Arbitration CAS 2021/A/7912 Olympiakos Nicosia v. Club Necaxa, award of 29 March 2023

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

Football
Transfer – Training compensation
Entitlement to training compensation
Waiver of training compensation rights
Categorization for the purpose of training compensation
Burden of proof for the purpose of categorization

1. **In accordance with Article 20 and Annex 4 of the FIFA Regulation on the Status and Transfer of Players (RSTP), training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when a player is registered for the first time as a professional before the end of the season of the player's 23rd birthday or when a professional is transferred between clubs of two different associations before the end of the season of the player's 23rd birthday.**

2. **A club may renounce its right to training compensation or sign a binding waiver of this right in favour of the new club. In order to be accepted, a waiver must be explicit and only the part entitled to training compensation (i.e. the relevant training club) can waive it. In other words, if a player's last training club waives its right to training compensation, this waiver is applicable to that training club only, and not to any other club that may have trained the player during his career.**

3. **Member associations are responsible for dividing their clubs into a maximum of four categories and to keep the data up to date. When categorizing their clubs, the national federations shall take into consideration a club's financial investment in training players. FIFA Circular 799 sets out the type of costs a national association should consider when determining a club's financial investment in training of young players. FIFA has a right to review and correct a categorization made by the national federations, but such re-categorization can only happen in case of a manifest discrepancy between the categorization of the national federation and the rules / guidelines issued by FIFA. This is only the case if the decision of the national federation is "clearly disproportionate".**

4. **Except where the arbitral agreement determines otherwise, an arbitral tribunal shall allocate the burden of proof in accordance with the rules of law governing the merits of the dispute, i.e. the *lex causae*. It is, in principle, the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal in a sufficient manner. A club alleging to be a category IV club will therefore need to provide evidence to that purpose, i.e. the categorization issued by its national**

federation. Once this is done, it is for the club claiming a right to training compensation to contest such submissions in a substantiated manner. It does not suffice that a club objects to the categorization of the other club as a category IV. Instead, the claiming club needs to demonstrate (and to substantiate) that the decision made by the national federation is "clearly disproportionate".

I. PARTIES

1. Olympiakos Nicosia (the "Appellant" or "Olympiakos") is a football club with registered office in Nicosia, Cyprus. Olympiakos is affiliated to the Cyprus Football Association (the "CFA"), which, in turn, is a member of the Fédération Internationale de Football Association ("FIFA").

2. Impulsora del Deportivo Necaxa S.A. de C.V. (the "Respondent" or "Necaxa") is a Mexican football club with its seat in Aguascalientes, Mexico. It is affiliated to the Mexican Football Federation (the "Federación Mexicana de Fútbol Asociación, A.C". or "FMF"), which is a member of FIFA.

II. BACKGROUND FACTS

3. Below is a summary of the main relevant facts, as presented in the Parties' written submissions, pleadings and evidence adduced in the course of the present proceedings and at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. The Player Transfer

4. P. is a football player of Chilean nationality born on 2 June 2000 (the "Player").

5. On 31 January 2020, Olympiakos and the Player entered into an employment relationship. The Player was registered with Olympiakos since 3 February 2020.

6. According to the Transfer Matching System ("TMS") Olympiakos belonged at the relevant time to the category IV clubs within the meaning of Annexe 4 of the Regulations on the Status and Transfer of Players ("RSTP").

7. Prior to transferring to Olympiakos, the Player played for Necaxa.

8. According to the Sports Employment Contract (the "Employment Contract") between Necaxa and the Player, the Player would have been under contract until the last match of the tournament of *Clausura 2023*.

9. On 31 December 2019, Necaxa and the Player signed the Sports Employment Termination Agreement (the "Termination Agreement").

10. According to his player passport, the Player was registered at Necaxa from 14 August 2018 until 9 January 2020.

B. The Proceedings before FIFA

11. On 23 September 2020, Necaxa filed a claim against Olympiakos before FIFA's Dispute Resolution Chamber (the "FIFA DRC"). Throughout the proceedings before the FIFA DRC, Necaxa claimed to be entitled to receive from Olympiakos the sum of EUR 45,000 as training compensation, plus 5% interest per annum as from the due date.

12. Olympiakos did not participate in the proceedings before the FIFA DRC.

13. On 18 February 2021, the FIFA DRC rendered the following decision ("the Appealed Decision"):

1. The claim of the Claimant, CLUB NEXACA, is partially accepted.

2. The Respondent, OLYMPIAKOS NICOSIA, shall pay to the Claimant:

- EUR 41,095.89 as training compensation, plus 5% interest per annum on that amount as from 5 March 2020, until the date of effective payment.

3. Any further claims of the Claimant are rejected.

4. The Claimant shall immediately inform the Respondent of the bank account to which the Respondent must pay the due amount (including all applicable interest).

5. The Respondent shall provide evidence of full payment to psdfifa@fifa.org. If applicable, the evidence shall be translated into an official FIFA language (English, French, German, Spanish).

6. If the due amount (including all applicable interest) is not paid by the Respondent within 45 days as from notification of the bank account details, the following consequences shall apply:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods.

2. The ban will be lifted immediately, and prior to its complete serving, following confirmation that the due amount (including all applicable interest) has been received by the Claimant.

3. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.

7. No procedural costs are payable (cf. arts. 17 par. 1 and 18 par. 1 of the Rules Governing the Procedure of the Players' Status Committee and Dispute Resolution Chamber.

14. On 7 April 2021, the grounds of the Appealed Decision were notified to the Parties.

15. The Appealed Decision reads in its relevant parts as follows:

"[…]

9. The Claimant requested the payment of training compensation on the basis of the subsequent transfer of the player as a professional player to the Respondent.

10. In accordance with art. 20 of the Regulations as well as in art. 1 par. 1 of Annexe 4 in combination with art. 2 lit. b) of Annexe 4 of the Regulations, training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when a professional is transferred between clubs of two different associations before the end of the season of his 23rd birthday.

11. Art . 2 par. 2 b) of Annexe 4 of the RSTP establishes that training compensation is not due if the player is transferred to a category 4 club.

12. In accordance with the information included in TMS, the Respondent belonged to the category IV club at the moment the player was registered with it, i.e. on 3 February 2020.

13. The categorization of the Respondent is contested by the Claimant.

14. In line with FIFA Circular no. 1673 of 28 May 2018 , Cypriot clubs are to be allocated category Ill or IV.

15. According to the guidelines, firstly established in FIFA Circular no. 769 and re-published in FIFA Circular no. 1249, the national federations should allocate its affiliated clubs as follows:

Category 1 (top level, e.g. high quality training centre):

All clubs of first division of National Associations investing as an average a similar amount in the training of players.

Category 2: all cubs of second division of the National Associations of category 1

All clubs of first division of all other countries having professional football

Category 3:

All clubs of third division of the National Associations of category 1

All clubs of second division of all other countries having professional football

Category 4:

All clubs of fourth and lower divisions of the National Associations of category 1

All clubs of third and lower divisions of all other countries having professional football

All clubs of countries having only amateur football

16. The information available in the internet indicates that the Respondent plays in the highest division in Cyprus and it has remained undisputed that it has been the case since the 2018/2019 season.

17. A club competing in the highest division at national level should be allocated to the highest training category available in the association in question and not to the lowest one.

18. In accordance with art. 5 par. 4 of Annexe 4 of the Regulations, the DRC 'may review disputes concerning the amount of training compensation payable and shall have discretion to adjust the amount if it is clearly disproportionate to the case under review.'

19. As per its established jurisprudence, the DRC may decide to reallocate clubs playing in the highest division of the relevant association to the highest category available.

20. Therefore, the Respondent is to be reallocated to category Ill and consequently art. 2 par. 2 b) of Annexe 4 of the RSTPis in casu not applicable.

21. It is undisputed that the player was registered with the Claimant as indicated in the player passport issued by the FMF, i.e. between 14.08.2018 and 30.07.2019 as well as between 14.08.2019 and 9 January 2020, i.e. for a total of 500 days in the seasons of his 19th and 20th birthday.

22. It is also uncontested that the Respondent did not pay to the Claimant training compensation resulting from the registration of the player with the latter.

23. In accordance with art. 3 par. 1 of Annexe 4 of the RSTP the new club of a player has to pay training compensation upon his subsequent international transfer as a professional to his former club for the time he was effectively trained by that club.

24. to calculate the training compensation due to a player's former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself (cir . Art. 5 par. 1 of Annexe 4 of the RSTP). In case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the numbers of years of training with the former club.

25. UEFA's indicative amount per year with regard to training category Ill is EUR 30,000.

26. As a result, the Claimant is entitled to receive the sum of EUR 41,095 .89, i.e. EUR 30,000 per year I 365 x 500 days, as training compensation from the Respondent.

27. Taking into account the specific request of the Claimant as well as the established jurisprudence of the DRC, the latter is entitled to receive 5% interest p.a. on the amount of EUR 41,095.89 as from 5 March 2020, i.e. as of the day after training compensation became due.

28. Consequently, the claim of the Claimant is partially accepted.

29. No procedural costs are levied as per art. 17 and 18 par. 1 lit. i) of the Procedural Rules.

30. Art. 24 bis RSTP is applicable.

[…]".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 27 April 2021, Olympiakos filed a Statement of Appeal against Nexaca with the Court of Arbitration for Sport ("CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code"). In its Statement of Appeal, Olympiakos requested that the dispute be submitted to a Sole Arbitrator and be conducted in English.

17. On 29 April 2021, the Appellant requested a 10-day extension of the deadline to file its Appeal Brief.

18. On 30 April 2021, the CAS Court Office acknowledged receipt of the Statement of Appeal.

19. On the same day, the CAS Court Office granted the Appellant's request for an extension of the deadline to file the Appeal Brief.

20. On 3 May 2021, Nexaca also requested that the dispute be submitted to a sole arbitrator and that the proceedings be conducted in English.

21. On 12 May 2021, the Appellant requested a further extension of the deadline to file its Appeal Brief.

22. On the same day, the CAS Court Office acknowledged receipt of the Appellant's letter and invited the Respondent to comment on the Appellant's request.

23. On 13 May 2021, the Respondent informed the CAS Court Office that it did not oppose to the request to extend the Appellant's deadline to file the Appeal, Brief. Furthermore, the Respondent requested that the CAS proceed with the appointment of the Sole Arbitrator according to Article R54 of the CAS Code.

24. On 14 May 2021, the CAS Court Office acknowledged receipt of the Respondent's letter and granted an additional 15-day extension of the Appellant's deadline to file the Appeal Brief.

25. On 2 June 2021, the Appellant filed its Appeal Brief.

26. Still on 2 June 2021, the Respondent requested that the CAS Court Office only set a deadline for the filing of the Answer once it had received the full Advance on Costs pursuant to Article R55 of the CAS Code.

27. On 3 June 2021, the CAS Court Office acknowledged receipt of the Appellant's Appeal Brief and granted the Respondent's request dated 2 June 2021.

28. On 28 June 2021, following the payment of the advance of costs by the Appellant, the CAS Court Office set a twenty-day deadline for the Respondent to file its Answer. Furthermore, it advised the Parties that pursuant to Article R54 of the CAS Code the sole arbitrator appointed by the President of the CAS Appeals Arbitration Division was

    Prof. Dr. Ulrich Haas, Professor in Zurich, Switzerland (the "Sole Arbitrator").

29. On 16 July 2021, the Respondent requested an extension of the deadline to file its Answer.

30. Still on 16 July 2021, the CAS Court Office invited the Appellant to comment on the Respondent's request by 19 July 2021.

31. On 19 July 2021, having received a prior agreement from the Respondent, the CAS Court Office granted the extension of the Respondent's deadline to file the Answer until 9 August 2021.

32. On 9 August 2021, the Respondent requested that the Appellant provided translations into the English language of certain exhibits that had been filed in Greek by the Appellant. Furthermore, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.

33. On 10 August 2021, the CAS Court Office acknowledged receipt of the Respondent's Answer, requested the Appellant to provide translations for the Exhibits filed in Greek by 24 August 2021 and invited the Parties to state whether they wanted the Sole Arbitrator to hold a hearing in this matter.

34. On 17 August 2021, Olympiakos informed the CAS Court Office of its preference for a hearing to be held.

35. On 17 August 2021, Necaxa informed the CAS Court Office of its preference to forgo holding a hearing.

36. On 18 August 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter.

37. On 24 August 2021, the Appellant filed the English translations of its exhibits nos. 26-32.

38. On the same day, the CAS Court Office acknowledged receipt of the translated exhibits.

39. On 25 August 2021, the CAS Court Office informed the Parties that a hearing would be held via video-conference on 6 and 7 December 2021 at 15:00.

40. On 16 November 2021, the CAS Court Office invited the Parties to return a signed copy of the order of Procedure ("OoP").

41. On the same day, the Respondent returned a signed copy of the OoP. Furthermore and by separate letter, the Respondent objected to the testimony of certain witnesses called by the Appellant. The Respondent stated that he *"[does] not accept the statement of the Witnesses Mr Lubormir Jurco, Mr Andreas Efthyvoulou, Mr Spyros Neofytides and any Appellant's / Club's official"*.

42. On 19 November 2021, Olympiakos signed and returned a signed copy of the OoP.

43. On the same day, the CAS Court Office invited the Appellant to comment on the Respondent's objections by 23 November 2021.

44. On 22 November 2021, the Appellant filed its observations with the CAS Court Office. Therein, the Appellant stated – inter alia – that the witness Mr Lubomir Jurko had been listed by mistake.

45. On 23 November 2021, the CAS Court Office advised the Parties on behalf of the Sole Arbitrator that the Respondent's objections as to the admissibility of the witnesses/party representatives called to testify by the Appellant were rejected and that the objection of the Respondent in relation to Mr Jurco was deemed moot.

46. On 7 and 8 December 2021, a hearing took place by videoconference. The Sole Arbitrator was assisted throughout the procedure by Ms. Lia Yokomizo, Counsel of the CAS. In addition, the hearing was attended by the following persons:

<u>For the Appellant:</u> Mr Loizos Hadjidemetriou, counsel,

Mr Alexandre Ferro, witness,

Mr Andreas Efthyvoulu, witness,

Mr Pyros Neofytides, witness,

Ms Antonia Antoniou, witness,

Ms Andie Anastasiou, witness.

<u>For the Respondent:</u> Mr Juan Manuel Lopez Ruiz, counsel,

Mr Jonathan Oliva Garcia, counsel.

47. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution of the arbitral tribunal. Furthermore, the Appellant waived the witness testimony of Mr Alexandre Ferro. At the conclusion of the hearing, the Parties confirmed that their right to be heard was fully respected and that there were no pending procedural issues.

IV. PARTIES' POSITIONS

48. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Position of the Appellant

49. In its Appeal Brief, Appellant sought the following relief:

The Appellant requests CAS to:

A. Uphold the present appeal, set aside the decision of the FIFA DRC and declare that the Appellant is not liable to pay any training compensation to the Respondent.

B. Overturn the FIFA DRC decision and decide that the DRC's decision to reallocate the Appellant in Training Category 3 was wrong and/or arbitrary and/or contrary to the provisions of the FIFA RSTP.

C. Alternatively to the above request, to send the dispute back to the FIFA DRC for reconsideration.

D. Order the Respondent to pay the procedural and all other costs arising out of the present proceedings and to reimburse the Appellant with the CAS Court Office Fee.

E. Order the Respondent to pay a contribution towards the Appellant's legal fees incurred in connection with the present proceedings.

50. The submissions of Appellant, as contained in its written submissions and oral pleadings, may be summarized, in essence, as follows:

i. Appellant's failure to reply to the DRC claim should not preclude the admission of its legal arguments and evidence before the CAS

- The Appellant argues that its failure to reply to the FIFA DRC claim was due to its TMS user not knowing that disputes concerning training compensation and solidarity contribution are administered via TMS.

- Given its small size, budget and organisation, the Appellant has a single TMS user, Ms. Antonia Antoniou. The latter is not employed by the Appellant and only acting as the Appellant's TMS user on a pro bono basis.

- Ms. Antonia Antoniou does not serve the Appellant in a professional role. She was not aware that disputes related to training compensation and the solidarity mechanism are

exclusively dealt with via TMS. Furthermore, the Appellant submits that it has previously never been involved in similar disputes.

- The Appellant further argues that its history of having participated in all employment related disputes in recent years shows that its failure to respond in the FIFA DRC proceedings was not an act of bad faith but instead a result of negligence and a lack of knowledge.

- The Appellant states that it first became aware of the dispute on 4 March 2021. It then immediately contacted FIFA via its legal representative in order to obtain information from FIFA. It is only then that the Appellant became aware of the tab on the TMS containing the claim uploaded by FIFA.

- The Appellant maintains that just by accessing the TMS one does not become aware of the dispute filed. Rather, the TMS user needs to actively select the "claims tab" in order to see whether a potential claim has been registered. The system does not flag the filing of a claim and there is no other means of notifying users of claims that have been filed.

- The Appellant also refers to CAS 2017/A/5090 Olympique des Alpes V. Genoa Cricket & Football Club, where the panel states as follows:

  "59. […] The Panel finds that Sion did not act with the diligence required, as it should have discovered Genoa's claim by checking FIFA TMS not only regularly but also thoroughly, and by failing to do so violated Article 2(1) of Annexe 6 to the FIFA RSTP which obliges clubs to "check the "Claims" tab in TMS at regular intervals of at least every three days and pay particular attention to any petitions or requests for statements". Pursuant to Article 2(2) of Annexe 6 to the FIFA RSTP, such omission could lead to "any procedural disadvantages" in the FIFA proceedings and even to sanctions pursuant to Article 9(4) FIFA RSTP, but not necessarily to the exclusion of evidence in appeals proceedings at CAS pursuant to Article R57(3) of the CAS Code . Negligence is not the same as bad faith.

  60. The Panel finds that – by admitting Sion's legal arguments and this new evidence to the file – it does not go beyond the claims submitted to it within the meaning of Article 190(2)(c) of Switzerland's Private International Law Act (the "PILS") or beyond the scope of the previous litigation as argued by Genoa.

  61. As such, the Panel sees no reason not to admit the legal arguments and the newly submitted evidence to the case file. […]".

ii. The Respondent waived its right to claim training compensation

- The Appellant further submits that the Respondent directly and explicitly waived its right to claim training compensation. The agent of the Player Alex Ferro stated in an email dated 31 January 2020 to the Appellant that

  "Necaxa … will NOT ask any payment regarding training compensation. It has been agreed before".

iii. The Respondent is no longer entitled to training compensation

- The Appellant argues that it follows from the Termination Agreement that the Respondent is not entitled to training compensation. The Termination Agreement explicitly states that *"the Parties agree, by signing this Agreement, to terminate the Sports Contract and, consequently, each and every one of the legal effects arising from it, from the moment this agreement is entered into, without liability for any of the Parts"*. The Termination Agreement, thus, eliminated the Respondent's entitlement to seek training compensation from the Player's new club. Any other interpretation does not make economic sense, because it would have seriously undermined the Player's prospects in finding a new club. The latter, however, was the sole purpose of the Termination Agreement.

- The Appellant refers – more particularly – to the following para from the Termination Agreement:

  PRIMERA. Las Partes acuerdan, mediante la firma del presente Convenio dar por terminado el Contrato Deportivo y, en consecuencia, todos y cada uno de los efectos jurídicos que de él dimanan, desde el momento de la celebración del presente convenio, sin responsabilidad para ninguna de las Partes.

  FIRST. The Parties agree, by signing this Agreement, to terminate the Sports Contract and, consequently, each and every one of the legal effects arising from it, from the moment this agreement is entered into, without liability for any of the Parts (Translation provided by the Appellant)

iv. The Appellant has only once competed in the First Division of the CFA since the 2018/2019 season

- The Appellant submits that the Appealed Decision is based on wrong facts and, therefore, must be squashed. Contrary to what the Appealed Decision states the Appellant has not been competing in the CFA First Division since the 2018/2019 season. Instead, during the 2018/2019 season the Appellant was competing in the Second Division.

- Thus, the finding in the Appealed Decision at para. 16 is simply wrong:

  "16. The information available in the Internet indicates that the Respondent plays in the highest division in Cyprus and it has remained undisputed that it has been the case since the 2018/2019 season".

v. FIFA arbitrarily moved the Appellant from Category 4 to Category 3

- The Appellant submits that it is qualified by the CFA as a Category 4 club and that the FIFA DRC was wrong in moving it from Category 4 to Category 3. The Appellant at the relevant time had only just been promoted to the First Division.

Season 2013-14, Second Division

Season 2014-15, Second Division

Season 2015-16, Second Division

Season 2016-17, Second Division

Season 2017-18, First Division

Season 2018-19, Second Division

Season 2019-20, First Division

- The Appellant submits that the CFA rightly categorize it in Category 4. Clubs in the Second Division have limited financial means which makes it impossible for such clubs to invest any money in the training of new players. The Appellant claims it had no money to invest in the players.

- The Appellant further states that neither the FIFA regulations nor the FIFA circulars provide for any automatic allocation to a higher Training Category in case a club competes in the First Division. Instead, the qualification of a club must be based upon the decision taken by the national federation based on the individual circumstances of the case. The Appellant submits that had the FIFA DRC taken the correct facts into consideration, it would not have allocated the Appellant to a higher Training Category.

- The Appellant also refers to Article 4 para. 1 of Annex 4 of the FIFA Regulations for the Status and Transfer of Player ("FIFA RSTP"), which reads:

  "In order to calculate the compensation due to training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players".

  The Appellant explains that, according to this provision, the allocation to a Training Category is not based on the national competition in which it is competing.

vi. Improper application of Article 5 para. 4 of Annex 4 of the FIFA RSTP

- The Appellant submits that the FIFA DRC wrongly applied Article 5 para. 4 of Annex 4 of the FIFA RSTP. The provision reads as follows:

  "The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review".

- The Appellant is of the view that the provision is not applicable to the case at hand. According to the provision the FIFA DRC may adjust the amount of the training compensation, but not the Training Category applicable to the Appellant.

vii. FIFA DRC erred in applying its discretion when placing the Appellant in Category 3

- The Appellant refers to FIFA Circular 1246 – this is a typo as its 1249 – (para. 5 on page 2) which reads as follows:

  "There is some degree of flexibility in these guidelines. For example, a club in a lower division may be placed in a category with clubs of a higher division if it makes a similar investment to those clubs in training young players".

- According to the Appellant, it follows from this circular that there is some flexibility when deciding on the applicable Training Category. The Appellant argues that the FIFA DRC misapplied its discretion and failed to investigate the Appellant's competition history. The Appellant further argues that the mere fact that the Appellant had competed in the First Division for a second season in a row is not a decisive factor when allocating a club to a specific Training Category.

viii. FIFA DRC failed to show manifest discrepancy when placing the Appellant in Category 3

- The Appellant finds that the application of the guidelines in the FIFA circular rests with the national federation. If the FIFA DRC wished to deviate from the CFA's categorization of the various clubs, it can only do so in case of *manifest discrepancy* between the applicable guidelines and a club's allocation by the federation. The Appellant argues that the FIFA DRC failed to establish a manifest discrepancy and also failed to properly investigate the underlying facts. The Appellant claims that the FIFA DRC exercised its discretion without proper justification, that its conclusion is arbitrary and exceeds FIFA's scope of powers. Moreover, the Appellant explains that the evidence presented by the Respondent is insufficient to conclude that there is a manifest discrepancy.

ix. The Respondent failed to fulfil its burden of proof

- With reference to Article 12.3 of the FIFA Procedural Rules, the Appellant argues that the Respondent failed to meet its burden of proof. The evidence submitted by the Respondent (reference to Wikipedia) is insufficient to justify the allocation of the Appellant in Training Category 3.

x. The placement in Category 4 as determined by the CFA was correct

- The Appellant further refers to the FIFA Circular 799, which contains a list of factors in order to place clubs in Training Categories. According to the Appellant, the Respondent

failed to submit any evidence relating to these factors. Furthermore, the FIFA DRC also failed to review these factors when determining the Training Category for the Appellant.

- The Appellant argues that the appropriate application of the criteria only allows the Appellant to be placed in Training Category 4:

  The Appellant does not invest any money in the training of young players. In Cyprus, it is standard practice for clubs to charge fees to young players for their training. Due to its limited revenues, the Appellant does not invest more than it receives in players' fees.

  The Appellant does not provide its young players with any financial benefits, perks, or other advantages. All its young players are amateurs.

xi. The CFA acted appropriately when it placed the Appellant in Category 4

- The CFA acted bona fide when it informed the FIFA DRC that the Appellant belonged to Training Category 4. Out of the 13 other clubs competing in the First Division of the CFA only three are placed in Training Category 4. When making its decision, the CFA takes into account the competition history of the respective clubs. Thus, *e.g.*, a relegation from the First Division to the Second Division is not by itself sufficient to move a club from Training Category 3 to 4. Instead, it is important to have a look at longer periods of times. The CFA's practice clearly shows that the CFA never intended to change a club's Training Category merely on the basis of a club moving from one Division to another.

B. The Position of the Respondent

51. In its Answer, Necaxa sought the following relief:

For all the reasons set forth above, the Respondent respectfully requests that the CAS:

1. To dismiss the Appeal lodged by CLUB OLYMPIAKOS NICOSIA against the Decision passed by the Dispute Resolution Chamber of FIFA on 18 February 2021, grounds of which were notified to the parties on 7 April 2021, in the procedure with FIFA Reference number TMS 6851;

2. To decide that CLUB NECAXA is entitled to receive the amount of EUR 41,095.89 as the training compensation for the Player Pedro Pablo Campos Olavarria, plus 5% interests p.a. on that amount as from 5 March 2020, until the date of effective payment.

3. We request this honorable Court to condemn CLUB OLYMPIAKOS NICOSIA to pay all the legal and procedural costs arising from the present procedure.

i. The Respondent's claim for training compensation

- The Respondent argues that the Appealed Decision must be upheld, because it is entitled to training compensation. The Respondent refers to CAS 2017/A/5277, Article 20 of the FIFA RSTP as well as Arts. 1 and 2 of Annex 4 of the FIFA RSTP to back its position.

The Respondent argues that the Player was registered with the Respondent as a professional player from the age of 19 to 20 and that, thereafter, the Player was transferred to the Appellant who is affiliated to a different association.

ii. The Respondent did not waive its right to claim training compensation

- The Respondent is of the view that at no point in time it waived its right to training compensation. The email of the Player's agent referred to above is no proof of such waiver.

- The Respondent argues that it never provided the confirmation referred to in the agent's email. Furthermore, Mr. Alex Ferro is not a representative of Necaxa and was never given any authority to sign or commit to anything on behalf of Necaxa.

- The Respondent submits that a valid waiver of the claim for training compensation must be explicit and signed by the authorised club. These conditions, however, not fulfilled in the case at hand.

- The Respondent also relies on FIFA DRC decisions TMS 7498 (17 February 2021) and FIFA DRC TMS 6521(2 December 2020), more particularly on the following excerpts:

  FIFA DRC TMS 7498

  "8. Finally, the Respondent held that Miedz Legnica had waived its entitlement to training compensation.

  10. The Respondent further contested the entitlement of the Claimant to receive training compensation arguing that Miedz Legnica had waived its entitlement to training compensation.

  11. In accordance with the jurisprudence of the DRC, a club that is entitled to receive training compensation for a particular player may waive such right. In order to be valid, a waiver for training compensation must be clear and unambiguous and needs to have been signed by the relevant club.

  12. In casu, the waiver referred to by the Respondent has been issued by Miedz Legnica, not by the Claimant. As a result, the Claimant has not waived its right to receive training compensation for the player and the waiver issued by Miedz Legnica is irrelevant in the present mater".

- FIFA DRC TMS 6521

  "8. According to the jurisprudence of the Dispute Resolution Chamber, the validity of a conventional waiver is subject to a clear and unequivocal declaration by the party concerned, requiring clear language reflecting the party's clear intention to renounce its rights. Implied waivers are not recognized.

  9. Only the party entitled to a right can waive this right".

- The Respondent also refers to the following excerpt from CAS 2017/A/5277:

4. Under Swiss law as well as the jurisprudence of the FIFA Dispute Resolution Chamber and CAS, the validity of a conventional waiver is subject to a clear and unequivocal declaration by the party concerned, requiring clear language reflecting the party's intention to renounce its rights. Implied waivers would not be recognized. Accordingly, and given that training compensation is a right stipulated in the RSTP, the existence of a waiver of this right may only be assumed in case it was unmistakable that the renouncing club had indeed intended to waive its right to training compensation.

5. As a general rule, only the party entitled to a right, i.e. only the club entitled to training compensation can waive this right. Therefore, neither the player nor an agent could be obliged towards a third club waiving the training compensation that pertains to the training club.

iii. The Termination Agreement did not preclude the Respondent's right to claim training compensation

- The Respondent also finds that the Termination Agreement does not preclude its claim for training compensation. The scope of application of the clause in the Termination Agreement (*"all legal rights arising from it had also been terminated"*) is limited to claims arising from the Employment Contract. It does not extend to claims arising from the RSTP.

- The Termination Agreement does not refer to training compensation and, therefore, does not affect the claim. Article 2 FIFA RSTP provides that the claim for training compensation is cancelled in case the former club terminates a player's contract without just cause. However, in the case at hand, the Employment Contract was terminated based on mutual consent. This is perfectly in line with Article 13 FIFA RSTP which provides that *"a contract between a professional and a club may only be terminated upon expiry of the term of the contract of by mutual agreement"*. The Respondent submits that, since the Employment Contract was terminated by consent, it is not prevented from claiming training compensation under the FIFA RSTP.

iv. The Appellant belongs in Category 3

- The Respondent submits that the Appellant belongs in Training Category 3. The Appellant participated in the First Division in the season 2017/2018. The Appellant was then relegated and returned to the First Division in the season 2019/2020. It, thus, has participated in the highest league more than once in the course of the last years.

- The Respondent argues that, because the Appellant participated in the First Division (seasons 2017/2018 and 2019/2020), it must be placed in the highest Training Category for that country, *i.e.* in Training Category 3.

v. FIFA may place the Appellant in Category 3

- The Respondent submits that the FIFA Circular 1249 does not grant any discretion to the national associations when determining the proper Training Category for their affiliated clubs. Instead, the FIFA Circular 1249 obliges national associations to fully

comply with the criteria in the Circular. Further, as the CFA allocates its clubs only to the Categories 3 and 4, Category 3 – evidently – must be reserved for the clubs participating in the First Division.

- According to the Respondent, it is not decisive whether a club has repeatedly competed in First Division over the last couple of years. Instead, the only decisive factor is whether a club was promoted to the First Division at the relevant time. Hence, the CFA should have placed the Appellant in Training Category 3 for the season 2019/2020.

- The Respondent rejects the Appellant's position that the burden of proof to show that the Appellant belongs in Category 3 falls exclusively on the Respondent, since all the relevant documents are not in the Respondent's possession. Furthermore, the process described in Circular 799 must be completed by the CFA and not by the Respondent.

V. JURISDICTION

52. Article R47 of the CAS Code provides as follows:

> *An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

53. The jurisdiction of CAS derives from Article 58 par. 1 of the FIFA Statutes that provides as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"* and Article R47 of the CAS Code.

54. The jurisdiction of the CAS is further confirmed by the OoP duly signed by both Parties. It, therefore, follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

55. Article R49 of the CAS Code provides as follows:

> *In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

56. The grounds of the Appealed Decision were notified to the Appellant on 7 April 2021. The Appellant filed its Statement of Appeal with the CAS on 27 April 2021. Consequently, the deadline for appeal of 21 days (contained in Article 58 par. 1 of the FIFA Statutes) was observed. It follows that this appeal is admissible.

VII. APPLICABLE LAW

57. Article R58 of the CAS Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

58. The Sole Arbitrator notes that Article 57 para. 2 of the FIFA Statutes provides the following:

> *The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and additionally Swiss law.*

59. The Sole Arbitrator, therefore, finds that the relevant FIFA rules and regulations, as in force at the relevant time of the dispute, shall be applied primarily, and Swiss law shall be applied subsidiarily, inter alia, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. ADMISSIBILITY OF THE APPELLANT'S EVIDENCE

60. Article R57 para. 3 of the CAS Code reads as follows:

> *"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply".*

61. The Appellant submits that his *"failure to participate and be heard in the FIFA proceedings was not the product of bad faith but of only negligence and lack of knowledge"* and that, therefore, *"it is fair and just for CAS to admit the Appellant's factual and legal arguments as well as the relevant evidence"*. Furthermore, the Appellant relies on the decision CAS 2017/A/5090. The panel in that case stated inter alia as follows (CAS Bulletin 2018/2, p, 57 et seq.):

> *"… the Panel found that after the amendment of Article R57 of the CAS Code in March 2013, the basis of de novo review was still, in essence, the foundation of the CAS appeals system and the standard of review should not be undermined by an overly restrictive interpretation of Article R57 para. 3 of the CAS Code. This has also been the view in CAS jurisprudence (CAS 2014/A/3486, as mentioned in CAS Bulletin 2015/1, p. 67). As such, the Panel also considered that the discretion to exclude evidence should be exercised with caution, for example, in situations where a party acted in bad faith or may have engaged in abusive procedural behaviour, or in any other circumstances where the Panel might, in its discretion, consider it either unfair or inappropriate to admit new evidence (See MAVROMATI/REEB, in The Code of the Court of Arbitration for Sport – Commentary, cases and material, page 520, para. 46). In this respect, no evidence was provided by Genoa that Sion acted in bad faith or engaged in any abusive procedural behaviour. On the contrary, Genoa explicitly accepted that it classified Sion's behaviour as negligent, not deliberate. The Panel found that Sion did not act with the diligence required, as it should have discovered Genoa's claim by checking*

FIFA TMS not only regularly but also thoroughly, and by failing to do so violated Article 2 para .1 of Annexe 6 to the FIFA RSTP. Pursuant to Article 2 para. 2 of Annexe 6 to the FIFA RSTP, such omission could lead to "any procedural disadvantages" in the FIFA proceedings and even to sanctions pursuant to Article 9 para. 4 FIFA RSTP, but not necessarily to the exclusion of evidence in appeals proceedings at CAS pursuant to Article R57 para. 3 of the CAS Code. Negligence is not the same as bad faith".

62. The Sole Arbitrator concurs with the view expressed in CAS 2017/A/5090 and when applying the above standards finds that there are not sufficient grounds to exclude any evidence presented by the Appellant in these proceedings.

IX. MERITS

A. Starting point: The prerequisites for claiming training compensation

63. Article 20 of the FIFA RSTP provides as follows in respect of training compensation:

"Training compensation shall be paid to a player's training club(s): (1) when a player is registered for the first time as a professional, and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations. The principles of training compensation shall not apply to women's football".

64. The pertinent provision in Annexe 4 of the FIFA RSTP to which Article 20 of the FIFA RSTP refers, reads as follows:

Article 2 para. 1 of Annexe 4 FIFA RSTP

"Training compensation is due when:

a) a player is registered for the first time as a professional; or

b) a professional is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the calendar year of his 23rd birthday".

65. In light of Article 20 FIFA RSTP, in conjunction with Article 1 para. 1 and Article 2 para. 1 of Annexe 4 FIFA RSTP, training compensation is payable, as a general rule, for training incurred between the ages of 12 and 21 when a player is registered for the first time as a professional before the end of the season of the player's 23rd birthday or when a professional is transferred between clubs of two different associations before the end of the season of the player's 23rd birthday.

66. It is undisputed that the Player was registered with the Respondent as indicated in the player passport issued by the FMF. Accordingly, the Player was registered with the Respondent between 14 August 2018 and 30 July 2019 as well as between 14 August 2019 and 9 January 2020, so for a total of 500 days in the seasons of his 19th and 20th birthday. The Appellant and

the Player entered into an employment relationship on 31 January 2020, and he has been registered with the Appellant since 3 February 2020.

67. As set out above, the Player was transferred between clubs of two different associations – FMF to the CFA – before the end of the calendar year of his 23rd birthday. Thus, the entitlement of the Respondent to receive training compensation was, in principle, triggered.

B. Is the entitlement to training compensation precluded by virtue of agreement?

68. A club may renounce its right to training compensation or sign a binding waiver of this right in favour of the new club. Such waiver, however, cannot be accepted lightly. This also follows from the FIFA Commentary of the RSTP where it is stated in the context of Article 5 of Annexe 4 FIFA RSTP (p. 310) as follows:

> *"The DRC has repeatedly confirmed that this is permitted. However, it has made any waiver subject to several conditions. First and foremost, the waiver must be explicit. In this respect, CAS has affirmed that any statement by a club to the effect that one of its players is a "free player" should be taken to refer to the fact the player is out of contract, not to any entitlement to training compensation.*
>
> *Secondly, only the party entitled to training compensation (i.e. the relevant training club) can waive it. In other words, if a player's last training club waives its right to training compensation, this waiver is applicable to that training club only, and not to any other club that may have trained the player during his career.*
>
> *Finally, a unilateral declaration by a training club constitutes a valid waiver. CAS has confirmed the DRC approach in this regard".*

69. The Appellant relies on an email of the Player's agent, Mr Alexandre Ferro, to Olympiakos to demonstrate that the Respondent waived its claim for training compensation. In that email dated 31 January 2020, Mr Alexandre Ferro writes to the Appellant – *inter alia* – that he is *"… getting the confirmation from Necaxa that they will NOT ask any payment regarding training compensation. It has been agreed before"*. The Sole Arbitrator notes that no "confirmation" by the Respondent was provided to Olympiakos or the CAS. The Sole Arbitrator further notes that Mr Alexandre Ferro is not a representative of the Respondent nor was he mandated to negotiate on behalf of it.

70. It is true that the Appellant provided a Witness Statement from Mr Alexandre Ferro wherein the latter states that *"[d]uring the negotiations with Necaxa for the mutual termination of the Player's employment by them it was explicitly agreed that they would waive their right to any training compensation"*. Such agreement is, however, contested by the Respondent. The Sole Arbitrator – absent any cogent evidence on file – is not prepared to accept such waiver. It is difficult to see what incentive the Respondent would have had to agree to a waiver of its claim for training compensation vis-à-vis the Player. Furthermore, there is a presumption that the Termination Agreement fully and exhaustively reflects the agreement between the Parties. If the Player and the Respondent agreed to such waiver, one would expect that such an important and unusual agreement would be incorporated into the Termination Agreement.

71. The Sole Arbitrator further finds that no clause in the Termination Agreement implicitly hints

to a waiver. The Appellant submits that such waiver may be derived from the clause "First" of the Termination Agreement that reads – *inter alia* – as follows:

> *"The Parties agree, by signing this Agreement, to terminate the Sports Contract and, consequently, each and every one of the legal effects arising from it, from the moment this agreement is entered into, without liability for any of the Parts".*

72. This clause, however, does not refer to "claims for training compensation" and only pertains to "legal effects" arising from the former employment agreement between the Player and Respondent. The employment agreement, however, is silent on a claim for training compensation.

C. Is the entitlement to training compensation precluded by virtue of the FIFA regulations?

73. Article 2 para. 2 Annexe 4 FIFA RSTP contains statutory events precluding any entitlement to training compensation and reads as follows:

> *"Training compensation is not due if:*
>
> *a) the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs); or*
>
> *b) the player is transferred to a category 4 club; or*
>
> *c) a professional reacquires amateur status on being transferred".*

74. The Sole Arbitrator remarks that both the first and third scenarios are immaterial to the case. It is undisputed among the Parties that the employment relationship between the Player and the Respondent was terminated by mutual agreement. A termination of the employment contract by mutual agreement is not tantamount to a termination without just cause and, therefore, does not affect a claim for training compensation. Lit. c is not applicable either, because the Player did not reacquire amateur status after being transferred.

75. What is disputed between the Parties, however, is whether or not the Player was transferred to a Training Category 4 club (lit. b).

a. The rules applicable to the categorisation of clubs

76. Article 4 of Annexe 4 FIFA RSTP reads as follows:

> *"1. In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.*

2. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year. Associations are required to keep the data regarding the training category of their clubs inserted in TMS up to date at all times (cf. Annexe 3, article 5.1 paragraph 2)".

b. The competence of the association to categorise a club

77. It follows from the above provisions that it is the member associations who are responsible for dividing their clubs into a maximum of four categories and to keep the data up to date. When categorising their clubs, the national federations shall take into consideration a club's financial investment in training players. In addition, FIFA has issued Circulars to member associations in order to provide further guidance, in particular FIFA Circular 799 of 19 March 2002 and FIFA Circular 1249 of 6 December 2010. In addition, FIFA Circular 1673 of 28 May 2019 advises the member associations that CFA only has two training categories (instead of four), namely Category 3 and 4, in which it needs to place its clubs.

78. FIFA Circular 799 sets out the type of costs a national association should consider when determining a club's financial investment in training of young players. These costs include:

"• *Salaries and/or allowances and/or benefits paid to players (such as pensions and health insurance)*

- *Any social charges and/or taxes paid on salaries*
- *Accommodation expenses*
- *Tuition fees and costs incurred in providing internal or external academic education programmes*
- *Travel costs incurred in connection with the players' education*
- *Training camps*
- *Travel costs for training, matches, competitions and tournaments*
- *Expenses incurred for use of facilities for training including playing fields, gymnasiums, changing rooms etc. (including depreciation costs)*
- *Costs of providing football kit and equipment (e.g. balls, shirts, goals etc.)*
- *Expenses incurred in playing competitive matches including referees expenses, and competition registration fees*
- *Salaries of coaches, medical staff, nutritionists and other professionals*
- *Medical equipment and supplies*
- *Expenses incurred by volunteers*

- *Other miscellaneous administrative costs (a % of central overheads to cover administration costs, accounting, secretarial services etc.)".*

79. FIFA Circular 1249 is the latest Circular dealing with the categorisation of clubs by national associations. The pertinent parts of that Circular read as follows:

"Category 1 (top level, e.g. high-quality training centre):

- all first-division clubs of member associations investing on average a similar amount in training players.

Category 2 (still professional, but at a lower level):

- all second-division clubs of member associations in category 1 and all first-division clubs in all other countries with professional football.

Category 3:

- all third-division clubs of member associations in category 1 and all second-division clubs in all other countries with professional football.

Category 4:

- all fourth and lower-division clubs of the member associations in category 1, all third and lower-division clubs in all other countries with professional football and all clubs in countries with only amateur football".

There is some degree of flexibility in these guidelines. For example, a club in a lower division may be placed in a category with clubs of a higher division if it makes a similar investment to those clubs in training young players".

c. Checks and balances put in place by FIFA

80. The categorisation of the clubs by their national associations can be reviewed by FIFA. This follows from FIFA Circular 1249, which states as follows:

> *"[…] the Resolution Chamber (DRC) has been facing an increasing number of cases in which there has been a manifest discrepancy between the above-mentioned guidelines and the actual assignment of a specific respondent club (e.g. first-division clubs of associations without high-quality training centres but with established professional football being assigned to category 3 or even 4 instead of category 2)".*

and that

> *"[in] cases of manifest discrepancy, the DRC normally applies the training category in accordance with the guidelines, despite the fact that the member association concerned has indicated a different categorisation".*

81. Furthermore, this right of FIFA to review and correct a categorisation made by the national federations also follows from Article 5 para. 4 Annexe 4 of the RSTP. The provision reads as follows:

"The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review".

82. This provision is, according to settled case law, also used as a gateway for FIFA to re-categorise clubs. In this respect, the FIFA Commentary on the RSTP states at p. 310 as follows:

"In recent times, the DRC has recategorised clubs, in the context of specific claims, on the basis of article 5 paragraph 4 of annexe 4".

83. It follows from the above that the national associations are first and foremost responsible for the categorisation of their clubs. FIFA may interfere with the decision of the national associations and re-categorise a club. However, the threshold to do so is high. There needs to be a manifest discrepancy between the categorisation of the national federation and the rules / guidelines issued by FIFA. The latter is only the case if the decision of the national federation is "clearly disproportionate".

d. The burden of proof and the duty to substantiate

84. Except where the arbitral agreement determines otherwise, an arbitral tribunal shall allocate the burden of proof in accordance with the rules of law governing the merits of the dispute, *i.e.* the *lex causae* (BERGER/KELLERHALLS, International and Domestic Arbitration in Switzerland, 2015, No. 1316).

85. As set out *supra*, the *lex causae* in the matter at hand are primarily the various regulations of FIFA and, subsidiarily, Swiss law. Article 12 para. 3 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber states as follows:

"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof. During the proceedings, the parties shall submit all relevant facts and evidence of which they are aware at that time, or of which they should have been aware if they had exercised due care".

86. The provision is in line with Article 8 of the Swiss Civil Code that reads as follows:

"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact".

87. Since the Appellant avails itself of Article 2 para. 2 lit. b Annexe 4 FIFA RSTP in order to escape liability from training compensation, the burden of proof that it is a category 4 club rests on it.

88. It is, in principle, the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal in a sufficient manner (Swiss Federal Tribunal: SFT 97 II 216, 218 E. 1). The party that has the burden of proof, thus, in principle has also the burden of presenting the relevant facts to the tribunal. Consequently, it is for the Appellant to substantiate that it is a category 4 club. The Sole Arbitrator finds that the Appellant has met its

burden to sufficiently substantiate its position by refering to the categorisation issued by the CFA, *i.e.* the entity primarily responsible for this task. The latter has categorised the Appellant as a training category 4 club.

89. Once the Appellant has substantiated its claim, it is for the Respondent to contest such submissions. However, also the Respondent needs to do so in a substantiated manner. It does not suffice that the Respondent objects to the categorisation of the Appellant as a category 4 club. Instead, the Respondent needs to demonstrate (and to substantiate) that the decision made by the CFA is "clearly disproportionate". Only in case the Respondent meets its duty of substantiation, the Sole Arbitrator must assess the evidence and determine whether or not the Appellant has met its burden of proof.

e. Analysis of the relevant jurisprudence

90. The Sole Arbitrator has looked at relevant jurisprudence related to the re-categorisation of clubs.

- DRC Decision of 10 December 2019 (Club Atlético 9de Julio v. FK Liepaja), Decision of 10 December 2019 (Club Lautaro Roncedo v. FK Liepaja) Decision of 10 December 2019 (Club Alem de Villa Nueva v. FK Liepaja) Decision of 10 December 2019, Club (Deportivo Argentino v. FK Liepaja), Decision of 10 December 2019 (Club Atlético Ricardo Gutiérrez v. FK Liepaja), Decision of 10 December 2019 (Club Lautaro Roncedo v. FK Liepaja) and Decision of 10 December 2019 (Banda Norte v. FK Liepaja). All these decisions deal with the categorisation of the Latvian club FK Liepaja. Similar to the case at hand, Latvia only has two training categories, *i.e.* Category 3 and 4. The Latvian Federation had placed FK Liepaja in Category 4. The panels in these disputes re-categorised FK Liepaja from Category 4 to Category 3. The panels found that the categorisation of the Latvian Federation was "clearly disproportionate", because FK Liepaja participated in the highest Latvian division, had become national champion and thus qualified for the UEFA competitions.

- In DRC decision of 14 February 2020 (Canon Yaounde v. SC Rheindorf Altach), the single judge re-categorized SC Rheindorf Altach from Category 3 to Category 2, because the club had competed at the highest level in Austria for the consecutive six football seasons and had participated in the UEFA Europa League tournament for two of the past six seasons. The club was – therefore – in the view of the DRC, an established professional football club in Austria competing at the highest level in this country which justified a reallocation into Category 2.

- The DRC Decision of 2 July 2020 (FC Kairat v. FC Noah) concerned a club (FC Noah) that had been categorised by the Armenian Football Federation as a category 4 club. The DRC took issue with this decision and stated that the national association classified FC Noah at the lowest category possible, *"despite the Respondent competing in the highest professional division in Armenia"* and that it would *"be against the spirit of art. 21 of the Regulations to allow a professional club that plays in the highest division of a country where more than one training category are*

available to benefit from young talents trained by other clubs outside of Armenia".

91. It appears from the above jurisprudence that the past sporting track record of a club and, in particular, whether or not the club plays in the "highest national league", is an important factor when assessing whether or not the categorisation by a national federation is clearly or manifestly disproportionate. The Respondent submitted that the Appellant – at the start of the relevant season – was competing in the highest professional league of the CFA. The participation in the highest league, however, is according to the above-mentioned jurisprudence, an important aspect in order to re-categorise a club. Accordingly, the Sole Arbitrator finds that the Respondent has contested the categorisation of the Appellant as a Category 4 club in a substantiated manner by pointing to the Appellant's sporting record.

f. Evaluation of the Evidence

92. FIFA Circular 1249 states that there *"is some degree of flexibility in these guidelines. For example, a club in a lower division may be placed in a category with clubs of a higher division if it makes a similar investment to those clubs in training young players"*. Similarly, there must be flexibility to rank a club of a higher division in a category with clubs of a lower division, if such clubs makes similar investments to those clubs in training young players. The question in this case, thus, is whether the CFA has manifestly exceeded the "flexibility" granted to it, when placing the Appellant in Category 4. The onus of proof that the Appellant was rightly positioned in Category 4 rests with the Appellant.

93. The Appellant relies – *inter alia* – on the testimony of Ms Andrie Anastasiou from CFA. The latter has explained the CFA's rationale to position the Appellant into the Category 4. Ms Andie Anastasiou explained that the Appellant is not an established first division club. Instead, the Appellant has spent the majority of its competition history in the second division. More particularly, she explained that the FIFA DRC erred when it found that *"the Respondent plays in the highest division in Cyprus and … that it has been the case since the 2018/2019 season"*.Ms Andrie Anastasiou also explained that the Appellant was competing in the CFA second division for the seasons 2013/2014, 2014/2015, 2015/2016, and 2018/2019. The Appellant, thus, only played in the first division occasionally, *i.e.* during the season 2017/2018 and 2019/2020. Furthermore, Ms Andrie Anastasiou stated that the Appellant's expenditure for young players was significantly lower than most of the other CFA's first division clubs. The Appellant's investments (calculated according to the FIFA Circular 799) amounted to EUR 154.08 per player in 2019. When multiplying this with the "player factor", this amounts to EUR 6,600 EUR in the relevant year. According to Ms Andrie Anastasiou the CFA examines each year the balance sheets of the clubs and assesses the financial investments of all the clubs in the training of young players (based on FIFA Circular 799). She stated that the Appellant spends significantly less than those clubs that are permanently or frequently in the first division. The above was corroborated by the testimony of Mr Spyros Neofytides, the president of the Cyprus Player Union. The latter stated that the Appellant is a particularly poor club compared to first division clubs in Cyprus, has a very small budget that is practically all spent on the professional team and not on the development of young players, that over the last years the Appellant mostly competed in the second division and that second division clubs' revenues are considerably lower

than the revenues of established first division clubs. Ms Antonia Antaniou, the Appellant's TMS manager, explained that the Appellant could not afford a big infrastructure for developing young players. The Appellant has no training fields of its own, does not even have locker rooms for the young players and needs to rent the training facilities from local school committees. Furthermore, she explained that none of the resources of the first team was used for the development of young players and that it was basically the parents of these young players that carried the financial burden of educating the young players.

94. In view of all of the above, the Sole Arbitrator finds that the CFA has not manifestly exceeded the flexibility available to it when placing the Appellant into the Category 4. The Appellant lacks the level of professionalism to be qualified as an established first division club within the meaning of the FIFA regulations and guidelines. The Sole Arbitrator finds that the evidence on file does not justify the re-categorisation of the Appellant into Training Category 3. Consequently, the Respondent's claim for training compensation must be dismissed.

g. The power of the CAS to interfere with FIFA's categorization

95. According to Article R57 of the CAS Code, the Panel's mandate is to review the facts and the law. CAS, thus, like the DRC, would have the power to review the re-categorization of clubs. However, the Sole Arbitrator finds that he should only do so exceptionally and with care, since FIFA has a margin of appreciation when categorizing clubs. The Sole Arbitrator only deems it just to interfere when objective elements or evidence (as is the case here) have not been properly assessed and evaluated by FIFA.

96. The Sole Arbitrator finds that, based on the evidence on file, the Appellant lacks the level of professionalism to be qualified as an established first division club within the meaning of the FIFA regulations and guidelines. The Sole Arbitrator further finds that the evidence on file does not justify the re-categorisation of the Appellant into Training Category 3.

97. Consequently, the Respondent's claim for training compensation must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Olympiakos Nicosia Football Club on 27 April 2021 against the decision of the FIFA Dispute Resolution Chamber dated 18 February 2021 is upheld.

2. The decision issued by the FIFA Dispute Resolution Chamber dated 18 February 2021 is set aside. The claim of Impulsora del Deportivo Necaxa S.A. de C.V against Olympiakos Nicosia Football Club for training compensation regarding the player P. is dismissed.

3. (…).

4. All other and further reaching claims are dismissed.