Arbitration CAS 2021/A/8275 Stade Malherbe de Caen v. Parma Calcio 1913 S.R.L., award of 11 November 2022

Panel: Mr Sofoklis Pilavios (Greece), President; Mr Patrick Grandjean (Switzerland); Mr Wouter Lambrecht (Belgium)

Football
Transfer – Solidarity mechanism
Applicable edition of the FIFA RSTP
FIFA Commentary on the RSTP
Definition of registration of a player
Obligation to pay solidarity contribution in the context of national transfers

1. **The applicable version of the FIFA Regulations on the Status and Transfer of Players (RSTP) on any given matter is determined by the moment in time when said matter is submitted before the adjudicatory bodies of FIFA. In principle, if a case is brought before the various deciding bodies of FIFA before the enactment of a certain edition of the FIFA RSTP, it will be assessed according to the previous edition. Conversely, a matter referred to FIFA after the latest version of the FIFA RSTP had come into force shall be adjudicated on the basis of said version. According to Article 26(2) FIFA RSTP, disputes concerning training compensation or solidarity contribution entitlements, as well as labour disputes relating to contracts concluded before 1 September 2001, shall be assessed according to the version of the FIFA RSTP that was in force *"when the contract at the centre of the dispute was signed, or the disputed facts arose"*.**

2. **The FIFA Commentary on the Regulations for the Status and Transfer of Players Edition 2021 (FIFA Commentary), albeit not binding, can provide useful guidelines for the interpretation of the FIFA RSTP and shall be seen as an interpretative approach, which is likely to give a certain degree of certainty among sports professionals. According to the FIFA Commentary *"disputes regarding training compensation and the solidarity mechanism are assessed according to the version of the Regulations in force when the disputed facts arose (i.e. at the time the player was registered with their new club, which triggers the payment of the relevant training reward), irrespective of the edition of the Regulations in force when the matter is actually brought to FIFA".***

3. **Pursuant to the Definition No. 17 of the FIFA RSTP, the registration of a player is defined as *"the act of making a written record containing details of a player"* including, *inter alia*, the starting date of said registration and the player's personal information. The change of registration of a player from "loan" to "permanent" does not constitute a new registration as such as it lacks the element of the "transfer" which, under Article 21 and 26(2) of the FIFA RSTP is considered essential.**

4. The obligation to pay solidarity contribution on national transfers with an international dimension was introduced with the June 2020 edition of the FIFA RSTP, which came into force on 1 July 2020.

I. PARTIES

1. Stade Malherbe de Caen ("SM Caen" or the "Appellant") is a professional football club with its registered office in Caen, France. It is affiliated with the French Football Federation (the "FFF"), which in turn is affiliated with the *Fédération Internationale de Football Association* ("FIFA").

2. Parma Calcio 1913 S.R.L. ("Parma Calcio" or the "Respondent") is a professional football club with its registered office in Parma, Italy. It is affiliated with the Italian Football Federation (the "FIGC"), which in turn is affiliated with FIFA.

3. SM Caen and Parma Calcio shall be collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written and oral submissions of the Parties and the evidence examined in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Background facts

5. The football player K. (the "Player") is a French national, born on […]. According to the Player's passport provided by the FFF and FIGC, he was initially registered with SM Caen as an amateur from 7 October 2011 to 30 June 2013. On 1 July 2013, the Player was registered as a professional player with SM Caen and remained as such until 31 August 2017.

6. On 1 September 2017, the Player was transferred from SM Caen to the Italian football club F.C. Internazionale Milano SPA ("FC Inter Milan"). In July 2019, the Player was still registered with FC Inter Milan.

7. By means of a transfer agreement concluded on 16 July 2019 and executed on the subsequent day, FC Inter Milan and Parma Calcio agreed on the loan of the Player to Parma Calcio (the "Transfer Agreement"). The loan fee amounted to 900,000.000€ (nine hundred thousand euro), payable in two equal instalments.

8. The Transfer Agreement also contained a mandatory purchase option which provides, *inter alia,* as follows[1] (the "Mandatory Purchase Option"):

"OBLIGATION TO TRANSFORM THE TEMPORARY TRANSFER INTO A PERMANENT TRANSFER (ART.103.3 BIS NOIF)

CLUB OF DESTINATION: [Parma Calcio]

CLUB OF ORIGIN: F.C. INTERNAZIONALE MILANO S.P.A.

PLAYER: [The Player]

With reference to Registration form no. 0000256360/19 the Club of destination is under the obligation to transform the temporary transfer of the contract into a permanent transfer at the realization of the following conditions:

UPON THE FIRST POINT OBTAINED IN THE 2019/2020 SERIE A CHAMPIONSHIP AFTER 01/02/2020 OR, ALTERNATIVELY, UPON THE FIRST APPEARANCE OF THE PLAYER IN THE SERIE A CHAMPIONSHIP AFTER 01/02/2020.

[…]

Pursuant to such obligation the club of destination is obligated to transfer to the club of origin, in the season subsequent to that during which the conditions are realised, in accordance with the deadline set annually by the Federal Council, the sum of:

€ 6,500,000	*(in letters) Euro*	*Six million five hundred thousand*
1st sporting season	*1,625,000.00*	*(in letters) Euro one million six hundred twenty five thousand*
2nd sporting season	*2,200,000.00*	*(in letters) Euro two million two hundred thousand*
3rd sporting season	*2,675,000.00*	*(in letters) Euro two million six hundred seventy five thousand".*

9. Also on 16 July 2019, Parma Calcio and the Player concluded an employment agreement valid as of 18 July 2019 until 30 June 2023 (the "Employment Agreement"). On the same date, Parma Calcio, FC Inter Milan and the Player further signed the form no. 0000256360/19 *"Professional Player Registration Form"* issued by the FIGC (the "Registration Form"). Pursuant to the

[1] The Transfer Agreement was originally drafted in the Italian language. However, the translation of the pertinent provisions as presented by the Parties in their respective submissions and the Appealed Decision is uncontested and it is quoted as such.

modalities of the Registration Form, the Player was loaned to Parma Calcio for one season, while the agreement of the implicated parties also included a *"redemption obligation"*.

10. On 16 February 2020, Parma Calcio won its first Serie A fixture since 1 February 2020. However, according to the information contained in the Player's passport issued by the FIGC, the Player was permanently registered with Parma Calcio on 1 September 2020.

B. Proceedings before the FIFA Dispute Resolution Chamber

11. On 22 December 2020, SM Caen lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") against Parma Calcio and requested the payment of a sum corresponding to 44,90% of the solidarity contribution generated by the permanent transfer of the Player from FC Inter Milan to Parma Calcio. In essence, SM Caen referred to the June 2020 edition of the FIFA Regulations on the Status and Transfer of Player (the "FIFA RSTP"), according to which a training club is entitled to receive a portion of the solidarity contribution payable in relation with the transfer of a player, either on a permanent or a temporary basis, for a fee when said player is transferred between two clubs affiliated with the same national association, provided that the training club is affiliated with a different association.

12. On 13 January 2021, the FIFA administration submitted a proposal to the Parties whereby it suggested that Parma Calcio was to pay an amount equal to 43,265.63€ (forty-three thousand two hundred and sixty-five euro and sixty-three cents) to SM Caen (the "FIFA Proposal"). Said amount corresponds to 53,25% of the due solidarity contribution related to the payment of the first instalment of the pertinent fee for the permanent transfer of the Player to Parma Calcio, as agreed between the latter and FC Inter Milan.

13. On 5 February 2021, Parma Calcio rejected the claim of SM Caen and the FIFA Proposal. For its part, Parma Calcio referred to Article 26(2) FIFA RSTP and argued that disputes concerning solidarity contributions shall be adjudicated on the basis of the regulations in force at the time the pertinent transfer agreement was concluded.

14. In this respect, Parma Calcio asserted that the Transfer Agreement was concluded on 16 July 2019 and therefore, the June 2019 edition of the FIFA RSTP was applicable to the matter at hand. Parma Calcio explained that pursuant to the modalities of the Transfer Agreement, it was obliged to permanently register the Player as the requirements of the Mandatory Purchase Option agreed between FC Inter Milan and Parma Calcio were met on 16 February 2020, when its team scored its first three points in the 2019/2020 Serie A Championship.

15. Due to the rejection of the FIFA Proposal by Parma Calcio, the matter was submitted to the Single Judge of the sub-committee of the FIFA DRC for further consideration. On 23 February 2021, a decision was issued with, *inter alia*, the following operative part (the "Appealed Decision):

"1. The claim of the Claimant, SM Caen, is rejected".

16. On 4 August 2021, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia,* the following:

"3. The obligation to pay solidarity contribution on national transfers with an international dimension was introduced with the June 2020 edition of the [FIFA RSTP], which came into force on 1 July 2020.

4. According to art.26 par.2 of the [FIFA RSTP], solidarity contribution disputes 'shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose'.

5. The [Transfer Agreement] was concluded on 16 July 2019 and executed on 17 July 2019, and indicated that the loan would become permanent if the Respondent earned one point in Serie A during season 19/20 after 1 February 2020 and/or after the player made his first appearance in Serie A during season 19/20 after 1 February 2020.

6. The aforementioned condition was met on 16 February 2020 after the Respondent won its first Serie A fixture since 1 February 2020, and the option to permanently register the [Player] with the Respondent was triggered. It also remained uncontested that this occurred without further intervention of the parties to the agreement.

7. In accordance with the [Player's] passport provided by the FIGC the [Player] was registered with the Respondent on a permanent basis on 1 September 2020 i.e. at the start of the 2020/2021 season. It is undisputed that such registration occurred as a consequence of the loan of the [Player] having become permanent before 1 July 2020 and without the further intervention of the parties to the agreement.

8. When the loan agreement was concluded, the June 2019 edition of the [FIFA RSTP] was applicable. At that time no solidarity contribution was payable in the context of national transfers.

9. When the option to permanently transfer the [Player] to the Respondent was triggered, the June 2020 edition of the [FIFA RSTP] was not yet in force and no solidarity contribution was due in case of a national transfer of a player.

10. Only the formal registration of the player on a permanent basis with FIGC occurred after the June 2020 edition of the [FIFA RSTP] had entered into force.

11. Applying the June 2020 edition to a transaction that was agreed between the parties one year before and was triggered before its entering into force, when solidarity contribution was not yet payable in the context of a national transfer, would go against the principle of legal certainty. It would not be fair for the parties to be subjected to a provision that was not applicable at the moment they discussed the possibility of the [Player's] loan to become permanent nor when the loan became de facto permanent with the option having been activated".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 25 August 2021, SM Caen filed a Statement of Appeal with CAS against the Appealed Decision in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code"), nominating both FIFA and Parma Calcio as the respondents. In this submission, the Appellant requested that the proceedings be conducted in French or alternatively, to be absolved from the obligation to translate any pertinent documents drafted in French, should the respondents prefer that the language of the proceedings be English.

By means of the same submissions, the Appellant nominated Mr. Patrick Grandjean, Attorney – at – law in Belmont, Switzerland as arbitrator and requested the time limit to file its Appeal Brief to be fixed *"from the day of the notification of the decision as to the language of the arbitration"*.

18. On 6 September 2021, the Respondent informed the CAS Court Office that it wished the present proceedings to be conducted in English and provided several arguments in support of its request. Additionally, Parma Calcio requested that all further documentation submitted by the Appellant be filed exclusively in English.

19. On 6 September 2021, FIFA requested to be excluded from the course of the present proceedings given that the nature of the matter at hand concerned a horizontal dispute between the Appellant and the Respondent.

20. On 7 September 2021, the Respondent requested the suspension of the time limit to appoint an arbitrator until the language of the proceedings be designated and the Appellant provided its position regarding the request submitted by FIFA on 6 September 2021. This request was granted.

21. On 7 October 2021, the CAS Court Office noted, *inter alia*, that the Appellant consented to the exclusion of FIFA from the present proceedings.

22. On 12 October 2021, the CAS Court Office noted that the Appellant agreed for the present proceedings to be conducted in English. Accordingly, it informed the Parties that *"the suspension of the Appellant's deadline to file its Appeal Brief"* and *"the suspension of the Respondent's deadline to nominate an arbitrator"* were hereby lifted.

23. On the same day, the Respondent nominated Mr. Wouter Lambrecht, Attorney-at-law, Barcelona, Spain, as an arbitrator.

24. On 22 October 2021, the Appellant filed its Appeal Brief pursuant to Article R51 CAS Code within the pertinent deadline.

25. On 29 November 2021, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, the Deputy President of the CAS Appeals Arbitration Division had decided that the arbitral tribunal appointed to decide on the matter at hand was constituted as follows:

- President: Mr. Sofoklis P. Pilavios, Attorney-At-Law, Athens, Greece
- Arbitrators: Mr. Patrick Grandjean, Attorney-At-Law, Belmont, Switzerland

  Mr. Wouter Lambrecht, Attorney-At-Law, Barcelona, Spain

26. On 6 December 2021, following a 21-day extension granted in this respect, the Respondent submitted its Answer pursuant to Article R55 CAS Code. By means of its Answer, the Respondent also requested for an award to be issued in the present matter based on the Parties written submissions.

27. On 14 December 2021, the Appellant requested a second round of submissions according to Article 56(1) CAS Code. In support of its request, the Appellant argued, *inter alia*, that the Respondent *"supported its argumentation with numerous references to the FIFA Commentary on the Regulations on the Status and Transfer of Players Edition 2021 (the 2021 RSTP Commentary), document which was published by FIFA on 10 November 2021, i.e. after the submission of the Appeal Brief on 22 October 2021"*.

28. On 20 December 2021, the CAS Court Office informed the Parties that the Panel had decided to hold a second round of submissions in the matter at hand.

29. On 10 January 2022 and 10 February 2022 respectively, the Appellant and the Respondent filed their second submissions.

30. On 17 March 2022, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present matter.

31. On 27 and 28 April 2022, the Parties filed the duly signed Order of Procedure.

32. On 4 May 2022, a hearing was held via video-conference. At the outset of the hearing, the Parties confirmed that they had no objection or comments as to the constitution and the composition of the arbitral tribunal nor in respect of how the proceedings had been conducted up to that moment.

33. In addition to the Panel and Mrs. Sophie Roud, Counsel for CAS, the following persons attended the hearing:

- For the Appellant:
    1) Mr. Serge Vittoz, counsel;
    2) Mr. Gauthier Moreuil, counsel;
    3) Mrs. Marion Mbour, Chief Financial Officer for the Appellant;
    4) Mr. Axel Geslin, Chief Human Resources Officer of the Appellant;
- For the Respondent:
    1) Avv. Vittorio Rigo, counsel;
    2) Mr. Matthias Nicolai, counsel;
    3) Mr. Dario della Corte, witness;
    4) Mrs. Federica Ravasio, interpreter;

34. The Parties had the complete opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

35. Before the hearing was concluded, all the Parties expressly stated that they had no objections with the procedure followed by the Panel, that they were satisfied as to how the hearing had been conducted and they confirmed that their right to be heard had been respected.

36. The Panel confirms that it carefully heard and took into consideration all the submissions, evidence and arguments presented by the Parties in their submissions and their pleadings, even if they have not been specifically summarized or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND PRAYERS FOR RELIEF[2]

a SM Caen

37. The submissions of the Appellant, in essence, may be summarized as follows:

- The main issue at stake in the case at hand is the determination of which edition of the FIFA RSTP shall apply to the merits of the dispute, as this will determine whether the rules on the solidarity mechanism for national transfers with an international dimension will apply.

- The applicable edition needs to be established pursuant to Article 26(2) FIFA RSTP which offers two options to the adjudicatory body *"when deciding which edition of the [FIFA RSTP] shall apply to a specific case, […], namely the edition of the regulations that was in force when the contract at the centre of the dispute was signed ["**Option 1**"] or the edition that was in force when the disputed facts arose ["**Option 2**"]";*

- As it is unclear which of the options needs to be applied by the adjudicatory body to establish the applicable edition of the FIFA RSTP in the present case, Article 26(2) FIFA RSTP needs to be interpreted.

- *"Under Swiss law and according to the constant CAS case law, the statutes and regulations of large entities, such as FIFA, shall be interpreted having recourse to the methods of interpretation applicable to the law"*; i.e., the literal, the systematic, the historical and the teleological methods.

- In light of the jurisprudence of the Swiss Federal Tribunal, there is no predominant method in interpreting the regulations of FIFA and therefore, all interpretation methods shall apply equally.

[2] The submissions and the prayers for relief as presented in this chapter refer to both round of submissions granted to the Parties.

- According to the correct interpretation of the applicable provision, Option 1 is applicable to all claims submitted on the basis of a contract, whereas Option 2 is applicable to all other claims.

- Since the legal relationship between SM Caen, that has contributed to the education and training of the Player, and Parma Calcio, that acquired the Player's services before the expiry of his employment contract from Inter Milan, does not involve any contract at the centre of the dispute, the legal relationship between them stems purely from the application of the rules regarding the solidarity mechanism.

- Therefore, the true meaning of the Article 26(2) FIFA RSTP is that disputes regarding the solidarity mechanism shall be assessed in accordance with the edition of the FIFA RSTP that was in force *"at the time the disputed facts arose"*.

- To define when the disputed facts arose, one must determine on which facts the claim of SM Caen is based.

- The right for a training club to claim solidarity contribution is triggered by the registration of the Player with a new club. Before the date of registration, the training club does not have any claim against the new club. As such, the date of registration of the Player with Parma Calcio is the relevant element on which SM Caen's claim is based and this shall be considered to constitute "the disputed fact" in the sense of article 26(2) FIFA RSTP. SM Caen's entitlement is governed by Article 2 annexe 5 of the FIFA RSTP which holds that a new club shall pay the solidarity contribution to the training club no later than 30 days following the registration.

- The Player was permanently registered with the Respondent on 1st September 2020 and hence, the June 2020 edition of the FIFA RSTP is applicable to the present matter.

- Under Swiss Law, the principle of non – retroactivity of law is applicable only *"if the set of facts of the case is entirely closed before the entry into force of the rule in question"*.

- Given that the right of the Appellant to claim the payment of the solidarity contribution by the Respondent stems from the applicable regulations of FIFA independently of the will of the Parties, and not by a contractual relationship existing between them, Article 3 of the Final Title of the Swiss Civil Code is applicable in the present matter.

38. On this basis, SM Caen submits the following prayers for relief:

(a) *"[Declare] that his (sic) appeal is admissible.*

(b) *[Annul] the [Appealed Decision].*

(c) *[Order] Parma Calcio 1913 s.r.l. to pay to Stade Malherbe de Caen the amount of 43,265.63 as solidarity contribution for the transfer of the [Player] from FC Inter Milan to Parma Calcio 1913 s.r.l., plus an interest of 5% p.a. as of 1st August 2020.*

(d) [Declare] that Parma Calcio 1913 shall pay to Stade Malherbe de Caen 53.25% of the solidarity contribution on all amounts received, or to be received, from FC Inter Milan for the transfer of the [Player] from FC Inter Milan to Parma Calcio 1913 s.r.l. plus an interest of 5% p.a. as of the due date of each amount in question.

(e) [Decide] that in the event the amount due, plus interest, as established above is not paid by Parma Calcio 1913 s.r.l. to Stade Malherbe de Caen within 45 days, the following consequences shall arise:

- *Parma Calcio 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. The aforementioned ban will be lifted immediately and prior to its complete serving once the amount is paid.*

- *In the event that the amount, plus interest, as established above 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.*

(f) [Order] Parma Calcio 1913 s.r.l. to pay the entirety of the costs of the present arbitration procedure".

b Parma Calcio

39. The submissions of Parma Calcio, in essence, may be summarized as follows:

- The wording of Article 26(2) FIFA RSTP provides discretion to the adjudicatory body to decide the applicable version of the FIFA RSTP in accordance with either of the two connecting factors foreseen in said article; *i.e., "when the contract at the centre of the dispute was signed"* or *"when the disputed facts arose"*. Options 1 and 2 contained in said Article are not mutually exclusive, and the Panel can even apply both if they equate to the same version of the FIFA RSTP.

- Irrespective of applying Option 1 or Option 2, SM Caen's case is based on the wrong premise that the Player was registered with Parma Calcio on 1 September 2020.

- *"**The Player was registered only once with Parma Calcio. The sole act of registration performed by Parma Calcio occurred on 17 July 2019, when it filed the Registration Form, the Transfer Agreement and the Employment Agreement with the registration office of the FIGC […]. The actual registration of the Player was subsequently confirmed by the Serie A on 6 August 2019***" (Emphasis by Parma Calcio).

- *Parma Calcio, Inter or the Player, did not file any documentation with the FIGC or the league in view of the so – called 'permanent registration' of the Player with Parma Calcio. Thus, no 'act of registration', as defined by the October 2019 (and the June 2020) FIFA Regulations, was completed on 1 September 2020".*

- According to the literal interpretation of the pertinent provisions of the FIFA RSTP, the following facts could determine the applicable version of the FIFA RSTP:
    - 16 July 2019: the singing of the Transfer Agreement, the Employment Contract and the Registration Form;
    - 17 July 2019; the date upon which the registration of the Player with Parma Calcio started to run;
    - 16 February 2020, the date of fulfilment of the option; *i.e.* when Parma Calcio scored its first three points in the 2019/2020 Serie A Championship.
- All three events occurred before the entry into force of the June 2020 FIFA RSTP and hence the June 2019 edition of said regulations is applicable in the present matter given that *"**the signing of the relevant documentation and the registration thereof occurred at the moment such version was in force**"* (Emphasis by Parma Calcio).
- Additionally, *"it is incorrect to state that the right to receive solidarity contribution accrues (or is born) at the moment of registration of a player, considering that such **entitlement accrues at the moment of the "transfer" of a player**, as is foreseen by article 21 and 1 article 1 of Annexe (sic) 5 of the June 2019 (and the June 2020) FIFA Regulations"* (Emphasis by Parma Calcio).
- In line with the concept of contractual stability, CAS jurisprudence defines the transfer of a professional football player between two clubs as *"the movement"* of the employment relationship – and not of the registration – from the old employer to the new one. Said movement takes place once the pertinent agreements are concluded between the implicated parties.
- Article 2 Annex 5 of the FIFA RSTP relates purely to the payment procedure and not to the entitlement *per se*.
- If the arguments submitted by the Appellant were to be accepted, the legal relationship between Parma Calcio and SM Caen would be governed by the June 2020 edition of the FIFA RSTP and thus, the Respondent would have been obliged to pay the applicable solidarity contribution to SM Caen. On the other hand, given that the Transfer Agreement was concluded in July 2019, it is governed by the June 2019 edition of the FIFA RSTP and therefore, Parma Calcio would not be allowed to deduct the percentage of the solidarity contribution due to the Appellant from the pertinent transfer fee.
- According to the jurisprudence of the Swiss Federal Tribunal, the retrospective effect of law constitutes a violation of the principles of legal certainty and predictability, unless otherwise explicitly provided.

40. On this basis, Parma Calcio submits the following prayers for relief:

"In principle order […]:

(i) Reject the Appeal of SM Caen;

(ii) Uphold the Appealed Decision;

In subordinate order […]:

(iii) Quantify the correct amount of solidarity contribution;

(iv) Determine the amount of solidarity contribution is payable in accordance with the payment schedule of the transfer compensation payable by Parma Calcio to Inter;

(v) Take the aforementioned payment into account when determining the calculation of default interest;

In any event, […]:

(vi) Grant any further or other relief to Parma Calcio as it sees fit;

(vii) Order SM Caen to bear any and all costs related to this arbitral proceeding; and

(viii) Order SM Caen to pay Parma Calcio a cost compensation for the legal fees incurred as deemed fit by the Arbitral Panel".

V. JURISDICTION

41. The Appellant submits that the jurisdiction of CAS derives from Article 58(1) FIFA Statutes, as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

42. The Respondent also states that jurisdiction of CAS to decide on the present matter is "uncontested".

43. The jurisdiction of CAS is further confirmed by the Parties by means of their signature on the Order of Procedure.

44. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

45. The Panel notes that the present Appeal was filed within the deadline of 21 days set by Article 57(1) FIFA Statutes edition May 2021. Furthermore, the present Appeal complied with all other requirements set in Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

46. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

47. Article R58 CAS Code provides the following:

> *"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".*

48. Pursuant to Article 56, para. 2, of the FIFA Statutes, *"[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".*

49. In principle, the Parties do not contest the primary application of the various FIFA Regulations and additionally, of Swiss Law on the present matter. However, the Panel notes that the Parties do not agree on the exact version of the FIFA RSTP that is to be applied to the merits of the matter at hand. Whereas the Appellant submits that the June 2020 edition of the FIFA RSTP shall govern the present case, the Respondent argues that the Panel shall apply the June 2019 edition of the FIFA RSTP.

50. Under such circumstances, the Panel is satisfied that the various regulations of FIFA are primarily applicable, in particular the FIFA RSTP, and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA. The issue of the exact edition of the FIFA RSTP that is to be applied on the case at stake shall be addressed in detail below.

VIII. MERITS

A. Main issues

51. The main issues to be resolved by the Panel are:

(i) Which edition of the FIFA RSTP is applicable in the present matter?

(ii) Is SM Caen entitled to receive solidarity contribution from Parma Calcio in relation to the permanent transfer of the Player to the latter?

(i) Which edition of the FIFA RSTP is applicable in the present matter?

52. The Panel observes that the main contention between the Parties revolves around which edition of the FIFA RSTP is to be applied to the matter at hand and more precisely whether the applicable edition of the FIFA RSTP is to be decided pursuant to Option 1 i.e., when *"the contract at the centre of the dispute was signed"* as contained in Article 26(2) of the FIFA RSTP or pursuant to Option 2 of the same provision i.e. *"when the disputed facts arose".*

53. In this respect, the Appellant submits that according to the Player's passport provided by the FIGC, the Player was permanently registered with the Respondent on 1 September 2020. According to the Appellant, and lacking a contract between the Appellant and the Respondent, the true meaning of Article 26 (2) FIFA RSTP, indicates that the cornerstone of a dispute regarding solidarity contribution is the moment when the player is registered with its new club and not the moment when the pertinent transfer agreement is concluded. Therefore, the Appellant asserts that the June 2020 edition of the FIFA RSTP is the applicable version of the FIFA RSTP in the present matter, as it is the version that was in force when the *"disputed facts arose"* i.e., when the Player was permanently registered with Parma Calcio.

54. On the other hand, Parma Calcio remarks that all the pertinent documentation regarding the Player's transfer to Parma Calcio was concluded on 16 July 2019 and executed on the following day. Further, the Respondent indicates that the Mandatory Purchase Option for the permanent transfer of the Player to Parma Calcio was triggered on 16 February 2020. Moreover, the Respondent submits that the Player was registered only once and that no new or separate registration took place in September 2020. In light of the above, the Respondent asserts that the June 2019 edition of the FIFA RSTP shall apply to the matter at stake given that the contract *"at the centre of the dispute"* i.e., the Transfer Agreement and all relevant (and disputed) facts, i.e., the registration of the Player and the date of fulfilment of the Mandatory Purchase Option, occurred when said version was in force.

55. Which of the above views, i.e. Option 1 or Option 2 as contained in Article 26(2) of the FIFA RSTP is to be followed depends first and foremost on the interpretation of the relevant rules within the applicable regulatory framework, i.e. FIFA Regulations. The Panel observes that FIFA is a private entity domiciled in Switzerland and that its regulations should be interpreted in accordance with the principles established with regard to the interpretation of state laws, rather than those applicable to the interpretation of contracts. Such finding is in line with the long-standing jurisprudence of CAS and the Swiss Federal Tribunal on that matter that stipulates the following:

"According to the SFT, the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (SFT 132 III 226 at 3.3.5 and references; SFT 131 II 361 at 4.2). When called upon to interpret a law, the SFT adopts a pragmatic approach and follows a plurality of methods, without assigning any priority to the various means of interpretation (SFT 133 III 257 at 2.4; SFT 132 III 226 at 3.3.5).

[…]

According to the SFT, the statutes of a private legal entity are normally interpreted according to the principle of good faith, which is also applicable to contracts (SFT 4A_392/2008, at 4.2.1 and references). However, the

method of interpretation may vary depending on the nature and dimension of the legal person involved. As regards the statutes of larger entities, it may be more appropriate to have recourse to the method of interpretation applicable to the law, whereas in the presence of smaller enterprises, the statutes may more legitimately be interpreted by reference to good faith. The subjective interpretation will be required only when a very little number of stakeholders are concerned (SFT 4A_235/2013, at 2.3 and 4C.350/2002, at 3.2).

FIFA is a very large legal entity with over not only two hundred affiliated associations, but also far more numerous indirect members who must also abide by FIFA's applicable regulations (SFT 4P.240/2006). It is safe to say that FIFA's regulations have effects which are felt worldwide and should therefore be subject to the more objective interpretation principles" (CAS 2017/O/5264-5266 par. 199, CAS 2013/A/3365 & 3366, par. 139 and 143-144. Also, CAS 2017/A/5173 par. 74, CAS 2017/A/5356 par. 86, CAS 2012/A/2187 par. 107).

56. The Panel fully adheres to these conclusions and principles and therefore, starts its analysis by reviewing the wording of the pertinent provisions as applied and in force at the time the Appellant filed its claim against the Respondent before the FIFA DRC. In this respect, the Panel notes that SM Caen requested the payment of a sum corresponding to 44.90% of the solidarity contribution generated by the permanent transfer of the Player from FC Inter Milan to Parma Calcio on 22 December 2020, when the June 2020 edition of the FIFA RSTP was still in force.

57. Article 26(1) and (2) FIFA RSTP (editions June 2019 and 2020) provides as follows:

"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 mechanism; c) labour disputes relating to contracts signed before 1 September 2001.

Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose".

58. The Panel observes that as a general rule, the applicable version of the FIFA RSTP on any given matter is determined by the moment in time when said matter is submitted before the adjudicatory bodies of FIFA. In principle, if a case is brought before the various deciding bodies of FIFA before the enactment of a certain edition of the FIFA RSTP, it will be assessed according to the previous edition. Conversely, a matter referred to FIFA after the latest version of the FIFA RSTP had come into force shall be adjudicated on the basis of said version.

59. Be that as it may, the Panel notes that Article 26(2) FIFA RSTP introduces certain exceptions to the abovementioned rule. According to the pertinent provision of the FIFA RSTP, disputes concerning training compensation or solidarity contribution entitlements as well as labour disputes relating to contracts concluded before 1 September 2001 shall be assessed according to the version of the FIFA RSTP that was in force *"when the contract at the centre of the dispute was signed, or the disputed facts arose".*

60. In view of the wording of Article 26(2) FIFA RSTP, it is rather clear to the Panel that the literal interpretation of the pertinent provision is not enough for one to safely ascertain whether claims regarding the solidarity contribution shall be adjudicated pursuant to the edition of the FIFA RSTP that is in force at the time the pertinent transfer agreement is concluded or pursuant to the FIFA RSTP that is in force when the player in question is actually registered with his new club.

61. Whilst the Panel is mindful that both options contained in Article 26(2) FIFA RSTP could be considered valid alternatives to determine the applicable edition of the FIFA RSTP in solidarity contribution disputes, depending on the fact specifics of each case, the Panel, does observe the following.

62. In an attempt to determine the true meaning of Article 26(2) FIFA RSTP when it comes to solidarity contribution rights, guidance can be sought from the intentions of the draftsman of the pertinent provision i.e., FIFA. When it comes to ascertaining the intentions of FIFA in adopting a certain provision of the FIFA RSTP, the Panel considers that the FIFA Commentary on the Regulations for the Status and Transfer of Players Edition 2021 (the "FIFA Commentary") serves such purpose. The Panel acknowledges that the FIFA Commentary, albeit not binding, can provide useful guidelines for the interpretation of the FIFA RSTP and shall be seen *"as an interpretative approach, which is likely to give a certain degree of certainty among sports professionals"* (cf. CAS 2012/A/2698 par.111, CAS 2007/A/1369 par. 56).

63. In view of the above, the Panel notes that according to the FIFA Commentary *"disputes regarding training compensation and the solidarity mechanism are assessed according to the version of the Regulations in force when the disputed facts arose (i.e. at the time the player was registered with their new club, which triggers the payment of the relevant training reward), irrespective of the edition of the Regulations in force when the matter is actually brought to FIFA"* (p. 406).

64. In this case, the Panel finds no reason to depart from the interpretation of Article 26(2) FIFA RSTP as contained in the FIFA Commentary and as cited above and the Panel considers that in this specific case it is a solid starting point for its analysis.

65. Accordingly, the Panel notes that pursuant to the Definition No.17 of the FIFA RSTP, the registration of a player is defined as *"the act of making a written record containing details of a player"* including, *inter alia*, the starting date of said registration and the player's personal information. In this regard, the Panel recalls that according to the Player's passport provided by the FIGC, the Player was initially registered with the Respondent on a temporary basis from 17 July 2019 until 31 August 2020. The Player's passport also indicates that the latter's registration with Parma Calcio changed from loan to permanent as of 1 September 2020.

66. Nevertheless, the Panel notes that pursuant to Article 21 of the June 2019 and 2020 editions of the FIFA RSTP, solidarity contribution entitlements arise when a professional player is *"transferred before the expiry of his contract"*. The Panel considers that the wording of the above provision is not to be disregarded. When read together with the explanatory comments provided in the FIFA Commentary, the Panel concludes that if it were to apply Option 2 as contained in Article 26(2) FIFA RSTP and as requested by the Appellant, the dispute would need to be

assessed according to the version of the FIFA RSTP which was in force when the registration of the player in question was transferred from his old club, Inter Milan to the new club, Parma Calcio.

67. Having established the above, the Panel remarks that the FIFA RSTP defines national transfers (as the transfer of the Player from Inter Milan to the Respondent) as *"the change of a player from playing for one club at an association to playing for a new and different club within the same association"*[3]. In this respect, the Panel recalls that according to the pertinent Player's passport provided by the FIGC, the Player's registration was transferred from FC Inter Milan to Parma Calcio on 17 July 2019. However, the Player was never "re – registered" with FC Inter Milan at the end of his loan spell. On the contrary, the Player's registration remained with Parma Calcio and his registration status was simply converted from loan to a permanent one, as duly reflected in his player passport.

68. Accordingly, the fact that according to the Player's passport, the Player's registration with Parma Calcio changed from loan to permanent was as of 1 September 2020 does not suffice to establish the applicability of the June 2020 edition of the FIFA RSTP in the present matter, as put forward by the Appellant. As mentioned above, said change in type of registration (loan v. permanent) does not constitute a new registration as such as it lacks the element of the "transfer" which, under Article 21 and 26(2) FIFA RSTP is considered essential.

69. In light of the aforementioned remarks and keeping in mind the fact specifics of the case at hand, the Panel concludes that even if the present matter, as requested by the Appellant, shall be assessed according to the edition of the FIFA RSTP that was in force when the disputed facts arose (Option 2), the Panel understands that the "disputed fact" *in casu* is the Player's registration being transferred from FC Inter Milan to Parma Calcio. Said transfer occurred on 17 July 2019, when the June 2019 edition of the FIFA RSTP was in force.

70. It follows that the present matter shall be assessed according to the June 2019 edition of the FIFA RSTP.

71. In reaching this conclusion, the Panel observes that if it were to have applied Option 1 as contained in Article 26(2) FIFA RSTP, something which it could have done pursuant to the discretion granted to it by said article, it would have come to the same conclusion.

(ii) Is SM Caen entitled to receive solidarity contribution from Parma Calcio against the permanent transfer of the Player to the latter?

72. Having established the aforementioned, the Panel now needs to determine whether the Appellant is entitled to receive solidarity contribution from the Respondent in relation with the permanent transfer of the Player to the latter.

73. In this regard, the Panel notes that the obligation to pay solidarity contribution on national transfers with an international dimension was introduced with the June 2020 edition of the FIFA

[3] Definition No. 22.

RSTP, which came into force on 1 July 2020. On the contrary, the June 2019 edition of the FIFA RSTP does not contain a similar provision.

74. Consequently, the Panel finds that SM Caen is not entitled to receive solidarity contribution from Parma Calcio in relation to the permanent transfer of the Player to the latter.

75. Considering the findings of the Panel on the two previous issues, all the other prayers for relief should be dismissed.

IX. CONCLUSIONS

76. Based on the foregoing, the Panel finds that:

- *The June 2019 edition of the FIFA RSTP is applicable on the present matter.*
- *SM Caen is not entitled to receive solidarity contribution from Parma Calcio against the permanent transfer of the Player to the latter.*

77. All other and further motions and prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 August 2021 by Stade Malherbe de Caen against the decision issued on 23 February 2021 by the Single Judge of the sub-committee of the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is dismissed.

2. The decision issued on 23 February 2021 by the Single Judge of the sub-committee of the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.