Arbitration CAS 2010/A/2316 Stoke City FC v. Brescia Calcio S.p.A., award of 6 December 2011

Panel: Mr Chris Georghiades (Cyprus), President; Mr Bernhard Welten (Switzerland); Mr Michele Bernasconi (Switzerland)

Football
Training compensation
Interpretation of the rules according to Swiss law
EU/EEA exception to the general principle of training compensation
Standards in terms of formal requirements for professional and for amateur players
Definition of "in writing"
Offer via registered letter as a way to provide evidence and not as a condition of validity

1. **The role of a CAS panel is not to revise the content of the applicable rules, but only to interpret and apply them. As to the interpretation of the rules, Swiss law provides, under art. 1, par. 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. However, the clear wording of a rule does not exclude its interpretation, if there are reasons to believe that it must be understood in another way than its literal meaning.**

2. **Article 6 para. 3 of Annex 4 to the FIFA Regulations on the Status and Transfer of Players (RSTP) sets out an exception which applies specifically to players moving from one football association to another, inside the territory of the EU/EEA. In other terms, for transfers occurring within the EU/EEA, Article 6 para. 3 is *lex specialis*, to be read as qualifying any general principle elsewhere in the RSTP dealing with the obligation to pay training compensation.**

3. **The language itself of Article 6 para. 3 RSTP makes clear that the first sentence covers both players with and players without a contract (i.e. both professionals and amateurs), whereas the second and third sentences cover only players who are already under contract, i.e. only professionals. The standards in terms of formal requirements are thus higher for professional players than for amateurs. Accordingly, if the training club does not offer a new professional contract in writing to one of its professional players whose contract is expiring, and such player signs a new professional contract with another club, the training club should not be entitled to training compensation.**

4. **Article 6 para. 3 of Annex 4 RSTP requires the contract or the offer to be made "in writing" by the training club to the player. There is no definition of "in writing" in the RSTP but the latter are governed by Swiss law. The formal requirement set by the RSTP is 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 RSTP, can rely on one definition of the term "in writing", namely the definition valid under Swiss law. Should the meaning of "in writing" 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 formal requirements could differ tremendously from one country to the other.

5. **Article 6 par. 3 of Annex 4 RSTP provides that the offer be made "via registered mail". The requirement of a transmission by registered mail has been foreseen by FIFA as a way to provide evidence and not as a condition of validity. Whereas article 16 of the Swiss Code of Obligations presumes that the form reserved in an agreement – to which the RSTP can be assimilated – is a condition of validity of such agreement, this presumption can be reversed by the proof that such form was reserved only to make it easier for the parties to discharge their burden of proof. Therefore, considering the objective of FIFA, namely helping the "former clubs" in their duty to discharge their burden of proof, the reference to a "registered letter" is only made "à des fins probatoires". There is indeed no reason to believe that FIFA wanted to submit the written offers made by "the former clubs" to an additional formal condition of validity.**

Stoke City Football Club Limited ("Stoke City" or the "Appellant") is a football club with its registered office in Stanley Matthews Way, Stoke-on-Trent, Staffordshire, ST4 4EG, United Kingdom. It is affiliated to the English Football Association and takes part to the English Premier League, which is the highest professional division in English football. It has been a member of the English Premier League since the 2008/2009 season. From the 2002/2003 season until the 2007/2008 season it was a member of the second tier of English football, namely the Football League Championship.

Brescia Calcio S.p.A. ("Brescia" or the "Respondent") is a football club with its registered office in Via Luigi Bazoli, 10, 625127, Brescia, Italy. It is affiliated to the Italian Football Association and takes part to the "Serie A" Italian Championship, which is the highest professional division in Italian football. It has been a member of the "Serie A" since the 2010/2011 season. From the 2005/2006 season until the 2009/2010 season it was a member of the second tier of Italian football, namely the "Serie B".

The player A. (the "Player") was born in 1988 and was registered with the Appellant from 8 November 2004 until 4 November 2006, i.e. between the ages of 16 and 18, pursuant to a Scholarship Agreement. He then signed an employment agreement with the Appellant which was effective from 5 November 2006 until 30 June 2007, i.e. between the ages of 18 and 19.

The terms of the employment agreement provided for the Player to be paid a basic wage of £250 per week, approximately £13,000 p.a., as well as certain bonuses in the event that the Player was selected for the Appellant's first team.

From February 2007 until June 2007 the Appellant and the Player apparently discussed a potential conclusion of a new agreement. Those discussions did not, however, lead to the signing of a new agreement.

The Appellant allegedly made offers of a new professional contract on 14 March 2007 (the "First Offer"), on 21 March 2007 (the "Second Offer") and on 16 May 2007 (the "Third Offer").

On 18 June 2007, the Appellant was informed by Peter Paunoch, the Player's agent ("the Agent"), that the Player decided to join the Respondent. This information was followed by a letter from the Respondent to the Appellant, dated 19 June 2007, representing that the Respondent was intending to begin discussions with the Player.

The Player was registered with the Respondent on 23 July 2007.

The Appellant entered into correspondence and discussions with the Respondent to procure the payment of a training compensation (the "Training Compensation"). As the Parties did not find any agreement, the Appellant filed a request before FIFA on 12 February 2008.

On 10 December 2009, the FIFA Dispute Resolution Chamber (DRC) passed a decision (the "Decision").

In the relevant part of its Decision, the DRC stated the following:

> *"(…)*
>
> *Furthermore, the Chamber noted that art. 6 of Annex 4 of the Regulations [the 2005 edition of the Regulations on the Status and Transfer of Players] establishes special provisions for clubs which belong to an association inside the territory of the EU/EEA. Since England as well as Italy belong to the EU, the aforementioned article is applicable to the matter at hand.*
>
> *According to art. 6 par. 3 of Annex 4 of the Regulations, training compensation is only payable if the former club can justify that it offered the player a contract in writing via registered post at least 60 days before the expiry of his current contract.*
>
> *In this respect, the Chamber took note that the contract signed between the Claimant and the player expired on 30 June 2007.*
>
> *Additionally, the Claimant allegedly negotiated with the player's agent in March 2007. Therefore, on 21 March 2007, it allegedly sent, via fax, a correspondence to the player's agent, offering the player a new contract.*
>
> *The Chamber consequently noted that the contract offer was addressed to the player's agent and not to the player itself as established in art. 6 par. 3 of Annex 4 of the Regulations.*
>
> *Furthermore, on 16 May 2007, the Claimant apparently sent a registered letter to the player offering him a new contract as from July 2007. In this regard, the Chamber could verify that the said letter is bearing the address of the player's parents in Hungary, but that no copy of the said letter bearing the player's address in England was transmitted. However, it is to be noted that the Claimant presented two documents evidencing the delivery, on 19 May 2007, in England, of a registered letter at the player's address.*

> *In this context, the Chamber noted that the Claimant's registered letter dated 16 may 2007, i.e. 46 days prior to the expiry of the player's current contract on 30 June 2007, and addressed to the player, was delivered to the player on 19 May 2007, i.e. 43 days prior to the expiry of the above-mentioned contract.*
>
> *In light of the above, the Chamber concluded that the Claimant is not entitled to receive any training compensation from the Respondent since it undoubtedly did not offer the player a contract 60 days before the expiry of his current contract.*
>
> *Taking into account all of the above, the Chamber concluded that the Claimant's demand for training compensation has to be rejected.*
>
> *On account of the foregoing and concluding its deliberations in the present affair, the Chamber did not deem it appropriate to enter into the substance of the other arguments raised by the parties to the dispute".*

For the above-mentioned reasons, the DRC rejected Stoke City's claim.

FIFA served the written grounds of the Decision on the Appellant and the Respondent on 1 December 2010.

On 21 December 2010, Stoke City filed a statement of appeal against Brescia with the Court of Arbitration for Sport (the CAS), pursuant to the Code of Sports-related Arbitration (the "Code"). The Appellant challenged the Decision submitting the following prayers for relief:

> *"i. the annulment and/or replacement of the Decision on the ground that the DRC erred in fact and in law that Stoke City did not meet the requirements under Article 20 and Annex 4 of the FIFA Regulations on the Status and Transfer of Players (2005 edition) (the "FIFA Regulations") to be paid Training Compensation for the Player;*
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> *ii. in the alternative, the annulment and/or replacement of the Decision on the grounds that the aims of sporting justice would not be served if Stoke City were to be denied the payment of Training Compensation for the Player;*
>
> *and*
>
> *iii. the award to Stoke City of Training Compensation in the amount of either €240,000 (Two Hundred and Forty Thousand Euros) if the Respondent was a UEFA Category 1 Club for the purposes of Training Compensation as at 1 July 2007 or €160,000 (One Hundred and Sixty Thousand Euros) if the Respondent was a UEFA Category 2 Club for the purposes of Training Compensation as at 1 July 2007 plus (in either case) interest at the appropriate rate calculated from 1 July 2007 until the date of payment".*

On 4 February 2011, the Appellant filed its appeal brief.

As supporting evidence, the Appellant filed four witness statements sworn by Mr. Tony Pulis, Mr. John Rudge, Mr. Tony Scholes and Mr. Eddie Harrison, where the witnesses state in essence that the Appellant made offers to the Player, the last ones being financially superior to the current agreement between the Appellant and the Player. The witnesses further stated that the Appellant had made its relevant offers to the Player in person well before the 60 (sixty) days deadline set by the FIFA Regulations.

The Appellant also filed an email sent to the Agent on 14 March 2007, in which the Appellant's Director of football, John Rudge, mentions that the contract offer attached to that email would be handed over to the Player the next day, namely on 15 March 2007. The contract offer is addressed to the Player and indicates that the Appellant wishes to offer the Player a one year contract from 1 July 2007 until 30 June 2008 under certain financial terms listed in the offer.

The Appellant then filed a fax sent to the Agent on 22 March 2007 under which Mr. Rudge refers to a visit he made to the Agent in Hungary in order to discuss the Player's future contract. A draft contract was attached to this fax.

On 28 February 2011, Brescia served its answer and made the following requests to CAS:

"1) Dismiss the appeal of Stoke City Football Club Limited

2) Decide that no Training Compensation is due

3) Order Stoke City Football Club Limited to bear all costs of the present arbitration

4) Order Stoke City Football Club Limited to compensate the legal costs of Brescia Calcio S.p.A. in their full amount".

Brescia expressed also the opinion that a hearing was not necessary and confirmed this opinion in subsequent correspondences.

After a full exchange of written pleadings and evidence, a hearing was held in Lausanne on 16 June 2011.

At the outset of the hearing, the Panel asked the parties to confirm whether they had objections to the Panel's composition. The parties confirmed that they had no objection and did not raise any prejudicial means or make any other remarks with respect to the procedure. During the hearing, the parties made full oral submissions, confirming their written submissions. The Appellant called its CEO, Mr. Tony Scholes, its Director of Football, Mr. John Rudge, its Club Secretary, Mr. Eddie Harrison, and the Player, who testified by conference call.

Mr. Tony Scholes

Mr. Tony Scholes explained to the Panel that he was in charge of the negotiations with the Respondent with respect to the Training Compensation allegedly due after the transfer of the Player from Stoke City to Brescia. Mr. Scholes stated first that the Appellant applies very strictly the policy on scholarships provided under the UK football regulations. However, Stoke City was ready to make an exception for the Player, on whom Mr. Scholes had received a very positive feedback from his technical staff.

From February 2007 until June 2007, Stoke City, notably Mr. Scholes in his capacity of CEO of the club, had been in contacts with the Player's agent in order to discuss a new contract for another year. It had always been the Appellant's understanding that the Agent was acting on behalf of the Player.

Then, once the contract had been signed between Brescia and the Player, the Agent was apparently representing the Italian club as to the question of the Training Compensation.

When asked about the formalities within the Appellant in order to make offers to players, Mr. Scholes confirmed that one signature was sufficient in order to make a binding offer to a player.

Coming back to the discussions which took place between the Appellant and the Respondent after the transfer of the Player, Mr. Scholes stressed that the discussions mainly took place through the Agent and that there was no question as to the principle of the Training Compensation but only as to the amount to be finally paid by Brescia.

Mr. John Rudge

Mr. John Rudge was at that time and still is Director of Football for the Appellant. Mr. Rudge explained to the Panel that he was the aide of the CEO as to contractual matters.

With respect to the physical and technical developments of the Player when he was playing with Stoke City, Mr. Rudge declared that the coach in charge of the young players was very good at that time and is actually now training the M21 English team.

Going then to the events which took place between February and June 2007, Mr. Rudge confirmed that he indeed made a trip to Hungary in order to meet the Agent, after the Appellant had submitted to him its first offer on 11 March 2007. This offer was also handed over to the Player in the club's premises. The Player's reaction was very positive, although the terms of the offer were not discussed at that moment. Based on the very helpful discussions which took place between him and the Agent in Hungary, a new offer was made by the Appellant. It is indeed quite usual that players receiving an offer first discuss it with their agent before commenting on it.

Actually, the Player never gave any sign that he would leave the Appellant and it was a total surprise to Mr. Rudge when he heard about the contract with Brescia.

The Player, A. (heard through telephone conference)

The Player first confirmed that he had recently appointed Mr. Paunoch as his agent in early 2007, because the Player was not happy with his previous agent. Stoke City was informed of this change.

Then the Player admitted that he had received the offer of the Appellant through Mr. Rudge. The document was handed over to him in the club's stadium. He discussed the offer with his Agent and was only unhappy with the financial terms. The Player confirmed as well that he had received the second offer from the Appellant through his Agent.

The Player then explained how much he had enjoyed his time in Stoke City. He learned a lot during his three years in England. The training was of very good quality, notably thanks to the coach, Mr. Blake. The Player was actually very happy with "everything". The academic education was notably very good. So was the health care. The Player added that the Appellant did "everything for him".

Coming back to his Agent, the Player confirmed that he had given him authority to speak on his behalf. The Player did not doubt that the Appellant truly intended to sign a contract with him. As the financial terms of the Appellant's offer were not meeting his expectations, the Player agreed on a separate contract with Brescia. The negotiations with the Respondent started following a game that the Player played for Hungary. The negotiations were conducted between the Respondent and the Player's Agent. The Player could however not remember exactly when, but he could confirm that a "pre-contract" was signed before his transfer from Stoke City.

The Player then replied to few questions asked by the Respondent's representatives. He confirmed that he was not a lawyer and that he did not know what is considered a binding offer. He then explained that he had pleasure to play both in England and in Italy. One reason for leaving Stoke City was that he wanted to play more and that he felt that in Brescia he might have more chances to play. So it was not just a question of money.

The Player confirmed that he was under contract with Brescia for another year and that Mr. Paunoch was still his Agent.

Mr. Eddie Harrison

Mr. Eddie Harrison explained that he was the Appellant's corporate secretary and that, as such, some of his duties were to take care of the contractual documentation. In that context, Mr. Harrison confirmed that he had sent an email to the Agent on behalf of Mr. Rudge. The offer letter of 21 March 2007 was typed by him and signed by Mr. Rudge. The reference to a "draft" on the evidence produced before CAS shows only that the document is a "file reference". It was in any case an offer, capable of acceptance. The contract attached to the letter aimed at showing to the Agent and the Player how the final contract would look like, in order for both of them to get familiar with the wording.

As to the email he sent to the Agent on 14 March 2007, with the attached offer in form of a letter (the "First Offer"), Mr. Harrison explained that the letter was handed over to the Player by Mr. Rudge. The evidence produced before CAS is an exact copy of the one handed over to the Player. It is not signed because Mr. Harrison does not sign file copies. As to the offer letter from John Rudge dated 21 March 2007 (the "Second Offer"), a signed version was in Mr. Harrison's file because this Second Offer was sent by fax. Actually it was the original fax. The contract attached to it was not signed because this would then require that the contract be filed with the FA within 5 days. The contract is thus only signed when the parties come to an agreement. The draft contract is only attached in order for the Player to take benefit to see what would be its content.

During the hearing, the Appellant produced new pieces of evidence, namely a copy of the Premier League and Football League contract dated 5 November 2006 and signed between the Player and the Appellant on 8 November 2006 and the Schedule 1 to the UK Interpretation Act 1978. The Respondent accepted that the first piece of evidence be served to the file but refused that the second one be produced, arguing that it had no possibility to comment on it. The Panel accepted both pieces of evidence, stressing however that it did not deem the Schedule 1 to the UK Interpretation Act 1978 to be relevant in the present case.

LAW

CAS Jurisdiction and Admissibility of the Appeal

1. The jurisdiction of CAS, which is not disputed, derives from art. 59 ff., specially Articles 62 and 63 of the FIFA Statutes and art. R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties. Consequently, CAS has jurisdiction to decide the present dispute.

2. Under art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel, therefore, in the exercise of its jurisdiction, does not examine only the formal aspects of the appealed decision, but holds a trial de novo, evaluating all facts, including new facts, which may not have been mentioned by the parties before the DRC, and all legal issues involved in the dispute.

3. The appeal was filed within the deadline provided by art. 60 of the FIFA Statutes and indicated in the Decision, namely within 21 days after notification of the Decision. It complies with the requirements of art. R48 of the Code. It follows that the appeal is admissible, which is undisputed.

Applicable Law

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. 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.

6. Considering that the present matter was submitted to the FIFA DRC on 1 October 2007, it is undisputed that the 2005 version of the FIFA Regulations on the Status and Transfer of Players (“the Regulations”) are applicable. Those Regulations shall thus apply primarily, together with the other applicable rules of FIFA. Swiss law will be applied complementarily.

Merits

A. The Position of Stoke City

7. Stoke City’s submissions can be summarized, in essence, as follows:

As to the applicable law, the Appellant submits that the 2005 edition of the FIFA Regulations for the Status and Transfer of Players (the "Regulations") is applicable. It then further submits that Swiss law may also be relevant where matters arise which are not covered by the Regulations, as provided under article 62.2 of the FIFA Statutes.

The Appellant then claims that it had invested a great deal of time and money in developing the Player and that it was keen to retain his playing services beyond summer 2007. As a result, the Appellant started negotiations with the Player and submitted three offers to him, the First Offer on 14 March 2007, sent per email to the Agent and hand delivered to the Player himself on 15 March 2007, the Second Offer on 21 March 2007, which was sent by fax with a draft contract to the Agent, who confirmed good receipt of it in an email sent the next day, and the Third Offer on 16 May 2007, which was sent to the Player and his Agent per registered mail.

Each offer made to the Player was significantly higher than the Player's then current remuneration. The Appellant was indeed willing to make an exception to his wage structure for young players in order to keep the Player.

Coming to the Decision of the DRC, the Appellant argues that two out of the three offers to the Player were made more than 60 (sixty) days before the expiry date of the Player's current contract.

The DRC was wrong when it did not recognize that the Second Offer was validly communicated to the Player, as the DRC's approach ignores that the email sent by the Agent shows that the Second Offer and the draft contract attached to it was handed over to the Player. In addition, the DRC's approach does not reflect the legal position of the Agent, who was and still is a representative of the Player. The Appellant refers in this respect to article 418a of the Swiss Code of Obligations and to the applicable FIFA Regulations on players' agents.

In any event, the provisions of article 6.3 of Annex 4 to the Regulations are not strict requirements which must be met in order for a Training Compensation to be payable. Those requirements aim at assisting training clubs in discharging the burden of proof to demonstrate that they have made an offer of a new employment contract to a player. The Appellant refers notably to the DRC case n° 108806, par. 9, where the DRC found that "it was decided to integrate in the 2005 edition of the Regulations some formal preconditions in order to facilitate the evidence that a contract offer was effectively made. In particular, the Chamber emphasized that the implemented new preconditions are not formal requirements stricto sensu but a requirement to evidence the fact of having made such an offer to a particular player. This should, therefore, ease the burden of proof laying on training clubs. This is the actual aim of the relevant formalities". The Appellant refers further to CAS jurisprudence 2009/A/1757 MTK Budapest v. Inter Milan, where CAS found that the preconditions in the Regulations were "matters of form and not of substance". Still referring to CAS 2009/A/1757, the Appellant claims that an overly formal approach would moreover be contrary to sporting justice and the purpose of Training Compensation.

The Appellant then claims that a Training Compensation is payable when "having regard to all the circumstances of the case" the training club is entitled to receive a Training Compensation for the period that it trained the player. Based on this assumption, the Appellant argues that it made all the necessary efforts in order for the Player to gain academic and football benefits. It

further showed a clear interest in retaining his services. This makes its request for a Training Compensation legitimate, even if the Panel were to find that the Appellant did not make any contract offer meeting the formal requirements of the Regulations.

The Appellant further argues that the relative conduct of the Parties must be taken into consideration, when it appears that the Appellant provided successful training and education to the Player and made great efforts to retain him, whereas the Respondent had first contacted the Player before reaching to the Appellant, this in clear violation of article 18.3 of the Regulations. Paying a Training Compensation to the Appellant would not cause a prejudice to the Respondent, which now benefits from the services of the Player, who already played 97 times in the Respondent's first squad. The fact that the Respondent did not mention at any time that it was not aware of a possible liability to pay Training Compensation, should also be taken into consideration.

Eventually, the Appellant puts forward that it complied fully with the domestic Football League Regulations, which reflect the Collective Bargaining Agreement in English Football. As the Regulations themselves require that collective bargaining agreements be taken into account, it would be inequitable to penalize the Appellant for acting in accordance with the Collective Bargaining Agreement.

B. *The Position of Brescia*

8. Brescia's answer can be summarized as follows:

As to the applicable law to the present case, the Respondent does not dispute that the FIFA Regulations (edition 2005) are applicable together with Swiss law.

The Respondent does not deny the role played by the Appellant in the Player's football education during two and a half years. It however argues that the Appellant is overstating its influence on the Player's career.

The Respondent then puts forward that the Appellant's interest in the Player was not as important as the Appellant claims it to be. Indeed both in duration and financial terms, the offers made by the Appellant were by far lower than the contract executed between the Respondent and the Player. The Respondent actually claims that the offers made by the Appellant were only driven by the interest to retain its rights on a Training Compensation.

The Respondent does not dispute that the Appellant and the Player's agent had entered into negotiations for a new contract. The Respondent does not dispute neither that this contract, if signed, would have been better than the then existing contract. The Respondent claims however that the Appellant never offered a contract "in the legal sense of the term". It further argues that the Appellant actually wanted to avoid making a legally binding offer.

The Respondent also strongly disputes the fact that it would have breached article 18.3 of the Regulations, since it notified Stoke City (i) before entering into negotiations with the Player

regarding the content of the contract; and (ii) in any event before the conclusion of the contract with the Player.

The Respondent then asserts that, although it fully supports the Regulations and agrees with the Appellant that the payment of a Training Compensation is appropriate when players are educated by a club, it is in any case necessary to follow the clear wording of article 6.3 of Annex 4 to the Regulations when deciding on the right for a Training Compensation. The Respondent therefore rejects all the submissions of the Appellant, notably the ones based on the DRC Decision 108806 and the CAS case 2009/A/1757.

The Respondent explains that a system of Training Compensation is admissible under EU law only subject to very specific conditions. According to the Respondent, the purpose of article 6.3 of Annex 4 to the Regulations is to ensure that a football player finds an employment within the EU without being restricted by the system of Training Compensation and by way of consequence facing the risk to become unemployed. This is the reason of the requirement for the training club to offer a contract to a player if such training club wishes to retain the right to get a Training Compensation. All other requirements under article 6.3 of Annex 4 to the Regulations are set for the same purpose.

Therefore, the Respondent understands that the 60 (sixty) days deadline must give the player the opportunity to seek a new job within that period, freed from the restriction caused by the Training Compensation. The requirement to send a contract offer per registered letter "is aimed at providing the player the means to demonstrate to any prospective employer that no indemnity in the form of training compensation is due to the old club in case of employing the player".

In Respondent's understanding, with the use of "must" in Article 6.3 of Annex 4 to the Regulations, FIFA shows that the requirements set out in the article have to be met. And Brescia bases itself on the principles of Swiss law on the interpretation of regulations, alleging that by making mere recommendations of those actually strict requirements would make it impossible to demonstrate that no Training Compensation is due, since the rule would therefore become meaningless. The Respondent concludes that there must be clear rules regarding the form of contract offers.

The Respondent then claims that none of the documents sent to the Player represent a contract offer under Swiss law, which applies in the present dispute. The contracts attached to the second and third offers were only drafts, for instance. Only Mr. Scholes seems to have authority to represent the Appellant and send binding offers but the First Offer was not signed by Mr. Scholes. Consequently, there was no way for the Player to bind the Appellant by signing one of the documents that had been sent to him and no valid contract would then have taken place.

The Respondent then argues that the so-called offers were made to the Agent and not to the Player. As article 6.3 of Annex 4 to the Regulations does not mention agents, the offers have to be made directly to the players. The Respondent further claims that "it is much easier for the player to demonstrate this when all he needs is to provide a statement from the post office that indicates no registered mail having been sent to the player himself by the current club". In this sense, allowing a communication to the agent would make it more difficult to prove that no offer has been sent to the player.

The principle of the bona fides interest to retain a player is only applicable to amateur players. For professional players, which the Player was, the strict requirements provided under article 6.3 of Annex 4 to the Regulations must apply.

The Respondent then rejects all the Appellant's submissions based on "equity".

The Respondent submits a letter from the FIGC, which is in charge of the control of football in Italy, which was part of the FIFA file and which indicates that Brescia belongs to the training category 2. Should a training compensation be due, the amount would thus be of EUR 60,000 (sixty thousand Euros) per year.

C. The Evaluation of the Panel

a) Interpretation of the FIFA regulations

9. 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.

10. 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, nr 7.3.10). As to the interpretation of the rules, Swiss law provides, under art. 1, par. 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). However, the clear wording of a rule does not exclude its interpretation, if there are reasons to believe that it must be understood in another way than its literal meaning (ATF 127 III 444 c. 1b).

b) Relevant FIFA regulations

11. The Panel deemed the following FIFA regulations to be relevant in the present case.

(1) Article 20 of the 2005 Regulations on the Status and Transfer of Players (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) 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".

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

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

"Training Compensation is due:

i) when a player is registered for the first time as a Professional; or,

ii) when 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.

Training Compensation is not due:

i) if the Former Club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs); or

ii) if the player is transferred to a Category 4 club; or

iii) if a Professional reacquires Amateur status on being transferred".

(4) Article 6 of Annex 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 of the 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 territory of the EU/EEA, the final Season of training may occur before the Season in which the player had his 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 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 club(s)".

c) The General Principle: Training Compensation is due when a player signs his first professional contract

12. It is undisputed that the Player was under a professional contract with the Appellant before joining the Respondent. His professional contract, which started on 5 November 2006 and ended on 30 June 2007, replaced a Scholarship Agreement which had started on 8 November 2004 and ended on 4 November 2006.

13. 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).

14. As already 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".

15. The Player was registered as a scholar in 2004 with his training club and played for three 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 Appellant would therefore 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

16. Article 6 para. 3 of Annex 4 to the Regulations – see above at para. 50(4) – sets out an exception which applies specifically to players moving from one football association to another, inside the territory of the EU/EEA, which nowadays includes twenty-seven member States of the European Union plus three States pertaining to the European Economic Area. In other terms, for transfers occurring within the EU/EEA – such as that of a Player, moving from the United Kingdom 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 Annex 4 to the Regulations

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

18. The second and third sentences of Article 6 para. 3 of Annex 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 (sixty) 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. As stressed in CAS 2008/A/1521 ad nr. 53, the Panel notes 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), whereas the second and third sentences cover only players who are already under contract, i.e. only professionals (see also CAS 2006/A/1152 ad nr. 8.9). The standards in terms of formal

requirements are thus higher for professional players than for amateurs. This appears legitimate to the Panel as, by becoming professionals in their training clubs, players join a limited circle of players on which the training club must pay particular attention. As correctly mentioned in CAS 2006/A/1152, one cannot expect a club, notably an amateur club, to focus on all its amateur players for whom training compensation might be paid by a third football club and consequently to make formal offers to all those players. On the contrary, there is no reason why a club which hires professionals, among them professionals which were trained by this club, should not follow the formal requirements set by FIFA. Accordingly, if the training club does not offer a new professional contract in writing to one of its professional players whose contract is expiring, and such player signs a new professional contract with another club, the training club should not be entitled to Training Compensation.

aa) Offer "in writing" 60 (sixty) days before the expiry of the current contract

19. Article 6 para. 3 of Annex 4 of the Regulations requires that the contract or the offer to be made "in writing" by the training club to the player. There is no definition of "in writing" in the Regulations.

20. The Appellant argues that reference should be made to English law. The Panel is of the opinion that the latter does not apply to the present case, as the term "in writing" is used by the FIFA Regulations, which are governed by Swiss law. In other words, the Panel is of the view, that the formal requirement set by the FIFA Regulations is 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 the term "in writing", namely the definition valid under Swiss law. Should the meaning of "in writing" 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 formal requirements could differ tremendously from one country to the other. Some clubs would therefore be subject to stricter rules than others, which would then be in contradiction with the purpose of the Regulations, namely *"to establish global and binding rules concerning the status of players (…) and their transfer between clubs belonging to different Associations"* (article 1 par.1 of the Regulations).

21. 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 101 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, as to an offer, or the parties, as to a contract, that are contractually bound by the document.

22. In the instant case, Mr. Rudge and Mr. Harrison declared at the hearing that a signed offer had been submitted to the Player on 14 March 2007 at the Appellant's stadium (the First Offer). The Player confirmed that he had received the document and remembered precisely the facts. Although Mr. Harrison did not file a copy of the signed version of the First Offer, the Panel has no reason to doubt that the original one was signed when it was handed over to the Player

and providing the Panel with a photocopy of the signed version would actually not bring further decisive evidence in the particular case.

23. The Respondent argues that Mr. Rudge did not have the authority to sign the First Offer. Mr. Scholes and Mr. Rudge confirmed at the hearing that the First Offer was valid. The Panel believes the witnesses and finds that in his quality of Director for Football and aide to the CEO, there is no doubt that Mr. Rudge had the necessary powers to represent the club. In any case, the subsequent exchanges between the parties show that the Appellant wanted the First Offer to be made to the Player, so that Mr. Rudge clearly signed the First Offer with the approval of the Appellant's management.

24. Mr. Harrison declared as well that a fax was sent to the Agent on 21 March 2007 with a revised offer (the Second Offer). The Agent confirmed good receipt of the Second Offer per email dated 22 March 2007 and the Player admitted at the hearing that this Second Offer had been passed over to him. The fax, which refers to the draft contract attached to it as an "offer", is again signed by Mr. Rudge, Director of football of the Appellant. The Swiss federal court confirmed that in the case of contractual documents exchanged between private entities, to the opposite of judicial acts, it seems admissible to legal authors that a fax be considered as meeting the formal requirements of the written form as defined under article 13 of the Swiss Code of obligations (ATF 121 II 250 c.3). Swiss doctrine (cf. SCHMIDLIN B., Berner Kommentar ad art. 13 OR) notably claims that a fax allows the sender to keep the original signed version in his file and must therefore be seen as comparable to ordinary mail. The Panel shares this opinion and does indeed consider that a fax is clearly to be considered as the equivalent of a written mail within the meaning of article 13 of the Swiss Code of Obligations.

25. As there is no reason to believe that FIFA wished to impose on the parties stricter forms than the ones admitted under Swiss law for private entities, the Panel thus finds that not only the First Offer but also the Second Offer is to be considered as made in the written form required by the Regulations.

26. Considering that the Player admitted he had received those two Offers and that those were made more than 60 (sixty) Days before the termination of the agreement between the Appellant and the Player, the Panel notes, that there are two documents which the Appellant signed with contractually binding effect. As a consequence, the first of the cumulative conditions of Article 6 para. 3 of Annex 4 of the 2005 Transfer Regulations is met. Since the Player received those two Offers, the Panel does not need to deal with the Parties' submissions on the role of the Agent.

27. This being stated, the Panel rejects the submissions of the Respondent according to which the Appellant had not submitted to the Player a contract which was ready to be signed. Indeed, both the First and the Second Offers contained the essential elements of a valid offer. Those documents and their attachment indicated who would be the parties to the contract, what would be required from the Player and what would be his salary. The place of work was clear. Nothing in the Regulations caused Stoke City to issue a final contract, to sign it and send it to the Player. The Regulations indeed mainly require from the Club to *"offer the player a contract"* and not to

send the Player a new contract. This is confirmed by the CAS jurisprudence quoted by the Parties, where reference is made to an offer and not to a formal contract (see as an example CAS 2008/A/1521 or CAS 2009/A/1757).

bb) Registered letter

28. Article 6 par. 3 of Annex 4 of the 2005 Regulations provides further that the offer be made "via registered mail". The Respondent argues in essence that this requirement must be met in order for the offer to be valid.

29. However, this is not the Panel's view. The Panel is of the opinion that the requirement of a transmission by registered mail has been foreseen by FIFA as a way to provide evidence and not as a condition of validity.

30. In fact, whereas article 16 of the Swiss Code of Obligations presumes that the form reserved in an agreement – to which the Regulations can be assimilated – is a condition of validity of such agreement, this presumption can be reversed by the proof that such form was reserved only to make it easier for the parties to discharge their burden of proof (ATF 128 III 212 c. 2b with references).

31. As the Appellant proved that it had communicated its offer in writing to the Respondent, the question, that the Panel has to deal with, is therefore whether the use of a "registered letter" is a condition of validity of the offer made by the "Former Club" or only a requirement reserved by FIFA to help such "Former Club" in discharging its burden of proof.

32. It has been recognized in the past, both by the FIFA DRC and by CAS, that when FIFA amended article 6 par. 3 of Annex 4 of the Regulations, and notably introduced the formal requirement of the "registered letter", its objective was to make it easier for the Former Club to discharge its burden of proof and to get a training compensation (see DRC decision n°108806 and CAS 2009/A/1757). The Panel adheres to this interpretation of the new rule. It is indeed easier to prove that an offer was made to a player if it is sent per registered mail instead of ordinary mail or even hand delivered. However, there are still other ways to prove that an offer was sent, be it through witnesses or fax receipts, for instance.

33. Therefore, considering the objective of FIFA, namely helping the "Former Clubs" in their duty to discharge their burden of proof, the Panel finds that the reference to a "registered letter" is only made *"à des fins probatoires"*. There is indeed no reason to believe that FIFA wanted to submit the written offers made by "the Former Clubs" to an additional formal condition of validity.

34. In that context, the use of the verb "must" in article 6 par. 3 of Annex 4 of the Regulations does not contradict the above interpretation of this article and the corresponding submission of the Respondent must be rejected.

35. As a consequence, the Panel finds that, the use of a "registered letter" is not a condition of validity of the written offer to be made by the "Former Club" under article 6 par. 3 of Annex 4 of the Regulations.

36. In the present case, the Appellant proved by written evidence and witnesses that it had submitted two offers in writing to the Player. The Player himself admitted having received the First and the Second Offer. The objective of the "registered letter", namely proving the communication of the offer to the Player, could thus be satisfied by other means.

37. With respect to the Respondent's submissions on EU law, the Panel notes that the Regulations were approved by the European Commission after a long process. It therefore shares the Respondent's view as to the need to take into account EU law when interpreting Article 6 par. 3 of Annex 4 of the 2005 Regulations. In this sense, the 60 (sixty) days deadline appears to be critical with respect to the admissibility of the Regulations under EU law. On the other side, the Panel finds that the reference to the "registered mail" in the Regulations is clearly not required by EU law, as it deals with questions of evidence, namely procedural matters, and not material ones.

38. The Panel thus concludes that it was not necessary to send the First and the Second Offer per registered mail to validly offer a contract to the Player.

cc) Better financial terms

39. Eventually, article 6 par. 3 of Annex 4 of the 2005 Regulations provides that the offer must be *"at least of an equivalent value to the current contract"*.

40. The Panel notes that both the First and the Second Offer were of a value superior to the then current contract of the Player. The Appellant claims that it even broke its internal regulations on Players' salaries when it made the Second Offer, whereas the Respondent does not dispute that the First and the Second Offer were at least of the same value than the then current contract of the Player. The Respondent does only claim that the First and the Second Offer were still insufficient and did not meet his expectations.

41. The Panel thus finds that on this point too, the Appellant met the requirements of Article 6 par. 3 of Annex 4 of the 2005 Regulations.

42. The submissions of the Respondent as to the allegedly insufficient duration and financial terms of the offers made by the Appellant are therefore irrelevant and must be rejected together with the submission that the terms of the offers show that the Appellant did actually not want to be bound by its offers, as it has been proven that at least two binding offers were submitted to the Player.

Conclusion

43. In conclusion, the Panel finds that:

- The Appellant made three offers to the Player.
- Two of those three offers, namely the First and the Second Offer were made in writing at least 60 (sixty) days before the expiry of the Player's then current contract. Both of them were at least of an equivalent value to the Player's current contract.
- The fact that none of those two offers were made per registered letter does not impact their validity and the right for the Appellant to claim a Training Compensation.
- Based on article 20 and article 6 par. 3 of Annex 4 of the 2005 Regulations, a Training Compensation is therefore due to the Appellant by the Respondent.
- The Respondent is a club of the UEFA Category 2, which is undisputed. The amount of the training compensation is therefore of EUR 160,000 (one hundred and sixty thousand Euros), which is also undisputed. The Respondent indeed admitted the importance of the Appellant in the Player's education and did not question the application of the FIFA tables. The Appellant, on its side, confirmed that its prayers for relief were limited to EUR 160,000 (one hundred and sixty thousand Euros), as far as the Training Compensation is concerned.
- The Appellant requested further in its prayers for relief that an "interest at the appropriate rate calculated from 1 July 2007 until the date of payment" be paid to it by the Respondent on top of the amount of EUR 160,000. The Panel notes first that the reference by the Appellant to an "appropriate rate" leaves to the Panel the competence to fix the interest rate for late payment. In the absence of any contractual agreement of the parties and of any specific rule on this topic in the FIFA Regulations, the Panel decides to apply Swiss law and to fix the interest rate for late payment at 5% p.a. as provided under article 104 par.1 of the Swiss Code of Obligations.
- According to article 3 par. 2 of Annex 4 of the 2005 Regulations *"the deadline for payment of Training compensation is 30 days following the registration of the Professional with the new Association"*. This provision of the 2005 Regulations, to which both parties adhered in their capacity of member of a national football federation which is itself member of FIFA, must be considered as fixing the due date of the obligation to pay the Training Compensation as defined under article 102 SCO with reference to article 76 et seq. SCO. As provided under article 102 SCO, the Respondent must thus be considered as being in default since such due date, which is therefore the starting date for the calculation of the interest rate, as provided under article 104 par. 1 SCO.
- The Player was registered with the Italian Football Federation on 23 July 2007, which is undisputed. Therefore the 30 (thirty) days deadline provided under article 3 par. 4 of Annex 4 of the 2005 Regulations expired on 22 August 2007 as provided under article 77 par. 1 nr. 1 SCO.

44. Based on the foregoing, the Panel decided that an interest of 5% p.a. on the amount of EUR 160,000 (one hundred and sixty thousand Euros) is due by the Appellant to the Respondent since 23 August 2007.

45. Based on all the above, the appeal must be accepted.

The Court of Arbitration for Sport rules:

1. Stoke City FC's appeal against the decision dated 10 December 2009 of the FIFA Dispute Resolution Chamber is upheld.

2. Brescia Calcio S.p.A. is ordered to pay to Stoke City FC the amount of EUR 160,000 (one hundred and sixty thousand Euros) plus 5% interest p.a. from 24 August 2007.

3. (…).

4. (…).

5. All other motions or requests for relief are dismissed.