

CAS 2024/A/10718 KAA Gent v. FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Manfred Nan, Attorney-at-Law, Amsterdam, The Netherlands

in the arbitration between

K.A.A. Gent, Gent, Belgium

Represented by Mr Sebastien Ronse, Manager Non-Sports, K.A.A. Gent, Gent, Belgium
Appellant

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation, and Ms Cristina Pérez González, Senior Legal Counsel, FIFA, Zurich, Switzerland
Respondent

I. PARTIES

1. K.A.A. Gent (the “Appellant”, the “Club” or “Gent”) is a professional football club with its registered office in Gent, Belgium. The Club is registered with the Royal Belgium Football Federation (*Union Royale Belge des Sociétés de Football-Association* - “URBSFA”), which in turn is affiliated to the *Fédération Internationale de Football Association*.
2. The *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body of international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.
3. Gent and FIFA are hereinafter jointly referred to as the “Parties”.

II. INTRODUCTION

4. These proceedings revolve around training compensation payable with respect to the transfer of Mr Ceti Junior Taty Tchibinda, a football player of Congolese nationality (the “Player”), from the Congolese club *Club Sportif Multidisciplinaire Diabes Noirs* (“Diabes Noirs”) to Gent.
5. Following an Electronic Players’ Passport (“EPP”) review process and a decision of a Single Judge of the FIFA Dispute Resolution Chamber (the “FIFA DRC EPP Decision”), the FIFA General Secretariat issued the Player’s EPP (the “EPP Decision”) and an Allocation Statement (the “Allocation Statement”). The ultimate consequence of the EPP Decision and the Allocation Statement (hereinafter jointly referred to as the “Appealed Decisions”) is that Gent was thereby required to pay training compensation to four other previous Congolese clubs of the Player, as follows:

- <i>Association Sportive V. Club Mokanda</i> (“Mokanda”):	EUR 182,902.99;
- <i>Ecole de Football TOTAL</i> (“TOTAL”):	EUR 142,860.09;
- <i>Club de Football Tout Puissant Caïman</i> (“Caïman”):	EUR 76,986.30;
- <i>Association Sportive Panthère</i> (“Panthère”):	EUR 19,298.53.
6. In the present appeal arbitration proceedings before the Court of Arbitration for Sport (“CAS”), Gent is challenging the Appealed Decisions, requesting, *inter alia*, a decision confirming that no training compensation is payable to any of the aforementioned clubs. FIFA requests the Appealed Decisions to be confirmed.

III. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing

a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

A. Background Facts

8. On 1 August 2023, Gent and Diables Noirs signed a transfer agreement regarding the transfer of the Player to Gent (the “Transfer Agreement”). The Transfer Agreement, *inter alia*, provides that the Player was registered with Diables Noirs as a professional football player, that no transfer fee was payable to Diables Noirs by Gent, but entitling Diables Noirs to a signing-on fee of 10% in case of a potential future transfer of the Player to a third club. Diables Noirs further waived any possible right to receive training compensation from Gent, warranted that any club to which the Player was loaned during his registration with Diables Noirs had assigned their claims for training compensation to it, and indemnified Gent for any claims of such clubs.
9. On 5 September 2023, the Player was registered as a professional football player with Gent via the Transfer Matching System (“TMS”), following which TMS generated a provisional EPP of the Player, following which a 10-day inspection period commenced.
10. On 18 September 2023, the provisional EPP was released for review by the clubs and the national football federations involved, which were the following:
 - a) URBSFA;
 - b) The *Fédération Congolaise de Football* (“FECOFOOT”);
 - c) Diables Noirs;
 - d) TOTAL;
 - e) Mokanda;
 - f) Caïman;
 - g) Panthère.
11. URBSFA and FECOFOOT are hereinafter referred to as the “Federations”. Diables Noirs, TOTAL, Mokanda, Caïman and Panthère are hereinafter referred to as the “Training Clubs”.
12. On 19 September and 3 October 2023, Gent intervened in the EPP process and provided certain information and evidence to FIFA.
13. On 27 September 2023, URBSFA intervened in the EPP process and provided certain information and evidence to FIFA.
14. On 5 October 2023, the EPP entered the “validation process”.
15. On 13 and 21 March 2024, FIFA invited FECOFOOT to complete the Player’s EPP.

16. On 27 March 2024, FECOFOOT intervened in the EPP process and provided certain information and evidence to FIFA.
17. On 28 March 2024, the Player's EPP again entered the "validation process".

B. Proceedings before the FIFA DRC

18. On 6 June 2024, by virtue of Article 10(3) of the FIFA Clearing House Regulations (the "FCHR") (providing that in situations of legal or factual complexity the FIFA DRC will decide on the final EPP), the FIFA General Secretariat referred the matter to the FIFA DRC.
19. On 12 June 2024, a Single Judge of the FIFA DRC rendered the FIFA DRC EPP Decision, providing, *inter alia*, as follows:

"15. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which she may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

- 16. The registration history provided by FECOFOOT states the player was an amateur with [Diablos Noirs] and with all his previous training clubs.*
- 17. Art. 7 of the FIFA RSTP and the DRC jurisprudence determine that career history data provided by the member associations is key for the distribution of training rewards.*
- 18. The importance of accurate data concerning a player's career history when determining entitlements to training compensation is paramount. The player passport, and for training compensation matters governed by the FCHR, the EPP, is key to providing this data, especially when a player is registered as a professional for the first time.*
- 19. Member associations are responsible for providing accurate data and therefore FIFA must rely on this information in good faith unless a club can provide evidence that would contradict what a member association has provided.*
- 20. The Single Judge acknowledges the attempt of [Gent] in having FIFA consider the player's registration with [Diablos Noirs] as a professional one.*
- 21. [Gent], however, did not provide satisfactory evidence of such an allegation. In particular, the Single Judge noted that the only evidence*

provided by [Gent] to contest the information contained in the player's passport issued by the FECOFOOT is the aforementioned 'transfer agreement'.

22. *The Single Judge understood that the mere mention in the agreement that the player had a professional contract with [Diablos Noirs] is per se not sufficient to overturn the information contained in the player passport issued by the FECOFOOT that he had been registered as an amateur with all its affiliated clubs, until his first professional registration with [Gent].*
23. *In fact, the Single Judge noted that no further evidence of the player's alleged professional status with [Diablos Noirs], such as a written employment contract with the latter club or any evidence that he was being paid more for his footballing activity than the expenses he effectively incurred, was provided.*
24. *Therefore, based on the documentation on file, there is no reason to overturn the information provided by the FECOFOOT.*
25. *Bearing all the above in mind and in line with the principle of the burden of proof of art. 13 par. 5 of the Procedural Rules, as well as on the basis of the evidence on file and that within TMS, the Single Judge determined that the player was always registered as an amateur at FECOFOOT, including with [Diablos Noirs].*

[...]

34. *Finally, the Single judge pointed out that, even though the agreement mentions that the player was born on 5 April 2005, the player's passport issued by the FECOFOOT and the information available in the TMS are aligned in the sense that the player's birthdate is 5 April 2002.*
35. *The Single Judge concluded her deliberations by confirming that the above constitutes her decision in the sense of article 10 paragraph 3 and 5 of the FCHR in relation to this EPP, the conclusions of which are reflected in the EPP determination to which this decision is enclosed as annexe.”*

20. On the same date, 12 June 2024, and based on the FIFA DRC EPP Decision, the FIFA General Secretariat issued the EPP Decision, which provides, *inter alia*, as follows:

“The FIFA general secretariat hereby determines the registration history of the player from the start of the calendar year of the player's 12th birthday until the aforementioned training rewards trigger. This registration history is considered true and accurate for the period in question, in accordance with the information provided by the member associations that participated

in the generation and review of the EPP, in accordance with article 10 of the FCHR. The registration history as determined by the FIFA general secretariat is as follows:

Club and member association	Start of registration	End of registration	Status	Nature of registration
K.A.A. GENT BEL, Belgium FIFA ID: 109HQBI Status: Affiliated Training category: 1	05/09/2023	Currently registered	Professional	Permanent
Club Sportif Multidisciplinaire Diables Noirs FECOFOOT, Congo FIFA ID: 109EXFJ Status: Affiliated Training category: 4	30/10/2022	14/08/2023	Amateur	Permanent
Association Sportive V. Club Mokanda FECOFOOT, Congo FIFA ID: 109EVKH Status: Affiliated Training category: 4	08/06/2021	29/10/2022	Amateur	Permanent
Association Sportive V. Club Mokanda FECOFOOT, Congo FIFA ID: 109EVKH Status: Affiliated Training category: 4	10/10/2020	30/05/2021	Amateur	Permanent

Ecole de Football TOTAL FECOFOOT, Congo FIFA ID: 109EV2B Status: Affiliated Training category: 4	14/08/2019	15/08/2020	Amateur	Permanent
Ecole de Football TOTAL FECOFOOT, Congo FIFA ID: 109EV2B Status: Affiliated Training category: 4	24/11/2018	23/06/2019	Amateur	Permanent
Club de Football Tout Puissant Caïman FECOFOOT, Congo FIFA ID: 142VP7B Status: Affiliated Training category: 4	13/01/2017	30/09/2018	Amateur	Permanent
Association Sportive Panthère FECOFOOT, Congo FIFA ID: 142VQ0H Status: Affiliated Training category: 4	30/11/2016	12/01/2017	Amateur	Permanent
Association Sportive Panthère FECOFOOT, Congo FIFA ID: 142VQ0H Status: Affiliated Training category: 4	10/08/2015	07/07/2016	Amateur	Permanent
Association Sportive Panthère FECOFOOT, Congo FIFA ID: 142VQ0H Status: Affiliated Training category: 4	14/08/2014	07/07/2015	Amateur	Permanent

21. The EPP Decision further provides as follows:

“Conclusion

15. *In consideration of the above and in accordance with the FCHR and annexes 4 and 5 to the RSTP, the FIFA general secretariat has determined the entitlement of clubs to training rewards for the above trigger as follows.*

16. *[Diables Noirs] would in principle be entitled to training compensation for having registered the player at some point in time between the start of the calendar year of player’s 12th birthday and*

the end of the calendar year of player's 21st birthday, but given that training compensation is deemed included in the transfer fee paid by the new club, no training compensation is due to this training club.

17. *[Mokanda] is entitled to training compensation for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 21st birthday.*
18. *[TOTAL] is entitled to training compensation for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 21st birthday.*
19. *[Caïman] is entitled to training compensation for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 21st birthday.*
20. *[Panthère] is entitled to training compensation for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 21st birthday.*
21. *No other club is entitled to training compensation.*
22. *[Diabes Noirs] would in principle be entitled to solidarity contribution for having registered the player at some point in time between the start of the calendar year of player's 12th birthday and the end of the calendar year of player's 23rd birthday, but given that solidarity contribution is deemed included in the transfer fee payable by the new club, no solidarity contribution is due to this training club. [Mokanda] is entitled to solidarity contribution for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 23rd birthday.*
23. *[Mokanda] is entitled to solidarity contribution for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 23rd birthday.*
24. *[TOTAL] is entitled to solidarity contribution for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 23rd birthday.*

25. [Caïman] *is entitled to solidarity contribution for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 23rd birthday.*
 26. [Panthère] *is entitled to solidarity contribution for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 23rd birthday.*
 27. *No other club is entitled to solidarity contribution.*
 28. *All of the above determinations and decisions are reflected in the EPP in question and/or will be considered in the generation of any Allocation Statement from this EPP for the calculation and distribution of training rewards in accordance with article 13 of the FCHR.*
 29. *More specifically, in case of an international transfer (cf. article 6 FCHR) with payments, this EPP will be considered in the generation of any future Allocation Statement for the calculation and distribution of any solidarity contribution that may become due at a later stage if and when the payments requirements are met.*
 30. *Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR, this decision and the corresponding allocation statements(s) AS TC-8625 may be jointly appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS.”*
22. On the same date, 12 June 2024, and based on the EPP Decision, the FIFA General Secretariat issued the Allocation Statement, which provides, *inter alia*, as follows:

“Conclusion

8. *The new club [Gent] (BEL) shall pay training compensation to the training club(s) of the player in the total amount of EUR 422,047.91.*
9. *The following training club(s) shall receive the following payment(s).*
 - 9.1. *The training club [Mokanda] (FECOFOOT) shall receive training compensation payments from the new club of the player in the amount of EUR 182,902.99.*
 - 9.2. *The training club [TOTAL] (FECOFOOT) shall receive training compensation payments from the new club of the player in the amount of EUR 142,860.09.*

- 9.3. *The training club [Caïman] (FECOFOOT) shall receive training compensation payments from the new club of the player in the amount of EUR 76,986.30.*
- 9.4. *The training club [Panthère] (FECOFOOT) shall receive training compensation payments from the new club of the player in the amount of EUR 19,298.53.*
10. *The payments defined in this Allocation Statement shall be made through the FIFA Clearing House entity (FCH), in accordance with articles 12, 13 and 14 of the FCHR. The FCH will contact the new club, the relevant training clubs and the relevant member associations to process these payments.*
11. *According to the relevant provisions of RSTP and FCHR, it is the new club that will be required to pay training rewards due to the training clubs concerned, and the new club may not assign responsibility to pay the amount requested to any other party.*
12. *Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR, this decision and its corresponding EPP may be jointly appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS.”*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 3 July 2024, Gent filed a Statement of Appeal with CAS, challenging the Appealed Decisions, in accordance with Articles R47 and R48 of the 2023 edition of the Code of Sports-related Arbitration (the “CAS Code”). In this submission, Gent named FIFA as only Respondent and requested that the case be submitted to a sole arbitrator.
24. On 12 July 2024, Gent filed its Appeal Brief in accordance with Article R51 of the CAS Code.
25. On 17 July 2024, FIFA informed the CAS Court Office that it agreed with the appointment of a sole arbitrator, provided that the sole arbitrator be selected from the football list.
26. On 22 August 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the arbitral tribunal appointed to hear the appeal was constituted as follows:

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27. On 19 September 2024, FIFA filed its Answer in accordance with Article R55 of the CAS Code.
28. On 24 September 2024, the CAS Court Office invited the Parties to express their position regarding their preference for a hearing to be held or for the Sole Arbitrator to issue an Award based solely on the Parties' written submissions. Furthermore, the Parties were invited to inform the CAS Court Office whether they requested a case management conference to be held.
29. On 1 October and 11 October 2024 respectively, FIFA and Gent indicated that the dispute could be resolved based on the Parties' written submissions without a hearing and without a case management conference.
30. On 17 October 2024, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Sole Arbitrator deemed himself to be sufficiently well informed and decided to not hold a hearing. Furthermore, the Parties were informed that, in accordance with Article R59 of the CAS Code, the evidentiary proceedings were closed.
31. On 21 October and 31 October 2024 respectively, FIFA and Gent returned duly signed copies of the Order of Procedure provided to them by the CAS Court Office, on behalf of the Sole Arbitrator, on 17 October 2024. By signing the Order of Procedure, the Parties, *inter alia*, confirmed that the Sole Arbitrator could decide this matter based on the Parties' written submissions and that their right to be heard had been respected.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

32. The Sole Arbitrator confirms that he carefully heard and considered in his decision all the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral Award.

A. The Appellant

33. Gent's submissions, in essence, may be summarised as follows:
 - The employment contract between Gent and the Player is not the first professional contract of the Player as he had already concluded an employment contract as a professional with Panthère on 2 September 2016.
 - Therefore, and in application of the relevant provisions of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") (Article 20 and Annex 4 FIFA RSTP), no training compensation is due if a player reacquires amateur status (Article 2.2.b Annex 4 FIFA RSTP). Training compensation is only due to the previous club (Diables Noirs), which club however had waived its right to training compensation. Therefore, no training compensation is due.
 - The EPP is based on a factual error (which remained unnoticed during the entire review process) as it mentions 5 April 2002 as the Player's date of birth instead

of 5 April 2005, which date of birth is confirmed by the Player’s official birth certificate and passport.

- Considering the correct date of birth (5 April 2005), 2017 should be taken as the starting point for calculating training compensation instead of 2014 as was done by FIFA, with the result that the amount of training compensation should be reduced to EUR 198,113.71 instead of EUR 422,047.91.

34. On this basis, Gent submits the following prayers for relief in its Appeal Brief:

“FOR THESE REASONS,

THE COURT OF ARBITRATION FOR SPORTS IS REQUESTED TO CONSIDER AND ACCEPT THE REMARKS OF KAA GENT,

IN FIRST ORDER, TO DECLARE THAT NO TRAINING COMPENSATION IS DUE

IN SUBSIDIARY ORDER, IF THE CAS WOULD STILL DECIDE THAT TRAINING COMPENSATION IS DUE, QUOD NON, TO REDUCE THE TRAINING COMPENSATION TO EUR 198.11,71 EUR, TAKING INTO ACCOUNT THAT THE DECISION OF THE FIFA SECRETARIAT GENERAL IS BASED ON WRONG FACTUAL DATA.”

B. The Respondent

35. FIFA’s submissions, in essence, may be summarised as follows:

- FIFA clearly lacks standing to be sued (alone), as Gent failed to name as respondents the Training Clubs which, except for Diables Noirs, were awarded the right to training compensation in the Appealed Decision. The present appeal must therefore be dismissed in the absence of these mandatory respondents, as any decision issued on the merits would violate their right to be heard. This is a clear-cut situation of lack of standing to be sued and, specifically, a lack of passive mandatory joinder or “*consorté passive nécessaire*”.
- As consistently confirmed by CAS, in particular also in CAS 2013/A/3228, point 2 of the summary on the CAS website; also followed by CAS 2021/A/8140, para 51, “[i]f the prayers for relief, whatever the decision of the CAS panel may be, will affect the rights of a third party that has not been named and included as respondent in the proceedings before the CAS, there is no scope of review for the CAS panel and the appeal must be dismissed”.
- Furthermore, Gent, attempting to demonstrate that the Player’s date of birth is incorrect, implicitly questioning the Player’s passport issued by FECOFOOT, also failed to call as respondents the URBSFA and FECOFOOT. Both the Player’s ITC and the Player’s player passport issued by FECOFOOT expressly indicate that the Player’s date of birth was 5 April 2002, and none of the parties

involved disputed this information (despite having had the opportunity to do so in light of the provisions of Article 9 FCHR).

- Consequently, the present case cannot be analysed in the absence of all mandatory respondents as they all have a legitimate expectation that the Appealed Decision is final and binding.
- As far as the merits of the horizontal disputes are concerned, the system of training rewards is built upon, *inter alia*, FIFA’s necessary reliance upon the information (now electronically) provided by the concerned national associations. Consequently, as both the ITC and the Player’s player passport issued by FECOFOOT indicated that the Player was born on 5 April 2002, instead of 5 April 2005 as alleged by Gent in the current proceedings before CAS, the FIFA DRC duly rendered its decision based on the (undisputed) date entered by the Federations, whose information is cardinal in determining a club’s entitlement to FIFA’s training rewards.

36. On this basis, FIFA submits the following prayers for relief in its Answer:

- “(a) Rejecting the requests for relief sought by the Appellant;*
- (b) Confirming the Appealed Decision; and*
- (c) Ordering the Appellant to bear the full costs of these arbitration proceedings.”*

VI. JURISDICTION

37. The jurisdiction of CAS, which is not disputed, derives from Article 57(1) FIFA Statutes (May 2022 edition), 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”, and Article R47 of the CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

38. Moreover, Article 10.5(b) FCHR provides as follows:

“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 paragraph 1 of the FIFA Statutes and may be appealed to the Court of Arbitration for Sport (CAS).”*

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

VII. ADMISSIBILITY

40. The appeal was filed within the deadline of 21 days set by Article 57(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

41. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

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

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

43. Article 56(2) FIFA Statutes (2022 edition) provides the following:

“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.”

44. Gent did not submit any position with respect to the applicable law.

45. FIFA argues that, in accordance with Article R58 of the CAS Code and Article 56(2) FIFA Statutes, *“the FIFA Statutes and regulations – namely the FCHR and the FIFA Regulations on the Status and Transfer of Players (ed. May 2023), constitute the applicable law to the matter at hand, and Swiss law shall be applied subsidiarily should the need arise to fill a possible gap in the FIFA regulations”*.

46. The Sole Arbitrator finds that the present proceedings are primarily governed by the various regulations of FIFA, more specifically the FCHR (edition October 2022) and the FIFA RSTP (edition May 2023) and, additionally, Swiss law.

IX. MERITS

A. The Main Issues

47. The present dispute concerns, in essence, FIFA’s alleged lack of standing to be sued alone and, on the substance, whether the Player had been registered as a professional

football player before his registration with Gent on 5 September 2023, and whether the Player was born in 2002 or 2005.

48. Considering the foregoing, the Sole Arbitrator will first determine whether FIFA lacks standing to be sued alone.
49. The first point of contention in these proceedings is whether FIFA has standing to be sued, in the absence of the Training Clubs and the Federations having been called as respondents.
50. FIFA is the entity that issued the Appealed Decisions, and the presence of FIFA as a party in these proceedings cannot be rejected. This is confirmed by CAS jurisprudence, holding, *inter alia*, as follows:

“Keeping in mind that the Appealed Decision is to be qualified as an association decision, this lacuna should be filled by Swiss law, and more precisely by Article 75 of the Swiss Civil Code, which reads as follows: ‘Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof.’ As per this provision, the challenge against an association decision must, in principle, be filed against the association that issued such a decision. This applies to decisions of FIFA as well. While there are circumstances in which FIFA’s presence is mandatory (those that contain a vertical element – vertical disputes), there are certainly other circumstances and situations – such as those in the present case – in which FIFA’s presence is optional (those that contain a horizontal element – horizontal disputes), i.e., its absence from the arbitral proceedings cannot cause - per se - the dismissal of the appeal. However, even if optional, the presence of FIFA among the respondents cannot be rejected by FIFA, in view of the clear rule of Article 75 of the Swiss Civil Code.” (CAS 2022/A/8960, para 97 of the abstract as published on the CAS website)

51. In any event, it is not in contention that FIFA has standing to be sued as such. Rather, FIFA maintains that it cannot be sued in the absence of the Training Clubs and the Federations.
52. After being provided with FIFA’s Answer, Gent did not request for a hearing or a second round of submissions to rebut FIFA’s position in this respect, but instead informed the CAS Court Office that the dispute could be resolved based on the Parties’ written submissions.
53. The Sole Arbitrator observes that, by means of the Appealed Decisions, the Training Clubs, except for Diablos Noirs, were awarded training compensation as follows:
 - Mokanda: EUR 182,902.99;
 - TOTAL: EUR 142,860.09;
 - Caïman: EUR 76,986.30;

- Panthère: EUR 19,298.53.

54. Gent, the Training Clubs and the Federations were all parties in the EPP review process and were all notified of the Appealed Decisions.
55. However, if Gent's requests for relief would be granted, the Appealed Decisions would be annulled, or the amounts awarded therein would be reduced, directly and adversely affecting the rights of the other four afore-mentioned clubs. Indeed, if Gent's appeal would be upheld, these clubs would lose their entitlement to the amounts of training compensation granted to them by means of the Appealed Decisions or these amounts would be reduced.
56. Accordingly, the Sole Arbitrator finds that the four afore-mentioned clubs have a clear and direct interest in the outcome of the present proceedings, more specifically that Gent's appeal be dismissed.
57. However, because the Club did not call them as respondents, they have been deprived of their right to be heard. Had they been granted their right to be heard, they could have defended themselves against the factual and legal allegations of the Club. It cannot be excluded that the submissions of these clubs could have an impact on the outcome of the merits of the present proceedings.
58. Consequently, the Sole Arbitrator finds that FIFA in principle indeed lacks standing to be sued alone and/or that he is barred from adjudicating and deciding on the merits of the case without Mokanda, TOTAL, Caïman and Panthère having been called as respondents.
59. CAS jurisprudence suggests that there may be a possibility to repair the default of not having called all parties that may be adversely affected by the appeal as respondents:

“In accordance with the CAS jurisprudence, a party has standing to be sued if it is personally obliged by the ‘disputed right’ at stake, i.e. if said party has some stake in the dispute because something is sought against it (CAS 2008/A/1620, para. 4.1; CAS 2007/A/1367, para. 37; and, CAS 2012/A/3032 para. 42).

CAS Panels repeatedly held that, when assessing whether a party may have standing to be sued, it has to be analysed if it ‘stands to be sufficiently affected by the matter at hand in order to qualify as a proper respondent within the meaning of the law’ (CAS 2017/A/5227, para. 35). CAS Panels also accepted the principle that ‘no order for relief can be granted which affects the rights and legitimate interests of absent third parties’ (see CAS 2020/A/7061, para. 125; CAS 2019/A/6334, para. 57; CAS 2016/A/4642 para. 120; CAS 2004/A/594, para. 51).

In particular, CAS Panels decided on several occasions that ‘the question of standing to be sued [...] must be resolved on the basis of a weighting of the interests of the persons affected by the said decision. The question, thus,

is who [...] is best suited to represent and defend the will expressed by the organ of the association' (CAS 2016/A/4787 para. 109; CAS 2015/A/3910, para. 138, endorsed by CAS 2016/A/4602, paras. 81 ff.).

It follows that when deciding who is the proper party to defend an appealed decision, CAS panels proceed by an analysis of the interests involved and by taking into account the role assumed by the association in the specific case (CAS 2020/A/7356, para. 64).

The Sole Arbitrator agrees that, on a general point of view, a sports federation such as the Respondent is deemed to be best suited to represent and defend the interests of its members in cases where a request for relief would have an indirect bearing on all its members (a similar reasoning was adopted in the case CAS 2016/A/4787).

However, this is not necessarily the case where a request for relief directly affects one or several specific members (CAS 2020/A/7061, para. 126). In this scenario, the appeal might also have to be directed against the potentially affected member(s) as co-respondent(s) alongside the sports federation from which the appealed decision emanates. This is essential for an arbitral tribunal to ensure that the right to be heard of the member(s) concerned is respected (CAS 2019/A/6351).

Consequently, while noting that he would be in principle prevented from granting any request for relief that would directly affect the rights of an absent third party, the Sole Arbitrator deems that he must deal with the Appellant's requests for relief in accordance with the above-mentioned test, i.e. in a manner which takes into account all the interests involved, the role assumed by the federation as well as the rights of defence and in particular the right to be heard of the directly affected parties." (CAS 2021/A/8225, paras. 75-81 of the abstract published on the CAS website).

60. The Sole Arbitrator finds that, although there may potentially be cases where a respondent like FIFA is best suited to represent the interests of its members if such members are only indirectly affected, eliminating the need to call such members as respondents, this is different in the matter at hand. On the basis of the above citation, the Sole Arbitrator feels strengthened in his opinion that Gent should have called the Training Clubs as respondents, given that they could potentially be directly and adversely affected by the outcome of the present appeal arbitration proceeding.
61. Furthermore, the Sole Arbitrator finds that FIFA is not "*best suited*" to defend the Appealed Decisions. FIFA has no direct knowledge of the Player's contractual situation with the Training Clubs or the Player's date of birth. Rather, the Appealed Decisions have been issued by the FIFA General Secretariat exclusively on the basis of the applications submitted by Gent, (some of) the Training Clubs and the Federations. In the matter at hand, FIFA merely acted as an independent court of first instance in a horizontal dispute between, ultimately, Gent and URBSFA on the one hand, and the Training Clubs and FECOFOOT on the other. FIFA does not have a

personal and/or direct interest in the outcome of the present proceeding, besides general objectives such as maintaining a consistent line of jurisprudence and supporting decisions of its adjudicatory bodies.

62. In the present appeal arbitration proceedings before CAS, the Club advanced evidence that was not part of the record in the proceedings leading to the Appealed Decisions.
63. Considering these arguments, including the filing of new evidence by Gent, the Sole Arbitrator notes that the assessment of Gent's (new) arguments with supporting documents require an analysis in which the explanations of the Training Clubs concerned (and of the Federations, particularly the FECOFOOT regarding the Player's Player Passport), would be important to consider. FIFA is not in a position to confirm whether the new evidence submitted by Gent is accurate or not.
64. Accordingly, the Sole Arbitrator finds that it is impossible for him to do justice without hearing the views of the Training Clubs, or at least affording them the possibility to do so. Deciding on Gent's appeal without affording the Training Clubs a right to be heard would comprise an impermissible violation of the due process rights of the Training Clubs. FIFA cannot represent the interests of the Training Clubs and the Federations in this instance.
65. As determined in Article R48 of the CAS Code, it is the responsibility of the appellant to name the respondent(s). After the passing of the 21-day deadline to appeal, there is in principle no possibility anymore for an appellant to add respondents to the proceedings, nor has there been any request of Gent to do so in the matter at hand.
66. This is not a statement that the Appealed Decisions are correct or that Gent's factual or legal contentions are incorrect, but because Gent did not call the Training Clubs and the Federations as respondents in the present proceedings, the Sole Arbitrator is barred from assessing the merits of Gent's appeal.
67. Consequently, based on all the above-mentioned facts and circumstances, the Sole Arbitrator finds that the substantial issues raised by Gent (whether the Player had been registered as a professional football player before his registration with Gent on 5 September 2023, and whether the Player was born in 2002 or 2005) in the present arbitration proceedings would have required at least the participation of Mokanda, TOTAL, Caïman and Panthère.

B. Conclusion

68. Based on the foregoing, the Sole Arbitrator holds that FIFA lacks standing to be sued alone in connection with the Appealed Decisions.
69. Consequently, Gent's appeal is dismissed, and the Appealed Decisions are confirmed.
70. All other and further motions or prayers for relief are dismissed.

X. COSTS

(...).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 3 July 2024 by K.A.A. Gent against the decisions issued on 12 June 2024 by the General Secretariat of the *Fédération Internationale de Football Association* is dismissed.
2. The decisions issued on 12 June 2024 by the General Secretariat of the *Fédération Internationale de Football Association* are confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 17 February 2025

THE COURT OF ARBITRATION FOR SPORT

Manfred Nan
Sole Arbitrator