



Football Legal

The international journal dedicated to football law

7 – June 2017



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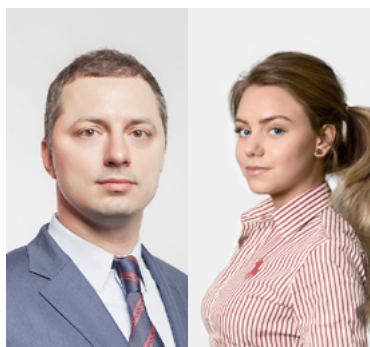
ISSN: 2497-1219

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Compensation for training of talents: Russian Perspective



In June 2016, the Russian Football Union (FUR) issued a new edition of Regulations on Status and Transfer of Players (FUR RSTP), where the FUR changed the method of calculation of training compensation. Following the enforcement of the new edition of the FUR RSTP, the clubs were (and still are) confused with the calculation of the relevant compensations for newly moved players under 23 years of age. Thus, a new wave of training compensation disputes has started before the FUR jurisdictional bodies.



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The issue of training compensation is a core element of the football system, aiming to remunerate the academies and football clubs for preparations of talents for "big water". Football jurisprudence knows many disputes, concerning a confrontation of interests of players' ex and club-purchaser, where one is aiming to acquire the most probable amount of compensation and the other is wishing to save his money. Disputes regarding the calculation of training compensation shall be discussed in the present article following a Russian perspective.

Hereafter we analyze the renewed method of training compensation calculation enforced by the FUR and illustrate the current application of the FUR RSTP based on the national dispute resolution body's (NDRC) latest decisions.

The FUR's new method of calculation of training compensation - FUR RSTP (edition 8 June 2016)

On 8 June 2016, during the ongoing transfer window, the FUR enforced a new RSTP edition. The updated version of the regulations enforced a new mechanism of calculation of training compensation for players under 23 years of age.

Specifically, the previous method added all the tax and insurance payments, transfer fee or training compensation to the previous club, and all those together with player's average salary for not more than 5 years and medical expenses, increased on the coefficient of the player's new club.

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Article 23.4 of the FUR RSTP provides as follows:

Edition of 8 June 2016	Previous edition
<p><i>"The training compensation, if a player's previous club and his new club did not agreed on different, is to be calculated as the sum consisting of the average salary of the professional football player, taxes and insurance contributions paid for the professional football player, the amount spent on medical insurance of professional football player and the medical expenses for the period of his work in his previous professional football club (limited to 5 years), as well as the expenses covered by the previous professional football club on the transfer of player (transfer fee, training compensation), excluding commissions paid to intermediaries, and shall be increased on the coefficient of the category of the relevant professional football club, to which the player is transferred".</i></p>	<p><i>"The training compensation, if the previous and new professional football clubs of a professional football player have not agreed otherwise, is calculated on the basis of the sum consisting of the average salary of a professional football player and the costs of his treatment for the period of work in the former professional football club (but no more than for five years) without applying the coefficient of the category of a new professional football club."</i></p>

The clubs in this respect were divided by the FUR into categories, where *Premier League* (top division) representatives took a coefficient of 3, *National League* (second division) of 2 and *Professional League* (third division) of 1.

A simple mathematical calculation shows that the new method greatly increased the training compensation, depending on the coefficient of the player's new club and all expenses of previous club, including already paid compensations. It is worth to mention that a similar method was used by the FUR in 2010, but the Russian football market faced a situation when players, being under enormous amounts of compensation, could not find a club. The system almost failed. Six years later, following the clubs' initiative, the formula was back again.

It shall also be noted that no relevant instructions were given by the FUR in respect of the application of the new method, which lead to a number of disputes that are now pending before the NDRC and the FUR Players' Status Committee.

One of such cases is a good example of how the FUR system of compensation for players training under 23, killed the perspectives for young players to build their careers, when moving from the club of origin under 23.

Considering that the dispute is ongoing, and is pending before the FUR, we prefer not to reveal the real parties concerned.

The NDRC jurisdiction on application of a new method of calculating training compensation

The Player (under 23 years old) had been employed by a club of the *Russian Premier League* (Club A) for 5 years. In fact, the Player was an established player of Club's A second team. In April 2016, 6 months prior expiration of Player's contract, the Club A proposed to the Player a new contract on same financial conditions as his farm club. The next day, the Player informed that he was not interested in concluding the new contract.

In April 2016, upon request of the Player, the Club A informed the Player on the approximate amount of his training compensation, which was equal to EUR 91,000.

Two Russian clubs were interested in contracting the Player, however, after 8 June 2016, the Club informed that the training compensation now amounts to EUR 617,000 for the Club from the second league, and EUR 925,000 for the Club from the *top league*.

The Player was still refusing to conclude the Contract with the Club A, and on the date of his contract expiration, *i.e.* end of June 2016, the Club transferred the amount of EUR 100,000 to the Player's account and, thus, doubled the Player's income.

After the expiration of his contract with Club A, the Player left without any proposal on employment from the Russian clubs, following enormous amount of training compensation demanded by the Club A.

The Player moved to a European Club of category 4 (Club B), concluded a

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2-year contract and started playing for his new Club. Several months after the financial situation of Club B changed, the Player was transferred for 10 months to a Russian club of the second division championship (Club C).

The Club A turned to the NDRC, asking for training compensation for the Player in the amount of EUR 617,000 to be paid by the Club C.

In October 2016, the NDRC issued a decision on the case.

Leaving discussions on whether the national chamber was a competent body to hear the dispute of international dimension with the participation of the Club B (non-FUR member), we would like to emphasize the FUR conclusions regarding the applicable edition of regulations to the merits, following which the NDRC obliged the Club C to pay the amount requested by Club A.

When deciding on the applicable regulations to the dispute, the NDRC applied the FUR RSTP in its edition of 8 June 2016, concluding as follows:

"The NDRC is of the opinion that to the following dispute the FUR RTSP in its edition dated 8 June 2016 shall be applied, because according to article 23 of FUR RSTP the obligation on payment of training compensation occurs starting from the moment of transfer of player to this [Club C]."

First of all, the authors believe that the application of the FUR RSTP in its edition, which came into force several weeks prior to expiration of the Player's contract with Club A, is contradictory to the principle of no retroactivity, or also known as *"tempus regit actum"*¹, which is

recognized in the established CAS jurisprudence, for example, in the landmark case CAS 2000/A/274 S. v. FINA, award dated 19 October 2000. It is stated as follows:

*"Under Swiss law the prohibition against the retroactive application of Swiss law is well established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred..."*² (same mentions in CAS 2009/A/2019 Jakub WAWRZYNIAK v. HFF, see par. 15).

Contrary to the above, the NDRC failed to consider that the training period of the Player with the Club A started in 2011, and all those years until 8 June 2016 the Player was trained under RSTP in its previous edition.

Moreover, in our opinion, it is pretty obvious that the NDRC was mistaken in calculating the compensation based on the FUR RSTP, which came into force in the last 3 weeks of the Player's contract, based on moment of transfer of the Player to the Club C, because there is a difference between the moment when the compensation is due and the very calculation of such compensation.

“ The FUR failed to issue valid directions towards the application of a new method of calculating the training compensation due before the change in regulations. Hence, it will be for the CAS to provide the FUR and its members with the lawful approach of national regulations ”

The mentioned approach finds its confirmation in the CAS jurisprudence.

The Panel in the case CAS 2014/A/3500 prior to calculating the training compensation clearly determined as follows:

"However, the amount of compensation must be determined by the regulations that were in place at the time during which a player trained with his club of origin, irrespective of future changes. Therefore, a difference exists between the moment on which the right for compensation is born and can be duly exercised, and the determination of the contents of such right; the latter must be determined according to the regulations in force at the time during which a player trains as an amateur with his club of origin."

Therefore, following the principle of no retroactivity and the CAS jurisprudence, we believe that the amount of compensation in the dispute described must be determined by the regulations that were in force at the time during which the player trained with his club of origin, and not at the time of transfer.

Though the case is not finished yet, we already see that the FUR, itself at national level, failed to issue valid directions towards the application of a new method of calculating the training compensation due before the change in regulations. Hence, it will be for the CAS to provide the FUR and its members with the lawful approach of national regulations, which will, hopefully, follow the balance of interests of the parties concerned.

For now, it can be concluded that by increasing (more than 6 times according to described case) the amounts of training compensation for young players, the FUR puts the

¹ For more, please see our article *"The tempus regit actum principle in CAS jurisprudence, protecting players' agents after quitting the 'football family'"*, Football Legal # 6 (November 2016), p. 143

² See CAS 2000/A/274 S. v. FINA, Digest of CAS Awards II (1998-2000), p. 389 at 405

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careers of those young talents in danger.

The only chance for those players, whose training take place in the period of application of new FUR's method of calculation, is moving to Europe, which is possible only for 5-8% of young players from Russia.

Hence, we believe that the new FUR RSTP method shall be changed by FUR, otherwise most of Russian players under 23 are on the eve of ending their professional football activity. This will absolutely, at least, lead to the increase of a number of registered amateurs with non-registered in FUR valid contracts and new disputes arising from it.