



Arbitration CAS 2007/A/1320-1321 Feyenoord Rotterdam v. Clube de Regatas do Flamengo, award of 26 November 2007

Panel: Mr Michele Bernasconi (Switzerland), President; Mr Manfred Nan (Netherlands); Mr Efraim Barak (Israel)

Football

Compensation for training

Burden of proof of the end of a player's training and/or education

Interpretation of the FIFA Circular Letters

Calculation of the compensation for training

1. **Art. 13, first sentence, of the FIFA Regulations for the Status and Transfer of Players sets the presumption that a player's training and education takes place between the ages of 12 and 23. The club that wishes to reverse this presumption bears the onus of proof that a player was completely trained before the age of 23.**
2. **The decision on whether and when the formation of a player has been completed has to be taken on a case-by-case basis, taking in due consideration all the circumstances and the evidence produced. With this regard, the number of matches played is not per itself necessarily decisive.**
3. **In the view of their nature, a strictly word oriented interpretation of the FIFA Circular Letters should not prevail over an intention-oriented interpretation. In other words, when interpreting the FIFA Regulations, FIFA's true intention shall be sought without exclusive regard to the literal meaning of the Circular Letter. The Panel has to interpret the latter according to the requirements of good faith and in line with common usages. Finally, constant practice within FIFA can help in interpreting how FIFA, as an association, and its direct and indirect members, understood and applied FIFA Regulations.**
4. **The system put in place by the FIFA Regulations for the Status and Transfer of Players divides a player's career into segments. Each period between each professional transfer is a specific and independent segment of time. In this context, when FIFA Circular Letter No 826 states that for any subsequent transfer up to the age of 23, training compensation will only be owed to the previous club of the player for the time he was effectively trained by that club, it exclusively refers to the segment of time (a) during which the player was contractually bound to the "*previous club*" and (b) which is immediately preceding the segment of time for which he is registered with the new club.**

Feyenoord Rotterdam N.V. is a football club with its registered office in Rotterdam, the Netherlands (“Feyenoord”). It is a member of the Royal Netherlands Football Federation (Koninklijke Nederlandse Voetbalbond – KNVB), itself affiliated to the Fédération Internationale de Football Association (FIFA) since 1904.

Clube de Regatas do Flamengo is a football club with its registered office in Rio de Janeiro, Brazil (“Flamengo”). It is a member of the Confederação Brasileira de Futebol (CBF), which has been affiliated to the FIFA since 1923.

The following facts are not disputed:

- The player V. (the “Player”) was born on 24 November 1983.
- The Player was registered with Flamengo as an amateur player from January 1995 to September 2000. He signed his first professional contract with Flamengo valid from 1 October 2000 until 30 September 2002.
- On 19 July 2001, the Player and Flamengo signed an agreement extending the first professional contract until 31 January 2004.
- On 5 February 2004, the Player joined the Brazilian Club S.E. Palmeiras, with which he entered into a labour agreement valid until 31 December 2004.
- The Player and S.E. Palmeiras mutually agreed to terminate their contractual relationship on 24 March 2004. The next day, the Player was registered again with Flamengo as a professional. A contract expiring on 31 December 2004 was signed.
- In January 2005, the Player joined Feyenoord as a professional.

Out of the 14 matches left until the end of the 2004/2005 season, the Player played between 5 and 6 matches with Feyenoord's first team.

At the present time, the Player is a regular player of the Feyenoord's first team.

On 25 May 2005, the 24th Labour Court of Rio de Janeiro ratified a “*conciliation agreement*”, which reads as follows, where relevant (as translated into English by Feyenoord):

“(…) *the litigants, V., Claimant, and **CLUBE DE REGATAS DO FLAMENGO**, Defendant, in this city, after being heard by His Honour the Chief Judge of the Court in accordance with the law, accepted a proposed conciliation, which is herein ratified:*

- 1 - *The Defendant shall pay the Plaintiff a net amount of R\$ 90,000.00 on the 21st of June, 2005; (...)*
- 4 - *General quittance for all terminated work contracts with the Defendant and for case no (...), so as to make no further claims;*
- 5 - *The parties declare that the following amounts are related to indemnify payments: R\$ 30,500.00 for holiday indemnities, plus an additional 1/3 on holidays, a differential of R\$ 36,500.00 related to FGTS payments and R\$ 23,000.00 penalty under article 477 of the Consolidated Labour Laws”.*

On 30 August 2005, Flamengo initiated proceedings with the FIFA Dispute Resolution Chamber to order Feyenoord to pay in its favour an amount of EUR 637,500 as training compensation.

On 12 January 2007, the FIFA Dispute Resolution Chamber concluded that Feyenoord had to pay to Flamengo an amount of EUR 67,500 notably on the following grounds (page 5 of the decision):

- “12. *In consequence, the Chamber decided that since the player, before being registered with the Respondent, had already been registered as a non-amateur player with another club, namely the club S.E. Palmeiras, no training compensation is due to the Claimant by the Respondent for the training of the player during the period prior to the player's registration with S.E. Palmeiras, i.e. for the period from January 1995 until 4 February 2004.*
13. *The Chamber then drew its attention to the period from 25 March until 31 December 2004, period in which the player was registered with the Claimant subsequent to his registration with the club S.E. Palmeiras. The Chamber noted that the player's age was 21 in that period, i.e. the season of his 21st birthday.*
14. *In this respect, the Chamber took note of the Respondent's statement that the player's training was already terminated at that time. The Chamber remarked that the Respondent had not submitted enough evidence in support of this assertion. Therefore, the Chamber had to reject the argument of the Respondent.*
15. *Consequently, the Chamber concluded that the Claimant is entitled to receive training compensation for the period from 25 March until 31 December 2004, i.e. for nine months”.*

As a result, on 12 January 2007, the FIFA Dispute Resolution Chamber decided the following:

- “1. *The claim of the Claimant, Clube de Regatas do Flamengo, is partially accepted.*
2. *The Respondent, Club Feyenoord, has to pay the amount of EUR 67,500 to the Claimant.*
3. *The amount due to the Claimant has to be paid by the Respondent within the next 30 days as from the date of notification of this decision.*
4. *In the event that the debt of the Respondent is not paid within the stated deadline, an interest rate of 5% per year will apply as of expiry of the aforementioned deadline and the present matter shall be submitted to the FIFA Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
5. *The Claimant is directed to inform the Respondent directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
6. *According to art. 61 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 (...).”*

On 14 June 2007, the parties were notified of the decision issued by the FIFA Dispute Resolution Chamber (“the Decision”).

It is undisputed that, to date, Feyenoord has not paid any training compensation to Flamengo with regard to the Player.

On 5 July 2007, Feyenoord filed a statement of appeal with the Court of Arbitration for Sport (CAS). It challenged the above-mentioned Decision, submitting the following request for relief:

“Feyenoord request the CAS to:

- a. Set aside and reverse the decision of the FIFA Dispute Resolution Chamber (see Annex A) in the sense that Feyenoord is no longer obliged in any kind of way to pay training compensation or any other compensation to Flamengo regarding the player V.*
- b. Decide that Flamengo has to pay the legal costs and the costs of arbitration to be determined in good justice by the CAS;*
- c. Decide that Flamengo has to pay the extra judicial costs to be determined in good justice by the CAS;*
- d. Decide that any of the payments under b. and / or c. are not subject to suspension for any reason and have to be effected within 30 days after the date of receiving the decision of the CAS to the account of Feyenoord in Rotterdam (...).*
- e. Submit the final appeal decision of the CAS to the disciplinary committee of FIFA in order for this disciplinary committee to take disciplinary measures on Flamengo in the event that Flamengo fails to comply with any decision of the CAS.”*

On 14 August 2007, Flamengo filed an answer, with the following request for relief:

“[Flamengo] requests the Court of Arbitration for Sport:

- 1. To dismiss the Appeal filed by [Feyenoord] against the decision of the Dispute Resolution Chamber of FIFA.*
- 2. To take a new decision according to our appeal brief (see procedure CAS/A/1321 Clube de Regatas Flamengo v/ Feyenoord).*
- 3. To determine that the cost of the arbitration shall be borne totally by Feyenoord.*
- 4. To determine that an amount of 20,000 CHF has to be paid by Feyenoord as a contribution to the legal and other costs incurred by the Appellant in the arbitration procedure.”*

On 5 July 2007, Flamengo filed a statement of appeal with the CAS. It challenged the Decision of the FIFA Dispute Resolution Chamber submitting the following request for relief:

“[Flamengo] requests the Court of Arbitration for Sport to:

- 1. Accept this Appeal against the decision of the Dispute Resolution Chamber of FIFA.*
- 2. Adopt an Award changing the mentioned decision and determining the V.'s Training Compensation due to Clube de Regatas do Flamengo in the amount of EUR 580,000 (five hundred thousand, eighty thousand euros)”.*

On 17 August 2007, Feyenoord filed an answer, with the following request for relief:

“Feyenoord requests the CAS to:

- a. Reject the claim of Flamengo;*
- b. Set aside and reverse the decision of the FIFA Dispute Resolution Chamber dated January 12, 2007 in the sense that Feyenoord is no longer obliged in any kind of way to pay training compensation or any other compensation to Flamengo regarding the player V.*

- c. *Decide that Flamengo has to pay the legal costs and the costs of arbitration to be determined in good justice by the CAS;*
- d. *Decide that Flamengo has to pay the extra judicial costs to be determined in good justice by the CAS;*
- e. *Decide that any of the payments under c. and / or d. are not subject to suspension for any reason and have to be effected within 30 days after the date of receiving the decision of the CAS to the account of Feyenoord in Rotterdam (...).*
- f. *Submit the final appeal decision of the CAS to the disciplinary committee of FIFA in order for this disciplinary committee to take disciplinary measures on Flamengo in the event that Flamengo fails to comply with any decision of the CAS”.*

A hearing was held on 1 October 2007 at the CAS headquarters in Lausanne.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from articles 60 ff. of the FIFA Statutes and article R47 of the Code of Sport-related Arbitration (the “Code”). It is further confirmed by the order of procedure duly signed by the parties.
2. It follows that the CAS has jurisdiction to decide on the present dispute.
3. Under article R57 of the Code, the Panel has the full power to review the facts and the law.

Applicable law

4. Article R58 of the Code provides the following:
“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. In the latter case, the Panel shall give reasons for its decision”.
5. Article 60 par. 2 of the FIFA Statutes provides *“[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*
6. The Panel is of the opinion that the parties have not agreed on the application of any specific national law. It is comforted in its position by the fact that, in their respective submissions,

the parties refer exclusively to FIFA's regulations. As a result, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily.

7. The case at hand was submitted to the FIFA Dispute Resolution Chamber after 1 July 2005, i.e. the date when the revised Regulations for Status and Transfer of Players (edition 2005) came into force. Article 26 par. 1 and 2 of the said revised Regulations stipulates the following:

- “1. *Any case that has been brought to FIFA before these Regulations come into force shall be assessed according to the previous regulations.*
2. *As a general rule, all other cases shall be assessed according to these Regulations, with the exception of the following.*
 - a. *Disputes regarding training compensation*
 - b. *Disputes regarding the solidarity mechanisms*
 - c. *Labour disputes relating to contracts signed before 1 September 2001.*

Any case not subject to this general rule shall be assessed in accordance with the Regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose.”

8. The dispute at stake involves contracts signed before 1 July 2005 and the payment of training compensation for a period running from 1995 through 2004. In the view of the above quoted provision and of the FIFA Circular Letter No 995 dated 23 September 2005, the previous Regulations for the Status and Transfer of Players (edition 2001) (the “FIFA Regulations”) shall govern the decision of this dispute.

Admissibility

9. The appeals were filed within the deadline provided by the FIFA Statutes and stated in the Decision of the FIFA Dispute Resolution Chamber. They complied with all other requirements of article R48 of the Code.
10. It follows that the appeals were admissible.

Procedural Motions

11. The order of procedure duly signed by the parties provides that “*The appeals procedures CAS 2007/A/1320 and CAS 2007/A/1321 oppose the identical parties in appeal and cross appeal. The appealed decision was issued by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA). These two disputes will be conducted jointly as (a) such appeals raise the same issues, (b) the parties are identical in both procedures, (c) the same Panel of arbitrators is in charge of both cases*”. Indeed, the parties confirmed at the hearing their agreement with the joint conduction of the procedures 1320 and 1321.

Merits

12. The main issues to be resolved by the Panel in deciding this dispute are the following:
 - A. Is Flamengo entitled to training compensation?
 - B. If so, which is the correct calculation of the training compensation?

A. Is Flamengo entitled to training compensation?

13. Article 13 of the FIFA Regulations provides the following:

“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, compensation shall be due until the player reaches the age of 23, but the calculation of the amount of compensation shall be based on the years between 12 and the age when it is established that the player actually completed his training”.

14. Pursuant to article 14 of the FIFA Regulations,

“When a player signs his first contract as a non-amateur, a sum of compensation shall be paid to the club(s) involved in the training and education of the player”.

15. According to article 15 of the FIFA Regulations,

“Compensation shall be paid each time a player changes from one club to another up to the time his training and education is complete, which, as a general rule, occurs when the player reaches 23 years of age”.

16. Article 17 of the FIFA Regulations states that:

“When a player signs his first contract as a non-amateur, or when a player moves as a non-amateur at the end of his contract but before reaching the age of 23, the amount of compensation shall be limited to compensation for training and education, calculated in accordance with the parameters set out in the Application Regulations”.

17. Article 5 par. 2 and 3 of the Regulations governing the Application of the FIFA Regulations reads as follows:

*“Principles
(...)”*

2 Compensation for training is due:

- (a) for the first time, when the player acquires non-amateur status according to Art. 1 of the FIFA Regulations for the Status and Transfer of Players*
- (b) afterwards, for every transfer up to the age of 23, depending on the player's status, i.e.:*
 - from amateur to non-amateur status*
 - from non-amateur status to non-amateur status*

3 Compensation for training is not due:

- (a) for transfers from amateur status to amateur status or for transfers from non amateur status to amateur status (reacquisition of amateur status), unless the player (re)acquires non-amateur status within a period of three years*
 - (b) if a club unilaterally terminates a player's contract without just cause, but without prejudice to the compensation due to the previous training clubs."*
18. Feyenoord claims that the "conciliation agreement" ratified by the 24th Labour Court of Rio de Janeiro on 25 May 2005 establishes (a) the existence of a labour conflict between Flamengo and the Player and (b) the fact that Flamengo failed to pay to the Player a sum corresponding to three months of salary. At the hearing, Feyenoord insisted on the fact that Flamengo was constantly late in the payment of the Player's wages. With reference to article 5 par. 3 (b) of the Regulations governing the Application of the FIFA Regulations, Feyenoord submits that Flamengo's position is identical to the one of a club which unilaterally terminates the player's contract without just cause.
19. Flamengo is of the opinion that the said "conciliation agreement" is irrelevant for the resolution of the present dispute.
20. Article 5 par. 3 of the Regulations governing the Application of the FIFA Regulations is the only provision in the applicable regulations that contemplates the situations where training compensation is not due, in spite of the fact that the conditions set in articles 13 ff. of the FIFA Regulations are met. In other words, in the present context, the only question to be addressed is basically whether Flamengo has terminated unilaterally the contract with the Player.
21. In the present case, it appears that the contracts between the Player and Flamengo always came to an end at their expiry date. The first professional contract was valid from 1 October 2000 until 30 September 2002. It was extended until 31 January 2004. In February 2004, the Player joined S.E. Palmeiras before returning to Flamengo, with which he signed a new employment agreement expiring on 31 December 2004. In January 2005, the Player signed with Feyenoord.
22. In this context, Feyenoord submits that "In fact, the player was forced, or incited, to leave the club because of bad payment of salaries by Flamengo which actually means that the player's contract was terminated unilaterally by the club without just cause".
23. In a recent case (CAS 2006/A/1180 issued on 24 April 2007), the CAS ruled that the "non-payment or late payment of remuneration by an employer does in principle – and particularly if repeated as in the present case – constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. (...) Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party

has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893 [...]; CAS 2006/A/1100 [...] marg. no. 8.2.5 et seq.)".

24. The Panel observes that Feyenoord has not demonstrated that the Player made any complaints regarding the alleged late payment of his salaries nor how this may have affected his situation to a point where he could not be expected to remain in a contractual relationship with Flamengo.
25. Feyenoord's allegations are not supported by the evidence produced or by the facts. The "conciliation agreement" ratified by the 24th Labour Court of Rio de Janeiro only confirms that the BRL 90,000,000 paid by Flamengo to the Player were related to holiday indemnities and to "Guarantee Fund for Length of Service" (FGTS). There is no indication of the alleged late payments of the Player's wages or of any criticisable conduct of Flamengo towards the Player.
26. Furthermore, less than two months after he joined S.E. Palmeiras, the Player returned to Flamengo, with which he signed a new contract expiring on 31 December 2004. This leads to think that the Player was not suffering indeed of any kind of mistreatment by Flamengo or late payment of salaries. Again: Feyenoord has not substantiated the contrary in any way.
27. From the evidence produced and considering the above, the Panel is of the opinion that there is no ground to apply article 5 par. 3 of the Regulations governing the Application of the FIFA Regulations.
28. Pursuant to the first sentence of article 13 of the FIFA Regulations, a player's training and education takes place between the ages of 12 and 23. As a general rule, training compensation is due whenever a player, who is not yet 23 transfers as a non-amateur from one club to another club which he joins in the same capacity (see articles 13 and 15 of the FIFA Regulations and FIFA Circular Letter No 769, dated 24 August 2001, p. 3).
29. It is undisputed that the Player joined Flamengo in January 1995, turned professional at the eve of his 17th birthday, was registered with S.E. Palmeiras as he was 20 years old and with Feyenoord as he was 21 years old.
30. Feyenoord considers that in the view of the numerous matches played by the Player in Flamengo's first team, his training and education was completed long before January 2005.
31. In general, the party, which asserts facts to support its rights, has the burden of establishing them (see also article 8 of the Swiss Civil Code, ATF 123 III 60, ATF 130 III 417). With this regard, FIFA Circular Letter No 801, dated 28 March 2002 (page 5), provides that "*The Committee was asked to determine what triggers the end of a player's training and/or education. It maintained*

that it is a question of proof, which is at the burden of the club that is claiming this fact. A player who regularly performs for the club's "A" team could be considered as having accomplished his training period. This may certainly signal that the formation of a player has been completed but there may be other indications hereto. The decision on this will have to be taken on a case-by-case basis".

32. In order to reverse the presumption set in the first sentence of article 13 of the FIFA Regulations, Feyenoord bears the onus of proof regarding the question of when the Player's formation was effectively and completely terminated.
33. In the appealed Decision, the FIFA Dispute Resolution Chamber stated that "*According to [Feyenoord], the player had participated in more than 100 matches for [Flamengo] and for Club Palmeiras and had scored more than 10 goals. As evidence hereto, the Respondent enclosed a declaration of the CBF with a listing of all the matches of the U-20 and U-23 team in which the player participated respectively called upon as a reserve player*". The FIFA Dispute Resolution Chamber held that Feyenoord had not submitted enough evidence in support of its assertion.
34. With this regard, the Panel observes that the "*listing of the matches of the U-20*" confirms that the Player played 11 times with the U-20 team. Pertaining to the listing of the U-23 team, there is no mention of the Player. The evidence submitted only corroborates the fact that the Player was involved in a national team competition with players who were under 20 years old. Such competitions merely require the players to be under a certain age, not necessarily to be completely trained. Consequently, the said listings of the matches of the U-20 and U-23 do not give much information about the completeness of the Player's training education.
35. In spite of the indications contained in the appealed Decision of the FIFA Dispute Resolution Chamber, Feyenoord has not brought any new evidence before the CAS Panel, besides a written testimony of the Player and of his agent, Mr L., who confirmed that the alleged number of matches played by the Player with Flamengo was actually 80. There is in particular no explanation with regard to the exact date when the Player played the said matches or was supposed to be considered as completely formed and trained.
36. At the hearing, Feyenoord alleged that it requested the CBF to confirm the number of official matches the Player played with Flamengo and S.E. Palmeiras from October 2000 to January 2005, but without any result. Without taking any position on the relevance of such information, if any, on 27 August, 29 August and 21 September 2007, the CAS Court Office also tried several times to get the same information without more success.
37. The members of the Panel regret that during the hearing Feyenoord has not even presented fact witnesses, who, for instance, had a direct knowledge of the Player's evolution and expertise. In addition, Feyenoord has not established the period during which the alleged 80 games were played.
38. Under those circumstances, the Panel holds that Feyenoord has not demonstrated that the Player's formation can be considered as completed before his transfer to Feyenoord.

39. Furthermore and regarding whether the Player's training was completed, the number of matches played is not per itself necessarily decisive. As a matter of fact, a player of a modest football team could be required to play on a regular basis although his formation is not finished, according to the standards of a better team. Similar differences can exist from a certain national championship to another. Regarding this aspect, the fact that S.E. Palmeiras prematurely put an end to its contract with the Player was not explained to the Panel. Under such circumstances, the latter cannot exclude that the Player's skills and talent did not meet the expectations of S.E. Palmeiras. Likewise, at the hearing, the representatives of Feyenoord confirmed that out of the 14 matches left until the end of the 2004/2005 season, the Player played between 5 and 6 matches with Feyenoord's first team. If the Player was as good as alleged, then why did he not play in all the games? No explanation was given to the Panel in this respect.
40. As mentioned above (see para. 31), the decision on whether and when the formation of a player has been completed has to be taken on a case-by-case basis, taking in due consideration all the circumstances and the evidence produced. In the absence of duly established facts, and taking in due consideration all the circumstances, the Panel holds that Feyenoord did not prove that the Player was completely trained before the age of 23 nor when his formation period must have been considered as terminated. In other words, Feyenoord did not reverse the presumption set in the first sentence of article 13 of the FIFA Regulations, according to which *"A player's training and education takes place between the ages of 12 and 23"*.
41. On the basis of the above, the Panel concludes that the Respondent is entitled to training compensation as provided by Chapter VII of the FIFA Regulations.

B. *Which is the correct calculation of the training compensation?*

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

Article 5 of the Regulations governing the Application of the FIFA Regulations:

"1. *For the purposes of calculating compensation, the training period starts at the beginning of the season of the player's 12th birthday, or at a later age, as the case may be, and finishes at the end of the season of his 21st birthday.*

(...)

4. *Payment of compensation for training:*

- (a) *As a general rule, the amount due shall reflect the costs which were necessary to train the player and shall be paid for the benefit of every club which has contributed to the training of the player in question, starting from the age of 12.*
- (b) *First payment (as mentioned in par. 2 (a)): The amount to be paid is for the benefit of every club which has contributed to the training of the player in question, starting from the age of 12. The money shall be distributed on a pro-rata basis depending on the full years of proper and proven training, and in relation to the category to which the training clubs belong".*

Article 7 par. 1 and 3 of the Regulations governing the Application of the FIFA Regulations:

“1. The compensation for training and education shall be obtained by multiplying the amount corresponding to the category of the training club for which the player was registered by the number of years of training from 12 to 21.

(...)

3. As a general principle, compensation for training is based on the training and education costs of the country in which the new club is located”.

FIFA Circular Letter No 826 dated 31 October 2002 (page 2):

“Until a more definitive calculation system is put into place, FIFA has established the following indicative amounts on the basis of information received for all national associations on a confederation basis, also keeping in mind the many requests from interested parties for simplicity:

(...)

Europe:

1. Category: EURO 90,000
2. Category: EURO 60,000
3. Category: EURO 30,000
4. Category: EURO 10,000

(...)

These amounts will be used when applying the provisions contained in Chapter VII of the FIFA Regulations for the Status and Transfer of Players (hereafter “Basic Regulations”), as well as Chapter III of the Regulations governing the Application of the Regulations for the Status and Transfer of Players (hereafter “Application Regulations”), together with circular letters nos. 769 and 799, subject to the simplifications outlined below.

(...)

(ii) Simplified Calculation Principles

(...)

To begin with, the rule remains that training compensation will be payable to all clubs that have trained a player between the age of 12 and 21 once the player acquires non-amateur status (i.e., by signing a non-amateur contract with the club for which he has been playing as an amateur, or by signing a non-amateur contract with another club to which he transfers). This is in accordance with Art. 5.2 (b) of the Application Regulations.

However, the principles concerning subsequent transfers will be simplified until the review of the revised regulations at the end of the 2003/2004 season has been completed. Until then, for any subsequent transfer up to the age of 23, including transfers from clubs belonging to the third and fourth categories as referred to in art. 5.2 (c) of the Application Regulations, training compensation will only be owed to the previous club of the player for the time he was effectively trained by that club.

Furthermore, the application of the cascade principle that is outlined in art. 5.4 (d) & (e) as well as art. 8 of the Application Regulations will be postponed until the review of the revised regulations at the end of the 2003/2004 season.

As a result, in case of subsequent transfers of young players, a training compensation fee will only be payable to the previous training club, and not to any other training club, until the review of the revised regulations will have been completed.”

43. Flamengo alleges that, based on the clear wording of the FIFA Circular Letter No 826 dated 31 October 2002, it is entitled to 9 years and 9 months of training compensation, since it is the “*previous training club*” and it has “*effectively trained*” the Player for the said period.
44. This case is primarily governed by the FIFA Regulations. For the implementation of the FIFA Regulations, the FIFA has issued a certain number of Circular Letters. Although these Circular Letters are not regulations in a strict legal sense, they reflect the understanding of the FIFA and the general practice of the federations and associations belonging thereto. Thus, the Panel considers these Circular Letters to be relevant also for the interpretation of the FIFA Regulations (CAS 2003/O/527, p. 10; CAS 2004/A/560, p. 9; CAS 2004/A/686, p. 8). However, in the view of the nature of the Circular Letters, a strictly word oriented interpretation of the Circular Letters should not prevail over an intention-oriented interpretation. In other words, when interpreting the FIFA Regulations, FIFA's true intention shall be sought without exclusive regard to the literal meaning of the Circular Letter. The Panel has to interpret the latter according to the requirements of good faith and in line with common usages. Finally, constant practice within FIFA can help in interpreting how FIFA, as an association, and its direct and indirect members, understood and applied FIFA Regulations.
45. The Panel is aware of the fact that training compensation in accordance with the FIFA Regulations applies only in the event of an *international* transfer (see preamble of the FIFA Regulations). For national transfers, the system enforced by the relevant association shall apply. Possibly, Flamengo did not receive any training compensation from S.E. Palmeiras as such compensation is allegedly not provided for by the CBF regulations. Assuming this is indeed the case, it is of course unfortunate and criticisable that the CBF has not deemed necessary to implement (yet?) in its regulations a similar training compensation system as FIFA's for national transfers. In any case, the consequences of this regrettable situation cannot be held against Feyenoord.
46. With respect to the matter of the training compensation and provided that the player is a professional and is not 23 years old, the system put in place by the FIFA Regulations divides into segments a player's career. This is clearly expressed by article 15 of the FIFA Regulations as well as by article 5 par. 2 of the Regulations governing the Application of the FIFA Regulations, which states that every transfer up to the age of 23 from non-amateur status to non amateur-status triggers a compensation for training. As a result, each period between each professional transfer is a specific and independent segment of time.
47. In this context, when FIFA Circular Letter No 826 dated 31 October 2002 states that for any subsequent transfer up to the age of 23 training compensation *will only be owed* to the previous club of the player for the time he was effectively trained by that club, it is evident that it exclusively refers to the segment of time (a) during which the player was contractually bound

to the “*previous club*” and (b) which is immediately preceding the segment of time for which he is registered with the new club.

48. In the present case, the Player's situation is the following:
 - first segment: time spent by the Player with Flamengo until he joined S.E. Palmeiras;
 - second segment: time spent by the Player with S.E. Palmeiras until he went back to Flamengo;
 - third segment: time spent by the Player with Flamengo after he left S.E. Palmeiras until the end of his contract with Flamengo;
 - fourth segment: time spent by the Player with Feyenoord.
49. In application of article 15 of the FIFA Regulations and article 5 par. 2 of the Regulations governing the Application of the FIFA Regulations, the training compensation to be paid by Feyenoord to Flamengo can only be calculated in connection with the third segment. With the system put in place by the FIFA Regulations, it is assumed that the training and education related to the previous segments (segment one and two) were fully compensated. This method is the only one that is in harmony with the applicable regulations and serves efficiency, predictability and stability of expectations as well as equal treatment of similarly situated parties.
50. As a matter of fact, in case of an international transfer, a club, which wants to employ a player, must be able to rely safely on the applicable regulations. This is especially true since it is the responsibility of the new club to calculate the amount of the compensation for training and education (cf. FIFA Circular Letter No 826 dated 31 October 2002, p. 4). In the present case, Feyenoord cannot be expected (1) to know what domestic system is enforced by the relevant national association for the possible previous national transfers and (b) to find out whether “previous segments” like the “first segment” (as described here above) has been the object of some kind of compensation paid by S.E. Palmeiras.
51. The meaning which Flamengo is trying to give to the Circular Letter No 826 is the following one: if, after several subsequent transfers, a player is employed again by his first club and, then, is transferred to a new club, the transferor could claim from the transferee the full compensation for the whole period of training and education it provided to the player, notwithstanding any compensation already paid to the transferor.
52. Such an interpretation of the FIFA Circular Letter No 826 would create a new rule, which is currently not provided for in the FIFA Regulations. Rather, in an international framework and on the basis of the FIFA Regulations, Flamengo as club of the “first segment” is considered as being another club than Flamengo in the “third segment”. Accordingly, Feyenoord cannot be expected to pay more simply because the preceding club had trained in the past the same player.
53. Flamengo's view is therefore inadmissible as it is clearly in opposition with the content, the text and the spirit of the FIFA Regulations regarding training compensation. Should such rule

exist, this would open the way to clubs within a certain national association to arrange for the return of a player to his “first club” just before an important international transfer, to collect – and then share – a higher compensation from the foreign club. Further, it would allow a club to be compensated several times for the same training period. This would cause great incertitude concerning the transfer of professional players and violate equal treatments between clubs which transfer their players for good and clubs which are in the position of transferring their players more than once.

54. The Panel takes comfort from the fact that its opinion on this issue is consistent with the new edition of the FIFA Regulations for the Status and Transfer of Players (edition 2005) and their commentary.
55. In conclusion, the Panel considers that the training period for which compensation is due by Feyenoord to Flamengo is the one corresponding to the time spent by the Player with the preceding club, Flamengo, after he left S.E. Palmeiras until the end of the 2004 contract with Flamengo (i.e. the third segment here above). This period is nine months long.
56. At the hearing, both parties confirmed that according to the classification of clubs outlined in the FIFA Circular Letter No 959 dated 16 March 2005 and under the terms of the FIFA Circular Letter No 826 dated 31 October 2002, Feyenoord as well as Flamengo falls into category 1.
57. Pursuant to the FIFA Circular Letter No 826, compensation for category 1 in Europe amounts EUR 90,000.
58. Based on the foregoing and in particular on article 7 par. 1 and 3 of the Regulations governing the Application of the FIFA Regulations, the Panel concludes that the training compensation to be awarded to Flamengo shall amount to EUR 67,500 (EUR 90,000 \cdot 12 x 9 = EUR 67,500).
59. With regard to the interest and in the absence of a specific contractual clause, the Panel can only apply the legal interest due pursuant to article 104 of the Swiss Code of Obligations. This article provides that the debtor, on notice to pay an amount of money, owes an interest at the rate of 5 % per annum (CAS 2003/O/486, p. 23).
60. Regarding the dies a quo for the interest, the FIFA Dispute Resolution Chamber ordered Feyenoord to pay the financial compensation to Flamengo within 30 days as of notification of the Decision.
61. It follows from the confirmation of the Decision that an interest of 5% shall be due as of 14 July 2007.
62. Based on the submissions made and the evidence available, no further issues are relevant to the case at hand and any other claims can be dismissed.

Confidentiality

63. Article R59 par. 6 of the Code provides that *“The award, a summary and/or a press release setting forth the results of the proceedings shall be made public by the CAS, unless both parties agree that they should remain confidential”*.
64. At the hearing, the parties agreed that the present award shall not be made public unless this is made in a fully anonymous manner or unless the parties later agree expressly to make it public.
65. However, the Court of Arbitration for Sports must be able to serve a copy of the present award to FIFA under the commitment of the said Federation to keep the award confidential.

The Court of Arbitration for Sport rules:

1. The appeal of Feyenoord Rotterdam N.V. against the decision issued on 12 January 2007 by the FIFA Dispute Resolution Chamber is dismissed.
 2. The appeal of Clube de Regatas do Flamengo against the decision issued on 12 January 2007 by the FIFA Dispute Resolution Chamber is dismissed.
 3. The decision issued on 12 January 2007 by the FIFA Dispute Resolution Chamber is confirmed.
 4. Feyenoord Rotterdam N.V. is ordered to pay Clube de Regatas do Flamengo the amount of EUR 67,500 (sixty-seven thousand and five hundred Euros), with interest at a rate of 5% as of 14 July 2007.
- (...)
7. All other or further claims are dismissed.