiations concentrated primarily upon the financial terms and the term of the agreement and continued between October 2008 until May 2009.

11. By fax dated 5 February 2009, addressed to the Respondent, the Appellant expressed its interest in a possible transfer of the Player to the Appellant in the 2009 summer transfer window.

12. On 6 February 2009, Mr Jesper Jansson, the then Sports Director of the Respondent, responded to the Appellant that it was the Respondent's intention and ambition that the Player should continue his development as a football player in Helsingborgs IF, but indicated that before any further discussion could take place the Respondent expected the Appellant to make an offer for the Player.

13. By fax dated 12 February 2009, the Appellant informed the Respondent that it would send an offer regarding the transfer of the Player in the following week.

14. By fax dated 17 February 2009, the Appellant offered up to EUR 650,000 for the transfer of the Player. The offer was made up as follows:

   - EUR 400,000 as fixed part; terms of payment to be agreed
   - EUR 250,000 as variable part depending on the number of matches played by the Player in Serie A Championship in the following three years.

15. By fax dated 19 February 2009, the Respondent responded to the offer made by the Appellant stating the following:

   "As A. is a very important Player for us and one of the Swedish Football biggest talents we kindly have to turn down your offer.

We are willing to arrange meeting between the two clubs in the near future for further discussions on a higher level".

16. By letter dated 17 March 2009, the Respondent proposed that a meeting take place between the two clubs and further, requested the sum of EUR 1,400,000 (payable in two instalments) to transfer the Player to the Appellant together with a further payment of 30% of the total transfer fee, in the event that the Player was transferred from the Appellant to another Italian or international club whilst still under contract with the Appellant.

17. On 20 May 2009, the Player signed an employment contract with the Appellant. The term of this contract was from 1 January 2010 until 30 June 2014.

18. By email dated 7 June 2009, addressed to Mr Jansson of the Respondent, the Player's agent made specific reference to the fact that in view of the upcoming transfer of the Player, the Respondent would be eligible to receive training compensation.

19. On the same day, an article about the Player was published in the newspaper Helsingborgs Dagblad in which, the Player talked about his transfer to the Appellant. The Player in particular stated that he had been negotiating a prolongation of his contract with the Respondent since the preceding winter and that the Respondent would receive training compensation after his transfer.

20. The Player was transferred to the Appellant at the end of his contract with the Respondent in October 2009.

21. On 27 November 2009, the Respondent issued an invoice number 220153, to the Appellant in the amount of EUR 415,000 in respect of training compensation. The invoice fell due on 31 January 2010.

22. On 19 February 2010, the Respondent sent a reminder to the Appellant with regard to the above-mentioned invoice.

23. By email dated 16 March 2010, the Appellant requested the Respondent's VAT number in order to effect the payment of invoice number 220153.

24. By letter dated 30 April 2010, the Appellant informed the Respondent that after an evaluation of the situation, it had come to the conclusion that no training compensation was due and that it would therefore not pay the requested amount.

25. By fax dated 3 May 2010, the Respondent's lawyer sought explanation of the Appellant's evaluation and the grounds for the Appellant's decision not to pay any training compensation.

26. No response to this request was received from the Appellant.

27. On 8 June 2010, the Respondent submitted a claim to the FIFA DRC, requesting *inter alia* that the Appellant pay the training compensation monies of EUR 415,000.

28. On 7 April 2011, the FIFA DRC rendered a decision, ordering the Appellant to pay the Respondent the sum of EUR 402,500 as training compensation following the transfer of the Player to the Appellant.

III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

29. On 27 December 2011, the Appellant filed a Statement of Appeal with CAS against the decision rendered by the FIFA DRC on 7 April 2011.

30. On 30 December 2011, CAS Court Office informed the Parties of the receipt of the Statement of Appeal filed by the Appellant. The Respondent was further invited to nominate an arbitrator from the list of CAS arbitrators within a ten-day time limit.

31. Following a request made by the Appellant, the Deputy President of the CAS Appeals Arbitration Division extended the deadline for the Appellant to file its Appeal Brief until 13 January 2012.

32. On 13 January 2012, the Appellant filed its Appeal Brief.

33. On 23 January 2012, the Parties were informed that in view of the failure of the Respondent to nominate an arbitrator, the President of the CAS Appeals Arbitration Division would nominate an arbitrator *in lieu* of the Respondent.

34. On 27 January 2012, the Respondent requested that the time limit to file its Answer be extended until after the payment of the advance of costs in accordance with Article R64.2 of the Code of Sports-related Arbitration (hereinafter, the "CAS Code").

35. On 22 February 2012, the Parties were informed of the receipt of payment of the advances of costs by the Parties and the Respondent was granted a twenty-day time limit to file its Answer.

36. On 22 February 2012, the Parties were informed that the following individuals had been appointed as Arbitrators: Mr Stuart McInnes, Solicitor in London, United Kingdom, as President of the Panel, sitting with Mr José Juan Pintó, Attorney-at-law in Barcelona, Spain and Mr Markus Manninen, Attorney-at-law in Helsinki, Finland as Members of the Panel.

37. On 8 March 2012, the Respondent filed its Answer.

38. On 18 and 19 March 2012, the Parties informed the CAS Court Office that they preferred a hearing to be held in the case at hand.

39. On 20 March 2012, the Parties were informed that Mr Serge Vittoz, attorney-at-law in Lausanne, Switzerland, would act as ad hoc Clerk in the present matter.

40. On 4 and 5 April 2012, the Parties signed the Order of Procedure.

41. On 22 May 2012, a Hearing was held at the CAS Headquarters in Lausanne, Switzerland.

IV. POSITION OF THE PARTIES

42. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

43. According to the Appellant, the Respondent is not entitled to any monies with regard to training compensation as the conditions of application of Article 6 par. 3 of Annexe 4 of the FIFA Regulations on the Status and Transfer of Players (hereinafter, the "Regulations") are not met in the case at hand, for the following reasons:

- The Respondent failed to offer a contract to the Player;
- The Respondent failed to make its communication with the Player in writing;
- The Respondent failed to send any documentation relating to the alleged offer to the Player via registered mail.

44. The Appellant is also of the opinion that the Respondent does not meet the criteria to benefit from the exception from the general rule of Article 6 par. 3 of Annexe 4 of the Regulations, in particular as it failed to demonstrate *"a bona fide and genuine interest in retaining the Player"*. The Appellant alleges that the only intention of the Respondent was to transfer the Player and make a considerable financial profit.

45. The Respondent's position, expressed in its Answer, can be summarised as follows:

- The Respondent and the Player started to negotiate the extension of the Player's contract in October 2008;
- The formal requirements of Article 6 par. 3 of the Regulations are set only to secure evidence and *"the non-fulfilment of these formal requirement does not automatically result in the dub being deprived from the right to training compensation"*;
- The Respondent made a valid offer to the Player according to Swedish law;
- In any event, the Respondent should benefit from the exception set in the first sentence of the latter provision of the Regulations as the Respondent can *"justify that it is entitled to"* training compensation as it's *"interest in keeping the Player was genuine and sincere and furthermore that this interest was shown a long time before Appellant showed its interest in the Player"*.

V. THE PARTIES' REQUESTS FOR RELIEF

46. The Appellant's requests for relief are the following:

"For the facts and legal arguments that were developed above and documented by the Appellant, in accordanæ with Article R51 of the Code of Sports-related Arbitration, the Panel is respectfully requested:

1. to accept the present appeal against the Challenged Decision;

2. to set aside the Challenged Decision;

3. to establish that the Appellant shall not pay any training compensation to the Respondent;

4. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;

5. to establish that the costs of the arbitration procedure shall be borne by the Respondent.

Subsidiarily, and only in the event that the above is rejected,

1. to accept the present appeal against the Challenged Decision;

2. to set aside the Challenged Decision;

3. to establish that the maximum amount due to the Respondent as training compensation corresponds to EUR 180,000;

4. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;

5. to establish that the costs of the arbitration procedure shall be borne by the Respondent".

47. The Respondent's requests for relief are the following:

"Respondent requests the Arbitral Tribunal to render an award:

*1. Dismissing Appellant's appeal against the decision of the FIFA Dispute Resolution Chamber (the "**DRC**") dated April, 7, 2011, (the "**Decision**") and confirming the Decision;*

2. Ordering Appellant to reimburse Respondent for its arbitration costs, including, without limitation, all legal fees and expenses incurred by Respondent, in an amount to be specified at a later stage of the arbitral proceedings; and

*3. Declaring that, as between the parties, Appellant alone shall bear all fees, expenses and other compensation payable to the arbitrators and the Court of Arbitration for Sports ("**CAS**") including any interest thereon".*

VI. HEARING

48. A Hearing was held on 22 May 2012 at the CAS headquarters in Lausanne, Switzerland. The following persons attended the Hearing:

- For the Appellant: Mr Franco Collavino, General Director assisted by counsels Mr Gianpaolo Monteneri and Mrs Anna Smirnova.
- For the Respondent: Mr Jesper Jansson, Sports Director, assisted by counsel Mr Nils Petersen.

49. At the beginning of the Hearing, the President asked the representatives of the Parties who would give evidence in the course of the Hearing to sit outside the Court before their examination.

50. The Panel heard evidence from the following persons:

- Mr Franco Collavino;
- Mr Jesper Jansson;
- A. (by tele-conference).

51. Each person heard by the Panel was invited by its President to tell the truth subject to the consequences provided by the law and was examined and cross-examined by the Parties and answered the questions of the Panel.

52. The Parties were then afforded the opportunity to present their cases, to submit their arguments and to answer the questions posed by the Panel.

53. Neither during nor after the Hearing did the Parties raise with the Panel any objection as to the respect of their right to be heard and to be treated equally in these arbitration proceedings.

VII. JURISDICTION OF THE CAS

54. Pursuant to Article R47 of the Code:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

55. The jurisdiction of the CAS derives from Articles 62 and 63 of the FIFA Statutes and was confirmed by the Parties when signing the Order of Procedure. The jurisdiction of CAS in the present case is not disputed by the Parties.

Under Article R57 of the Code, the Panel has the full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the appealed one.

VIII. ADMISSIBILITY

56. The appeal was filed within the deadline provided by the FIFA Statutes and the Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber. It complied with all other requirements of Article R48 of the Code.

57. It follows that the appeal was admissible.

IX. APPLICABLE LAW

58. Art. R58 of the CAS 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.

59. Art. 60 para. 2 of the FIFA Statutes, in its applicable version to this case, further provides that CAS shall primarily apply the various Regulations of FIFA, and, additionally, Swiss law.

60. As the present matter was submitted to the FIFA DRC on 9 June 2010, it is undisputed that the 2009 edition of the FIFA Regulations on the Status and Transfer of Players (hereinafter, the "Regulations") are applicable. Those Regulations shall thus apply primarily, together with the other applicable rules of FIFA. Swiss law will be applied complementarily.

X. MERITS

A. Interpretation of the FIFA regulations

61. 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 training compensation.

62. 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, par. 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

63. The Panel deems the following FIFA regulations to be relevant in the present case:

(1) Article 20 of the 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) each time a professional is transferred 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 Annexe 4 of these regulations".

(2) Article 1.1 of Annexe 4 to the 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 the age of 12 and the age when it is established that the player actually completed his training".

(3) Article 2 of Annexe 4 to the Regulations reads as follows:

"1. Training compensation is due when:

i. a player is registered for the first time as a professional; or

ii. 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.

2. Training compensation is not due if:

i. the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs); or

ii. the player is transferred to a category 4 club; or iii. a professional reacquires amateur status on being transferred".

(4) Article 6 of Annexe 4 to the 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 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 EU/EEA, the final season of training may occur before the season of the player's 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 post 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 right 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 or when is subsequently transferred

64. It is undisputed that the Player was under a professional contract with the Respondent before joining the Appellant.

65. 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 Regulations).

66. As 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".

67. In the present case, the Player had been a member of the youth teams of the Respondent since the age of five. He was registered as a professional in 2005 with his training club and played with the Respondent for five seasons. At the moment of the transfer, he was under the age of 23. In principle, in accordance with Article 20 of the Regulations, the Respondent would be entitled to the payment of training compensation. However, the Regulations set out certain exceptions to such general principle.

D. The EU/EEA Exception to the General Principle

68. Article 6 para. 3 of Annexe 4 to the Regulations sets out an exception which applies specifically to players moving from one football association to another inside the territory of the EU/EEA. For transfers occurring within the EU/EEA – such as that of a Player, moving from Sweden 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 Annexe 4 to the Regulations to Professional Players

69. It is undisputed that the Player was a professional when he left the Respondent and signed a contract with the Appellant. The Panel accepts that Article 6 para. 3 is applicable and no further development is required in this respect, which is undisputed by the Parties.

70. The second and third sentences of Article 6 para. 3 of Annexe 4 to the 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.

71. Article 6 para. 3 of Annexe 4 of the Regulations requires that the contract or the offer to be made *"in writing"* by the training club to the player. In the CAS case CAS 2008/A/1521, the Panel mentioned that there is no definition in the FIFA regulations of the meaning of *"in writing"*. As mentioned in paragraph 60 above, Swiss law applies complementarily to the 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.

72. The Respondent asserts that Swedish law shall be applicable to the interpretation of what is a valid offer. In this regard, the Panel is of the opinion that the terms set forth in the Regulations are meant to be independent from the governing law of the existing professional contract, the final objective being that all interested parties, which *per se* are coming from different countries in case of application of the Regulations, can rely on one definition of those terms. Should the

meaning of those terms derive from the national law applicable to the previous professional contract, this would create a lot of insecurity in the case of international transfers as the clubs would therefore be subject to stricter rules than others, which would then be in contradiction with the purpose of the Regulations, namely to *"lay down global and binding rules concerning the status of players (…) and their transfer between clubs belonging to different associations"* (Art. 1 para.1 of the Regulations) (in the same sense, see CAS 2010/A/2316). The Panel therefore concludes that Swedish law cannot be applied to the interpretation of the Regulations.

73. In the instant case, it is undisputed between the Parties that there has been an extensive exchange of emails and several meetings between the Respondent and the Player regarding the extension of the Player's contract with the Respondent. However, while the Respondent alleges that it actually offered a new contract to the Player, the Appellant alleges that there was at no point any real offer made containing all the elements of an employment contract with the Player.

74. 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 Respondent, as there is no document in the file which the Respondent signed. The first of the cumulative conditions of Article 6 para. 3 of Annexe 4 of the Regulations is therefore not met.

75. As one of the cumulative formal requirements of Article 6 para. 3 of Annexe 4 is not met, there is no need to determine whether or not the other formal requirements of this provision were met.

76. Having failed to comply with at least one of the formal requirements of Article 6 para. 3 of Annexe 4 of the Regulations, the Respondent should in principle not be entitled to training compensation.

77. With reference to CAS 2006/A/1152, the Panel notes, however, that the last part of the first sentence of Article 6 para. 3 of Annexe 4 of the 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 ("the exception to the exception")

78. The Panel must now determine what – short of offering a contract in accordance with the Regulations – 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 of Annexe 4 of the Regulations. In order to determine this, the Panel considers it is necessary to interpret the meaning of the term *"justify"* in light of the purpose of Article 6 para. 3 itself, and the FIFA rules on transfers.

79. In this respect, in a previous CAS case (2006/A/1152) involving an amateur player, the panel 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"*.

80. In CAS 2010/A/2316 the panel declared 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)"*.

81. The Panel is of the opinion that the conditions listed by the panel in the case CAS 2006/A/1152 are therefore also applicable to professional players. In this sense, the Panel disagrees with the *obiter dictum* of the Panel in the CAS case 2010/A/2316 stating that *"if the training club does not offer a new professional contract in writing to one of its professional players whose contrat is expiring, and such player signs a new professional contract with another club, the training club should not be entitled to Training Compensation"*. Following this *obiter dictum* would render the first sentence of Article 6 para. 3 of Annexe 4 of the Regulations meaningless for professional players whereas it is noted that this rule is applicable to professional players.

82. In this context, the Panel recalls that *"the rationale for the provisions in the FIFA Regulations regarding training compensation is that clubs should be encouraged to train the players and those clubs that carry out the training process successfully should be rewarded for their training efforts. By the same token, those other clubs which enjoy the fruits of that training process should be obliged to pay something in compensation for the training efforts engaged in by others"* (CAS 2009/A/1757).

83. The Panel fully agrees with such contention and further emphasizes, together with the CAS panel in the latter case (CAS 2009/A/1757), that *"the aim of sporting justice shall not be defeated by an overly formalistic interpretation of the FIFA Regulations which would deviate from their original intended purpose"*, i.e. that a club which trained a player should be compensated for its training efforts.

84. However, the Panel deems that the "exception to the exception" and the conditions of its application listed above shall be applied more strictly to professional players as clubs shall pay particular attention to those players with a contract.

85. In the case at hand, the Respondent was able to demonstrate that (i) it started to negotiate with the Player one year before the end of his contract, (ii) that several offers were made to the Player either via email or during meetings, (iii) that these offers were substantially of a greater value than the Player's existing contract.

86. The Respondent was further able to demonstrate that the offers made were binding on the club according to Swedish law. As seen before, Swedish law is not directly applicable to the interpretation of the Regulations. However, the Panel deems that the fact that the offers made were binding in the Respondent's managers' mind is a clear indication that the Respondent genuinely and sincerely wanted to keep the Player within the club.

87. The Appellant asserts that the only interest of the Respondent in keeping the Player was to obtain a better price in the transfer. Such contention made by the Appellant cannot be followed, firstly as the first offer made by the Appellant to transfer the Player came in February 2009 when the Respondent and the Player had already been negotiating the extension of the contract for several months and secondly because it is contradicted by the fact that the Respondent originally turned down the first offer made by the Appellant, arguing that it wanted to keep the Player. The fact that there were later discussions regarding the transfer of the Player does not mean that the Respondent was in any way misleading in its interest in keeping the Player in order to negotiate a better transfer sum.

88. Based on the foregoing, the Panel is of the opinion that the Respondent showed a *"bona fide and genuine interest"* to keep the Player and having taken account of all the circumstances, the Panel deems that the Respondent is able to demonstrate that it is entitled to benefit from the "exception to the exception" set forth in the first sentence of Article 6 para. 3 of Annexe 4 of the Regulations.

89. The Panel further notes that the Appellant knew that it would have to pay training compensation to the Respondent. This was confirmed by the Player, in particular at the Hearing, and is further substantiated by the fact that the Appellant requested, in March 2009, from the Respondent its VAT number in order to proceed to the payment.

90. In view of the above, the Panel decides that the Respondent is entitled to training compensation in the case at hand.

G. What is the period of time to be taken into consideration in order to calculate the training compensation?

91. According to Article 1 para. 1 of Annexe 4 to the Regulations, the amount of compensation payable shall be based on the years between 12 and 21, unless it is evident that a player has already terminated his training period before the age of 21.

92. According to FIFA Circular Letter no. 801 dated 28th March 2002, the burden of proof to show that the player has terminated his training period before the age of 21 is on the club claiming this fact:

"The Committee was asked to determine what triggers the end of a player's training and/or education. It maintained that it is a question of proof, which is at the burden of the club that is claiming this fact. A player who regularly performs for the club's "A" team could be considered as having accomplished his training period. (…) The decision on this will have to be taken on a case-by-case basis".

93. It is therefore the Appellant which has the burden of proof to show that the Player terminated his training before the age of 21.

94. The Appellant asserts that should the Respondent be entitled to training compensation, this compensation should be calculated up to the end of the season 2006 (in Sweden football seasons follow a calendar year) as the Player had, at that time, completed his training period.

In support of this argument, the Appellant contends that the fact that the Player was fielded ten times in the "A" team of the Respondent, that he took part in four UEFA Cup games in the season 2007/2008 and that he was a member of the national youth team is a proof that he had terminated his training period. On the other hand, the Respondent asserts that the Player's training period was not completed at the time he was transferred to the Appellant. The Sports Director of the club, Mr Jesper Jansson, is of the opinion that in the season 2009 the Player was not ready to take the next step and to play in a championship of higher level than Sweden. The Respondent also contends that the fact that the Player was not fielded by the Appellant's coach is another element showing that the Player had not completed his training when he was transferred to the Appellant.

95. Firstly, the Panel notes that the fact that the Player was called up to take part in matches with the youth national team in 2007/2008 does not mean that the Player had terminated his training. It only shows that the Player was at that point of time among the best players of his age in Sweden.

96. According to CAS jurisprudence a player that regularly plays in the "A" team of a club is to be deemed as having completed his training (CAS 2003/O/527, CAS 2006/A/1029). In the case CAS 2003/O/527, it was stated that:

"L. signed his first non-amateur contract with the Respondent on 1 October 1996. During season 1996-1997, he played five times with the Respondent's "A" team. During season 1997-1998, he was engaged more regularly and played 15 times with the "A" team. At that time, he already spent many years with the Respondent's club and was noticed for his good technical skills and speed. L. can therefore be considered as having completed his training period before the beginning of season 1997-1998, in view of the scale, the characteristics and the level of games the Respondent's club at that time".

97. In the season 2007, the Player played ten games in the Swedish national league with the "A" team of the Respondent. He started only four games out of these ten and was substituted twice. In addition, the Player played in four European Cup matches in that season, starting one and playing an average of 35,5 minutes.

98. The Panel is of the opinion that in view of these figures, the Player, then aged of 17, could not be considered as being a major player for the team and it cannot be considered that he had at that time completed his training period.

99. The season 2008 can, on the contrary, be considered as a turning point in the career of the Player. In this season, the Player played in nineteen games (out of a possible thirty) for the "A" team of the Respondent, starting seventeen of them and playing the whole game twelve times. In the season 2009, the Player's figures are similar although he played two more games for the Respondent's "A" team in the Swedish national league.

100. In line with the previous CAS cases and FIFA Circular letter n° 801, the Panel considers that these figures are a clear indication that the Player had completed his training period at the end of the season 2007.

101. The Panel is conscious that the number of games played is only one factor, to be taken into consideration when assessing if a player has completed his training period, but deems that this is an important and objective criteria which might be sufficient in the absence of other elements.

102. The Panel is of the opinion that once this objective criteria is demonstrated, the burden of proof then shifts to the training club to prove that a player was not actually fully trained even though he was playing most of the games with the "A" team. In the case at hand, the Panel deems that the fact that the Respondent's Sport Director considers that the Player had not completed his training in 2009 and that the Player did not play with the Appellant's "A" team after the transfer are insufficient indications to contradict such assumption and to determine that the Player had not completed his training period.

103. The Panel emphasizes that there is a difference between the training and the development of a player. In this regard, the panel in the CAS case 2006/A/1029, stated that:

"The training period is ruled and limited by FIFA with specific regulations and Circular Letters while the development of a player is not. The aim and the spirit of FIFA Regulations is to regulate the training and not the development of the Player. Therefore what needs to be established is the point of termination of the training period and not the extent of the subsequent development of Y. as a professional football player. There is no contestation between the contending parties as to the fact that the Player did improve his skills since 1997".

104. The Panel agrees with such contention and believes that the fact that the Player was not fielded in the Appellant's "A" team is not because he was not fully trained but rather because his development as a football player was not complete. It is part of a player's development to be transferred to a better team and to learn how to play with better players in a more competitive environment.

H) What is the correct calculation of the training compensation?

105. The relevant provisions and guidelines for the calculation of the training compensation are the following:

Article 4 of Annexe 4 of the Regulations:

"In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.

Article 5 of Annexe 4 of the Regulations:

"1. As a general rule, to calculate the training compensation due to a player's former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.

2. Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player's 12th birthday to the season of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.

3. To ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the seasons between their 12th and 15th birthdays (i.e. four seasons) shall be based on the training and education costs of category 4 clubs. This exception shall, however, not be applicable where the event giving rise to the right to training compensation (cf. Annexe 4 article 2 paragraph 1) occurs before the end of the season of the player's 18th birthday.

4. The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review".

Article 6 par. 1 of Annexe 4 of the Regulations:

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 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.

106. Furthermore, the attachment of the FIFA Circular letter 959 of 16 March 2005 contains a table showing the training costs for each category. For UEFA club members, the figures are the following:

- Category I: EUR 90,000
- Category II: EUR 60,000
- Category III: EUR 30,000
- Category IV: EUR 10,000

107. In the case at hand, it is not disputed between the Parties that the Respondent is a category II club and that the Appellant is a category I club.

108. As mentioned before, according to Article 5 par. 3 of Annexe 4 of the Regulations, the training costs between a player's 12th and 15th birthday shall be based on the training and education costs of category IV clubs (EUR 10,000). Equally, the Panel recalls that in the case of the transfer of a professional player, training compensation is calculated on a pro rata basis for the time the player was effectively trained by his previous club (Art. 3 par. 1 of Annexe 4 of the Regulations) and when a player is transferred from a lower to a higher category club, the calculation shall be based on the average of the training costs of the two clubs.

109. In view of the foregoing, the calculation of the training compensation is the following:

Season 2002 – category IV	EUR 10,000
Season 2003 – category IV	EUR 10,000
Season 2004 – category IV	EUR 10,000
Season 2005 – average between cat. I and II	EUR 75,000
Season 2006 – average between cat. I and II	EUR 75,000
Season 2007 – average between cat. I and II	EUR 75,000
Training compensation	**EUR 255,000**

XI. CONCLUSION

110. On the basis of the foregoing, the Panel concludes that:

- The Respondent failed to comply with the formal requirement of Art. 6 par. 3 of Annexe 4 of the Regulations in order to be entitled to training compensation; however
- The Respondent justified that it was entitled to such compensation in view of all the circumstances of the case;
- The Respondent is entitled to a training compensation in the amount of EUR 255,000.

111. The Panel took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarised or addressed herein.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The appeal filed by Udinese Calcio S.p.A against the decision issued by the FIFA Dispute Resolution Chamber on 7 April 2011 is partially upheld.

2. The decision of the FIFA Dispute Resolution Chamber on 7 April 2011 is set aside.

3. Udinese Calcio S.p.A is ordered to pay to Helsingborgs IF the amount of EUR 255,000 as training compensation with regard to the transfer of A., plus 5% interest p.a. from 15 February 2010.

(…).

6. All other claims are dismissed.