

CAS 2023/A/10041 FC Noah v. Fédération Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Mark Andrew Hovell, Solicitor in Manchester, United Kingdom

in the arbitration between

FC Noah, Armenia

Represented by Mr Javier Ferrero Munoz and Mr Juan Alfonso Prieto Huang, Attorneys-at-law
in Madrid, Spain

– Appellant –

and

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios; Director of Litigation, FIFA; Miami,
USA

– Respondent –

I. PARTIES

1. FC Noah (“Noah” or the “Appellant”) is an Armenian football club, with registered office in Vaghharshapat, Armenia. Noah is affiliated to and operates within the jurisdiction of the Football Federation of Armenia (the “FFA”), which is in turn a member association of Fédération Internationale de Football Association (“FIFA”).
2. FIFA (or the “Respondent”) is an association under Swiss law with its registered office in Zurich, Switzerland. FIFA is the world governing body of football. It exercises regulatory, supervisory, and disciplinary functions over national associations, clubs, officials and players, worldwide.
3. Noah and FIFA shall each be referred to as a “Party” and collectively, as the “Parties”.

II. FACTUAL BACKGROUND

4. The following outline is a non-exhaustive summary of the factual background based on the Parties’ submissions and documents on the file. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. 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 the present Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. This appeal relates to Noah’s claim for training compensation in respect of an Armenian player, Sergei Muradian, born on 27 August 2004 (the “Player”).
6. On 23 February 2023, the Player’s registration was transferred internationally, from FC Zenit JSC in Russia (“Zenit”) to Noah (the “Transfer”), and therefore administered in accordance with the then recently enforced (on 16 November 2022) FIFA Clearing House Regulations (the “FCHR”).

A. The Player’s transfer from Zenit to Noah

7. On 14 February 2023, the Player and Zenit mutually agreed to terminate the employment contract entered into between themselves, pursuant to a settlement agreement of that date (the “Settlement Agreement”). As per the terms of the Settlement Agreement, the Player agreed to compensate Zenit RUB 3,000,000 (three million Rubles) for the early termination. This amount was payable by 16 February 2024 and could be paid to Zenit by any third party. Noah paid this amount to Zenit on the Player’s behalf before the 16 February 2024 deadline.
8. Clause 2 of the Settlement Agreement provided:

“In the event of timely payment [of the RUB 3,000,000 termination fee], Zenit will not claim any training compensation in accordance with Article 20 of FIFA’s Regulation on the Status and Transfer of Players, from the [Player’s] future club, where they will be registered immediately after leaving [Zenit].”

9. On 17 February 2023, Zenit de-registered the Player via the FIFA Transfer Matching System (“TMS”). This triggered the following sequence of events in TMS:
 - On 21 February 2023, Noah entered a transfer instruction to engage the Player on a permanent basis from Zenit. Noah uploaded documents in support, including proof that Zenit had waived its right to training rewards (the “Waiver”).
 - On 21 February 2023, the FFA requested the Player’s International Transfer Certificate (the “ITC”) from the Football Union of Russia (the “FUR”).
 - On 22 February 2023, the FUR delivered the ITC to the FFA.
 - On 23 February 2023, the FFA confirmed receipt of the ITC, thereby completing the Player’s registration with Noah.
10. The Waiver was initially only uploaded in Russian.

B. The EPP inspection and review process

11. The international transfer of the Player’s registration triggered a possible entitlement to training rewards in accordance with Article 6.3 of the FCHR, resulting in a provisional Electronic Player Passport being generated in accordance with Article 8.1 of the FCHR (bearing reference 19135) (the “EPP”). This commenced the 10-day ‘inspection’ period in accordance with Article 8.2 of the FCHR on 23 February 2023. Under the EPP inspection process, all FIFA members and associations had the opportunity to request further inclusion of information in the EPP.
12. On 6 March 2023, upon completion of the 10-day EPP inspection process, the Player’s EPP was released for ‘review’ in accordance with Article 9 of the FCHR. Zenit was invited to participate in the inspection process.
13. On 7 March 2023, the FFA submitted the Player’s proof of registration and employment contract with Noah in its original language.
14. On 17 March 2023, the EPP was ‘moved into validation’.
15. On 17 July 2023, FIFA requested Noah to submit, by 24 July 2023, “[...] *any documentation it may find relevant to the entitlement to training rewards of any relevant club in the EPP, including but not limited to waivers or contract offers provided by the training clubs of the [P]layer*”.
16. On 10, 18 and 23 August 2023, FIFA sent Noah a first, second and final reminder respectively, reiterating the same request as above.
17. On 19 September 2023, FIFA issued its determination on the EPP and the related Allocation Statement (bearing reference TC-2240) in accordance with Article 10.4 of the FCHR. In doing so, it notified Noah that it was required to “*pay training compensation to the training club(s) of the player in the total amount of EUR 102,630.14*” (the “Appealed Decision”).

18. On 3 October 2023, Noah contacted FIFA, highlighting that Zenit had waived its entitlement to training compensation and provided supporting documentation, which included a translation of the waiver contained in the Settlement Agreement and a further email from Zenit confirming that it would not be claiming training compensation from Noah.
19. On 6 October 2023, FIFA informed Noah that (i) *“as a matter of principle”*, waivers for training rewards needed to be provided *“during the review phase on an EPP in order to be taken into account”*; (ii) the Appealed Decision was final, subject to a further appeal at CAS; (iii) payments must run through the FIFA Clearing House, in compliance with the FCHR, so parties cannot *“circumvent the system [...] by settling the matter outside the scope of the FCH. Accepting such circumvention could [...] undermine the integrity of the system and obstruct financial transparency”*; however, (iv) Noah and Zenit were not prevented from *“agreeing on the (partial or total) reimbursement of the amounts paid [via the FCH], to guarantee that no circumvention of the FCHR occurs and that the objectives of the system are complied with”*.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS

20. On 10 October 2023, Noah filed its Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Article R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”). In its Statement of Appeal, Noah requested that the case be submitted to a sole arbitrator.
21. On 16 October 2023, FIFA requested that the case be submitted to a panel of three arbitrators rather than a sole arbitrator, citing potentially complex legal issues in light of the then recently introduced FIFA Clearing House governed by the FCHR.
22. On 25 October 2023, Noah informed the CAS Court Office that the Parties had agreed to suspend the procedure for a period of 30 days. The CAS Court Office confirmed suspension of the procedure until 25 November 2023. This suspension was subsequently extended until 31 May 2024, upon the mutual agreement of the Parties.
23. On 5 June 2024, Noah requested the CAS Court Office to resume the procedure.
24. On 6 June 2024, the CAS Court Office notified the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit the case to a sole arbitrator, to be appointed in due course.
25. On 10 July 2024, Noah filed its Appeal Brief with the CAS Court Office in accordance with Article R51 of the CAS Code and extensions agreed upon by FIFA and then confirmed by the CAS Court Office.
26. On 23 July 2024, FIFA requested a 60-day extension for the filing of its Answer, which was granted by the CAS.

27. On 23 July 2024, the CAS Court Office notified the Parties that Mr Lars Hilliger had been appointed as Sole Arbitrator and drew the Parties' attention to disclosures made on his "*Acceptance and Statement of Independence*" form.
28. On 31 July 2024, Noah challenged the appointment of Lars Hilliger on the basis that he had disclosed nominations by FIFA in more than ten appeals in the last five years, and appointed in six procedures involving FIFA as a party within the last three years. This, it submitted, was an 'Orange List' item in accordance with the IBA Guidelines on Conflicts of Interest in International Arbitration.
29. On 5 August 2024, the CAS Court Office notified the Parties that Mr Hilliger, whilst considered independent and impartial, had decided to recuse himself from the procedure.
30. On 8 August 2024, the CAS Court Office notified the Parties that Mr Mark Andrew Hovell had been appointed as Sole Arbitrator by the Deputy Division President. Neither Party challenged this and on 16 August 2024, the Panel was constituted as follows:

Sole Arbitrator: Mr Mark Andrew Hovell, Solicitor in Manchester, United Kingdom

31. On 31 January 2025, FIFA filed its Answer with the CAS Court Office in accordance with Article R55 of the CAS Code following extensions as agreed between the Parties and authorised by the CAS Court Office.
32. On 3 February 2025, FIFA stated that it did not consider a hearing necessary.
33. On 10 February 2025, Noah indicated that a hearing would not be necessary provided that it was granted a second round of written submissions.
34. On 11 February 2025, the CAS Court Office on behalf of the Sole Arbitrator granted Noah's request for a second written submission limited to the issue of mandatory passive joinder of Zenit to the procedure and decided that a hearing was not necessary.
35. On 10 March 2025, Noah submitted its submission on the question of the lack of passive mandatory joinder. It also filed a written statement from Zenit that, in summary, confirmed it had waived its right to participate in the proceedings and that it would not be claiming training compensation from Noah in respect of the Player (the "Zenit Statement").
36. On 13 March 2025, FIFA responded to Noah's reply, in which it set out its position on Zenit's mandatory passive *litisconsortium* and contested the admissibility of the Zenit Statement.
37. On 17 March 2025, Noah filed a further response to FIFA's reply justifying the admissibility of the Zenit Statement.
38. On 1 April 2025, the CAS Court Office circulated a copy of the Order of Procedure to the Parties. FIFA and Noah signed and returned the Order of Procedure on 1 and 2 April 2025 respectively.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

39. This section of the Award is a non-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 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. Noah's position

40. In its Statement of Appeal, Noah made the following requests for relief:

- “a) the Decision adopted by the FIFA general secretariat in the determination on the Electronic Player Passport 19135 for the player Sergei Muradian and the corresponding Allocation Statement TC-2240 is annulled.*
- b) FIFA is ordered to bear all procedural costs and other arbitration expenses of this procedure.*
- c) FIFA is also ordered to pay the legal fees and other expenses incurred by [Noah] in an amount to be determined at the discretion of this Hon. Tribunal.*

[...]

FURTHER REQUEST: *In this document we have attempted to comply with all the requirements of the applicable legislation. As a result, should [Noah] have committed any involuntary defect; we request that it be agreed, that it be returned [...] for the correction thereof” .*

41. In its Appeal Brief, Noah requested for the Appeal to be upheld and therefore that:

- “A.- The Decision adopted by the FIFA general secretariat in the determination of the Electronic Player Passport 19135 for the player Sergei Muradian and the corresponding Allocation Statement TC-2240 is annulled since the Decision is contrary to the pacta sunt servanda principle and to the own objectives of the FIFA Clearing House.*
- B.- On subsidiary basis, the Decision adopted by the FIFA general secretariat in the determination on the Electronic Player Passport 19135 for the player Sergei Muradian and the corresponding Allocation Statement TC-2240 is annulled since the Decision is contrary to the good faith a procedure fairness principles [sic].*

In all cases:

C.- The Respondent shall bear all the procedural costs of the present proceeding.

D.- Finally, the Respondent shall compensate [the Club] for the costs and legal fees incurred in connection with this arbitration in an amount to be determined at the discretion of the Honorable Sole Arbitrator in accordance with article R65.3 of the CAS Code.”

42. A summary of Noah’s arguments follows:

i. The Waiver

43. FIFA regulations (both the FCHR and the Regulations on the Status and Transfer of Players (the “RSTP”)) and CAS jurisprudence (*CAS 2017/A/5277*) recognise valid waivers.

44. Zenit’s waiver was explicit and subsequently ratified. It is therefore valid.

ii. Pacta sunt servanda

45. The principle that valid contracts must be honoured is recognised as the cornerstone of the FIFA RSTP. It is also well established in CAS jurisprudence (for example, *CAS 2013/A/3091, 3092 & 3093* and *CAS 2005/A/973*)

46. A mere formality of an administrative nature should not annul a valid agreement.

47. Noah signed the Player in reliance on the Waiver and on the basis that it would not be liable for training compensation in connection with his transfer. The Appealed Decision therefore undermines the validity of the Settlement Agreement.

iii. FIFA Clearing House objectives

48. The Appealed Decision contradicts the objectives of the FIFA Clearing House, namely:

- Process specific payments related to the transfer of football players between clubs;
- Protect the integrity of the football transfer system;
- Enhance and promote financial transparency in the football transfer system;
- Prevent fraudulent conduct in the football transfer system.

iv. Procedural fairness

49. Article 9.9 of the FCHR enables FIFA to request for further information during the EPP review process, or even after the EPP review process under Article 10.2 of the FCHR. This is supported by the explanatory notes to the FCHR.

50. FIFA should therefore have requested for an English version of the Waiver.

51. Ignoring the Waiver due to a missing translation amounts to excessive formalism (*CAS 2019/A/6636*) and infringes Article 29.1 of the Swiss Constitution, which guarantees the right to equal and fair treatment in judicial and administrative proceedings.

B. The Respondent's position

52. In its Answer, FIFA requested the Sole Arbitrator to issue an award:

“(a) rejecting the Appellant’s request for relief and confirming the Appealed Decision;

Alternatively, if the Appealed Decision is to be amended,

(b) referring the case back to FIFA so that any necessary amendments to the Appealed Decision may be implemented by FIFA administratively through the FIFA Clearing House system in accordance with the instructions from the Sole Arbitrator;

In any event

(c) ordering the Appellant to bear the full costs of these arbitration proceedings.”

53. A summary of FIFA’s submissions follows.

i. Preliminary issue: lack of passive mandatory joinder

54. Zenit has a direct financial interest in the outcome of the case and therefore should have been called as a co-respondent in these proceedings. By not being called as a respondent, Zenit has not been given the opportunity to be heard on certain matters. Zenit should have had the chance to intervene – this was in Noah’s hands as it initiated the Appeal.

55. Failure to call Zenit violates the principle of “passive mandatory *litisconsortium*”. This is supported by CAS jurisprudence, see for example: *CAS 2013/A/2338*, *CAS 2022/A/9238*, *CAS 2023/A/10002* and *CAS 2024/A/10514*.

56. Noah’s Appeal must therefore be rejected before assessing the merits.

ii. Failure to comply with the FCHR

57. Article 9 of the FCHR imposed an obligation on Noah to upload the Waiver during the EPP review process. This was a mandatory requirement with which Noah did not comply.

58. Noah had an extended period of time, close to six months, and several opportunities to upload the Waiver, yet it failed to do so.

iii. Rebuttal to Noah’s arguments

59. Noah uploaded the Waiver to the TMS in the context of generating an ITC in compliance with Article 10 of Annex 3 of the RSTP, but not in fulfilment of the requirements

established by Article 9.7 of the FCHR. These are two distinct processes, governed by different regulations, with different objectives and timeframes.

60. The validity of the Waiver is a matter between Noah and Zenit and one left for determination by the Sole Arbitrator. However, this cannot be established without Zenit being a party to these proceedings as it would constitute a violation of 'passive mandatory *litisconsortium*', rendering Noah's arguments moot.
61. Noah has misinterpreted Article 9.9 of the FCHR – FIFA's ability to request further information is not open-ended, but applies only during the EPP review process, which is a 10-day window as per Article 9 of the FCHR. In any event, FIFA invited Noah to provide the waiver four times outside the EPP review process.

C. Passive mandatory *litisconsortium*

62. The Sole Arbitrator invited the Parties to make further submissions on the limited issue of passive mandatory joinder (or lack thereof) to these proceedings by Zenit. A summary of the Parties' positions follows:

i. Noah:

63. The issue of mandatory passive *litisconsortium* should be dismissed entirely because:
 - The appeal is purely "vertical" in nature – there is no dispute between Noah and Zenit. Zenit has confirmed that it has waived its right to the training compensation and therefore has no interest in the outcome; the Zenit Statement confirms this. FIFA is therefore best suited to represent and defend the interests of its (indirect) members such as Zenit.
 - FIFA could have requested Zenit's intervention in the proceedings, as per Articles R54 and R41.2 of the CAS Code, if it felt that its rights could be affected. On the other hand, Zenit has clearly expressly waived its right to participate in the Zenit Statement. Its right to be heard is therefore not compromised.
 - In the absence of a clear provision in the FCHR, the question of standing to be sued must be resolved by weighing the interests of the persons affected by the decision (*CAS 2016/A/4787* and *CAS 2016/A/4602*).
 - The FIFA Clearing House simply acts as an intermediary, performing an administrative function in the process of assessment, allocation and distribution of training rewards, as regulated by the FCHR.
 - Given the *de novo* nature of this appeal, justice would be better served by admitting the waiver (*CAS 2023/A/9940 & 9941* and *CAS 2023/A/9730*).
 - The Zenit Statement was filed within the framework of the second round of submissions and should therefore be admissible.
 - FIFA's ability to request further information is at any time "*whether during or after the EPP review process*" (Article 10.2 FCHR).

The Appellant additionally sought to extend its prayers for relief:

“[r]eferring the case back to FIFA so that any necessary amendments to the Appealed Decision may be implemented by FIFA administratively through the FIFA Clearing House system in accordance with the instructions from the Sole Arbitrator”.

ii. FIFA:

64. Noah’s appeal presents an evident issue of passive mandatory *litisconsortium* which cannot be remedied at this stage of the proceedings.
- The Zenit Statement is late and therefore should be inadmissible in the absence of exceptional circumstances as per Article R56 of the CAS Code.
 - In any event, the issue of standing is not one of admissibility but rather of substantive law. FIFA has not challenged the admissibility of the Appeal, but dismissal on the merits.
 - The Appealed Decision grants Zenit a right to training compensation; modifying it would directly affect Zenit’s legal position. The alleged Waiver is the subject of a horizontal agreement between Noah and Zenit and Zenit must necessarily be a party to any appeal – this is supported by CAS jurisprudence (see: *CAS 2023/A/10002*, *CAS 2023/A/10009* and *CAS 2023/A/10010*).
 - Under Swiss law and CAS jurisprudence, affected parties must access the case file, respond to arguments and be heard on equal footing. Zenit’s absence violates these.
 - FIFA cannot verify a waiver through the Zenit Statement as it would need to be tested in evidence and it is not for FIFA to request the intervention of Zenit in accordance with the CAS Code.
 - The Zenit Statement should not be allowed to substitute for the requirement for Noah to call the correct Respondent. This is procedurally flawed and brings into jeopardy the integrity of the arbitration process.

V. JURISDICTION OF THE CAS

65. The jurisdiction of CAS is derived from Article R47 of the CAS Code, which provides that:

“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”.

66. Article 10.5 (b) of the FCHR provides that:

“The FIFA general secretariat will notify the final EPP and the Allocation Statement to all parties in the EPP review process.

[...]

*b) This notification shall be considered a final decision by the FIFA general secretariat for the purposes of Article 57 of the FIFA Statutes and may be appealed to the [CAS].
[...]"*

67. Article 57 (1) of the FIFA Statutes states that:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged within 21 days of receipt of the decision in question".

68. The Sole Arbitrator notes that the Parties have not contested the jurisdiction of CAS.

69. Further, the jurisdiction of CAS is confirmed by the Order of Procedure duly signed by the Parties.

70. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

71. Under Article 49 of the CAS Code, the time limit for appeal shall be *"twenty-one days from the receipt of the decision appealed against"*, unless otherwise provided for in the statutes or regulations of the federation concerned.

72. Article 57 (1) of the FIFA Statutes provides that appeals must be filed within 21 days of receipt of the decision being appealed and Article 57(2) provides that *"[r]ecourse may only be made to CAS after all other internal channels have been exhausted"*.

73. The Club were notified of the Appealed Decision on 19 September 2023.

74. The Club its Statement of Appeal on 10 October 2023, within the deadline of 21 days.

75. The Club completed its Appeal as per the terms of Articles R47, R48 and R51 of the CAS Code, including payment of the CAS Court Office fee.

76. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

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

"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.”

78. Article 56 (2) of the FIFA Statutes provides as follows:

“The 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”.

79. It is submitted by the Appellant and the Respondent that the Sole Arbitrator shall therefore primarily apply the FIFA statutes and regulations, specifically the FCHR, and Swiss law shall be applied subsidiarily should the need arise to fill a possible gap in the FIFA regulations.

80. The Sole Arbitrator is not minded to depart from that agreed position.

VIII. PRELIMINARY ISSUE

81. FIFA protested the belated submission of the Zenit Statement, arguing that the Club should not be allowed to file additional evidence after its Appeal Brief pursuant to Article R56 of the CAS Code.

82. The Sole Arbitrator had directed the Parties to address the issue of passive mandatory *litisconsortium* by way of a specific second round of submissions. He did not direct the Parties on whether they could adduce evidence in support of those submissions or not.

83. The evidence that was adduced by the Club (the Zenit Statement) was solely in relation to the second round of submissions. It was not additional evidence relating to the merits or another issue in the case at hand, that the Club had sought to introduce at a late stage. Additionally, the Zenit Statement added nothing new, in the opinion of the Sole Arbitrator – the Waiver was already on the CAS file, as was Zenit’s previous email. FIFA had the ability to comment on the Zenit Statement in its second submission too.

84. The Sole Arbitrator determined to accept the Zenit Statement to the CAS file, as a part of the second round of submissions that he had directed the Parties to make.

IX. MERITS

A. The main issues

85. The Sole Arbitrator notes that, at the relevant time, the FCHR were new regulations, only having come into force a few months before the relevant transfer of the Player.

86. The FCHR has various phases. It starts when a training rewards trigger is identified and a provisional EPP for the relevant player will then be generated by TMS. This is available for inspection by the member associations and clubs involved. They can all provide

information via TMS. After the close of the inspection period or phase, the FIFA general secretariat will assess the provisional EPP for accuracy and relevance. The FIFA general secretariat will then open an EPP review process in TMS and invite the relevant parties to participate. During the review phase, clubs should upload proof of any valid waiver in TMS (Article 9.7 FCHR). After completion of the EPP review process, the FIFA general secretariat will evaluate any requests to amend the registration information to see if any of that information needs to be incorporated and to amend the EPP. An Allocation Statement is then produced on the final EPP, which includes the amount(s) to be distributed to training clubs.

87. The Sole Arbitrator notes that in the case at hand the Club did provide a copy of the Settlement Agreement, containing the Waiver, but (1) this was in Russian, rather than English, Spanish or French (the official languages to be used pursuant to Article 15.5 of the FCHR); and (2) this appears to have been uploaded to TMS on 21 February 2023 as part of the process to obtain the ITC, as opposed to part of the review process mentioned above, which commenced on 6 March 2023.

88. During the review process, FIFA sent the same message to the Club four times, once in July 2023 and three times in August 2023:

*“Please note that your club or member association is participating in this electronic player passport (EPP) and that **its review phase is now closed**.*

We noticed that new registration information regarding the player in question has been included in the EPP by the participating member association(s) during the review process, in line with article 9 of the FIFA Clearing House regulations.

Based on the above, please be informed that the said new registration information is now available to you in the EPP.

*In accordance with art. 10 par. 1 and 10 par. 2 of the FIFA Clearing House regulations, **we kindly ask you to provide any documentation relevant to the entitlement to training rewards of any relevant club in the EPP, including but not limited to waivers** or contract offers provided by the training clubs of the player, by no later than the end date of the ongoing "completion" phase as currently displayed in TMS.”*

89. The Sole Arbitrator was left with the impression that FIFA was aware of the Waiver and prompted the Club to refile it as part of the EPP process, as it is able to do pursuant to Article 9.9 of the FCHR. However, the language used by FIFA could have been much more precise. It simply needed to ask for the Waiver and to direct the Club to get it translated.
90. The Club failed to respond and ultimately received the Appealed Decision and now seeks to have that annulled, in its primary prayers for relief.
91. The Club challenged the Appealed Decision on the following grounds: (i) the waiver of the training compensation was fully valid; (ii) the Appealed Decision was contrary to the

pacta sunt servanda principle; (iii) the Appealed Decision was also contrary to the objectives of the FIFA Clearing House, because it: (a) leads to the processing of payments which are not due; (b) promotes an unjust enrichment of Zenit; (c) avoids financial transparency by providing double payments; and (d) supports fraudulent conduct in the football transfer system by granting sums that had already been waived; and (iv) the Appealed Decision was contrary to the principles of good faith and procedural fairness, as FIFA would be able to consider the English translation of the Waiver within the Settlement Agreement at any time.

92. On the other hand, FIFA argued that the Club had committed a fatal procedural mistake by not calling Zenit as a respondent to these proceedings when, in fact, Zenit has a direct and legitimate interest in the outcome of the present arbitration. By not having been called as a respondent, Zenit has not been given the chance to be heard and to defend its legitimate position, as a party legally entitled to training compensation under the Appealed Decision. FIFA argued that this clearly constituted a violation of ‘passive mandatory *litisconsortium*’ or ‘*consortité passive necessaire*’ and, therefore, should lead to the rejection of the Appeal, without needing to assess the substantive merits of the case any further.

93. Both Parties included the alternative prayer for relief, to have the matter sent back to FIFA, with any instructions the Sole Arbitrator chose to provide.

94. The Sole Arbitrator notes that the CAS Code establishes the Panel’s scope of review and his powers as follows:

“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.”

95. As such, he has effectively one of three options available to him, as follows:

- to accept the Club’s Appeal and to annul the Appealed Decision; or
- to reject the Club’s Appeal and to confirm the Appealed Decision; or
- to annul the Appealed Decision and to return the matter to FIFA so that any necessary amendments to the Appealed Decision may be implemented by FIFA administratively through the FIFA Clearing House system in accordance with the instructions from the Sole Arbitrator.

96. These options are considered in turn:

Accept the Appeal?

97. The issue with this option is the absence of Zenit as a respondent in the matter at hand. The Sole Arbitrator notes that the Club argues that this is a purely “vertical” dispute between itself and FIFA, and that Zenit has no interest in the matter at hand, as is evidenced by the Waiver, its email of 3 March 2023 and the Zenit Statement. Whereas FIFA submits that this is a “horizontal” dispute between clubs – does the Club have to

pay training compensation to Zenit or not? If the Appealed Decision is annulled, as the Club requests in its Appeal, then the award of training compensation to Zenit is annulled too. It loses that monetary award. Zenit therefore need to be present. It has a right to be heard, pursuant to Article 29.1 of the Swiss Constitution.

98. Both Parties provided the Sole Arbitrator with CAS jurisprudence which purported to support their respective positions. The Sole Arbitrator noted that there was a wealth of jurisprudence support FIFA's argument that Zenit needed to be a party to these proceedings, where what was sought by the Club would result in it losing its award of training compensation. On the other hand, the Club relied on *CAS 2023/A/9940 & 9941* which dealt more with whether a waiver that was not before FIFA at first instance could be considered by CAS on appeal, but the waiving clubs were parties to the CAS proceedings, so this jurisprudence was not on point. Further, the Club cited *CAS 2023/A/9730* which again dealt with the acceptance by CAS of a waiver that had not been before FIFA, where the waiving club was again a party at the CAS proceedings, so could be properly heard.
99. The Sole Arbitrator could understand the Club's frustration. It produced evidence that Zenit appeared to want to play not part in these proceedings and was content to renounce the award of training compensation made in the Appealed Decision. The Club also pointed out that Zenit had not sought to intervene in the case at hand either.
100. However, the Sole Arbitrator notes the following:
 - It is not for Zenit to look to intervene. The starting point before CAS is for the Appellant to summons the correct respondents, as per Article R48 of the CAS Code, rather than for any missed respondents to take matters upon themselves and look to intervene. As FIFA noted, the Club was looking to turn the tables. In the case at hand, Zenit has a legal interest and would be affected by an Award to solely annul the Appealed Decision;
 - Perhaps if FIFA had the Waiver in an official language filed in the review phase, that would have sufficed and a different decision would have been rendered. However, this is simply conjecture, as the process in the FCHR was not followed properly;
 - As FIFA have pointed out, had Zenit been a respondent, then it would have seen the entire CAS file, including FIFA's submissions. It might have confirmed its written position, it might not. It might have rowed back from the Zenit Statement. The only certainty is Zenit would have been heard before this Award was rendered, rather than afterwards, affording it additional procedural rights;
 - As noted in *CAS 2024/A/10718* and whilst there is absolutely no suggestion of this, it is always possible that Zenit could claim some irregularity with the Waiver at any stage, which would need to be considered by the Sole Arbitrator;
 - Ultimately, it was the Club's own doing not to bring Zenit into these proceedings.

101. The Sole Arbitrator determines to follow the long line of jurisprudence relating to violations of ‘passive mandatory *litisconsortium*’. The Club’s request to simply annul the Appealed Decision is rejected.

Reject the Appeal?

102. FIFA submitted that all of the Club’s remaining arguments on the merits should be rejected and the Appeal fully rejected too.
103. For the reasons set out below, the Sole Arbitrator determines not to stray further into the merits and not only determines not to reject the remainder of the Club’s prayers, rather to grant these and to return the case to FIFA.
104. The Sole Arbitrator notes that the Panel in *CAS 2023/A/10002* noted that rejecting prayers for relief against an absent respondent, would not preclude it from considering other prayers for relief (such as returning the case to the first instance body) that would not affect the rights of such an absent respondent.
105. In the case at hand, the Sole Arbitrator has come to that decision based on the following:
- The Waiver was uploaded by the Club to TMS. The FCHR were brand new regulations and this may excuse the Club to a degree. It may well have thought throughout the EPP processes, that it had already provided the Waiver, it may not have realised that it needed to be translated;
 - FIFA appeared to be aware of the Waiver. Why else would it write to the Club four times over two months inviting it to submit the Waiver?
 - As noted above, if the issue was language, then why did FIFA not specify that in those communications?
 - If the Appeal is simply rejected, then the Club would have to pay the training compensation to Zenit and see if Zenit returned the money to it, or whether it would then need to embark upon a new legal process;
 - On a *prima facie* basis, there is strong evidence that Zenit has waived its entitlement to training compensation. Is it “just” to reject the Appeal with that evidence before the Sole Arbitrator?
 - The Sole Arbitrator took a similar approach in *CAS 2024/A/10427* where there was evidence of two differing decisions at first instance regarding the same player and the same transfer, but different training clubs and there was a correction of the EPP for a subsequent transfer of the same player which lead to a strong suspicion that a mistake had been made by the member association and subsequently rectified. The just option was to return that matter to FIFA to consider again, with the benefit of the full picture.

Refer the case back?

106. The Sole Arbitrator notes that both FIFA, in its Answer, and the Club, in its second round of submissions, requested, in the alternative, that the Sole Arbitrator return the case to FIFA.

107. FIFA is now in possession of the Waiver in English. It has the Zenit Statement and will be able to check the validity of those with Zenit. If it is then satisfied that Zenit has validly waived its entitlement to training compensation triggered by the transfer of the Player to the Club, then it can issue the appropriate decision. If there are issues, it can consider these with the Club.
108. It appears to the Sole Arbitrator that the matter can only be considered this way by FIFA, as it can deal with Zenit. The Sole Arbitrator cannot.
109. Any decision rendered by FIFA is then appealable still by the Club (or indeed Zenit, if affected) to CAS, ensuring the procedural rights of all parties.
110. This is the only option that does not offend the rights of Zenit, provides for a just outcome for the Club and respects the prayers of both Parties.

B. Conclusion

111. The Appealed Decision is annulled and the case is referred back to FIFA.
112. All other prayers for relief are dismissed.

X. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 10 October 2023 by FC Noah against the decision issued on 19 September 2023 by the general secretariat of Fédération Internationale de Football Association is partially upheld.
2. The decision issued on 19 September 2023 by the general secretariat of Fédération Internationale de Football Association is annulled and the matter is referred back to the Fédération Internationale de Football Association for a new decision in the light of the reasons formulated in the present Award.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 4 August 2025

THE COURT OF ARBITRATION FOR SPORT

Mark Andrew Hovell
Sole Arbitrator