

Termination of contract by football players: from Webster & Matuzalem to the future of article 17 of FIFA Regulations for the Status and Transfer of Players.

Introduction:

When FIFA agreed with the EU Commission on 2001 about the new Regulations for the Status and Transfer of Players, one of the main issues was the maintenance of contractual stability between footballers and clubs as well as the consequences of terminating the existing contract.

FIFA accepted the possibility of ending a contract without just cause with no sporting sanctions and, of course, with the payment of a compensation or indemnity to the former club.

This adventure, legal and practicable, has been a kind of reproachable behaviour and no one had even intended to use it until Andrew Webster, the Scottish player, rescinded his contract with Hearts of Midlothian on 2006. So five years pass on before anyone wanted to employ the now famous article 17.

Webster's case:

The details of the Webster's case have been already discussed and even published in this worldsportlawreport and then it would be preferable to focus only on some particular issues raised by the CAS award.

As we know, the CAS decided that the player should pay the mere one-year residual value of his contract as the compensation to reward his former club, Hearts of Midlothian. The Panel analyzed article 17 and took all the indicated parameters and criteria for a decomposition of the said article.

One of the main topics, in my opinion, was the amortization of the player's transfer, even though in Webster's situation the amount was not really important, but the discussion for other situations is a significant one. The CAS said that, as the player renewed his previous contract with Heart, such a renewal was in fact the acceptance that the initial transfer was already amortized and then the Panel did not consider that the remaining year had to be calculated for the compensation as for the amortization of such transfer.

This will be a real question for the future, as it seems clear that the clubs, in order to avoid the possible early rescission of their players contracts, when a footballer is doing a fine job, they will try to renew the contract, for "putting the counter to zero" again, as a renewal of a contract shall start again the so-called "protected period". We must consider if this way of safeguard the interest of the clubs, by initiating a new "protected period" might decrease the possible compensation for a future breach of contract by the player, as the renewal will immediately impede the amortization of the transfer fee paid by the club.

The matter is not insignificant as a huge transfer fee might be impossible to amortize if renewing the contract and in some cases we are talking about big money. Then, should

we contemplate that the situation might be a *do ut des* as we say in Latin countries or a *quid pro quo* in English legal terms? If the player gives the club more years of “protected period” when renewing his contract, the compensation should decrease by not including anymore the amortization of his previous transfer? I do think that FIFA and CAS Panels are going to struggle with this issue in the very near future, as I will explain further on.

As for the rest of the parameters, the Panel explained its own position on why no other amount has to be given to the former club, and concretely on the so-called “specificity of sport” which is one of the criteria of article 17.1, it was dismissed by the Panel even though it said that *“Therefore the Panel shall bear the balance in mind (to strike a reasonable balance between the needs of contractual stability, on the one hand, and the needs of free movement of players on the other hand) when proceeding to an examination of the other criteria for compensation listed in article 17.”*

Finally, another of the CAS award points it the view of the Panel that FIFA has not done well its job when summarizing the amortization granted to Hearts and asking FIFA to establish, for the future, clear indications on why a final sum is given and how the deciding body has reached that amount. As we will see, FIFA has taken CAS word and in the following article 17 case, the amounts of each parameter of the compensation have been analyzed and explained, at least much better than in Webster’s decision, when FIFA did no give any clarification on the indemnity granted to Hearts.

Matuzalem’s case:

After the way opened by Andy Webster, two players, at the end of season 2007, used article 17 to finalize their current contract with their clubs. The only one who has already got a decision is the Brazilian player “Matuzalem”, by FIFA Dispute Resolution Chamber, in February 2008 and which is currently on appeal before the CAS.

The DRC awarded the former club Shakhtar Donetsk, from Ukraine, the sum of 6,800,000 € and, according to the CAS suggestion, has for the first time explained how and why the final sum of a compensation has been reached.

The case was evidently quite different from that of Webster, as the transfer was not amortized when the player terminated his contract, with two remaining years still existing and no renewal of contract was involved. So a sum was granted to the club for such pending amortization of the transfer fee.

Another amount was given on the basis of the “remuneration and other benefits due to the player under the previous and the new contract”, which is a quite different position of the CAS award on Webster.

Finally, another amount was decided to compensate the “sports-related damage... in the light of the stability of sport” which is, also, a totally diverse application of article 17 than that of the Panel in Webster’s case.

Now, all the parties, new club (Zaragoza from Spain), the player and the former club Shakhtar Donetsk have appealed to the CAS and the decision is due to be rendered before the end of 2008.

The future and a personal conclusion:

The other player who applied to article 17 was the Italian goalkeeper Morgan de Sanctis, who left Udinese to finally sign a contract with Sevilla FC. The case is currently before the DRC in FIFA and will surely not have a decision at that stage before the end of 2008.

This case is interesting as the player renewed his contract with Udinese and we will see if FIFA follows the Webster's award or not.

The Pandora's box has been opened, even though I personally do not consider it a plague because article 17 has been agreed between FIFA and the EU Commission as well as other stakeholders of football and it is merely a right to be exercised or not, it is not compulsory but it is obviously not forbidden. We have to face that players, when reaching a certain point of their career and due to personal or external matters as pressure of the club to renew, non-agreement on the new salaries, family issues, sporting needs of the player or whatever other reason, will utilize article 17 and this should not be considered as an illegal treatment to the clubs but just a decision admitted by the Regulations. When writing this paper, two other players, on my knowledge, have used it at the end of season 2008: Assunção from Oporto and Jonás Gutiérrez from Real Mallorca.

This will not be a race for article 17, but the rarity of Webster's initial move shall be more frequent in next seasons.

Finally, I would like to point out two matters: first of all that the CAS decision on Webster, or any other one on article 17, is not a "Bosman-like" case and each case should and will be treated as a particular and specific one, according to the issues of each contract and situation of a player, and secondly that the clubs all over the world should think about agreeing indemnity or compensation clauses in order not to prevent the rescission of contracts by players but for a previous knowledge for both parties of the cost of such rescission.

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