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Football in Focus

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English Clubs to be aware of recent CAS decision on Scholars

The recent Court of Arbitration for Sport ("CAS") case of *Aston Villa FC v B93 Copenhagen* (the "Troest Case") has important implications for English clubs in their signing of Scholarship Agreements with players who have been trained in foreign national associations.

Facts

The Troest Case concerned the player Magnus Troest ("Troest") who was registered with the Danish Club B93 Copenhagen ("B93") from 1 November 2001 until 1 July 2003, at which time the player entered into a Scholarship Agreement with Aston Villa. Upon registration with Aston Villa, B93 requested Training Compensation in the sum of €70,833 for the training it had provided to Troest on the basis that Troest had now become a professional for the first time in accordance with the FIFA Regulations for the Status and Transfer of Players (Edition 2001) (the "Regulations"). Aston Villa rejected the claim stating that the player was an amateur player and in accordance with the Regulations, Training Compensation only became payable if and when Troest became a professional player by signing a professional contract (which it contended the Scholarship Agreement was not). B93 appeared to initially accept this position by waiting until a professional contract was entered into.

Aston Villa did not enter into a professional contract with the player and in fact, the Scholarship Agreement was terminated prematurely in May 2003 and the player returned to Denmark. After Troest had returned to Denmark, B93 reiterated its request for Training Compensation in respect of the player's registration with Aston Villa. In this respect, B93 argued that Troest had been a professional at Aston Villa and relied on previous decisions of the FIFA DRC and the CAS to the effect that the only matter to be considered in determining whether a player is an amateur or a professional is whether the remuneration that he receives is in excess of the expenses he incurs in playing football (Article 2 of the Regulations). The matter was therefore referred to the DRC to determine whether Training Compensation was payable to B93 in respect of Troest's registration under the Scholarship Agreement.

Aston Villa's Arguments

Aston Villa argued that Troest's registration under the Scholarship Agreement was classed by The FA and the Premier League ("PL") as an amateur registration and thus he could not be considered as being a professional player. Aston Villa stated that the DRC must look beyond Article 2 of the Regulations and in particular rely upon the designation placed on students by The FA

and the PL and the accepted understanding between FIFA and The FA that students were amateurs.

DRC Decision

Unfortunately, the DRC simply followed its previous jurisprudence and applied Article 2 of the Regulations which provides as follows:

1. "Players who have never received any remuneration other than for the actual expenses incurred during the course of their participation in all or any activity connected with association football should be regarded as amateur."

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2. *Travel and hotel expenses incurred through involvement in a match and the cost of a player's equipment, insurance and training may be reimbursed without jeopardising a player's amateur status.*
3. *Any player who has ever received remuneration in excess of the amount stated under paragraph 2 of this Article in respect of participation in or an activity connected with association football should be regarded as non-amateur."*

The DRC concluded that on the basis of the Scholarship Allowance, Troest was a professional player as he received remuneration in excess of the expenses and costs described in Article 2(2). The designation of Troest as an amateur by Aston Villa, The FA and the PL was considered to be irrelevant. Troest was consequently considered to be a professional player and the DRC awarded Training Compensation to B93.

CAS Appeal

Aston Villa appealed the DRC decision arguing that the DRC had been mistaken in simply applying Article 2 of the Regulations in a vacuum and should have taken into account provisions of English Law, the designation placed on students by The FA and the PL and the accepted understanding between FIFA and The FA regarding the status of students as amateurs in English Football.

In addition, Aston Villa submitted that even if Article 2 of the Regulations was deemed to be the sole factor to determine the status of a player, then Troest must still be considered an amateur as he did not in fact receive "remuneration". In particular, it was argued that the Scholarship Allowance could not be considered as remuneration as it was not the payment of a "wage" in return for services provided by students, but the award of a bursary sum to enable students to complete the education and football development programmes.

Aston Villa also asserted that under English Law, students registered under the Scholarship Agreement are not considered as employees and the UK tax authorities do not consider the Scholarship Allowances to be taxable income. Furthermore, if Troest was in fact an employee, he would have been entitled to receive a greater sum than the Scholarship Allowance in accordance with the National Minimum Wage Act 1998.

It was also argued, in the alternative, that even if the Scholarship Allowance was considered to be "remuneration" then the Scholarship Allowance did not exceed the player's expenses. In this regard, reference was made to the actual amount of the Scholarship Allowance under the Scholarship Agreement and this was contrasted with Troest's costs and expenses in completing the football and educational programmes.

CAS Decision

The CAS admitted that this case was not an easy one and there was "*force in the arguments of both parties*". However, having considered the wording of Article 2 of the Regulations, it concluded that "*...the only relevant criterion according to this provision is thus one of remuneration. In the panel's view, the receipt by the player of any remuneration other than for the actual expenses incurred during the course of their participation in or for any activity connected with association football is what alone distinguishes an amateur from a non-amateur player*".

The CAS therefore confirmed that in determining the status of Troest, the only issue to consider was his remuneration and expenses. As such, there was no need to consider the Scholarship Agreement or English Law and it concluded that the classification of a player by The FA was not decisive, or even persuasive (in fact, the CAS stated that The FA's classification of students as amateurs was inconsistent with the Regulations).

The CAS applied Article 2 and concluded that the Scholarship Allowance exceeded the stipulated limit of expenses and Troest was therefore deemed to have become a professional when he registered with Aston Villa as a student. As a result, Aston Villa's registration of Troest triggered B93's entitlement to Training Compensation under the Regulations. Whilst the CAS admitted that the money paid to Troest fell short of a living wage and that students could not subsist in England without other sources of income, it reiterated that it could not deviate from the strict test set out in Article 2 of the Regulations and that players had to be categorised either as amateur or professional; there was no scope for a hybrid category for students such as Troest.

Conclusion

This case has far reaching implications for English football. Clubs must be aware, when signing foreign trained players on Scholarship Agreements, that they will now become immediately liable for Training Compensation to the player's training clubs (provided such training clubs have of course duly retained their entitlement – see the Tim Krul case¹). This therefore removes the time that clubs previously had to assess a player over the term of the Scholarship Agreement before entering into a professional contract and thus accruing the liability to pay Training Compensation. Clubs must ensure that before they register foreign trained students, that they have calculated, and made provision for, the Training Compensation liability they will now face.

¹ In the Tim Krul case the CAS confirmed that for training clubs in the EU/EEA to be entitled to Training Compensation they must have shown a "*bona fide and genuine interest*" in retaining the player for the future – this is a subjective test and may not require the offer of a professional contract. This principle applies to the previous training club in respect of an amateur player's first registration as a professional.