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The FIFA Regulations on the Labour Status and Transfer of Players

By Michele Colucci¹ and Felix Majani²

Seperti pada pekerja umumnya, olahragawan/wati termasuk pemain bola tunduk pada beberapa peraturan. Ada beberapa peraturan yang berlaku bagi mereka dan atasan mereka (klub-klub) pada tingkat internasional yaitu peraturan-peraturan yang dibuat oleh Federasi Sepakbola Dunia (FIFA). Artikel ini mencoba untuk menganalisa bagaimana pengaruh peraturan FIFA tentang hubungan pekerjaan antara klub dan pemain dengan mengambil studi kasus-kasus dari dua badan arbitrase internasional utama yaitu the FIFA Dispute Resolution Chamber dan the Court of Arbitration of Sport.

1. Introduction

As with the normal employee, sportsmen and sportswomen are subject to certain mandatory regulations, footballers included.

There are laws which govern the working relations between players and their employers (clubs) at international level. These laws are maintained by footballs world governing body, FIFA (Federation International Football Association), and in the present article, we shall take a closer look at how these relations operate from a theoretical and practical point of view.

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This article shall mainly focus on the contents and the impact of the FIFA regulations on the employment relationship between clubs and players by taking into due account the relevant case laws of sports” two main arbitral bodies at international level: the FIFA Dispute Resolution Chamber³ and the Court of Arbitration of Sport⁴.

Given the specific nature of sports, FIFA has always claimed respect of its autonomy as a Sport Association representing the interests of several stakeholders⁵.

The provisions contained in the FIFA Statutes enable FIFA to run and establish laws governing the labour conditions of footballers at international level, provided that the national associations in which these players are playing club football are members of the FIFA family. Through its statutes, FIFA has the ability to either instruct, order, or advise all the national football associations to include in their national statutes, all the FIFA regulations concerning contractual stability between players and clubs, provided that these national associations have received FIFA membership⁶.

This authority in particular stems from article 10.4(a) of the FIFA statute, which requires any association seeking admission as a FIFA member to include in its statutes, a mandatory provision

³ The DRC is an arbitration panel established by FIFA, and it deals with issues related to the transfer of football players at international level. Its decisions and case laws are available on www.fifa.com

⁴ CAS is an international arbitration body dealing with sporting disputes and its awards are available on www.cas.org.

⁵ For more details about the autonomy and specificity claimed by the international sports association, see M. Colucci, “Sport in the EU: in the name of autonomy and specificity”, in *The future of Sports Law in the European Union*, (R.Blanpain, M. Colucci, F. Hendrickx, eds.), Kluwer Law International, 2008.

⁶ FIFA has 208 member Associations worldwide. Its statutes and regulations are available on www.fifa.com.

undertaking to always comply with the statutes, regulations, directives and decisions of FIFA, its confederation and the Court of Arbitration for sport, failure to which they could be suspended or expelled from FIFA⁷.

2. The International Football Regulations

2.1 Scope

The scope of FIFA regulations governing labour and contractual matters is contained in article 1 of the FIFA Regulations on the Status and Transfer of Players (hereinafter “the FIFA regulations”)⁸. Article 1 thereof specifically stipulates that the scope of the FIFA regulations extend to the rules concerning the status of players, their eligibility to participate in organised football, and to transfers between clubs and players belonging to *different associations*. A clear reading and interpretation of the provisions of article 1 raises two clear observations; that the FIFA regulations on labour are only applicable in the following instances:

1. when there are labour relations and/or disputes between a club and a player whose nationality is different to the nationality of the club for which he plays for; or
2. When there are contractual disputes regarding the transfer of a player between two clubs belonging to different associations.

When either of these two elements is present, then there is said to be an “*international dimension*” to the contractual or labour dispute in issue, and the FIFA regulations must be applied by the relevant national association.

⁷ Article 15(1, b) - the FIFA congress may expel a member if it seriously violates the statutes, regulations, decisions or the code of ethics of FIFA.

⁸ In order to understand the genesis of the FIFA regulations please see J.-C Drolet, “Extra time: are the new FIFA Transfer rules doomed?” in *The International Sports Law Journal*, 2006/1-2, Asser Institute, 66-73.

The only instance where the regulations of the national association can be applied at the expense of the FIFA regulations, is when a contractual dispute arises as a result of a transfer between clubs belonging to the same association, or where there has already been established, at national level within the framework of the association, an independent arbitral tribunal and/or a collective bargaining agreement guaranteeing fair proceedings and respecting the principle of equal representation in cases of employment related disputes between clubs and players that have an "international dimension"⁹.

In order to have the competence to hear any labour dispute at national level, the independent arbitral tribunal so established must meet certain minimum procedural standards as set out in FIFA circular 1010¹⁰. These standards are that;

- a) The principle of parity between the player and the club must be respected, when constituting the arbitral panel, with each party being accorded the right to choose one arbitrator each, with the two arbitrators thereafter appointing the chairman of the tribunal. The parties can alternatively agree on a sole arbitrator
- b) The right of either party to reject the appointment of any arbitrator who could influence the proceedings must be respected in order to ensure an independent and impartial tribunal
- c) All the parties, the player included, must be accorded the right to be heard, to call expert witnesses, to legal representation as well as to speak and present evidence.

⁹ Article 1(2), article 22(b) of the FIFA regulations on the status and transfer of players. www.fifa.com

¹⁰ FIFA circular letter 1010 has not been published on the FIFA website (visited on 15 June 2006).

- d) The tribunal must also ensure that the parties are treated equally *vis a vis* each other during the proceedings, with either party being given the right to examine, comment or disapprove any allegations presented by the other.

Only when these standards are proved to have been observed can a national tribunal be given competence to handle labour disputes of international dimensions. In all other situations, such disputes are referred to the FIFA legal bodies.

2.2 The general labour principles

The main principles governing labour relations between clubs and players at international level are that:

1. All contracts must be respected (*Pacta sunt servanda*).
2. Contracts may be terminated by either party without consequences where there is just cause. In the event of termination without just cause, compensation shall be payable, in addition to sporting sanctions.
3. Contracts may be terminated by footballers where there is "sporting just cause"¹¹.
4. Contracts cannot be terminated during the course of the season.

All these principles clearly aim to guarantee the contractual stability between clubs and players. In the name of specificity of sports, footballers subject to the FIFA regulations enjoy only to a certain extent the "freedom of contract" compared to other employees. However, this "freedom" is subject to a number of obligatory restrictions. It is from the violation of these obligations that the bulk majority of labour disputes in today's sports world arise.

¹¹ See paragraph 15 of the Commentary on FIFA regulations on the status and transfer of players available on www.fifa.com.

2.3 The status of “players” and the nature of football contracts

Players are classified as either amateur or professional. A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he normally incurs. An amateur on the other hand does not necessarily have a written contract, but is paid only for the expenses he incurs for his footballing activity, such as boots, travel, gear etc.

Oral agreements, although possibly admissible and in conformity with national labour laws, are not in line with the mandatory FIFA requirements for written contracts and might be unenforceable at FIFA level¹². FIFA requires all contracts for professionals to be in written form. The minimum length of all written contracts for professional players shall be from its effective date until the end of the season, which basically sums up to 6 months, while the maximum length of a contract shall be five years. Contracts for periods other than these are only permissible if they are consistent with national laws.

Players are prohibited from entering into more than one employment contract with more than one club at the same time. The only time when a player is allowed to enter into more than one employment contract with different clubs is when he has been transferred on loan. In all other instances other than this, the player shall be sanctioned by FIFA for entering into more than one labour contract with different clubs. The new club for which he has also signed the second contract shall also be sanctioned for inducement of breach of contract¹³.

¹² The FIFA dispute resolution chamber has held that a player on an oral contract is entitled to register and sign for a new club because he was not bound to his former club by a written employment contract, but only by a registration form deposited to the relevant league or federation. See page 11 of the FIFA commentary, www.fifa.com

¹³ Chapter iv, article 6 of the FIFA commentary on FIFA regulations on the Status and Transfer of Players, www.fifa.com

Any player who wishes to change his status from professional to amateur status must wait for at least 30 days to elapse after his last match as a professional to before becoming eligible to play as an amateur¹⁴. On the other hand, there is no deadline applicable to any player who wishes to change his status from amateur to professional.

In order to be eligible to play for a club, a player, whether amateur or professional, must be registered with a national association. Additionally, a player can only be registered for one club at any particular time. Players may be registered for a maximum of three clubs during a season, but he or she can only be allowed to play in official matches for only two of these clubs. The only exception where a player can be allowed to play for all three clubs for which he has been registered during the course of a season is if he has been transferred from a club whose season starts in a different time of the year, to a club whose season also runs for a different period altogether.(article 5.3 of the FIFA regulations on the status and transfer of players) i.e. where a player is moving between two clubs belonging to associations with overlapping seasons, he may be eligible to play for the third club¹⁵.

Furthermore, the FIFA regulations allow the loaning of players from one club to another. The only requirement is that there must be a written agreement between both clubs. The minimum period allowed for such a loan is 6 months, and the club accepting the player on loan shall be responsible for paying the players salaries and other allowances for the entire period of the loan. It must also

¹⁴ Article 3 of the FIFA regulations on the status and transfer of players available on www.fifa.com

¹⁵ This could occur for example, where a player signs for club A in Europe, and is then loaned to club B in Europe, and later on during the January transfer window, he is sold to club C in Brazil. He will be eligible to play for club C because the Brazilian season does, unlike the European league, does not run from July to June.

not loan the player in issue to another club without the written consent of the loaning club. Loans only apply to professional players and from an administrative point of view they are considered as transfers.

2.4 Registration and transfer procedures

All clubs intending to conclude a contract with a professional player must inform the player's current club in writing before entering into negotiations with him. Furthermore, a player is only allowed to conclude a contract with another club if his contract with his current club has expired or is due to expire within the next six months. Appropriate sanctions are imposable on the new club as well as the player for any breach of these provisions¹⁶. Additionally, the new club wishing to employ the player must not subject the validity of his contract with them to a successful medical examination and/or to the grant of a work permit. Any inclusion of such a clause by a club is invalid and nevertheless still do not relieve the new club off its contractual obligations to the player in the event that the player happens to fail a medical or is denied a work permit.

The transfer of a player can only take place during the registration period. In principle, there are two annual registration periods. The first period lasts from June 1 to August 31 of each season. In between this period, there is a second registration period open from January 1 to January 31 of each year. As an exception to this rule, a professional whose contract has expired prior to the end of a registration period may be registered outside that registration period¹⁷. Outside this period, a player cannot enter into an employment relation with a club.

Should the player enter into any contractual negotiations with a new club within the transfer period, he will thereafter, through his club, be required to submit to the national football association for which

¹⁶ Article 18.3 FIFA regulations, www.fifa.com

¹⁷ Article 6(1) FIFA regulations, see www.fifa.com.

he intends to play, a copy of his contract, an international transfer certificate (ITC) and a player passport. A player passport is a document containing relevant data and information about the player, such as his name, nationality, date of birth and the clubs for which he has played for since the season of his 12th birthday. It is an important document which assists tracing the history of the player and his previous clubs for purposes of training compensation, and it must not be confused with the normal passport travel document.

The ITC is issued by football association of the club, from which the player is leaving, to the football association of the club to which the player is transferring to. It is a necessary document since its issuance signifies an assurance by the association from which the player is leaving that the player in issue has no contractual disputes with his previous club and that he is free to join the new club. In principle, the ITC must not be issued in case a contractual dispute arises between the player and his former club.

The request for the ITC is sent by the club wishing to sign the player to the association of the club from which the player is leaving, and must in principle, be issued within the next 30 days following such a request. Failure to issue the ITC still entitles the new club to register the player on a provisional basis on the basis of annexe 3, article 2(6) of the regulations on the status and transfer of players, but without prejudice to the old club's right to compensation for breach of contract. These are mandatory documentary requirements without which the registration and/or eligibility of the player to engage in gainful employment cannot be allowed.

3. FIFA Rules Governing the Employment of Minors

Pursuant to the FIFA regulations a minor is a player under the age of 18. In order to tackle the problem of trafficking of "minors", FIFA prohibits the international transfer of minors, subject to the following exceptions as contained in article 19 of the FIFA regulations on the status and transfer of players;

- a) If the player's parents move to the country in which the minor's new club is located for reasons not linked to football
- b) If the transfer takes place within the territory of the European Union (EU) or European economic area (EEA) and the player is aged between 16-18 years. However, for these exceptions to qualify, the new club must provide the minor with adequate football education and or training in line with the highest national standards, guarantee him an academic/school access which will enable him to pursue a career other than football should he cease to play football, ensure that the player is looked after in the best possible way (optimum living standards), and provide the relevant association with proof that it is complying with these requirements.
- c) If the player lives no further than 50km from a national border, and the club with which he wishes to sign for in the neighbouring association is also within 50km of that border.

If any of these exceptions are existent, then the international transfer of the minor in issue is allowed. In general however, FIFA discourages the employment of minors in football.

In addition, minors are not allowed to sign contracts exceeding 3 years (article 18.2). In case of there being contracts exceeding 3 years, FIFA will only recognise the first 3 years of this contract, and upon the expiry of these 3 years, the minor shall be free to leave the club, unless he has explicitly or *defacto* accepted an extension of the contract, thereby leaving his former club at a loss. Clubs are thus advised to sign minors on short term contracts, and also to abide by the three exceptions aforementioned in article 19.

4. Dispute Resolution Mechanisms

Unlike in the rest of the legal systems, the football world, owing to the specific nature of sports, has established several bodies, run by legal experts in the area of sports and football, to hear and

adjudicate on labour disputes affiliated to sports. FIFA generally restricts recourse by parties to ordinary courts, unless such recourse has been specifically permitted by FIFA. (Article 61.2 of the FIFA statute). The applicable law shall in all cases be the FIFA regulations, and Swiss law.

The two main bodies established at international level to adjudicate on football matters are the CAS and FIFA's legal bodies, which are the Dispute Resolution Chamber (DRC) and the Players' Status Committee (PSC). However, the competence of FIFA to hear such disputes is without prejudice to the right of a player or a club to seek legal redress before civil courts for any employment related disputes¹⁸. In this regard, it is quite advisable for either clubs, players or even coaches to seek legal redress before FIFA as opposed to the ordinary civil courts, specifically because FIFA has the ability to use its disciplinary powers to enforce any decision passed by the DRC or the players status committee, compared to the decisions rendered by ordinary courts or by arbitral bodies in other countries, which could be time and money consuming, as well as difficult if not impossible to enforce, depending on the laws of the country where such enforcement is sought.

4.1 The Dispute Resolution Chamber and the Players' Status Committee.

These bodies are competent to hear any employment related dispute between clubs and players, coaches and clubs, between clubs and associations, as well as between clubs belonging to different associations. In addition, they are competent to adjudicate on employment related disputes related to the payment of training compensation and solidarity mechanism for transfers between clubs belonging to different associations.

¹⁸ Article 22 FIFA Commentary on FIFA regulations on the Status and Transfer of Players, see www.fifa.com

The DRC is also responsible for hearing any dispute regarding the refusal by a national association to issue the requisite ITC, a document which is mandatory for a player to be able to sign an employment contract with a new club in a different association. However, with regard to the procedural issue as to whether or not a provisional registration can be granted to the player pending the hearing of the merits and/or demerits of the substantial dispute as to whether or not a national association has acted improperly in refusing to issue an ITC, the players status committee is competent to hear and to grant such provisional registration. Upon submission to the PSC, such a case is normally heard by one judge. Additionally, the players' status committee has competence to hear disputes regarding the transfer procedures, international transfer of minors, disputes concerning failure by clubs to respect terms of a loan transfer as well as the release of players to national association teams. The players' status committee normally sits with a panel of three adjudicators, with the exception of urgent cases which require quick resolutions such as the issuance of provisional registration, which may be heard by a single judge.

On the other hand, the DRC is competent to hear the rest of the contractual matters between clubs and players, or clubs and coaches, including failure to pay training compensation and solidarity mechanism payments. The competence of the DRC to hear employment related disputes between professionals and clubs is only limited to disputes that have a litigious value of CHF100,000. The DRC is composed of members representing both clubs and players in equal number¹⁹, and is led by an independent chairman. The decisions are rendered by a single judge.

All rulings by the DRC and the players' status committee must be delivered within 60 days. On the other hand, judgments must be

¹⁹ The players are represented by 10 members sent by FIFPRO, which is a international union body charged with the responsibility of representing and protecting the interests of footballers, whereas 10 other members are sent by associations and leagues from all over the world, belonging to clubs.

delivered within 30 days. The costs of litigation before a single judge of the status committee are fixed at maximum 25,000 CHF. The status committee normally indicates in its decisions, the party which shall bear the costs of such litigation, usually the unsuccessful party. The proceedings before the DRC are all free of charge, with FIFA bearing all the costs thereof. The official languages for all disputes submitted to FIFA are English, French, Spanish and German, with English being the authoritative text.

4.2 The Court of Arbitration for Sport

This is an institution independent of any sports organization which facilitates the settlement of sports-related disputes through arbitration or mediation by means of procedural rules adapted to the specific needs of the sports world. Its main task is to resolve legal disputes in the field of sports through arbitration. It does this through pronouncing arbitral awards which have the same enforceability as ordinary law court judgements.

All the decisions issued by the players' status committee or the DRC may be appealed to the CAS. FIFA specifically recognises the jurisdiction of the CAS to hear matters appealed from the FIFA decisions. Articles 60 and 61 of the FIFA statute recognise the competence of the CAS to resolve disputes between FIFA and its members, clubs, players and officials²⁰ provided that such appeals have been lodged within 21 days of the FIFA decision being appealed against.

In addition, the CAS rules, allow any party wishing to litigate a contractual matter to directly submit his or her case to it without first having to go to FIFA, although this has been specifically prohibited by under article 61.2 of its statutes which require all parties to exhaust all other internal channels before resorting to the CAS.

²⁰ The CAS is primarily mandated by FIFA to apply the FIFA regulations as well as Swiss law when hearing employment related disputes.

5. Contractual Disputes

5.1 Specificity of sports

In all cases, the specific nature of sports, which has been recognised by the EU, is considered by the CAS when adjudicating on labour disputes. This specificity allows the universal application of the FIFA regulations to all labour contracts that bear with them international dimensions, therefore avoiding possibilities of there being inconsistent sports law precedents from the national courts or other tribunals through the application of their national or federative labour laws²¹.

Furthermore, this specificity prohibits the application of national labour laws to sporting labour disputes that have international dimensions. This position could not have been well emphasised by the CAS in its decision in the case of TAS 2003/0/530 AJ Auxerre c/FC Valencia & Mohammed Lamine Sissoko²². This case involved an action by AJ Auxerre FC against its former player, Mohammed Sissoko, concerning an alleged breach of contract by Mr Sissoko, who had walked out on Auxerre and signed for Spanish club Valencia FC. Auxerre relied on the French labour law, specifically the *Charte du Football Professionnel*, which was a collective bargaining agreement signed by all professional footballers, under which agreement Mr Sissoko was obliged to have remained at Auxerre FC. However, this agreement was rejected by the CAS, which held that the rules of the *Charte* were of national scope and could neither be purportedly deployed in another State, nor could

²¹ "Sport is a phenomenon that naturally expanded towards the borders... it is not only preferable but also indispensable that the regulations which control the sport at an international level have a regular and largely coherent character in the whole world." See TAS 2005/A1983 & 984 *Peñarol c/Bueno, Rodríguez & PSG*, www.cas.org.

²² Award available on www.cas.org

they supercede the FIFA regulations on the status and transfer of players in disputes of international dimensions.

In any case, the mere fact that the national laws are “excluded” from application with regard to international labour disputes does not mean that FIFA does not consider the national laws when it insists on the specificity of sports. This is because FIFA has always maintained, in article 1(3a) of its regulations of the status and transfer of players, that “the national regulations of all associations” have to be conformity with the FIFA regulations²³

Moreover, all the national laws have been expressly and/or impliedly and considered by FIFA, through article 25.6 of of the regulations on the status and transfer of players, which states that “The FIFA bodies, when taking their decisions, shall apply these Regulations(of FIFA) whilst taking into account all relevant arrangements, law and/or collective bargaining agreements that exist at national level, as well as the specificity of sport”. It has been accepted that the “national regulations, collective bargaining agreements and other agreements are more of a coadjutor than a decisive point and they are only taken into consideration when there appears to be a hole in the FIFA_Regulations, given the fact that article 1 of that Regulations stipulates that “national regulations” have to be conformed to the principles of the FIFA ones. Greater detail as to the application of the specific nature of sports through tge FIFA regulations in comparison to the national laws shall be highlighted later on in the CAS case of andrew webster & wigan athletic fc vs hearts of midlothian plc.

²³ Article 1 of the regulations on the status and transfer of players require all associations to include, without any modification, the FIFA regulations on the principles of *pacta sunt servanda*, termination of contract with just cause, termination without just cause, regulations on the employment of minors, regulations on amateur and professional status, registration periods, loans and lengths of professional contracts

5.2. Termination of contract with “sporting just cause”

A contract between a professional and a club may only be terminated upon expiry of the term, or by mutual agreement²⁴. Unilateral termination of a contract without just cause, especially during the protected period, is vehemently discouraged. In football however, the vast majority of such disputes have occurred as a result of unilateral termination, either with or without a just cause.

One of the specificities associated with labour relations in football is that players are allowed to prematurely terminate their contracts without any sporting sanctions, for sporting just cause. Sporting just cause is said to occur when a club fails to field a player for more than 10% of the club’s official matches (including the championship and international cup matches) in the course of the season. When this happens, just cause is said to be present, thereby entitling the player concerned may terminate his contract for sporting reasons.

However, sporting just cause does not necessarily occur in all circumstances. There are exceptions. Firstly, in order to invoke this provision, the player in question must be an “established player”. Who exactly an established player has not been well defined in the FIFA regulations. However, the DRC jurisprudence has it that a player can be said to be established if he can prove that he has completed his training period, and that his football skills are at least equal or superior to those of his teammates playing regularly in the same team. Secondly, the position of the player is also very important. Certain players, such as 2nd choice goalkeepers who, owing to their special positions, cannot be guaranteed more than 10% of matches in a season unless the 1st choice goalkeeper is injured or otherwise prevented from playing. In these situations, the 2nd choice goalkeeper cannot terminate his contract for sporting just cause.

²⁴ Article 13, FIFA regulations on the Status and Transfer of Players, see www.fifa.com.

Thirdly, if the club was not able to field the player affected because he was or had been injured and/or suspended over a certain period, then sporting just cause is said to be absent and the player cannot terminate his contract.

Essentially, article 15 of the FIFA regulations on the Status and Transfer of Players is clear that due consideration shall be given to the player's circumstances, with the existence of a sporting just cause being established on a case by case basis. Furthermore, a player may only rely on this provision to terminate his contract after 15 days have elapsed following the last official match of the season of the club with which he has been registered. Failure by the player to observe this requirement may lead to sporting sanctions.²⁵

5.3. Termination with just cause

The FIFA regulations allow either the player or the club to terminate a contract without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause to do so (i.e. a valid reason). A "just cause" is said to exist where one party engages in behaviour that is in breach of the employment contract, such as to entitle the other party to have a valid reason, in other words a serious reason to terminate the contract. Not all behaviours that are contrary to the employment contract amount to valid reasons to terminate a contract. All situations are weighed on a case by case basis, with the sole aim of identifying the existence of "a serious reason to terminate the contract".²⁶

²⁵ Article 15(6), FIFA Commentary on the Status and Transfer of Players, www.fifa.com.

²⁶ For a detailed description of the just cause concept in the DRC case law see J. Soek, "Termination of International Employment Agreements and the "just cause" concept in the case law of the FIFA Dispute Resolution Chamber", in *The International Sports Law Journal*, 3-4/2007, 28-45.

Such behaviour, or “a serious reason justifying the termination” could, for example be failure by the club to pay the player’s salaries. It has however been said that such breach must have persisted for 3 months or more in order to entitle the player to terminate the contract with just cause. Additionally, the player affected must inform the club in writing of the said default, and of the fact that his payments are due, failure to which he will terminate the contract.

A club, on the other hand is entitled to terminate a players contract with just cause if the player fails to appear for training sessions without a valid reason, merely because for example, he has been told by the coach that he will not be fielded for example because of his frequent arguments with his teammates, or because his is uncooperative and does not follow the club’s directives.

In summary, just cause can therefore be claimed on grounds of a long and unjustified absence of the player from the club²⁷, and also for disciplinary reasons²⁸, but cannot be claimed on grounds of the player’s physical condition²⁹ or due to lack of effort in the field from the player.³⁰

In all cases of termination for just cause, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions. On the other hand, the party responsible for the termination is liable to pay compensation for the damages suffered for the early termination, as well as to suffer the requisite sporting sanctions that follow³¹.

²⁷ DRC, decision of 6 of July 2003

²⁸ DRC, case No. 14558 of 15 January 2004

²⁹ DRC, case No. 113291 of 21 November 2003

³⁰ DRC, case No. 74563 of 22 of July 2004.

³¹ Article 14, FIFA commentary on the Status and Transfer of Players.

5.4. Termination of a contract without just cause.

The FIFA regulations, article 16 of the status and transfer rules, prohibit the unilateral termination of a contract during the course of the season. And as earlier highlighted, termination is only permissible in situations of just cause and/or sporting just cause. In cases other than these, such as unilateral termination of the contract by either the club or the player without just cause, several consequences may befall the party in breach, as provided for by the FIFA rules.

Unilateral termination of a contract occurs when the party terminating the contract has no valid reason to do so. Valid reasons only exist when a party to a contract has acted contrary to the terms of that contract. Termination of a contract outside this scope amounts to a termination without just cause.

5.5. The “protected period” and consequences of termination without just cause

In all cases, the party terminating the contract without just cause must pay compensation. In addition to the obligation to pay compensation, sporting sanctions are imposable on any player found to have unilaterally terminated his contract. This sanction could be a four month ban on the player from playing all official matches, or in the case of aggravating circumstances, a six month ban. These sanctions are however only imposable in case of unilateral termination of the contract by the player during the “protected period”³². This period has been established in order to guarantee a certain degree of stability to the employment relationship in sport.

³² This is a period of 3 entire seasons following the entry into force of a contract, where such contract is concluded prior to the players 28th birthday, and a period of 2 entire seasons following the entry into force of a contract, where such contract is concluded after the 28th birthday of the player.

For unilateral breach without just cause occurring outside the protected period, no sporting sanctions are imposable, but disciplinary sanctions may be imposed on the player for failure to give notice of the termination within 15 days of the last official match of the season.

Clubs which employ players who have unilaterally terminated their contracts with their previous clubs may also face consequences for inducing such termination. The general assumption by FIFA, unless proved to the contrary, is that any club which employs a player who has unilaterally terminated his previous contract has induced that player to commit the aforesaid breach. Under Article 17(4) of the FIFA regulations, sporting sanctions, in addition to the obligation to pay compensation may be imposed on any club found guilty of such induction during the protected period. The club could be banned from registering (employing) any new players, either nationally or internationally for two registration periods, which essentially amounts to one year (season).

In addition, club officials, players, and agents alike or any other person who is subject to the FIFA statutes are equally bound by these provisions and could face similar sanctions should it be proven that they have acted in a manner designed to induce any player to breach his professional contract with a club.

5.6. Compensation due and the criteria for calculating

It is worth noting that while calculating the amount of compensation payable by the party guilty of unilateral termination of the contract, due regard is accorded to the following conditions: the law of the country concerned, the specificity of sports, and “any other objective criteria” – which includes:

- the remuneration and other benefits that were due to the player under the existing contract with his old club, and/or under his new contract with his new club
- the number of years remaining under the player’s existing contract (with his old club) up to a maximum of 5 years

- the fees and expenses paid or incurred by the former club, amortised over the term of the contract
- And whether the breach occurred within the protected period.

Previous jurisprudence by the court of arbitration for sports (CAS) has certainly found it difficult to apply all these criteria in arriving at an amicable and reasonably compensatory figure for unilateral breach of contract. Emphasis has been placed on the specificity of sport, rather than on the specific provisions of article 17.1. Indeed, it is worth noting that the CAS has, for instance, overlooked the provisions requiring the application of the law of the country concerned while handling such cases. It has also, unlike the normal employment contracts which seek to compensate the injured party in the form of damages (restitution), disregarded the principle of damages “*per se*”

6. Case focus – Andrew Webster & Wigan Athletic FC v Heart of Midlothian PLC

This case involved the unilateral termination of a contract, without just cause outside the protected period. It is one of football’s landmark rulings not only for the manner in which it overruled the FIFA provisions on termination of employment contracts by players without just cause, but also for the message through which players around the world could perceive from it in relation to their current contractual terms with their clubs.

Briefly, the facts of this case involved a 24year old Scottish player, Andrew Webster who had been signed by Scottish club Hearts of Midlothian fc on a 3year contract on March 31, 2001, which contract was later extended by a further 4 years on July 2003. In effect, Mr. Webster’s employment contract with Hearts was to expire on 30 June 2007. Webster however became an integral part of Hearts fc” s structure and an important player who during his time at Hearts made 22 appearances for his country, Scotland. Hearts therefore offered to extend Mr. Webster’s contract in April 2005, but he declined to accept it. The club chairman was evidently

angered by Webster's refusal, and publicly declared that Webster would no longer play for Hearts. He was therefore put on the bench for vast parts of the season. Hearts meanwhile had received several offers from Southampton FC and Blackburn rovers to sign Mr Webster but declined to accept them.

On may 26 2006, with just under 1 year left on his contract, which was outside the protected period, Mr. Webster invoked article 17 of the FIFA regulations and decided to terminate his contract i.e. irrespective of the existence or otherwise of a just cause. On august 2006, Mr. Webster then signed a 3 year professional contract with Wigan FC. Evidently angered by this, hearts sued both Mr. Webster and Wigan before the FIFA DRC seeking compensation for breach of contract without just cause. Their claim was accepted, and the DRC found Webster guilty of unilaterally terminating his contract without just cause, and Wigan were held jointly and severally liable for inducing the said breach. Consequently, Webster and Wigan were ordered to pay Hearts 625,000 pounds. Dissatisfied with this ruling, both Wigan and Mr. Webster, as well as hearts FC appealed to the CAS, principally questioning the criteria used by the DRC in arriving at the figure of 625,000pounds. The CAS reversed the DRC decision, and also lowered the amount of compensation payable by Mr. Webster and Wigan jointly and severally to 150,000 pounds.

Of key importance however in relation to this case is the number of legal aspects, related to the international labour relations in the world of football that can be picked from the CAS decision thereof. These aspects, which are of fundamental importance to clubs, are;

- a) That unilateral termination of a contract by a player is viewed as a breach of contract, even if such termination occurs outside the protected period.
- b) That the training compensation payments which the former club would have received had it transferred the player to the new club, or to another club is not part of the issues to be considered

while calculating the amount of compensation payable for termination of contract without just cause, under article 17. Neither are the amounts invested by the former club in training and developing the player's successful career or the market value of the player of any relevance.

- c) That in order to avoid any future uncertainties and/or litigation as to the amount of compensation due to a club as a result of unilateral termination of a contract by its former player(s), the club is allowed, during the period of contractual negotiations with the player, to stipulate in the contract the type and amount of compensation that may be paid to it by the player and/or the new club in case the player were to terminate his contract in future.
- d) That owing to the specific nature of football and the particularities of the football market, football contracts, unlike the normal commercial contracts are not characterised by the general contract rules on damages. The specific provisions of article 17 of the FIFA regulations demand that it is in the best interests of football that solutions to contractual disputes be based on uniform compensatory criteria rather than on the provisions of national law.
- e) That despite article 17 listing the law of the "law of the country concerned" as one of the aspects to be considered while calculating compensation for unilateral breach of contract, the CAS is prepared, for the sake of uniformity and organization in the determination of compensation payable for unilateral breach, to overlook this provision and to instead apply Swiss law³³, and additionally, the FIFA regulations. Article 17(1) therefore, in the eyes of the CAS, contains a broad range of criteria, many of which cannot in good sense be combined, and

³³ This is the law of the seat of the court of arbitration for Sports, and cases which are heard by the court of arbitration for sport apply Swiss law where the parties have not chosen the law to be applied to their dispute.

some of which may be appropriately applied to one category of a case and not to another.

- f) That the clubs' needs for contractual stability are adequately considered and catered for by the severity of the sanctions imposed on the player for unilateral termination during the protected period. Compensation to the club for termination outside the protected period would therefore lead to enriching the club, contrary to the intentions of article 17, which are meant to ensure an equal footing between a club and a player when it comes to compensation.
- g) That clubs are not entitled to receive either the transfer fee or the signing on fee, or apportion thereof which they had paid when signing a player who later on unilaterally terminates his contract as compensation. They can only receive such fees if they are stipulated in the employment contract.
- h) Clubs are entitled to receive from players, and vice versa the outstanding remuneration that was due to the player (or from the club) until the expiry of the term of the contract as compensation for unilateral termination of a contract. I.e. the residual value of the contract.
- i) That the principle of joint and several liability envisaged in article 17.2 is one of strict liability. It is not conditional on whether or not the new club engaged in any faulty acts to induce the player to terminate his contract. Any club which employs a player who has unilaterally terminated his previous contract with his old club deemed to have induced the player to engage in the aforesaid termination and will be liable jointly with the player to compensate the former club for such termination.
- j) That the transfer of the player to another club is not a *condicio sine qua non* for the application of article 17. Article 17 applies as long as it is proved that the player has unilaterally terminated his contract without just cause. The player still remains liable

for the termination, regardless of whether or not he transfers. In addition, a 3rd party, or a new club can only be held jointly and severally liable, for the termination only if the player were to go ahead and sign a new employment contract with the new club immediately after terminating his contract with his former club (article 17.2). In this regard, the termination of the previous employment agreement and the signature of a new employment agreement by the player can be said to be two different aspects of the same problem.

Unlike the normal employment contracts which seek to compensate the injured party in the form of damages (restitution), football is specific in nature and the criteria applied in compensating an injured party for breach of contract is wide and varied. It takes into account the need for players to continue with their careers despite having engaged in unilateral breach of contract and also disregards the principle of "damages" per se.

7. Ancillary Labour Requirements:

7.1 Release of players for national associations

Despite having been contracted to clubs, FIFA mandates all clubs without failure, to release their players to play for their national teams as and when required under the FIFA calendar. Any divergent agreement between a club and a player is prohibited³⁴. Players are required to heed all national call ups, and are only allowed to refuse a national call up if they have informed the national football association of their country in writing, and before the aforesaid call up, of their intention to cease representing their country at national level. Players who decline to represent their country after being requested to do so are restricted by FIFA from playing for their clubs for the period during which they would have been playing for their countries. This ban may further be extended

³⁴ Annex 1 article 1 of the FIFA commentary on the Status and Transfer of Players.

by 5 days if the player for whatever reason declined the call up (article 5, annexe 1 of the FIFA commentary).

In all cases, players must be released at least 48 hours before the beginning of any friendly match, 4 days before any international qualifying match and 14 days before the start of any international tournament, such as the world cup, or the European Cup. In addition, all players must return to their clubs within 24 hours of the finish of any international match, with the clubs being entitled to receive written information from the player's country, of the players return schedule at least 10 days before the match. A player who fails to return to his club within this period may face a number of consequences, one of which could see his club requesting FIFA to shorten the amount of time that player will have to return to his club in case of a future international call up.

FIFA and UEFA have recently introduced new compensatory mechanisms which seek to insure all clubs which lose their players through injury while appearing for their country at the next two editions of the euro 2008 and euro 2012, as well as the 2010 world cup. This is a fee of 174 million Euros to be paid set aside by both bodies to be shared equally among all the clubs whose players will feature in the 2008 and 2012 European championships. A fee of 76 million Euros has been set aside for distribution in a similar manner for clubs whose players will feature at the 2010 world cup in South Africa³⁵. These payments are regardless of whether or not the players participating at these championships shall get injured while playing³⁶.

³⁵ UEFA has set aside Euros 43.5 million for the 2008 European championship, and 55 million for the 2012 edition respectively as compensation for clubs whose players get injured at these championships. For further reading visit, <http://www.iht.com/articles/2008/01/21/sports/soccermoney21.php>

³⁶ For further reading, visit <http://www.iht.com/articles/2008/01/21/sports/soccermoney21.php>

8. Training Compensation

FIFA generally assumes that players between the ages of 12 and 23 are yet to achieve professional status and are still in their period of training. This assumption can only be rebutted if it is proved that a player has already finished his training before the age of 21 years. FIFA therefore seeks to compensate clubs who invest lots of money in training these young players once these players achieve professional status while at other clubs. This compensation is called training compensation. This compensation is due when a player signs his first employment contract, or is transferred (employed) to a new club before he reaches the age of 23. It is in all cases, paid to the clubs to which the player formerly belonged to before attaining professional status as compensation for the investments made by these former clubs in training and developing the player. Training compensation payment is of particular importance to all clubs involved in employing players, since it is mandatory for them to trace the player's history in order to know which clubs are entitled to this fee. This fee is still payable by the player's new club in case a player below the age of 23 breaches his employment contract with his former club without just cause³⁷, and must be paid within 30 days of registration of the player by the new club.

These costs take into account the costs the new club would have spent had it trained the player on its own. They are calculated on a pro rata basis from the season of the player's 12th birthday to his 21st birthday. All clubs are grouped into four categories, and it is from these categories that FIFA has allocated the training costs due to be paid for certain players, depending on the national association (confederation) from which a player is transferring from. The scales range from high quality training academies to amateur centres, and are reviewed on a yearly basis.

³⁷ Article 2.2, annexe 4, of the FIFA commentary on the Status and Transfer of Players.

9. Solidarity contribution

In addition to training compensation, it is important for clubs which employ players to know that solidarity contributions are also payable when engaging in transfer negotiations with clubs for players. This is a fee paid by any club which signs a player who is still under an employment contract with his previous club, with the consent of the latter club. These payments are only due in cases of a player transferring to a club belonging to a different association and never between transfers of clubs belonging to the same association (internationality). It is paid to all the former clubs with which the player was employed by during his 12th and 23rd birthday, as compensation for investing in the players' development. It is paid throughout the entire career of the player, as long as he keeps transferring from club to club while still under contract with his previous club, and off course with the latter's consent. This is a fee of 0.25% of the transfer compensation paid by the new club to any club which owned the player during his 12th and 15th birthdays, and 0.5% of the transfer compensation paid by the new club to all the clubs the player played for during his 16th and 23rd birthday. It is paid within 30 days of registration of the player with the new club and unlike training compensation, is calculated from the transfer fee paid by the new club for the player.

10. Conclusion and recommendations

With regard to labour the FIFA regulations apply only to transfers or employment disputes between clubs from different associations or between players with different nationalities from the clubs which have employed them, i.e. to issues having an international dimension. If the FIFA rules are not duly implemented by national sports associations they could lead to a sort of "reverse discrimination", which critics argue amounts to a violation of the "*par condicio*" among two players who have signed similar employment contracts with the same club, with the only difference between them being that one of the players is a national of the

association of the club for which he is employed , while the other is not.

With regard to young football players, greater systems of checks and balances ought to be put forward at FIFA level to curb the rising levels of the shipping, trafficking and employment of minors by –above all- a large number of European clubs, despite there being clear prohibitions from FIFA.

Collaboration must be put in place between FIFA and all the national associations in the fight against the illegal employment of minors on football contracts, with emphasis being placed on the education and social development minors who happen to engage in employment contracts from clubs.

And with the landmark ruling in the case of Webster, tighter and clearer rules must be laid forth by FIFA as to the criteria applicable for the calculation of compensation due for cases involving breach of contract without just cause. It is also in the best interests of the survival of clubs which invest large sums of money when signing, training and developing players to receive greater protection from FIFA in terms of the compensation and contractual stability regulations aimed at curbing unilateral termination of contracts without just cause. It however remains to be seen how FIFA could amend its regulations to achieve this without contravening any EU laws on employment and freedom of movement.

Collaboration must also be fostered between the DRC and the CAS, if the FIFA objectives towards the attainment of globalisation of sports laws, and the uniformity of all football cases laws, - not necessarily those concerning labour are to be attained. Clear laws paving the way for this must be introduced.

Whereas the Compensatory mechanisms for the release of players for international duty have been very much welcome, the efficiency of the solidarity and training compensations could also be improved to the benefit of those clubs coming from the poorest associations

worldwide, most of which are not aware of the existence and/or their rights to claim these payments when selling their young players to big European clubs.

For the future it is essential to foster the dialogue and co-operation among all Sports stakeholders at international level in order to guarantee the better protection of players as workers and clubs as employers.

11. List of Terms and Abbreviations

FIFA- Federation of international football associations

CAS- Court of arbitration for sports

ITC- International transfer certificate

DRC-Dispute Resolution Chamber

PSC – Players Status Committee

UEFA – union of European football associations

FIFpro – federation of international associations of professional footballers

EU – European Union