

**CAS 2023/A/9371 A.S. Roma v. Sporting Clube de Portugal**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition**

President: Mr Manfred Nan, Attorney-at-Law, Amsterdam, the Netherlands

Arbitrators: Mr Jacopo Tognon, Attorney-at-Law, Padova, Italy

Mr Benoît Pasquier, Attorney-at-Law, Zurich, Switzerland

**in the arbitration between**

**A.S. Roma S.p.A**, Rome, Italy

Represented by Mr Paolo Lombardi and Mr Luca Pastore, Attorneys-at-Law, Lombardi Associates Ltd., Edinburgh, United Kingdom

**- Appellant -**

**and**

**Sporting Clube de Portugal – Futebol, SAD**, Lisbon, Portugal

Represented by Mr José Carlos Oliveira and Mr Amândio Novais, Attorneys-at-Law, Lisbon, Portugal

**- Respondent -**

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## **I. PARTIES**

1. A.S. Roma S.p.A (the “Appellant” or “Roma”) is a football club with its registered office in Rome, Italy. Roma, currently playing in the *Serie A*, which is the highest football league in Italy, is registered with the Italian Football Federation (*Federazione Italiana Giuoco Calcio* – “FIGC”), which in turn is affiliated to the *Fédération Internationale de Football Association* (“FIFA”).
2. Sporting Clube de Portugal – Futebol, SAD (the “Respondent” or “Sporting”) is a football club with its registered office in Lisbon, Portugal. Sporting, currently playing in the *Primeira Liga*, which is the highest football league in Portugal, is registered with the Portuguese Football Federation (*Federação Portuguesa de Futebol*), which in turn is also affiliated to FIFA.
3. Roma and Sporting are hereinafter jointly referred to as the “Parties”.

## **II. INTRODUCTION**

4. These appeal arbitration proceedings concern the payment of training compensation with respect to the transfer from Roma to Sporting of Mr Etienne Marius Catena (the “Player”), a football player of Ivorian and Italian nationality, born on 1 January 2004. The Player is currently playing with the Italian club Delfino Pescara 1936 (“Pescara”), which, in turn, is currently playing in the *Serie C*, which is the third level in Italian professional football.
5. Following a claim filed by Roma, the Dispute Resolution Chamber of the FIFA Football Tribunal (the “DRC”) ruled that Roma is not entitled to training compensation for the first registration of the Player as a professional with Sporting (the “Appealed Decision”).
6. Roma is challenging the Appealed Decision before the Court of Arbitration for Sport (“CAS”), arguing that it is entitled to receive training compensation from Sporting in the amount of EUR 159,865.48, whereas Sporting seeks a confirmation of the Appealed Decision.

## **III. FACTUAL BACKGROUND**

7. Below is a summary of the main relevant facts and allegations based on the Parties’ written and oral submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this arbitral award only to the submissions and evidence it considers necessary to explain its reasoning.

**A. Background Facts**

8. It is undisputed between the Parties that from 26 September 2014 to 9 January 2022, the Player was registered as an amateur with the FIGC for its affiliated club Roma.
9. On 30 June 2021, Roma sent a letter to the Player which provides as follows (free translation into English provided by Roma which was not disputed by Sporting):

***“Call for resumption of competitive activity for the sporting season 2021/2022 – Catena Etienne Marius Yopougon (Ivory Coast) 1-1-2004***

*Dear Etienne,*

*By means of the present letter AS Roma is glad to invite you to attend the training centre “Fulvio Bernardini” in Trigoria on 26 July 2021 at 9am in order to resume the competitive activity in view of the 2021/2022 sporting season.*

*During the sporting season that is about to end, you showed dedication and commitment which led you to achieve important individual and team results.*

*On the basis of the bond of registration existing with our club, which expires on 30 June 2023, we wish to continue working with you, keeping alive the option of offering you a professional contract at a later stage.*

*Best regards*

*AS Roma SPA*

[Three illegible signatures and a stamp of Roma]

*The academy manager”*

10. In June 2021, the Player and Sporting concluded an employment contract.
11. On 10 January 2022, the Player was registered as a professional football player with Sporting.
12. On 1 June 2022, Roma sent a letter to Sporting requesting it to pay training compensation in an amount of EUR 129,947.68 as, “[a]ccording to the information at our disposal, [Sporting] registered the Player on 12 July 2021, i.e. during the calendar year of the Player’s 17<sup>th</sup> birthday”.
13. On 14 June 2022, Sporting rejected Roma’s request, submitting that Roma “failed to satisfy the burden to prove of its genuine and bona fide interest in retaining the Player’s services, notably considering that it was already in a position to offer the Player a professional contract and decided not to do it”.

**B. Proceedings before the Dispute Resolution Chamber of the FIFA Football Tribunal**

14. On 24 August 2022, Roma filed a claim against Sporting before the DRC, requesting payment of training compensation in the amount of EUR 159,865.48, plus 5% interest *per annum* as from 10 January 2022 until the date of effective payment.
15. On 19 September 2022, Sporting requested that Roma’s claim be dismissed.
16. On 9 November 2022, the DRC rendered the Appealed Decision with the following operative part:
  - “1. *The claim of [Roma] is rejected.*
  2. *The final costs of the proceedings in the amount of USD 16,000 are to be paid by [Roma] to FIFA with reference to case no. TMS 11009 (cf. note relating to the payment of the procedural costs below).”* (emphasis omitted by the Panel)
17. On 20 December 2022, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, as follows:
  - *“[Roma] is located in Italy and [Sporting] in Portugal, both countries being members of the European Union (EU), hence art. 6 par. 3 of Annexe 4 RSTP is applicable as lex specialis to the matter at hand and the registration of the [Player] with [Sporting] shall be considered a first registration of a professional player between two clubs based within the EU.*
  - *As per the provisions set out in art. 6 par. 3 of Annexe 4 RTSP, in case of a first registration of a professional, [Roma], in order to retain its entitlement to training compensation, shall provide evidence that it had made a contract offer to the [Player] during the course of his registration with it. [...]*
  - *In very exceptional cases, the DRC has decided that a club that has not offered a contract in the sense of art. 6 par. 3 of Annexe 4 RSTP may retain its entitlement to training compensation by having shown a bona fide interest in keeping the player, a principle that has also been confirmed by CAS.*
  - *In this respect, it is undisputed that [Roma] did not offer a contract to the [Player].*
  - *Nevertheless, [Roma] alleged having shown bona fide interest in retaining the services of the [Player].*
  - *In accordance with art. 13 par. 5 of the Procedural Rules, [Roma] carries the burden of proving that it did show a genuine interest in retaining the [Player’s] services.*
  - *In this respect, [Roma] provided an untranslated letter dated 30 June 2021, sent to the [Player] and signed by the latter. According to [Roma’s] translation of said*

*letter, it informed the [Player] of its ‘wish to continue working with you [the Player], keeping alive the option of offering you a professional contract at a later stage.’*

- *[Roma] further stated that in any case, the [Player] was registered with it for the season as per the FIGC regulations, therefore it had no need to offer the [Player] a contract or show bona fide interest since the [Player’s] registration was ongoing.*
- *[Roma] sent the aforementioned letter to the [Player] on 30 June 2021, whilst the [Player] was still registered with it. Thus, it cannot be considered as a proof of its intention to retain the [Player]. In fact, it appears rather logical for a club to organize the pre-season and the return to training for its registered players.*
- *The letter submitted by [Roma] did not prove that it had intended to offer a contract to the [Player], nor that it had intended to begin contractual negotiations with him and/or his entourage any time soon. In particular, the wording of the letter is quite open and merely appears to foresee the possibility of perhaps, in the future, offering the [Player] a contract. Even though we are dealing with a translation of the original, the expressions “keep alive”, “the option” and “at a later stage” seem to rather confirm that such possibility is not yet discarded, than to reinforce a genuine interest in the [Player’s] services.*
- *What is more, [Roma] could in principle still have offered a contract to the [Player], something that it did not do.*
- *In view of all of the above, [Roma] did not meet its burden of proof in the sense of art. 13 par. 5 of the Procedural Rules.*
- *Therefore, it cannot be established that [Roma] had shown bona fide interest in retaining the player’s services.*
- *As a result, [Roma] did not comply with the requirements of art. 6 par. 3 of Annexe 4 RSTP and/or the requirements developed by the jurisprudence of the DRC and CAS in their application of the provisions set out in the aforesaid article.*
- *Hence, [Roma] is not entitled to receive training compensation for the first registration of the [Player] as a professional with [Sporting].*
- *Consequently, the claim of [Roma] is rejected.”*

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

18. On 10 January 2023, Roma filed a Statement of Appeal with CAS in accordance with Articles R47 and R48 of the 2022 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”), challenging the Appealed Decision. In its Statement of Appeal, Roma nominated Mr Jacopo Tognon, Attorney-at-Law in Padova, Italy, as arbitrator.

19. On 26 January 2023, Sporting nominated Mr Benoît Pasquier, Attorney-at-Law in Zurich, Switzerland, as arbitrator.
20. Also, on 26 January 2023, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the proceedings pursuant to Articles R52.2 and R41.3 CAS Code.
21. On 9 February 2023, Roma filed its Appeal Brief in accordance with Article R51 CAS Code.
22. On 16 March 2023, Sporting filed its Answer in accordance with Article R55 CAS Code.
23. On 20 March 2023 and 24 March 2023 respectively, following an invitation from the CAS Court Office to express their preference in this respect, Sporting indicated that it did not consider it necessary to hold a hearing, whereas Roma requested a hearing to be held. No request was submitted by the Parties to hold a case management conference.
24. On 11 April 2023, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division, pursuant to Article R54 CAS Code, had decided that the Panel appointed to decide the case was constituted as follows:  
  
President: Mr Manfred Nan, Attorney-at-Law in Amsterdam, the Netherlands;  
Arbitrators: Mr Jacopo Tognon, Attorney-at-Law in Padova, Italy;  
Mr Benoît Pasquier, Attorney-at-Law in Zurich, Switzerland.
25. On 13 April 2023, the Parties were advised that, pursuant to Article R57 CAS Code, the Panel had decided to hold a hearing in this matter. Furthermore, Roma was invited to present an English translation of exhibit 5 to the Appeal Brief.
26. On 21 April 2023, Roma provided the CAS Court Office with an English translation of exhibit 5 to its Appeal Brief.
27. On 26 April 2023, the CAS Court Office confirmed that the Panel had decided that a hearing would be held in person on 5 July 2023 at the CAS Court Office in Lausanne, Switzerland.
28. On 27 April 2023 and 3 May 2023 respectively, Sporting and Roma returned duly signed copies of the Order of Procedure to the CAS Court Office that was provided to them on 27 April 2023.
29. On 14 June 2023, Roma informed the CAS Court Office that the announced witness would not appear at the hearing.
30. On 20 June 2023, Sporting reiterated its request to not hold a hearing, or subsidiarily, to hold a hearing remotely so as to minimize the arrangements to be made for a hearing limited to oral pleadings.

31. On 27 June 2023, Roma confirmed its wish to hold an in-person hearing, mainly in light of its desire for its in-house counsel to make a party statement and in order for Roma to be satisfied that its right to be heard would be fully discharged.
32. On 28 June 2023, the CAS Court Office informed the Parties that the Panel had decided to maintain the in-person hearing.
33. On 5 July 2023, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel.
34. In addition to the members of the Panel, and Ms Lia Yokomizo, CAS Counsel, the following persons attended the hearing:
  - a) For the Appellant:
    - 1) Mr Paolo Lombardi, Counsel;
    - 2) Mr Ian Laing WS, Counsel;
    - 3) Mr Daniele Muscarà, in-house Counsel.
  - b) For the Respondent:
    - 1) Mr José Carlos Oliviera, Counsel;
    - 2) Mr Amândio Novais, Counsel.
35. No witnesses or experts were heard besides Mr Muscarà, who provided a party statement on behalf of Roma. Sporting was granted the opportunity to cross-examine Mr Muscarà.
36. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.
37. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.
38. The Panel confirms that it carefully heard and considered in its decision all of 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.

## **V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF**

### **A. The Appellant**

39. Roma's submissions, in essence, may be summarised as follows:
  - On 26 September 2014, the Player was registered with Roma by the FIGC as a '*giovani di serie*', a specific type of registration, which applies to players between the age of 14 and 19 pursuant to the FIGC's regulations, the '*Norme*

*organizzative interne* (“NOIF”). This bond governed the relationship between Roma and the Player and created specific rights and obligations for them both at domestic level.

- Until its abrupt end in 2021, this relationship was renewed annually until 30 June 2018 when the Player was 14, at which point he signed the five-season long registration as ‘*giovani di serie*’, which was in force until 30 June 2023.
- The Appealed Decision fails to understand the nature of the *giovani di serie* bond between the Player and Roma, and erroneously concluded that Roma did not have a *bona fide* interest in the Player, as Roma demonstrated its desire to continue its relationship with the Player, confirming such desire in the letter delivered to the Player on 30 June 2021 in advance of the 2021/2022 football season. In sending such letter, Roma more than complied with its obligations under the NOIF and demonstrated, also for the purposes of the jurisprudence of FIFA and CAS, a genuine intention to continue and explore the possibility of prolonging beyond the term of the *giovani di serie* bond, its relationship with the Player. This letter demonstrates that on the balance of probabilities the Player would have been offered a professional contract prior to the end date of the *giovani di serie* bond.
- Pursuant to the *giovani di serie* agreement, which was in force until 30 June 2023, Roma was not required to offer an employment contract to the Player. In fact, Roma was deprived of the possibility to offer the Player a professional contract prior to 30 June 2023.
- The Player, after signing a professional contract with a club outside of Italy, has subsequently, less than twelve months after leaving Roma, joined another Italian club, Delfino Pescara 1936 (“Pescara”), something that could not have happened directly as a result of the *giovani di serie*, undoubtedly openly flouts and undermines the training reward system.
- The *giovani di serie* agreement between Roma and the Player is a common agreement entered into with players by clubs in Italy. It is unconscionable that non-Italian clubs are permitted to exploit a loophole whereby they can remove players on the cusp of signing their first professional contracts from Italian clubs without the need to pay any compensation. Roma’s interests have been circumvented due to an international club taking advantage of a registration approved by the FIGC and used widely throughout Italy. The subsequent transfer of the Player from Sporting to another Italian club indicates that Sporting indeed exploited a loophole in the Italian registration system and therefore stands to benefit at the expense of Roma, despite investing significantly fewer resources and less time into the training and education of the Player than Roma.
- No Italian football club could seek to register the Player without the agreement of Roma. The *giovani di serie* registration prevents this. Roma has not only been deprived of the opportunity to offer a professional contract to the Player, but Roma has also been deprived of the services of the Player entirely and of the entitlement



to benefit from the training and education provided to the Player over a seven-and-a-half-year period.

- The present case will, if the Appealed decision is not overturned, set an unfortunate precedent and drastically undermine the entire *giovani di serie* registration system in operation in Italy, which cannot be what FIFA foresaw when implementing a training reward system. Therefore, Roma should be entitled to receive the training reward which is the *praemium pecuniarium*.

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

“1. *In light of the above, [Roma] respectfully requests the Panel to issue an Award:*

- a) *CONFIRMING that the FIFA Decision erred when it deemed that [Roma] did not have a bona fide interest in retaining the Player’s services;*
- b) *CONFIRMING that the Respondent is obliged to pay training compensation to [Roma] according to the FIFA regulations and the applicable jurisprudence;*
- c) *ORDERING [Sporting] to pay outstanding training compensation to [Roma] in the amount of EUR 159,865.48 (one hundred and fifty-nine thousand, eight hundred and sixty-five euros and forty-eight cents), or in a different amount deemed appropriate by the Panel;*
- d) *ORDERING [Sporting] to pay interest of 5% p.a. on the outstanding amount as from the Player’s registration with the Portuguese Football Federation, until the date of full payment;*

*In any event:*

- 2. *to order [Sporting] to bear any and all procedural and legal costs related to these proceedings.” (emphasis omitted by the Panel)*

## **B. The Respondent**

41. Sporting’s Answer, in essence, may be summarised as follows:

- Roma’s alleged entitlement to training compensation and the Player’s status can only be assessed in light of the applicable FIFA Regulations on the Status and Transfer of Players (“RSTP”). These rules specifically apply to transfers within the European Union/European Economic Area and were drawn up after exhaustive discussions held between FIFA/UEFA and the European Commission to find solutions that would not excessively hinder the freedom of movement of

players and to strike a balance between the freedom of movement of workers and the protection and incentive of club's investment in training of young players.

- Pursuant to Article 6(3) of Annex 4 RSTP, Roma is not entitled to training compensation, as it has not offered an employment contract to the Player, nor demonstrated its genuine and *bona fide* interest in retaining the services of the Player.
- Roma's burden to prove its genuine interest in retaining the Player's services cannot be satisfied by a standard notice sent to the Player, which letter merely served to summon the Player to the beginning of the season 2021/2022. No evidence has been provided that Roma has ever taken a proactive stance *vis-à-vis* the Player to demonstrate its will to maintain him at the club, let alone offered (or even discussed or negotiated) any employment contract with the Player. In this regard, Sporting refers to specific CAS case law.
- The Italian internal regulations are not applicable nor relevant.
- The qualification of the Player as *giovani di serie* originates from the signing of 'an application for registration' required for underaged players to be fielded and play for a club competing in one of the Italian professional leagues.
- Pursuant to Article 33.3 NOIF, Roma was apparently already in a position to enter into a professional contract with the Player since he had turned 16, *i.e.* at least since January 2020, two years before the Player was registered with Sporting.
- According to the FIFA Commentary on the RSTP (edition 2021) (the "RSTP Commentary"), the registration of the Player as *giovani di serie*, will not be recognised in any international transfer dispute brought before FIFA or CAS.
- Roma failed to discharge its burden of proof to show that it is entitled to training compensation. Therefore, the Appealed Decision should be upheld as it is consistent with both the ratio of the relevant rules and unambiguous CAS jurisprudence.

42. On this basis, Sporting submits the following prayers for relief in its Answer:

“[Sporting] *respectfully requests the Panel to issue an award:*

(a) *upholding the [Appealed Decision];*

(b) *sentencing [Roma] to pay the costs of the arbitration;*

(c) *sentencing [Roma] to pay [Sporting's] legal fees and other expenses incurred in connection with the proceedings.”*

## **VI. JURISDICTION**

43. Article R47 CAS Code provides the following:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.”*

44. 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 CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

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

## **VII. ADMISSIBILITY**

46. The grounds of the Appealed Decision were communicated to the Parties on 20 December 2022. Roma filed its Statement of Appeal with CAS on 10 January 2023, *i.e.*, within the time limit of 21 days set by Article 57(1) FIFA Statutes. The Statement of Appeal further complied with the other conditions set forth in Article R48 CAS Code, including the payment of the CAS Court Office fee.

47. The admissibility of the appeal is not disputed by Sporting.

48. It follows that the appeal is admissible.

## **VIII. APPLICABLE LAW**

49. Article R58 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.”*

50. Roma maintains that pursuant to Article R58 CAS Code and Article 26(2) RSTP (August 2021 edition), the matter is governed by the RSTP (June 2022 edition), and subsidiarily by Swiss law. In its submissions, Roma also relies on the applicability of the NOIF.

51. Sporting maintains that pursuant to Article R58 CAS Code and Article 26(2) RSTP, the matter is governed by the RSTP (August 2021 edition), and subsidiarily by Swiss law.
52. Article 56(2) FIFA Statutes 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.”*
53. The Panel finds that, pursuant to Articles R58 CAS Code and 56(2) FIFA Statutes, the regulations of FIFA are primarily applicable, in particular the RSTP. Additionally, should the need arise to fill a possible gap in the various rules of FIFA, Swiss law is applicable.
54. As to the applicable version of the RSTP, the Panel observes that Roma’s claim was filed with the DRC on 24 August 2022, at which point in time the RSTP (July 2022) was in force.
55. Article 26(1) and (2) RSTP (July 2022 edition) provides as follows:
- “1. Any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations.*
- [...]
- 2. As a general rule, other cases shall be assessed according to these regulations with the exception of the following:*
- a) disputes regarding training compensation; [...].*
- Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose.”*
56. With reference to CAS jurisprudence (CAS 2014/A/3652 and CAS 2016/A/4418), the RSTP Commentary provides as follows in this respect:
- “According to this exception [i.e. Article 26(2)(a) RSTP], disputes regarding training compensation and the solidary mechanism are assessed according to the version of the Regulations in force when the disputed facts arose (i.e. at the time the player was registered with their new club, which triggers the payment of the relevant training reward), irrespective of the edition of the Regulations in force when the matter is actually brought to FIFA.”*
57. Since the Player was registered with Sporting on 10 January 2022, at which point in time the RSTP (August 2021 edition) was in force, the Panel finds that the present dispute is to be decided on the basis of the RSTP (August 2021 edition).

58. With respect to Roma's reliance on the NOIF, the Panel finds that in view of the fact that the present arbitration concerns the concept of training compensation as set forth in the RSTP, there is in principle no scope for the application of the NOIF. However, with respect to specific arguments raised by Roma and Sporting on the basis of the NOIF, the Panel will address the relevance and applicability thereof in more detail below.

## **IX. MERITS**

### **A. The Main Issues**

59. The main issues to be resolved by the Panel are the following:

- i. Is Roma entitled to training compensation for the Player?
- ii. If so, what amount of training compensation must Sporting pay to Roma?

*i. Is Roma entitled to training compensation for the Player?*

**a) The applicable regulatory framework**

60. The Panel notes that the concept of training compensation is governed by Article 20 RSTP, which summarises the main principles of the system, and Annex 4 RSTP, in which the technical details are set out.

61. Article 20 RSTP provides as follows:

*“Training compensation shall be paid to a player's training club(s): (1) when a player is registered for the first time as a professional, and (2) each time a professional is transferred until the end of the calendar year of his 23<sup>rd</sup> birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations. The principles of training compensation shall not apply to women's football.”*

62. Article 2(1) of Annex 4 RSTP provides as follows:

*“Training compensation is due when:*

- a. a player is registered for the first time as a professional; or*
- b. a professional is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the calendar year of his 23<sup>rd</sup> birthday.”*

63. The Parties agree that the Player was registered for the first time as a professional with Sporting and that this was before the end of the calendar year of the Player's 23<sup>rd</sup> birthday, in principle entitling Roma to receive training compensation from Sporting.

64. However, since the Player transferred from Roma to Sporting, Article 6(3) of Annex 4 RSTP (“*Special Provisions for the EU/EEA*”) is applicable as a *lex specialis*, which provision provides as follows:

*“If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract, subject to the temporary exception below. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player’s previous club(s).*

- i. *The contract offer may be made by electronic mail, provided that the former club obtains confirmation from the player that he has received a copy of said offer and can provide such confirmation in case of any dispute.”*

65. Roma also relies on the NOIF, which provides as follows in Article 33 (in a translation provided by Roma that remained undisputed):

*“1. Young players from the age of 14 take on the qualification of ‘giovani di serie’ when they sign an application for registration with a club competing in one of the professional Leagues and such application is accepted.*

2. *Players with the qualification of ‘giovani di serie’ are bound to a club, which is therefore allowed to train and coach them with the aim of fielding them in the competition that the club is competing in, until the end of the football season which begins in the year in which the player reaches 19 years of age. During the last football season of such registration, the player qualified as ‘giovane di serie’ is entitled, within the term established each year by the Federal Council, to receive an indemnity determined each year by the League in which the relevant club competes, being the player subject to a relationship of technical training and without this entailing the acquisition of the status of ‘professional’. The club for which the ‘giovani di serie’ is registered has the right to stipulate the player’s first professional contract with a maximum duration of three years. Such right can be exercised exclusively during the last month of registration as ‘giovani di serie’, following the procedures established each year by the Federal Council.”*

**b) The Player’s registration with Roma**

66. Roma maintains, *inter alia*, that it was not required to offer an employment contract to the Player, as the Player was bound to it until the end of the 2022/2023 season. Specifically, Roma argues that “[u]ntil its abrupt end in 2021, this relationship was renewed annually until 30 June 2018 when the Player was 14, at which point he signed

*the five-season long registration as giovani di serie, which was in force until 30 June 2023”.*

67. The Panel notes that there is no evidence on file suggesting that the Player signed any agreement, registration or other document, whereby he committed himself to being registered with Roma for five seasons until 30 June 2023. Although there is also no direct evidence on file establishing that the FIGC registered the Player as a *giovani di serie*, the Panel notes that it remained uncontested between the Parties that the Player was indeed registered as a *giovani di serie*. Accordingly, for the purposes of the present appeal arbitration proceedings, the Panel is prepared to proceed on the basis of such premise.
68. The Panel notes that there is also no evidence on file suggesting that Roma finds that the Player breached any obligations towards it by registering for Sporting. There is also no indication that Roma objected to the release of the Player’s International Transfer Certificate by the FIGC on 10 January 2022.
69. The Panel further notes that the Player’s transfer from Roma to Sporting was a transfer of an international nature within the European Union. Accordingly, while Roma may have been subject to the NOIF or any other rules issued by the FIGC, Sporting was not. Whereas the NOIF may have a certain impact at national level, preventing domestic rival clubs from registering the Player, the concept of *giovani di serie* is not recognised at an international level.
70. In this respect, the Panel notes that the RSTP Commentary provides as follows with respect to domestic concepts related to different forms of registration of players in the context of Article 2 RSTP:

*“The Regulations recognise just two categories of players: amateurs and professionals. It is important to recall that article 2 is binding at national level, which means member associations cannot modify these categories or create new ones that differ from those established by the Regulations. Nevertheless, other status categories are regularly encountered at national level. Examples include: the so-called ‘scholar’ status in England and the similar categories of ‘aspirant’ or ‘stagiaire’ in France, ‘giovani di serie’ in Italy, or ‘Vertragsamateure’ in Germany. However, none of these hybrid statuses will be recognised in any dispute brought before FIFA or the Court of Arbitration for Sport (CAS). As CAS has confirmed, there is no provision for additional categories in the Regulations: all players are either professionals or amateurs.”*  
(RSTP Commentary, p. 20-21)

71. The Panel’s finding that the status of the Player is solely to be analysed based on the relevant FIFA rules is supported by CAS jurisprudence:

*“There is no room for the application in such a case of different national rules. Pursuant to articles 1 §3, litt. a) and 26 §3 of the RSTP, a national federation is obliged to literally transpose article 2 of the RSTP. The mere fact that a national*

*federation registers a player in a way inconsistent with the requirements of the RSTP (e.g. because a club did not inform the national federation that it concluded an employment contract with a player) should not affect the decision as to the true status of the Player and should not remove the Player from the scope of the FIFA regulations and the criteria established in article 2 of the RSTP (CAS 2007/A/1370 & 1376, CAS 2008/A/1781, §8.25). As a result, the RSTP, and in particular its article 2, override possible conflicting national rules.” (CAS 2012/A/2711, 2712 & 2713 para. 47 of the abstract as published on the CAS website)*

72. Consequently, the Panel finds that the *giovani di serie* status of the Player is of no particular relevance in this matter. Since it is undisputed that the Player did not have a professional employment contract with Roma, he is considered to have been an amateur player during his indefinite registration with Roma.

**c) Was Roma required to offer the Player an employment contract to be entitled to training compensation?**

73. Pursuant to Article 6(3) of Annex 4 RSTP, a “former club” is in principle entitled to training compensation if (i) it offers the relevant player an employment contract; or (ii) it can otherwise justify that it is entitled to such compensation.
74. As to the purpose and scope of Article 6(3) of Annex 4 RSTP, the RSTP Commentary provides as follows:

*“Paragraph 3 ensures that any potential hindrance to the free movement of players between clubs affiliated to different member associations inside the territory of the EU/EEA should be reduced, not only using specific calculation methods, but also via mechanisms to ensure that only clubs genuinely interested in a player’s services retain their entitlement to training compensation.*

*i) The general rule: contract offer*

*To achieve this aim, if a player’s former club fails to offer the player a contract, no training compensation is payable. The intention is clear: either a club shows genuine interest in the player’s services by offering them a contract, or the club loses its entitlement to training compensation.*

*[...]*

*iv) Proving genuine interest in a player’s services in the absence of a contract offer*

*It might be that a training club is not (yet) in a position to offer a contract to a player prior to his being transferred, for example if applicable national legislation does not permit players to sign a professional contract prior to a*



*certain age, or if the club is a purely amateur club, or if a club is prohibited by sporting regulations from placing its players under contract. To address circumstances of this kind, the Regulations stipulate that a club that fails to offer a player a contract can submit other evidence to demonstrate that it had a genuine interest in the player's services and is therefore entitled to training compensation.*

*While the DRC has repeatedly protected the rights of clubs that cannot offer players contracts due to mandatory national regulations or legislation, recent jurisprudence indicates that such clubs must still show they have taken a proactive stance to justify these rights. Specifically, the fact that a club is prohibited from offering the player a contract because of applicable national legislation does not exempt it from its obligation to justify its entitlement to training compensation. In the absence of any offer, the club must demonstrate that it had a 'genuine and bona fide interest in retaining the services of the player' in order to be entitled to training compensation. Even beyond the circumstances described above, the need for a training club to demonstrate a 'genuine and bona fide interest in retaining the services of the player' is the decisive element in determining its entitlement to training compensation where there is no contract offer [to] consider.*

*In a case from 2006, when asked to analyse what might be considered as a justification for an entitlement to training compensation despite the absence of a contract offer, the CAS concluded that the training club had to show 'a bona fide and genuine interest in retaining him for the future.' In this specific case, the training club was assumed to have shown this interest, since it was able to provide evidence of regular meetings with the player concerning plans for his future career. It submitted a number of different development plans, which showed the club had been following a clear strategy it hoped would culminate in the player being offered, and signing, a professional contract with them. Consequently, the player's new club was told to pay training compensation to the training club despite the absence of a contract offer. In a 2017 case, where the club had not offered the player an actual contract, the Panel deemed that the club's genuine and bona fide interest in the player had been demonstrated by prolonged negotiations with the player's agent.*

*On the other hand, a contract offer made solely for the purpose of collecting training compensation, and which is not founded on a genuine interest in retaining the player's services, will not protect the right to training compensation. This was set out in a 2014 case in which the training club provided no evidence whatsoever to support its entitlement. It should be highlighted that the burden to prove the genuine and bona fide interest lies with the training club claiming an entitlement to training compensation." (RSTP Commentary, p. 314-317)*

75. While not binding, the Panel considers the RSTP Commentary an authoritative source for interpreting the RSTP. The Panel infers from the above that offering an employment contract is in principle a clear indication of a club's interest in retaining the services of a football player. However, even if no employment contract is offered, a "former club" may still be entitled to training compensation if it can establish that it had a genuine and *bona fide* interest in retaining the services of the player. This alternative is particularly relevant in case a "former club" was for some reason barred from offering an employment contract to the player. In case there was no impairment to offer a player an employment contract, but no employment contract was offered, the Panel infers that a restrictive approach is to be applied.

76. The Panel finds that such restrictive approach is supported by the RSTP Commentary as to the purpose and scope of Article 6 of Annex 4 RSTP:

*"These provisions are designed to reflect specific circumstances pertaining to certain aspects of EU law, most notably the principle of freedom of movement for workers. They apply exclusively to players moving between member associations within the territory of the EU/EEA. The player's nationality is irrelevant. The relevant jurisprudence shows that a strict approach is taken. (RSTP Commentary, p. 313)*

77. In continuation, the Panel adheres to the following considerations of another CAS panel:

*"The purpose of article 6 para. 3 of Annexe 4 to the FIFA RSTP has been described in the decision CAS 2006/A/1152, para 22 et seq as follows:*

*'(...) the purpose of the above provision is to ensure that no player, whether amateur or professional, in whom the club has no interest is impeded to accept the offer of another club because he carries some sort of 'compensation price tag'.'*

*'Indeed, in case a club is not interested any more in the services of one of its (...) players and decides to write off the investment made for its training, the player should be free to move to another club with no strings attached. In other terms, the application of an automatic compensation price tag to all amateur players should be deemed unreasonable.'*

*This Panel adheres to the above finding. Furthermore, this Panel finds that it follows from the above that both alternatives serve a common purpose, i.e. to make the payment of training compensation subject to the condition that the club wanted to retain the services of the player. Only if the club sincerely and honestly pursued this goal shall the free movement of the player be impeded by an automatic price tag calculated as a lump sum. It is in light of this common purpose that both alternatives must be interpreted and that CAS established its jurisprudence in relation to the second alternative, whereby the club must demonstrate (absent any offer) that it had a 'genuine and bona fide interest in*

*retaining the services of the player’ in order to be entitled to a training compensation (see, inter alia, CAS 2012/A/2890 at para. 69 and CAS 2006/A/1152 at para. 23).*

*Thus, the Panel finds that no formalistic approach is warranted, but that both alternatives must be read and construed in light of the very purpose of the provision, i.e. that (in both alternatives) there must be evidence (be it through an offer or some other means) of a ‘genuine and bona fide interest in retaining the services of the player’. The Panel refers in this respect to the decision CAS 2014/A/3497, para. 65, where the panel stated that the aims of sporting justice should not be defeated by an overly formalistic interpretation of the FIFA RSTP, which would deviate from their original purpose:*

*‘The Panel also took into account the case CAS 2009/A/1757 to which the Parties were referred in the course of the hearing. It bears in mind that the aims of sporting justice should not be defeated by an overly formalistic interpretation of the FIFA Regulations which would deviate from their original purpose, appreciating that the standards in formal requirements are higher in the case of professionals than amateurs. However, it notes that section 6.3 of Annex 4 of the 2005 Regulations does impose an onus of proof on the former club (in this case the Appellant). This reflects the need to balance the interests of the club involved in being compensated for its effort and expenditure on training a young player on the one hand and the interests of the young player in being able to advance his career on the other hand.’” (CAS 2016/A/4720, paras. 64-66 of the abstract published on the CAS website)*

78. In the matter at hand, it is not in dispute that Roma did not offer an employment contract to the Player. It is however in dispute whether Roma was barred from doing so or not. In this respect, domestic law and regulations such as the NOIF may be relevant, as they could theoretically prevent a club from offering an employment contract to young football players.

**d) Was Roma barred from offering an employment contract to the Player?**

79. Roma argues that, pursuant to Article 33(1) and (2) NOIF, it could not offer the Player an employment contract, and in any event was also not required to offer an employment contract to the Player because of the *giovani di serie* bond between Roma and the Player in force until 30 June 2023. As such, despite the amateur status held by the Player, he was nevertheless bound to Roma and, consequently Roma to him until 30 June 2023.
80. Sporting submits that Roma’s claim can only be assessed in light of the applicable regulations, which are the RSTP, and that Italian regulations must be disregarded, referring to the RSTP Commentary in which it is explicitly mentioned that the status of *giovani di serie* will not be recognised in any dispute before FIFA or CAS. In addition, Sporting maintains that Article 33(3) NOIF provides explicitly that Roma could have

offered the Player an employment contract since he had turned 16, *i.e.* at least since January 2020, two years before the Player became registered with Sporting, but chose not to offer one to the Player. In this regard, Sporting argues that Roma actually offered employment contracts to players aged 17 years old, referring to a news article of February 2021.

81. While it was initially disputed by Roma, Roma explicitly acknowledged during the hearing that Article 33(3) NOIF expressly provides for the opportunity of an Italian club to offer a player (with the qualification *giovani di serie*) an employment contract as follows (in a free translation provided by Sporting and not contested by Roma):

*“Players with the qualification of ‘giovani di serie’, at the age of 16 and provided that they are not registered on a temporary basis, can enter into a professional contract.”*

82. The possibility of offering employment contracts to players of 16 or older is further corroborated by Sporting’s reliance on a news article dated 23 February 2021 suggesting that Roma in the past offered an employment contract to a football player aged 17, which allegation remained uncontested by Roma. The Panel also has no reason to question the accuracy of the news article relied upon by Sporting, which is not disputed by Roma, and considers this to be a confirmation that Roma was not prevented by the NOIF to offer an employment contract to the Player.
83. Furthermore, as indicated *supra*, the Panel finds that the concept of *giovani di serie* may well have prevented domestic rival teams from registering the Player, but the *giovani di serie* bond did not prevent Sporting or the Player from entering into an employment contract. Indeed, Roma does not argue that the Player breached any obligations towards it by registering for Sporting. The Panel finds that the only question is whether Roma is entitled to receive training compensation, which depends primarily on whether or not Roma offered an employment contract to the Player. The Panel notes that Roma did not.
84. In view of the above, the Panel finds that Roma was not barred from offering an employment contract to the Player.

**e) Did Roma establish a genuine and *bona fide* interests in retaining the services of the Player?**

85. Roma submits that, even though it did not offer an employment contract to the Player, it nonetheless had a *bona fide* interest in retaining the services of the Player after training and educating him for over a seven-and-a-half-year period. To support this stance, Roma refers to its letter sent to the Player on 30 June 2021, in which Roma expressed its intention for the Player to remain registered with it for the upcoming football season and to preserve Roma’s ability to register the Player as a professional player.
86. Roma maintains that this letter, especially considered with all other relevant facts and circumstances, is sufficient to demonstrate that Roma had a genuine *bona fide* interest

in the Player and that, on a balance of probabilities, the Player would have been offered a professional contract prior to the end date of the *giovani di serie* bond.

87. Sporting submits that Roma’s burden to demonstrate its genuine interest in retaining the Player’s services cannot be satisfied by only sending a standard notice to the Player, which merely served to summon the Player to the beginning of season 2021/2022. No other evidence was offered by Roma, and therefore it failed to prove that it has ever taken a proactive stance *vis-à-vis* the Player (and/or his representatives) to demonstrate its desire to maintain him at the club, let alone to offer or discuss the possibility of concluding an employment contract.
88. The Panel observes that Roma’s letter dated 30 June 2021 to the Player provides as follows (in a free translation provided by Roma, not disputed by Sporting):

***“Call for resumption of competitive activity for the sporting season 2021/2022  
– Catena Etienne Marius Yopougon (Ivory Coast) 1-1-2004***

*Dear Etienne,*

*By means of the present letter AS Roma is glad to invite you to attend the training centre “Fulvio Bernardini” in Trigoria on 26 July 2021 at 9am in order to resume the competitive activity in view of the 2021/2022 sporting season.*

*During the sporting season that is about to end, you showed dedication and commitment which led you to achieve important individual and team results.*

*On the basis of the bond of registration existing with our club, which expires on 30 June 2023, we wish to continue working with you, keeping alive the option of offering you a professional contract at a later stage.*

*Best regards*

*AS Roma SPA*

[Three illegible signatures and a stamp of Roma]

*The academy manager”*

89. The Panel notes that the subject matter of this letter involves the start of the training to resume the 2021/2022 football season, and the letter merely serves as an invitation to the Player to attend this first training. In addition, the letter also confirms that Roma, on the basis of the *giovani di serie* bond valid until 30 June 2023, wishes to continue working with the Player, “*keeping alive the option of offering [...] a professional contract at a later stage*”.

90. The Panel observes that Roma has not referred to nor has provided any evidence whatsoever regarding any negotiations or written or oral communications with the Player and/or his representatives and/or his family to discuss the option of offering a professional contract to the Player in the near future. The only communication from Roma to the Player is the 30 June 2021 letter. Also, the Panel notes that Roma did not submit any evidence related to any development plans or evaluation reports which could have established Roma's continued reliance on the services of the Player. In the same context, Roma was not able to provide evidence of regular meetings with the Player concerning plans for his future career, which would have shown the club had been following a clear strategy it hoped would culminate in the Player being offered, and signing, a professional contract with them.
91. The Panel finds that to only inform the Player, via the letter dated 30 June 2021, of its wish to continue working with him, "*keeping alive the option of offering [...] a professional contract at a later stage*" is without a doubt insufficient to claim training compensation in accordance with Article 6 of Annex 4 RSTP.
92. The Panel feels comforted by CAS jurisprudence. In CAS 2006/A/1152, contrary to Roma in the matter at hand, the "former club" submitted evidence that it already started negotiations with the player for a professional contract, which entitled it to training compensation albeit not offering a contract to the player; in CAS 2014/A/3479, the panel considered that the burden of proof required cannot be met by merely showing that the club treated the player, generally speaking, just as it would with any other young amateur player in its club, which is comparable with Roma inviting the Player to the first training and keeping the option open to offer a contract at a later stage; in CAS 2018/A/5733, the panel emphasized that a club has to demonstrate that it adopted a proactive attitude *vis-à-vis* the player so as to clearly show a *bona fide* and genuine interest in retaining him for the future, which Roma failed to do in the present matter.
93. Therefore, the Panel finds that Roma has not justified that it is entitled to training compensation.

**f) Is there another reason why Sporting should be required to pay training compensation to Roma?**

94. Finally, the Panel also finds that Roma's arguments that the Appealed Decision is to be set aside because (i) Roma's interests have been circumvented due to an international club taking advantage of a registration approved by the FIGC, and because (ii) the subsequent transfer of the Player to an Italian club indicates that Sporting has exploited a loophole in the Italian registration system, are to be dismissed.
95. The Panel finds that training compensation may potentially have been awarded to Roma in case it would have established that a so-called bridge transfer had been set up, whereby the ultimate goal was the circumvention of the NOIF by registering the Player with Pescara. However, the Panel finds that such claim would have to be directed against Pescara, which is not a party to the present proceedings. In any event, the Panel finds that,

based on the evidence at hand, no “bridge transfer” has been established to have taken place or that Sporting abused any right or acted in bad faith.

96. Any arguments raised by Roma suggesting that denying training compensation would be counterintuitive or undermine the training reward system are to be dismissed. Indeed, under the current regulatory framework set forth in the RSTP, the conditions set for receiving training compensation are simply not satisfied.
97. Consequently, the Panel finds that there is no other reason why Sporting should be required to pay training compensation to Roma.

**B. Conclusion**

98. Based on the foregoing, the Panel finds that:
- i. Roma is not entitled to receive training compensation from Sporting.
  - ii. Roma’s appeal is dismissed, and the Appealed Decision is confirmed.
99. 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 10 January 2023 by A.S. Roma S.p.A against the decision issued on 9 November 2022 by the Dispute Resolution Chamber of the FIFA Football Tribunal is dismissed.
2. The decision issued on 9 November 2022 by the Dispute Resolution Chamber of the FIFA Football Tribunal is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 27 October 2023

## **THE COURT OF ARBITRATION FOR SPORT**

Manfred Nan  
President of the Panel

Jacopo Tognon  
Arbitrator

Benoît Pasquier  
Arbitrator