

DEVELOPING UNIFORM CRITERIA FOR THE SPECIFICITY OF SPORT: THE WEBSTER CASE

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In 2001, FIFA introduced new regulations to govern the worldwide employment of football players. One such regulation enabled players over 23, who had played with a club for three seasons, to terminate their employment “without just cause”, subject to compensation, the level of which was linked to the player's contract. Disputes over compensation, under these regulations would be determined by a Disputes Resolution Chamber, with a right of appeal to the Court of Arbitration for Sport. At the end of the 2005/2006 season, Andrew Webster utilised this regulation in terminating his contract with the Scottish club Heart of Midlothian. A dispute between the parties as to the “appropriate” level of compensation was resolved, per this dispute resolution process. This article examines the various issues involved with this dispute, the respective decisions of the Dispute Resolution Chamber and the Court of Arbitration for Sport and the development of uniform criteria for the worldwide governance of football.

Under the Regulations Regarding the Status and Transfer of Players which had been first promulgated by the Federation International de Football Association (FIFA), the governing body of world football, in 2001,¹ (with revisions coming into force in July 2005)² Webster could unilaterally terminate his contract, subject to the payment of compensation to his former club. Disputes as to the level of compensation would be resolved according to a resolution mechanism contained in the FIFA Regulations. A dispute, at first instance, could be heard by a Dispute Resolution Chamber, with a right of appeal to the Court of Arbitration for Sport (“CAS”). The former handed down its decision in April 2007,³ the latter in January 2008.⁴ In doing so, the CAS made statements concerning the importance of developing uniform criteria for the specificity of sport.

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¹ FIFA Regulations Regarding the Status and Transfer of Players [5 July 2001].

² Federation International de Football Association, Regulations for the Status and Transfer of Players [1 July 2005].

³ Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

⁴ Court of Arbitration for Sport, CAS 2007/A/1298 Wigan Athletic FC v/Heart of Midlothian; CAS 2007/A/ 1299 Heart of Midlothian v/Webster & Wigan Athletic FC; CAS 2007/A/1300 Webster

This article begins with a presentation of the background to and relevant rules and regulations developed by FIFA, governing unilateral termination without just cause and the awarding of compensation following such termination. It then presents the facts of this particular case, the respective submissions of the parties, and examines the respective decisions of the DRC and the CAS. It concludes with some observations on how this case has enhanced the development of uniform criteria across the football world in resolving the various disputes that occur between clubs and players.

The FIFA Regulations

Football (or soccer) traditionally operated a transfer and compensation system which placed restrictions on the ability of players to take up employment with clubs that were prepared to employ them. Under the employment rules promulgated by FIFA, a player who had completed his employment contract with a club could not move to another club until his “new” club paid a compensation fee to his previous club for the “training and development”⁵ which had apparently been invested in him. In 1995, the European Court of Justice, in *Bosman*, found that this compensation rule and limitations on the number of “non-nationals” who could play for clubs were inconsistent with “the freedom of movement of workers” contained in Article 48 (revised Article 39) of the European Communities Treaty.⁶

Following *Bosman* there were a series of negotiations between the European Commission, FIFA, the Union des Associations Europeennes de Football (UEFA), the governing body of European Football (and a member Confederation of FIFA), and the International Federation of Professional Footballers’ Associations,⁷ a confederation of professional player associations/unions over the development of a new set of employment rules for world football. An agreement was eventually reached between the parties in 2001.⁸ A revised

v/Heart of Midlothian, 30 January 2008 (Hereafter The Court of Arbitration for Sport, The Webster Decision, 30 January 2008).

⁵ Article 14.1, Federation International de Football Association, Regulations Governing the Status and Transfer of Players [May 1991].

⁶ Case C-415/93, Union Royale des Societies de Football Association v Bosman, [1995] ECR I-4921. For a critique of the training and development mantra see Braham Dabscheck “The Globe at Their Feet: FIFA’s New Employment Rules – II” 2006 (9) Sport in Society 1-18.

⁷ For details of its operation see the FIFPro website, <http://www.fifpro.org> at 20 June 2008.

⁸ See Principles for the Amendment of FIFA Rules Regarding International Transfers [5 March 2001], and FIFA Regulations Regarding the Status and Transfer of Players [5 July 2001]. Also see Regulations Governing the Application of the Regulations Governing the Status and Transfer of Players [5 July 2001]. For information on the context of and evaluations of the substance of these regulations see Braham Dabscheck “The Globe at Their Feet: FIFA’s New Employment Rules-I” (2004) 7 Sport in Society 69-94; Braham Dabscheck “The Globe at Their Feet: FIFA’s New Employment Rules-II” (2006) 9 Sport in Society 1-18; and Stefan Van den Bogaert, Practical Regulation of the Mobility of Sportsmen in the EU Post Bosman (2005) Kluwer Law International, The Hague.

version of these Regulations was promulgated in December 2004, which came into force in July 2005.⁹

Three major features of FIFA's (July 2005) Regulations are relevant for the following discussion. Compensation payments are to be paid to a player's training club for a player, until the end of the season when he turns 23, who moves to another club "whether the transfer takes place during or at the end of the player's contract".¹⁰ The Regulations contain procedures for determining the amount of compensation for training, depending on where the player and clubs are "located" within the "football family".¹¹

A major issue which dominated initial negotiations of these Regulations was concern about the stability of employment contracts. Club and league officials were worried that players would simply break their contracts and take up employment or, to use a term from the early days of American baseball, "revolve" to other clubs.¹² The Regulations contained various provisions to ensure the maintenance of contractual stability between players and clubs. Article 13, entitled "Respect of Contract", states that:

*"A contract between a Professional and a club may only be terminated on expiry of the term of the contract or by mutual consent."*¹³

Despite this, however, the Regulations countenance contracts being terminated for just cause or for sporting just cause.¹⁴ The former is where either a club or player does not fulfil obligations contained in the contract and, the latter, where a player does not appear in 10 per cent of official matches played during the season.

Article 16 states that

"A contract cannot be unilaterally terminated during the course of a Season."

Article 17 provides details on the consequences of terminating a contract without just cause. They are:

⁹ Federation International de Football Association, Regulations for the Status and Transfer of Players [1 July 2005]. Subsequent amendments were ratified in October 2007, which came into effect on 1 January 2008.

¹⁰ Article 20, Regulations for the Status and Transfer of Players [1 July 2005]. Also see Article 21.

¹¹ Annex 4, Regulations for the Status and Transfer of Players [1 July 2005]. Also see Annex 5.

¹² For example see, James B. Dworkin, *Owners versus Players: Baseball and Collective Bargaining*, Boston, Auburn House Publishing, 1981, pp 41-53.

¹³ Article 13, Regulations for the Status and Transfer of Players [1 July 2005].

¹⁴ Articles 14 and 15, Regulations for the Status and Transfer of Players [1 July 2005].

1. *“In all cases, the party in breach shall pay compensation. Subject to the provisions of Art. 20 and Annex. 4 in relation to Training Compensation, and unless otherwise provided for in contract, compensation for breach shall be calculated for due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the Former Club (amortised over the term of the contract) and whether the contractual breach falls within a Protected Period.*
2. *Entitlement to compensation cannot be assigned to a third party. If a Professional is required to pay compensation, the Professional and his New Club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.*
3. *In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the Protected Period. This sanction shall be a restriction of four months on his eligibility to play in Official Matches. In the case of aggravating circumstances, the restriction shall last six months. In all cases, these sporting sanctions shall take effect from the start of the following season of the New Club. Unilateral breach without just cause or sporting just cause after the Protected Period will not result in sporting sanctions. Disciplinary measures may, however, be imposed outside of the Protected Period for failure to give notice of termination (i.e. within fifteen days following the last match of the season). The Protected Period starts again when, while renewing the contract, the duration of the previous contract is extended.*
4. *In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club to be found in breach of contract or found to be inducing a breach of contract during the Protected Period. It shall be presumed, unless established to the contrary, that any club signing a Professional who has terminated his contract without just cause has induced the Professional to commit the breach. The club shall be bound from registering any new players, either nationally or internationally, for two Registration Periods.*

5. *Any person subject to the FIFA Statutes and FIFA regulations (club officials, players' agents, players etc) who acts in a manner designed to induce a breach of contract between a professional and a club on order to facilitate the transfer of the player shall be sanctioned.*¹⁵

Article 17 makes reference to terms called the Protected Period, a Registration Period and the last match of a Season. With respect to the latter it is important to discern the meaning of "Season" to ensure that notification by a player occurs within the 15 day period when such notification can be lodged. Clause 7 of the Regulations defines the Protected Period as:

*"...a period of three entire Seasons or three years, whichever comes first, following the entry into force of a contract, if such contract was concluded prior to the 28th birthday of the Professional, or to a period of two entire Seasons or two years, whichever comes first, following the force into entry of a contract, if such contract was concluded after the 28th birthday of the Professional."*¹⁶

In other words, a player between that ages of 23 and 28 is enabled to terminate his contract with a club if, during the life of that contract, he has played for the club for three years or three seasons and provides notice of his intention to terminate his contract within 15 days of the completion of the last match of the season. The player is obliged to compensate his former club for such termination, with the extent of such compensation being linked to the contract that the player has terminated.

Under Article 6 of the Regulations, players can be only registered during Registration Periods, or what are colloquially known as "transfer windows". There are two such periods. The first is a "longish" period between seasons of up to 12 weeks; the second, a shorter period which cannot be more than four weeks, mid season.¹⁷

The Regulations define the Season as:

*"...the period starting with the first Official Match of the relevant national league championship and ending with the last Official Match of the relevant national league championship."*¹⁸

There is an inconsistency, however, between the definition of a Season and an Official Match. The latter are defined as:

¹⁵ Article 17, Regulations for the Status and Transfer of Players [1 July 2005].

¹⁶ Clause 7, Definitions, Regulations for the Status and Transfer of Players [1 July 2005].

¹⁷ Article 6, Regulations for the Status and Transfer of Players [1 July 2005].

¹⁸ Clause 9, Definitions, Regulations for the Status and Transfer of Players [1 July 2005].

“...matches played in the framework of Organised Football, such as national league championships, national cups and international championships for clubs, but not including friendly and trial matches.”¹⁹

An Official Match played in a national cup competition or an international championship could occur *after* the completion of a national league championship.

The Regulations have brought into being a Players’ Status Committee and a Dispute Resolution Chamber (“DRC”) to resolve various disputes which may occur between clubs and players.²⁰ The latter is relevant for the discussion here. Disputes may be heard by a single judge of the DRC or by the Chamber. The Regulations specify that “fundamental issues” should be heard by the DRC which “shall consist of equal numbers of club and player representatives” plus an independent person or judge who shall chair proceedings. Decisions of the DRC can be appealed to the Court of Arbitration for Sport (CAS).²¹ In reaching its decision, the DRC is required to:

“...apply these Regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport.”²²

Rules Governing the Procedures of the Players’ Status Committee and the DRC specify that its decisions must be in writing which, amongst various things, must include “the reasons for its findings”.²³ Article 15 of these Rules specifies that:

- 1. “Costs in the maximum amount of CHF 25,000 are levied in connection with proceedings of the Players’ Status Committee. Costs are to be borne in consideration of the parties’ degree of success in the proceedings...”*
- 2. DRC proceedings are free of charge.*
- 3. No procedural compensation shall be awarded in proceedings of the Players’ Status Committee and the DRC.”²⁴*

¹⁹ Clause 5, Definitions, Regulations for the Status and Transfer of Players [1 July 2005].

²⁰ Articles 22 – 25, Regulations for the Status and Transfer of Players [1 July 2005].

²¹ Article 24.2, Regulations for the Status and Transfer of Players [1 July 2005]. Also see Article 60, FIFA Statutes: Regulations Governing the Application of the Statutes, Standing Orders of the Congress, 8 June 2006 and Court of Arbitration for Sport, Statutes of the Bodies Working for the Settlement of Sports-related Disputes, Article 47.

²² Article 25.6, Regulations for the Status and Transfer of Players [1 July 2005].

²³ Article 13.4 (f), Federation International de Football Association, Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber [1 July 2005].

Following the initial introduction of these Regulations in 2001, only a handful of cases found their way to the DRC. There was one case in 2002, four in 2003. Since then however, the DRC has been subject to an increasingly heavy case load. In 2004 it heard 124 cases, 217 in 2005, 251 in 2006 and 198 in 2007; a total of 795 cases between 2002 and 2007.²⁵

Facts of the Case²⁶

Andrew Webster entered into a contract with Hearts on 31 March 2001, slightly before his 19th birthday. He was born on 23 April 1982. It was a four plus year contract which was due to expire on 30 June 2005. His signing occurred slightly before the promulgation of FIFA's 2001 regulations. Hearts paid his former club, Arbroath of the Scottish League, a transfer fee of £75,000. In July 2003, two years prior to the expiry of his original contract, Hearts and Webster entered into a new four year contract. It would terminate on 30 June 2007. While playing for Hearts, he established himself as a leading national and international player. He first gained selection for the Scottish national team in 2003. He went on to represent Scotland 22 times by the age of 24. Prior to his eventual falling out with Hearts, he represented the club in 239 games.²⁷

During the period April 2005 to April 2006, Hearts made several representations to Webster, as they had done previously, to extend his contract for a further two years on improved terms. Given, that at the end of the 2004/2005 season, he would be over 23 and free of the encumbrance of any compensation fee, per FIFA's Regulations, he declined such entreaties and held out for a higher offer. Once his contract expired on 30 June 2007, he would be a free agent and able to take advantage of the competition of various, including presumably "leading", clubs for his services. This is something Hearts sought to avoid.

Following his refusal to sign a new contract, Hearts decided that it would not select him for several games. Webster believed that his non-selection was a tactic designed to pressure him into signing a new contract. A leading personage of Hearts, a Mr Vladimir Romanov, maintained that Webster's commitment to the club was uncertain and, as a result, Hearts had decided to place him on the transfer list. Romanov also made a statement criticising the role of Webster's

²⁴ Article 15, Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber [1 July 2005].

²⁵ Dispute Resolution Chamber, Decisions 2002 to 2007, FIFA website, <http://www.fifa.com/aboutfifa/federation/administration/decision.html> at 20 June 2008.

²⁶ Unless otherwise stated the material in this section is derived from paragraphs 8 to 36 of The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

²⁷ Paragraph 85, Facts of the Case, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007. This case is reported with three numbering sequences. They are "Facts of the Case" (Facts), Paragraphs 1 to 89; "Considerations of the Dispute Resolution Chamber" (Considerations), Paragraphs 1 to 52; and "Decision of the Dispute Resolution Chamber" (Decision), Paragraphs 1 to 11.

parents in this matter; which only served to harden his disquiet concerning continuing his career with Hearts.

Webster turned to the Scottish Professional Footballers' Association for advice. It initially informed him that he could seek to terminate his contract for just cause, per Article 14 of FIFA's Regulations, because of the mutual breakdown in trust that had occurred between him and the club. On 14 May 2006, Webster wrote to Hearts informing it of this course of action. Hearts responded by informing him that it would lodge an appeal with the Scottish Premier League Board.

The Scottish Professional Footballers' Association also advised Webster that he could also terminate his contract without just cause, per Article 17 of the FIFA Regulations; as such termination would occur outside the three year protected period of his employment with Hearts. The advantage of this course of action, is that it would be easier for him to obtain employment with a new club for the 2006/2007 season, over the "just cause" strategy which could involve a lengthy and protracted dispute which would forestall such employment. On 26 May 2006, Webster wrote to Hearts informing it that he was unilaterally terminating his employment, per Article 17 of the FIFA Regulations.

The last match of the national league Season was played on 7 May 2006. The last Official Match – the Cup Final – was played on 13 May 2006. Depending on how the interplay of the Season and Official Matches was interpreted, Webster's letter of 26 May 2006 was either within, or just outside the 15 day notification period specified in Article 17.3 of the Regulations. In subsequent correspondence, Webster informed Hearts that he was withdrawing the "just cause" claim of his letter of 14 May 2006.

On 9 August 2006, Webster signed a three year contract with Wigan Athletic. Neither he nor Wigan paid Hearts any compensation. In November 2006, Hearts filed a claim before the Dispute Resolution Chamber claiming compensation in excess of £5 million from Webster and Wigan Athletic, that Webster be banned from playing in any official matches for two months and Wigan Athletic from signing any new players for one registration period, per Articles 17.3 and 17.4 of the Regulations. In January 2007, Wigan loaned Webster to Glasgow Rangers, until the end of the 2006/2007 season.

Submissions of the Parties

FIFA's Regulations sanction compensation payments for breaching a contract without just cause. Heart of Midlothian wished to extract the maximum amount of compensation following Andrew Webster's unilateral breach of his contract. In addition, Hearts wanted sporting sanctions to be imposed on both Webster and Wigan Athletic. Webster and Wigan wished to minimise the level of

compensation they would have to provide Hearts. Wigan maintained that it should not be obliged to provide any compensation, because its signing of Webster had occurred well after his dispute with Hearts and the subsequent termination of his contract.

Hearts maintained that a correct reading of Article 17.1 would lead to the conclusion that Scottish law should be applied in remedying this breach of contract.²⁸ It submitted that:

“The particular remedies that exist under Scots law for breach of contract are based on the principle of restitutio in integrum which attempts to return the injured party to the position he would have been in had the breach not occurred.”

It maintained that because of Webster’s unilateral termination of his contract, it had lost the opportunity to transfer his “registration to another club and [the] profit consequent thereon...the costs that would be incurred by Hearts had it purchased a replacement player of a similar age, experience and ability...[and] the costs which were wasted in the acquisition [it had paid Arbroath a £75,000 transfer fee], training and development of the Player, and for which it did not receive the expected return of a transfer fee”.

Hearts identified five major components in its compensation claim. They were £4 million for factors identified in the above paragraph; £200,000 for the residual value of the last year remaining of his contract; £717,000 (or £330)²⁹ for the “profit” Webster obtained from breaking his contract – that is, the difference in income between the last year of his old, terminated contract and the first year of his new contract; £80,000 (or £50, 000)³⁰ for costs in prosecuting this case and £70,000 for sporting and commercial losses; a total of £5.037 million (£4.680 million)³¹.

Webster and Wigan Athletic submitted that the level of compensation should be determined according to Swiss law and/or that of the European Community. While they noted that Clause 26 of Webster’s contract stated his contract was subject to the “Articles of the Scottish Football Association and the Rules of the

²⁸ The information here is drawn from Paragraph 63 of The Court of Arbitration for Sport, The Webster Decision, 30 January 2008. It runs to more than five pages.

²⁹ In the hearing before the DRC, Hearts submitted the higher amount -£717,000 – as the extent of Webster’s “profit”. See Paragraph 36, Facts, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007. In the appeal before the CAS, it substituted the lower figure, £330,000. The difference appears to be that the latter is calculated according to base payments contained in the contract and excludes possible bonus payments.

³⁰ The lower figure was for the hearing before the DRC. See Paragraph 35, Facts, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

³¹ The higher figure was claimed before the DRC; the lower amount in the appeal to the Court of Arbitration for Sport.

Scottish Premier League” they were “themselves expressly subject to the statutes and regulations of FIFA”.³² They maintained that:

“Whilst a player may be required to compensate his club for unilateral termination of contract which has occurred, if this termination occurred outside the Protected Period, then the sum of the compensation awarded cannot constitute a restriction upon that player’s right of freedom of movement within the EU, as he has already complied with the stipulated period of contractual stability.”

They claimed that Webster should not be subject to the “arbitrary” transfer fee that Hearts sought to obtain, for “the replacement costs of acquiring a new player and/or the loss of opportunity to receive a transfer fee” as such criteria were not included in Article 17.3.

They added that Hearts would not have been entitled to receive any transfer/compensation fee for Webster if he had played out his contract, per the prohibition on such payments in the Regulations for players over 23, which would have occurred here. They refuted Hearts’ claim that the costs of acquiring Webster had been wasted in that he had been more than an accomplished player with them for five years. Moreover, Hearts’ claim that it was responsible for Webster’s development/improvement was challenged with the refrain that his improvement as a player resulted from “his own abilities, commitment and professionalism”. Webster and Wigan submitted that the residual amount contained in his contract (his guaranteed salary and signing on fees, and not the inclusion of any potential bonuses) should be the “principal factor” in determining the compensation paid to Hearts.

The Dispute Resolution Chamber

The DRC found that Webster had terminated his contract outside the Protected Period and that its task was “to assess the unavoidable consequences of this termination”.³³ It said that his letter of 16 May 2006 to Hearts, where he had unilaterally terminated his contract, had not occurred within the 15 day notification period when the league championship concluded on 7 May 2006; rather than the last Official Match, the Cup Final, of 13 May 2006. It ruled that Webster would be ineligible to play the first two weeks at the beginning of the next season.³⁴

³² The information here is drawn from Paragraph 64 of The Court of Arbitration for Sport, The Webster Decision, 30 January 2008. It exceeds six pages.

³³ Paragraphs 15 and 16, Considerations, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

³⁴ Paragraphs 21 to 26, Considerations, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

The DRC wished to emphasise”

“...the primacy of the principle of the maintenance of contractual stability, which represents the backbone of the agreement between FIFA/UEFA and the European Commission signed in 2001³⁵... [and that] Regulations concerning compensation for breach of contract without just cause serve as a deterrent and a lack of a firm response by the competent deciding authorities would represent an inappropriate example towards all the football actors, especially in view of the particular attention that this case arouses in the world of football.”³⁶

The DRC found that the remaining value, the last year, of Webster’s contract with Hearts was equal to £200,000³⁷ and that Hearts had “greatly contributed to [his] steady improvement” as a player.³⁸ It then said :

“...that limiting the compensation for breach of contract to the residual value of the contract not only is not in line with the jurisprudence of the Dispute Resolution Chamber, but would also undermine the principle of maintenance of contractual stability, reducing to a mere formula the legitimate right of the damaged party to receive compensation.”³⁹

The DRC decided that Webster should pay Hearts £625,000 in compensation⁴⁰ for which Webster and Wigan Athletic were jointly liable, under Article 17.2.⁴¹

Hearts and Webster and Wigan Athletic decided to appeal this decision to the CAS. While the former thought the amount of compensation was too low, the latter too high, the major objection they shared, was that the DRC had not followed the rules governing its procedures which required it to provide “the reasons for its findings”.⁴² They were particularly piqued about the “reasons” for

³⁵ See note 7, above.

³⁶ Paragraphs 28 and 29, Considerations, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

³⁷ Paragraph 41, Considerations, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

³⁸ Paragraph 46, Considerations, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

³⁹ Paragraph 48, Considerations, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

⁴⁰ Paragraph 50, Considerations, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

⁴¹ Paragraph 34, Considerations, Decision of the Dispute Resolution Chamber [Decision 47936], 4 April 2007.

⁴² Article 13.4 (f), Federation International de Football Association, Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber [1 July 2005].

the extra £425,000, which the DRC had added on to the “contractual element” of £200,000.

The Court of Arbitration for Sport

The CAS concurred with the submission of the parties that the DRC had failed in its obligation to provide “reasons for its findings” in awarding a compensation payment of £625,000.⁴³ Between the hearing of the dispute before the DRC and the subsequent appeal to the CAS, the parties revised downward the residual value of Webster’s contract, from £200,000 to £150,000.⁴⁴ This lower amount appears to be based on the level of guaranteed income contained in his contract and the exclusion of potential bonus payments.

The CAS turned its mind to the issue of which legal system should form the basis of its decision making. Hearts, it should be remembered, had submitted it should be Scots law and the principle of *restitutio in integrum*. Webster and Wigan Athletic had maintained it should be Swiss law and/or that of the European Community. The CAS rejected Hearts’ submission. It said:

*“Hearts is relying on general rules and principles of Scottish law on damages for breach of contract, i.e. on provisions of Scottish law that are neither specific to the termination of employment contracts nor to sport or football, while article 17 of the FIFA Status Regulations was adopted precisely with the goal of finding in particular special solutions for the determination of compensation payable by football players and clubs who unilaterally terminate their contracts without cause. In other words, it is important to bear in mind that it is because employment contracts for football players are so atypical, ie require that the particularities of the football labour market and the organization of sport be accounted for, that article 17 was adopted. At the same time, footballers’ contracts remain akin to employment contracts (and are generally characterised as such under national laws), than to some form of commercial contract to which general rules on damage are applicable.”*⁴⁵

It saw no reason to turn its back on the “specific solutions and criteria laid down in article 17”, as the FIFA Statutes:

“...underline the primary application of the Regulations chosen by the parties, [and] that article 17(1) itself refers to the specificity of sport and it is in the interest of football that solutions to

⁴³ Paragraphs 93 to 102, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁴⁴ Paragraph 104, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁴⁵ Paragraph 128, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

compensation be based on uniform criteria rather than on provisions of national law that may vary considerably from country to country."⁴⁶

Finally, it said:

*"In light of the history of article 17, the Panel finds that the specificity of sport is a reference to the goal of finding particular solutions to the football world which enable those applying the provision to strike a reasonable balance between the needs of contractual stability, on the one hand, and the free movement of players, on the other hand, ie to find solutions that foster the good of football by reconciling in a fair manner the various and sometimes contradictory interests of clubs and players."*⁴⁷

The problem still remained, however, of how to interpret Article 17 in determining an "appropriate" level of compensation for Hearts.

As a first step, the CAS noted that Article 17 "applies to the unilateral termination of contracts both by players and clubs... [and] must be interpreted and applied in a manner which avoids favouring clubs over players or vice versa".⁴⁸ It pointed out that the particular needs of clubs for contract stability are protected by the Protected Period of Article 17, in tandem with the three year time frame contained in Clause 7 of the Definitions; and the requirement of Article 16 that contracts cannot be unilaterally terminated during the course of a season.⁴⁹ It added that, subject to contractual obligations:

*"...compensation should not be punitive or lead to enrichment and should be calculated on the basis of the criteria that tend to ensure clubs and players are put on equal footing ... [and] that the criteria applicable in a given type of situation and therefore the method of calculation of the compensation be as predictable as possible".*⁵⁰

Having examined the general thrust of Hearts' submission, it proceeded to examine the various elements of its claim for compensation. It rejected the main claim of £4 million, the rationale of which was based on the lost profit and replacement value of Webster, because such compensation had not been incorporated into his contract and to impose such a payment would "cause the club to be enriched and would be punitive vis a vis the Player".⁵¹ It said that

⁴⁶ Paragraph 129, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁴⁷ Paragraph 132, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁴⁸ Paragraph 136, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁴⁹ Paragraph 137, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁵⁰ Paragraph 138, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁵¹ Paragraph 139, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

“there is no economic, moral or legal justification for a club to be able to claim the market value of a player as lost profit.”⁵² Nor was there any reason,

*“to believe that a player’s value on the market owes more to training by the club than to a player’s own efforts, discipline and natural talent...In any case, it is clear that a club cannot simply assume that it is the only source of success of a player and thus claim his entire value, particularly without bringing any proof (which would be very difficult) of its paramount role in the player’s success in leading to his market value.”*⁵³

Finally, in dismissing Hearts’ submission on this matter, it said:

*“...from an economic and moral point of view, it would be difficult to assume a club could be deemed the source of appreciation in market value of a player while never be deemed responsible for the depreciation of value. Consequently, if the approach relied on by Hearts were followed, players would be entitled to claim for example that they are owed compensation for their alleged decrease in market value caused by such matters as being kept on the bench for too long or having an incompetent trainer, etc. Obviously, such a system would be unworkable and would not serve the good of football.”*⁵⁴

The CAS observed that under Article 20 and Annex 4 of the Regulations, compensation for training players was not based on a player’s market value “but on demonstrable investment made and costs incurred by the club”.⁵⁵ Moreover, given that Webster was over 23 when his termination occurred, there was no scope in Article 17.1 for “market value” compensation.⁵⁶ To accede to Hearts’ submission:

“...because of the potentially high amounts of compensation involved, giving clubs a regulatory right to the market value of players and allowing lost profits to be claimed in such manner would in effect bring the system partially back to the pre-Bosman days when players’ freedom of movement was unduly hindered by transfer fees and their careers and well-being could be seriously effected by them becoming pawns in the hands of their clubs and a vector through which clubs could reap considerable benefits without sharing the profits or taking corresponding risks. In view of the text and history

⁵² Paragraph 141, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁵³ Paragraph 142, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁵⁴ Paragraph 143, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁵⁵ Paragraph 144, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁵⁶ Paragraph 145, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

*of article 17 (1)...allowing any form of compensation that could have such an effect would clearly be anachronistic and legally unsound.*⁵⁷

Hearts' claim, linking compensation to the "profits" Webster obtained from his new contract, was rejected "because rather than focusing on the content of the employment contract which had been breached, it is linked to the Player's future financial situation and is punitive".⁵⁸ The CAS also rejected Hearts' claims concerning alleged sporting and commercial losses because of its failure to establish either the cause of Webster's termination or the existence of the damage; and its costs before the DRC, as the DRC's regulations preclude the payment of such costs and Hearts' lack of success in the current proceedings.⁵⁹

The CAS concluded that the residual value of the contract between Webster and Hearts provided the appropriate criteria for the compensation payable to the club;⁶⁰ an amount of £150,000. This, together with an interest payment of five per cent from when the contract was terminated was awarded to Hearts.⁶¹

The CAS did not consider whether or not Webster's notification to Hearts of the breaking of his contract occurred in the 15 day notification period contained in Article 17.3 – whether or not an Official Match (the Cup Final) played after the completion of the national competition did, or did not, constitute part of a Season. In any case, Article 17.3 states that, "In all cases...sporting sanctions shall take effect from the start of the following season of the New Club". That time was long past.

Consistent with the decision of the DRC, the CAS ruled that Webster and Wigan Athletic were jointly and severally liable for the compensation payable to Hearts.⁶² Finally, it ruled that the costs of the hearing were to be equally shared by the parties, with each party responsible for its own costs.⁶³

Conclusion

In handing down its decision the CAS confirmed that players could utilise provisions contained in FIFA's Regulations for the Status and Transfer of Players which enabled them to unilaterally breach their contract without just cause. Webster had fallen out with Heart of Midlothian over his refusal to enter into a new contract and his associated desire to test the market when his contract

⁵⁷ Paragraph 146, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁵⁸ Paragraph 150, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁵⁹ Paragraph 155, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁶⁰ Paragraph 152, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁶¹ Paragraph 156, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁶² Paragraphs 158 to 163, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁶³ Paragraphs 164 to 166, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

expired. The CAS observed that Hearts was seeking a return to the pre-Bosman era when players were “pawns in the hands of their clubs”.⁶⁴ *Bosman* forced FIFA and UEFA to develop a new system of employment rules which “reconcil[ed] in a fair manner the various and sometimes contradictory interests of clubs and players”.⁶⁵ Webster and fellow players, those playing now and in the future, if not for all time, owe an enormous debt of gratitude to Jean Marc Bosman for challenging FIFA’s employment rules and bringing about changes which enhanced their economic freedom and employment rights.

The CAS’s decision is also of importance for its undermining, if not dismissal, of the traditional claim made by clubs that they, through the training they provide, are responsible for improvements in the skill and “market value” of players. Such improvement, the CAS found, could be due to “the player’s own efforts, discipline and natural talent”.⁶⁶

In an earlier article it was argued that soccer was in the early stages of developing a system of international jurisprudence.⁶⁷ In 2005, the CAS declared:

*“Sport is, by its nature a phenomenon which transcends borders. It is not only desirable, but essential that the rules governing sport on an international level have a uniform and broadly consistent nature throughout the world. To ensure its respect on a world level, such regulations cannot be applied differently from one country to another, particularly because of the interferences between state law and sports regulations. The principal of the universal application of FIFA rules - or any other international federation - meets the requirement of rationality, safety and legal predictability ...The uniformity which results tends to guarantee equality of treatment between all destinees of these standards whatsoever country they are in”.*⁶⁸

The decision of the CAS in this case, in particular, its statement that the resolution of disputes should be “based on uniform criteria rather than on provisions of national law that may vary considerably from country to country”⁶⁹ is consistent with this stance and provides another example of the increasing spread of soccer’s recently created system of international jurisprudence.

⁶⁴ Paragraph 146, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁶⁵ Paragraph 132, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁶⁶ Paragraph 142, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁶⁷ Braham Dabscheck ‘Soccer’s Burgeoning International Jurisprudence’ 2007 (2) *The Australian and New Zealand Sports Law Journal* 79-86.

⁶⁸ CAS Case 2005/A/983 & 984 *Club Atletico Penarol v Carlos Heber Bueno Suarez and Christian Gabriel Rodriguez Barotti & Paris Saint Germain*. This extract is reproduced in Paragraph 64, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.

⁶⁹ Paragraph 129, The Court of Arbitration for Sport, The Webster Decision, 30 January 2008.