

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 28 June 2013,

in the following composition:

Geoff Thompson (England), Chairman (did not take part in the deliberations)

Rinaldo Martorelli (Brazil), member

Jon Newman (USA), member

Theodoros Giannikos (Greece), member

Essa M. Saleh Al-Housani (UAE), member

on the claim presented by the club,

Club E, from country I

as Claimant

against the player,

Player M, from country I

as Respondent 1

and the club,

Club U, from country E

as Respondent 2

regarding an employment-related dispute
arisen between the parties

I. Facts of the case

1. On 26 July 2007, Player M, from country I (hereinafter: *the Respondent 1 or player*) born in May 1993, and Club E, from country I (hereinafter: *the Claimant*), signed a document named "*Variazione di Tesseramento*".
2. On 1 July 2009, the Respondent 1 signed a "Scholarship Agreement" with the Club U, from country E (hereinafter: *the Respondent 2 or Club U*). Consequently, the Respondent 2 requested the player's International Transfer Certificate (ITC) and, after the Single Judge of the Players' Status Committee of FIFA passed a decision allowing the registration of the Respondent 1 with the Respondent 2, the player was finally registered as a professional with the Respondent 2 on 13 October 2009.
3. On 13 June 2011, the Claimant lodged a claim against the Respondent 1 and the Respondent 2 (hereinafter: *the Respondents*), for the unilateral termination of the employment contract without just cause by the Respondent 1. The Claimant requested to be awarded with the amount EUR 725,000 plus 5% interest p.a. "*due to all amounts in delay*".
4. In addition, the Claimant alleged that the Respondent 2 had "*blatantly and shamelessly induced the player to breach his contract in complete disregard of his obligations towards [the Claimant] under the contract*" and, in consequence, requested that the Respondent 2 would be jointly and severally liable for the payment of the above-mentioned amount. Equally, the Claimant requested sporting sanctions for the Respondent 2.
5. The Claimant explained that the "*Variazione di Tesseramento*" signed by both parties constitutes a written employment contract according to the internal regulations of the *Football Federation of country I*. Furthermore, the Claimant stated that in accordance with the aforementioned internal regulations of the Football Federation of country I, by signing the "*Variazione di Tesseramento*", the player acquired the right to receive remuneration in the amount of EUR 11,307 per year, which exceeds by far the player's costs he incurred with his football activity. The Claimant further explained that a player who signs a "*request for registration for a club (...) assumes the qualification of a "giovani di serie" and the status of "giovani di serie" constitutes a relationship between the club and the player according to which the player is bound to the club until the end of the season of which the player turns 19 years old*".
6. Therefore, according to the Claimant, "*the player was a professional under contract with [the Claimant]*" as he was entitled to receive more than the costs he incurred for his footballing activity and, consequently, he unilaterally

terminated the contract without just cause by signing with the Respondent 2 in July 2009.

7. The Respondents replied to the Claimant's claim dismissing it in full. In particular, the Respondents argued that the player was an amateur player with the Claimant *"and as such, under the FIFA Regulations, he was free to transfer internationally in the summer of 2009 and to join Club U without restriction"*. The Respondents pointed out that also the Football Federation of country I confirmed that the player was an amateur while registered with the Claimant.
8. Furthermore, the Respondents stressed that there did not exist a contractual relationship between the player and the Claimant, so the player cannot be held to have unilaterally terminated any contract and the Respondent 2 cannot be held to have induced the player to breach any contract. The Respondents pointed out that the *"Variazione di Tesseramento"*, which, according to the Claimant is an employment contract, *"contains no terms, no dates of employment and no remuneration figures, so it clearly does not adhere to FIFA Circular 1171 which sets the minimum requirements for contracts of professional players"*.
9. Additionally, the player declared that he had not received any form of remuneration from the Claimant in all the time that he was playing as an amateur for it. In this respect, the Respondents also referred to the Claimant's *"own admission that the right of "giovani di serie" players to receive 'remuneration' is limited to players of age 18/19"* and pointed out that the player left the Claimant before turning 18.
10. In its replica, the Claimant repeated that the *"Variazione di Tesseramento"* is a written agreement by means of which both signing parties undertake obligations and that, therefore, it is a written contract as established by article 2. par. 2 of the FIFA Regulations on the Status and Transfer of Players. In addition, the Claimant indicated that the relevant issue is not the amount received by the player, but rather that the player was entitled to receive remuneration. The Claimant holds that: *"The fact that the remuneration was not payable immediately makes no difference to the evaluation of the status of the Player under the FIFA Regulations"*.
11. Moreover, the Claimant indicated that, although the player was registered in the Football Federation of country I with the Claimant as an amateur player, the relationship between the Claimant and the player was a professional relationship *"when evaluated under the FIFA Regulations"*.

12. Finally, the Respondents reiterated all of their previous arguments and rejected the claim, requesting FIFA to dismiss the claim lodged by the Claimant.

II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter referred to as *the DRC* or *the Chamber*) analysed whether it was competent to deal with the matter at stake. In this respect, it took note that the present matter was submitted to FIFA on 13 June 2011. Consequently, the previous edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: the *Procedural Rules*) is applicable to the matter at hand (cf. art. 21 par. 3 of the 2012 edition of the Procedural Rules).
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition 2012) the Dispute Resolution Chamber shall adjudicate on employment-related disputes between a club and a player that have an international dimension.
3. In continuation, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, it referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2010 and 2012), and, on the other hand, to the fact that the present claim was lodged in front of FIFA on 13 June 2011. Therefore, the DRC concluded that the 2010 edition of the Regulations on the Status and Transfer of Players (hereinafter: *the Regulations*), is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, the members of the Chamber entered into the substance of the matter. They started by acknowledging that the parties to the dispute had signed, on 26 July 2007, a document named "*Variazione di Tesseramento*" which the Claimant alleges to constitute a valid and binding employment contract. The Chamber noted however that the Respondents categorically rejected that the "*Variazione di Tesseramento*" constituted an employment contract.
5. In this respect, the Dispute Resolution Chamber deemed it important to highlight that, in order for an employment contract to be considered as valid and binding, apart from the signature of both the employer and the employee, it should also contain the "*essentialia negotii*" of an employment

contract, such as the parties to the contract and their role, the duration of their employment relationship as well as the remuneration.

6. After a thorough study of the only signed document on file, *i.e.* the "*Variazione di Tesseramento*", the Chamber noted that such document does, in itself, not stipulate any obligations between the parties, other than that the player shall respect various rules of the *Football Federation of country I*. Moreover, the members of the Chamber acknowledged that the above-mentioned document does neither contain a term during which one of the parties should render services to the other nor does it stipulate any kind of remuneration.
7. Consequently, the Chamber concluded that the parties had not signed a valid and binding employment contract, since the document named "*Variazione di Tesseramento*" lacks all the "*essentialia negotii*" to be considered a valid employment contract.
8. What is more, the Chamber duly noted that the player did not receive any remuneration during the period of time he was registered with the Claimant, as acknowledged by the Claimant. In this respect, the Chamber considered that the argumentation of the Claimant in relation to art. 2 par. 2 of the Regulations is to be rejected, since the player was not paid for his footballing activity.
9. Finally, the Chamber noted that even the association to which the Claimant is affiliated, *i.e.* the Football Federation of country I, confirmed that the player had the amateur status while being registered with the Claimant.
10. As a consequence, the Dispute Resolution Chamber decided that, since no employment contract was concluded between the Claimant and the player, there was no possibility for the Chamber to enter into the question whether or not such alleged employment contract had been terminated by the player.
11. All the above led the Dispute Resolution Chamber to conclude that the complaint of the Claimant has to be rejected.

III. Decision of the Dispute Resolution Chamber

The claim of the Claimant, Club E, is rejected.

Note relating to the motivated decision (legal remedy):

According to art. 67 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).

The full address and contact numbers of the CAS are the following:

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For the Dispute Resolution Chamber:

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Encl. CAS directives