

CAS 2014/A/3518 Zamalek Sporting Club v. Accra Hearts of Oak Sporting Club

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Hans Nater, Attorney-at-law, Zurich, Switzerland

in the arbitration between

Zamalek Sporting Club

Represented by Mr. Juan de Dios Crespo Pérez, Attorney-at-law, Valencia, Spain

as Appellant

and

Accra Hearts of Oak Sporting Club

Represented by Mr Raphael Queiroz Botelho, Attorney-at-law, São Paulo, Brazil

as Respondent

I. PARTIES

1. The Zamalek Sporting Club (hereinafter: the "Appellant" or "Zamalek") is a Football Club domiciled at Mitokba-Giza and registered with the Football Association of Egypt, which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: the "FIFA").
2. The Accra Hearts of Oak Sporting Club (hereinafter: the "Respondent" or "Accra") is a Football Club domiciled in Accra, Ghana, and registered with the Football Association of Ghana, which in turn is affiliated to the FIFA.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the written and oral submissions of the parties and the evidence examined in the course of the proceedings and during the hearing. It is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 20 August 2006, Karimu Al Hassan (hereinafter: "Player"), a football player of Ghanaian nationality, born on 30 April 1991, was registered as an amateur football player with Nikwab Professionals, a Ghanaian club participating in the Second Division of Ghana.
5. On 2 December 2007, the Player was registered as an amateur football player with the Soccer Learners, a Ghanaian club participating in the first division of Ghana.
6. On 4 November 2008, the Player was registered as a non-amateur football player with Accra, a Ghanaian club participating in the first division of Ghana. The Player was registered with Accra until 4 August 2011.
7. On 14 August 2011, the Player entered into a "contract of professional football player" with Zamalek for 5 seasons, i.e. the season 2011/2012 until the season 2015/2016.
8. On 17 August 2011, the Player was registered as a professional football Player with Zamalek.

B. Proceedings before the Dispute Resolution Chamber of the FIFA

9. On 19 October 2011, Accra filed a claim with FIFA, claiming payment of training compensation in the amount of USD 82'600 with interest of 5 % per annum as of 19 October 2011. Zamalek never replied, although it was informed that, in the absence of a reply, a decision would be taken on the basis of the information at hand.

10. On 17 May 2013, the Dispute Resolution Chamber of the FIFA rendered its decision (hereinafter: "Appealed Decision"), deciding that Zamalek had to pay training compensation to Accra for the period of 33 months. The Appealed Decision contains the following operative part:

"III. Decision of the DRC judge

1. *The claim of the Claimant, Accra Hearts of Oak Sporting Club, is partially accepted.*
2. *The Respondent, Zamalek Sporting Club, has to pay to the Claimant, Accra Hearts of Oak Sporting Club, within 30 days as from the date of notification of this decision, the amount of USD 82,500 as well as 5% interest p.a. on said amount as of 20 October 2011 until the date of effective payment,*
3. *If the aforementioned amount plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
4. *Any further claim lodged by the Claimant, Accra Hearts of Oak Sporting Club, is rejected.*
5. *The final amount of costs of the proceedings in the amount of CHF 10,000 is to be paid by the Respondent, Zamalek Sporting Club, within 30 days as from the date of notification of the present decision, as follows:*
 - 5.1 *The amount of CHF 9,000 has to be paid to FIFA to the following bank account with reference to case no. pna 11-02713:*

UBS Zurich
Account number 366.677.01 U (FIFA Players' Status)
Clearing number 230
IBAN: CH27 0023 0230 3666 7701U
SWIFT: UBSWCHZH80A
 - 5.2 *The amount of CHF 1,000 has to be paid to the Claimant, Accra Hearts of Oak Sporting Club.*
6. *The Claimant, Accra Hearts of Oak Sporting Club, is directed to inform the Respondent, Zamalek Sporting Club, immediately and directly of the account number to which the remittances under points 2 and 5.2 above are to be made and to notify the DRC Judge of every payment received."*

11. This decision was notified to the Appellant, via the Egyptian Football Association, by fax of 13 February 2014.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORTS

12. On 4 March 2014, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the "CAS"). The Appellant requested to submit the Appeal to a Sole Arbitrator.

13. On 14 March 2014, the Appellant filed its Appeal Brief, submitting the following requests for relief:

"A). To fully accept the present appeal against the Decision, rendered by the FIFA Dispute Resolution Chamber on the 17May 2013.

B). As consequence, to adopt an award annulling said decision and declaring that:

- 1). The appealed decision of the FIFA Dispute Resolution Chamber dated 17 May 2013 is annulled; and*
- 2.1.1). The Player Karimu Alhassan had already completed his training period before joining Accra Hearts of Oak, i.e. before the beginning of the sporting season 2008/2009; and consequently, the Respondent is not entitled to receive any compensation of whatsoever kind related to the training of the Player,*
- 2.1.2). OR, the Player had already completed his training before the beginning of the sporting season 2009/2010*
- 2.1.3). OR, the Player had already completed his training before the beginning of the sporting season 2010/2011*

SUBSIDIARILY,

- 2.2). To decide that the compensation is not in accordance with the real costs of training (as per the "Bernard" jurisprudence of the European Court of Justice) and to reduce it accordingly as per its real costs.*
- 3). To fix a sum of 10,000 CHF to be paid by the Respondent to the Appellant, to help the payment of its legal fees and costs.*
- 4). To condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fees."*

14. By fax letter of 17 March 2014, the Respondent agreed with the appointment of a Sole Arbitrator as proposed by the Appellant.

15. On 7 April 2014, the Respondent filed its Answer, requesting the following requests for relief:

- "a) exclude the evidences presented by the Appellant, based on article R57 of the Code;*
- b) reject the Appeal Brief presented by the Appellant;*
- c) confirm the decision passed by the honorable Single Judge of the Dispute Resolution Chamber and determine the Appellant to pay the final amount of US\$ 82,500.00 (eighty two thousand and five hundred American Dollars), plus interest to the Respondent;*
- d) to fix a sum of 10,000 CHF to be paid by the Appellant to the Respondent, to cover its legal fees and costs – especially since the Appellant did not respect the proceedings before FIFA and created unnecessary expenses to the Respondent; and*

e) condemn the Appellant to the payment of all costs and expenses in connection with the CAS proceeding and the arbitrator fees."

16. On 28 April 2014, pursuant to article R54 of the Code of Sport-related Arbitration (hereinafter: the "CAS Code"), the CAS Court Office informed the Parties that the Arbitral Panel called upon to resolve the dispute at hand is constituted as follows:

Sole Arbitrator: Dr. Hans Nater, Attorney-at-Law in Zurich, Switzerland.

17. By letter of 9 May 2014, the CAS Court Office, taking note of the diverse positions of the Parties regarding the holding of a hearing, informed the Parties that a hearing shall be convened.

18. By the same letter of 9 May 2014, the CAS Court Office informed the Parties of the decision of the Sole Arbitrator on the evidentiary requests by the Parties:

(i) Upon Appellant's request, the FIFA was asked to produce a copy of its file related to the matter.

(ii) With respect to the Appellant's evidentiary request "*to provide the Panel and the Appellant with a detailed report of the budget of its training academy and/or any eventual means of proof such as invoices in order to duly certify the training and formation costs in which incurred the Accra SC for its youth teams during the sporting seasons 2008/2009, 2009/2010 and 2010/2011*" the Respondent was invited to submit its positions/observations including a reference to article R44.3 of the CAS Code.

(iii) With respect to Respondent's motion to "*exclude the evidence presented by the Appellant, based on article R57 of the Code*", the Appellant was invited to submit its position/observation on the objection raised by the Respondent.

19. On 16 May 2014, the Respondent submitted that the documents requested by the Appellant were irrelevant but that it would nevertheless do its best effort to obtain this information, while the Appellant rejected the Respondent's objection to exclude any evidence it produced before CAS.

20. On 20 May 2014, the FIFA produced a copy of its file related to the matter.

21. On 21 May 2014, the CAS Court Office forwarded the FIFA file to the Parties and invited them to produce within 10 days additional documents, if any, evidencing the actual and (in the case of the Appellant) hypothetical costs for the training and formation costs of Karimu Alhassan and/or their youth teams.

22. On 3 June 2014, the Appellant submitted the documents requested by the Sole Arbitrator in the CAS Court's letter of 21 May 2014.

23. By letter of 4 June 2014, the Parties were informed of the decision of the Sole Arbitrator to dismiss Respondent's request in its Answer to "*exclude the evidences presented by the Appellant, based on article R57 of the Code*" and the Respondent was invited to use its best effort to obtain from its past administration the documents requested by the CAS Court's letter of 21 May 2014.
24. On 17 and 18 June 2014 respectively, the Appellant and the Respondent returned duly signed copies of the Order of Procedure.
25. On 19 June 2014, a hearing was held in Lausanne, Switzerland. At the outset of the Hearing both parties confirmed that they had no objection to the constitution and composition of the Panel.
26. In addition to the Sole Arbitrator and Mrs. Pauline Pellaux, Counsel to the CAS, the following persons attended the hearing:
 - (i) For the Appellant:
 1. Mr. Juan de Dios Crespo Pérez, Counsel for the Appellant
 2. Mr. Nasr Azzam, Counsel for the Appellant
 3. Mr. Hany Zada, Member of Appellant's Board
 4. Mr. Daniel Magdi Louis, translator
 - (ii) For the Respondent:
 1. Mr. Rafael Queiroz Botelho, joined the hearing via audio-conference
27. No witnesses were heard at the hearing. The Parties had ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.
28. Before the hearing was concluded, the Parties agreed to informally stay the proceedings until the end of June 2014 in order to negotiate a settlement agreement.
29. Before the hearing was concluded, both Parties expressly stated that they did not have any objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been fully respected.
30. By letter of 31 July 2014, the Parties were advised by the Sole Arbitrator that he considered appropriate to supplement the presentation of the Parties with respect to (i) the status of the Player when he played with Accra and (ii) the average age of the players of teams A in sub-Saharan countries. The Parties were invited to submit, within a week, any comments to the extract of the website <http://ghanafoot.wordpress.com/2009/10/20/glo-Dremier-league-0910-preview-round-2/> referring to "captain Karimu Alhassan" and to submit any comments and documents establishing that the Player was, or was not, captain

of the Respondent's team as well as any documents establishing the average age of the A team's players in sub-Saharan Afrika and/or the average age of their departure from their countries of origin.

31. By letter of 5 August 2014, the Appellant filed its comments on the issues raised by the Sole Arbitrator in his letter of 31 July 2014.
32. On 18 August 2014 the CAS Court Office informed the Parties that the Respondent did not submit any observations or documents within the time limit fixed by the CAS Court Office in its letter of 31 July 2014 and invited the Respondent to submit, within a week, any observations strictly limited to the Appellant's submission of 5 August 2014.
33. On 29 August 2014, the CAS Court Office received a letter from the Respondent addressing the letter of the CAS Court Office dated 18 August 2014.
34. On 1 September 2014, the CAS Court Office invited the Appellant to submit its position and observations, if any, on the admissibility of the Respondent's letter dated 29 August 2014 and its exhibits.
35. By letter of 4 September 2014, the Appellant objected to admit the Respondent's submission of 29 August 2014 and submitted some additional observations and documentation (exhibits 13 to 15).
36. On 10 September 2014, the Parties were informed of the decision of the Sole Arbitrator not to accept the Respondent's Submission of 29 August 2014. Further, as the Respondent's submission of 29 August 2014 was not admitted, the Appellant's observations in its letter of 4 September 2014 related to the substance as well as the Appellant's exhibits 13 to 15 were not admitted either.

IV. SUBMISSIONS OF THE PARTIES

37. The following outline of the Parties' positions is illustrative only and does not necessarily encompass every contention took forward by the Parties.
38. The submissions of the Appellant may be summarized as follows:
 - (i) Zamalek submits that the Player was a well-established Football player in Ghana when he joined Accra: In the first season, i.e. 2008/2009, he participated in 28 out of a total of 30 matches played by Accra.
 - (ii) Zamalek contended that the Player was named team captain in the second season, i.e. 2009/2010, he played for Accra and that he then participated in 28 matches with Accra as well as in 4 matches with the senior national team of Ghana related to the African Cup 2009.

- (iii) Zamalek further maintained that in the third season 2010/2011 the Player participated in 21 out of 30 official matches of the Ghana Premiere League, despite the fact that he had already informed Accra that he would not extend their contractual relationship. Additionally he played in 5 international friendly matches with the Ghanaian national under-20 team and in 2 matches with the senior national team.
- (iv) Zamalek submitted that, due to the social and political instability in Egypt, it was unable to participate in the proceedings before the FIFA Dispute Resolution Chamber.
- (v) Zamalek submitted that it had offered a contract to the Player providing a salary of USD 300'000 per year, an amount which is offered in the world of Football only to consistent and well-established players, not to footballers who are still on their training and formation years.
- (vi) Alternatively, Zamalek submitted that, based on the cost per player for training and in order to be proportionate to the real expenses incurred by Accra, the remuneration should be reduced to EUR 1'228.66 for the season 2008/2009, EUR 1'273.10 for the season 2009/2010 and EUR 1'313 for the season 2010/2011.

39. The submissions of the Respondent may be summarized as follows:

- (i) Accra submitted that the Player was hired as a "developing talent" and not as a "superstar" and categorized (and paid accordingly) as a "Junior Category D" player, "given his under development status".
- (ii) Accra submitted that the Player was at no time among the highest paid professionals with the Respondent, "given his under development status".
- (iii) Accra submitted that, at the time the Player joined Accra, only three out of forty-eight players received a lower salary than the Player.
- (iv) Accra maintained that the Player was not named captain of the Respondent after one season.
- (v) Accra submitted that the Player's cap with the Ghana National Team (U-20) occurred in 2010 and 2011 and that, with respect to his cap in 2009, he played only the second half of an international friendly match, with the Ghana National Team B (local players only).
- (vi) Accra maintained that, in Ghana, players leave at an early age, as they get higher salaries from clubs abroad.

(vii) Accra maintained that Zamalek procrastinated the dispute for more than two years by not participating in the proceedings before the FIFA Disciplinary Chamber.

(viii) Accra maintained that, during the proceedings before the FIFA Disciplinary Chamber, Zamalek was able to transfer several players.

V. ADMISSIBILITY

40. The appeal was filed within the deadline of 21 days set by article 67(1) of the FIFA Statutes (2012 edition). The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fees.

VI. JURISDICTION

41. The jurisdiction of CAS, which is not disputed, derives from article 67(1) of the FIFA Statutes as it determines that "*[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question*" and article R47 of the Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

42. It follows that CAS has jurisdiction to decide on the present dispute.

VII. THE RESPONDENT'S MOTION TO EXCLUDE THE EVIDENCE SUBMITTED BY THE APPELLANT BASED ON ART. 57.3 OF THE CAS CODE

43. In its Answer, the Respondent requested to exclude the evidence submitted by the Appellant and, in its submission of 28 May 2014, reiterated such request on the grounds that it "*will be deprived from its right to appeal, as there will be no further instance to adjudicate on this matter*", if its request is not granted.

44. The Appellant rejected the Respondent's objection to exclude any evidence it produced before CAS on the grounds that its fundamental procedural right to be heard should be guaranteed.

45. Under article R57 of the CAS Code, the Panel has full power to review the facts and the law, and it may issue a new decision that replaces the decision challenged.

46. Article R57.3 of the 2013 version of the CAS Code reads as follows:

"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply".

47. According to **Rigozzi**, "*the amendment may make sense in those CAS cases where the CAS acts as a second instance arbitral tribunal, reviewing an award rendered by another*

*arbitral panel at the end of genuine arbitral proceedings. But in appeals proceedings against decisions rendered by the hearing bodies of the sports-governing organizations, where the curing effect of a full, de novo review by the CAS assumes all its importance, we believe Panels should use the discretion now granted to them by Article R57 only in those cases where the adducing of pre-existing evidence amounts to abusive or otherwise unacceptable procedural conduct by a party"*¹.

48. According to **Mavromati** "the new limitations in the admission of new evidence [pursuant to article R57.3 CAS Code] should be interpreted in such a way as not to circumvent the core principle of the Panel's full power of review".²
49. For the following reasons, the Sole Arbitrator decided to dismiss Respondent's request to "exclude the evidences presented by the Appellant, based on article R57 of the Code":
- (i) The challenged decision has been rendered by the Dispute Resolution Chamber of FIFA, not by an arbitral tribunal. To the extent that the previous instance, as in the case at hand, is not an independent arbitral tribunal but an internal body of a sports federation, the full power of review must prevail.³
 - (ii) It may be left open, whether Zamalek, due to the social and political instability in Egypt in the years 2012 and 2013, was unable to participate in the proceedings before the Dispute Resolution Chamber of the FIFA. However, Accra did not substantiate let alone prove that Zamalek acted abusively.
 - (iii) Accra's argument that it has been deprived "*from its right to appeal*" should not be heard, as Accra could have submitted a request to refer the case back to FIFA, which it did not submit. Moreover, the Swiss Federal Tribunal pointed out that the requirement of having two bodies or a double degree of jurisdiction does not fall within the procedural public policy within the meaning of Art. 190(2)(e) of the Private International Law Statute.⁴
 - (iv) Finally, the Sole Arbitrator underlines that, pursuant to article 57.3 of the CAS Code, it is within his **discretion** to exclude any evidence available before the challenged decision was rendered, in other words, he is not obligated to exclude such evidence.

¹ Antonio Rigozzi/Erika Hasler/Brianna Quinn, The 2011, 2012 and 2013 Revisions of the Code of sports-related Arbitration, in: Jusletter 3 June 2013, Rz 72.

² Despina Mavromati, The Panel's right to exclude evidence based on Article R57 para 3 CAS Code: A limit to CAS' full power of review?, in: CAS Bulletin 1/2014, page 55/56.

³ Mavromati (fn. 2 above) at p. 52, 55.

⁴ FT 4A_530/2011, at 3.3.2.

VIII APPLICABLE LAW

50. Article R58 of the CAS Code provides the following:

"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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

51. The Panel notes that article 66(2) of the FIFA Statutes stipulates 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 Swiss law additionally applied."

52. The Sole Arbitrator is therefore prepared to proceed on that basis.

IX MERITS

A. The Main Issues

53. In view of the above, the main issues to be resolved by the Panel are:

- (i) Is Accra entitled to training compensation for the Player?
- (ii) If Accra is entitled to training compensation, what would be the relevant period of training and education to be taken into account?
- (iii) If training compensation for the relevant period is payable, what would be the correct calculation of the indicative amount of training compensation?
- (iv) Are there any reasons to adjust the indicative amount of training compensation?

a) Is Accra entitled to training compensation for the Player?

54. In its appealed decision, the FIFA Dispute Resolution Chamber decided that Zamalek had to pay an amount of training compensation of USD 82'500 and 5% interest p.a. on said amount from 20 October 2011 until the date of effective payment.

55. The Sole Arbitrator notes that Zamalek's primary request for relief is that Accra should not be awarded any training compensation at all on the grounds that the Player was "*already formed*" when he joined Accra at the age of 17 ½ in November 2008.

56. The Sole Arbitrator observes that the general provision in the FIFA Regulation for the Status of Players is Article 20, which stipulates:

"Training Compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a Professional, and (2) on each transfer of a Professional until the end of the Season of his 23th 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 annex 4 of these Regulations".

57. Pursuant to article 1 para. 1 of Annex 4 to the FIFA Regulations:

"A player's training and education takes place between the ages of 12 and 23. Training Compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, Training compensation shall be payable until the end of the Season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between 12 and the age when it is established that the player actually completed his training."

58. According to article 2 para. 1 of Annex 4 to the FIFA Regulations:

"Training Compensation is due:

i) when a player is registered for the first time as a Professional; or

ii) when a Professional is transferred between clubs of two different Associations (whether during or at the end of his contract) before the end of the Season of his 23rd birthday".

59. According to FIFA Circular Letter no. 801 dated 28th March 2002, the burden of proof is on Zamalek to show that the Player has terminated his training period:

"The Committee was asked to determine what triggers the end of a player's training and/or education. It maintained that it is a question of proof, which is at the burden of the club that is claiming this fact".

60. It is not disputed by the Parties that the Player, when he joined Accra on 8 November 2008, was registered for the first time as a Professional.

61. Further, it is not disputed by the Parties that the Player was less than 21 years old when he joined Accra and less than 23 years when he left Accra.

62. For the following reasons, the Sole Arbitrator concludes that the Player was not "*already formed*" when he joined Accra in November 2008.

63. The Player was engaged by Accra as a "*Junior CAT D*"- player at a signing fee and a monthly salary lower than most of the other players belonging to Accra's "*Senior*" and

"Junior" teams. The following chart illustrates that the signing fees and salaries of the players depended on the category each player was allocated to.

Name	Year of birth	Signing Fee	Monthly Salary
Karimu Alhassam	1991	GHC 5,000	Junior CAT D – 150
Rakib Issa	1991	GHC 7,000	Junior CAT C – 170
Daniel Coleman	1984	GHC 20'000	Junior CAT A – 240
Douglas Nkrumah	1986	GHC 30'000	Junior CAT B – 200

The player Karimu Alhassam, categorized as a Junior CAT D, received a signing fee of GHC 5'000 and a monthly salary of GHC 150, his playmate Rakib Issa, categorized as a Junior CAT C, was granted a signing fee of GHC 7,000 and a monthly salary of GHC 170.

64. Zamalek did not object in a substantiated manner to Accra's submission that, out of 48 players belonging to Accra's "Senior" and "Junior"-teams, only 3 players received a lower and 33 players received a higher salary than the Player in the season 2008/2009.
65. Contrary to the Appellant's submissions, it is fair to state that, at the beginning of the first season with Accra, the Player was not a "superstar", and it was certainly not "evident" in the sense of Article 1 para. 1 of the Annex 4 to the FIFA Regulations that the Player had terminated his training period when he joined Accra.
66. As the Appellant rightly observed, the Player, in his first season with Accra, played 28 out of 30 matches with Accra, the winner of the Ghanaian title in the season 2008/2009. However, one cannot exclude that a player who has the chance to play in a top team suddenly develops from a talent to a regular team member, and the number of matches played is not the only and decisive criteria.
67. The Sole Arbitrator, in assessing when the Player's training period terminated, considered on the one hand the status of the Player categorized as a Junior CAT D when he joined Accra and his modest financial arrangement in absolute terms and in relation to other players, and, on the other hand, the fact that the Player played 28 out of 30 matches with Accra's "A" team. On balance, he takes the view that the Player was not fully trained at least during the season 2008/2009. Therefore, Accra is entitled to a training compensation for the Player.

b) The relevant period of training and education to be taken into account

68. Zamalek submitted that the Player was named captain of Accra's A-Team in the season 2009/2010, the second season the player played with Accra.
69. In its Answer, the Respondent declared the Appellant's submission that the Player was named captain in the season 2009/2010 to be "incorrect". However, in its submission of 29 August 2014, the Respondent acknowledged that the Player became the captain of Accra "at a certain point".
70. Most importantly, the Respondent did not contest the following information published on the website <http://ghanafoot.wordpress.com/2009/10/20/glo-Dremier-league-0910-preview-round-2/> on 20 October 2009, which was transferred to the Parties inviting them to comment on:

"OHENE DJAN: Hearts of Oak-King Faisal Babies

Both teams lost on the opening day of the league. Both teams conceded 2 goals. While Faisal pulled one back, Hears posed zero threat to their opponents. Coaches of both clubs (Isaac Opeeley Boateng of King Faisal and Ayman El Yamani of Hearts of Oak) are new and have a lot to prove this season. At least one of them is likely to be sacked before the season ends. However, I tip King Faisal to beat Hearts of Oak who seem to be rebuilding their team and also have key players (Kofi Abanga, Charles Taylor and captain Karim Alhassan) injured.
[underlining added]

Players to watch Hearts of Oak: Torric Jibril, Luggard Tetteh, Eric Gawu

Players to watch King Faisal: Osei Boateng, Ofosu Mickey, Suraj Mohammed

Prediction: Hearts of Oak 1:1 King Faisal Babies".

71. Based on the above, it is deemed to be established that the Player became captain of Accra as of 20 October 2009. It has not been submitted, that, thereafter, the Player lost his role as captain of Accra.
72. Further, the Respondent has not contested the Appellant's submission that the Player, in the second season 2009/2010, played again 28 matches with Accra, in addition to his participation in at least one match of the national team of Ghana, which, although with the "B" team, remains a participation at the international level.
73. The Sole Arbitrator therefore concludes that, as from his second season with Accra, the Player could not anymore be considered as a young developing talent but acquired the status of a key player. The Player's training period thus terminated at the end of the first season the Player played for Accra, i.e. the season 2008/2009. Therefore, Zamalek has the obligation to pay a training compensation to Accra for the season 2008/2009, the first season the Player played with Accra.

c) The calculation of the training compensation

74. Under the heading “Training Costs”, article 4 of Annex 4 to the FIFA Regulations reads as follows:

“1. In order to calculate the compensation due for training and education costs, Associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs’ financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average “player factor”, which is the ratio between the number of players who need to be trained to produce one professional player.

2. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each Association, are published on the FIFA website (www.FIFA.com). They will be updated at the end of every calendar year”.

75. Article 5 par. 1 to 4 of Annex 4 to the FIFA Regulations is related to the “Calculation of Training Compensation” and provides the following:

“1. As a general rule, to calculate the Training Compensation due to a player’s Former Club(s), it is necessary to take the costs that would have been incurred by the New Club if it had trained the player itself.

2. Accordingly, the first time a player registers as a Professional, the Training Compensation payable is calculated by taking the training costs of the New Club multiplied by the number of years of training in principle from the Season of the player’s 12th birthday to the Season of his 21st birthday. In the case of subsequent transfers, Training Compensation is calculated based on the training costs of the New Club multiplied by the number of years of training with the Former Club.

3. To ensure that Training Compensation for very young players is not set at unreasonably high levels, the training costs for players for the Seasons between their 12th and 15th birthday (i.e. four Seasons) shall be based on the training and education costs for category 4 clubs.

4. The Dispute Resolution Chamber may review disputes concerning the amount of Training Compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review”.

76. It is not disputed that both Parties belong to the category II of the African Football Confederation. Pursuant to the FIFA Circular letter no. 1223 dated 29 April 2010 the indicative amount of the training compensation for the category II of the Africa Football Confederation is USD 30'000.

77. Based on the foregoing, the Sole Arbitrator concludes that Accra is entitled to a training compensation for the Player related to the season 2008/2009 in the indicative amount of USD 30'000, subject to adjustment in case such amount is deemed to be clearly disproportionate.
- d) Are there any reasons to adjust the indicative amount of training compensation?**
78. Zamalek submitted that the effective training costs the club incurred "*widely differ from the so-called indicative amounts provided by FIFA, i.e. 30'000!!!*". It filed a "*Information Memorandum*" dated 27 February 2014 signed by its financial director and confirmed by the club's independent financial auditor, and submitted that, according to this memorandum, the costs per player amounted to 11'902.72 Egyptian Pounds or EUR 1'228.66 respectively for the sporting season 2008/2009.
79. The Respondent submitted that the Appellant was able to offer the Player a much higher salary, as i) it had not incurred any costs for the education of the Player and ii) in view of its "*much favorable financial situation*".
80. Pursuant to article 5 para. 4 of Annex 4 to the FIFA Regulations the Dispute Resolution Chamber shall have discretion to adjust the amount of the training compensation if it is clearly disproportionate to the case under review.
81. According to CAS jurisprudence, a club objecting to a training compensation calculated on the basis of the indicative amounts according to the FIFA Regulations, may prove that such compensation is disproportionate on the basis of concrete evidentiary documents such as invoices, costs of training centers, budgets and the like (CAS 2009/A/1810 & 1811, Award of 5 October 2009, para 55 and the further references cited there).
82. Despite the confirmation of Zamalek's financial director at the end of the "*Information Memorandum*" that the figures included the "*direct and indirect expenses incurred by the Club for all the youth teams for the ages between 12 and 20 that are playing official tournaments of the Egyptian FA*", the Sole Arbitrator takes the view that the evidence provided by the Appellant is not convincing enough to establish that the training compensation in the indicative amount of USD 30'000 is clearly disproportionate. First, the training costs submitted by the Appellant cannot be truly verified, as the latter has not submitted any accounts, coaches' or players' contracts, invoices, receipts or payroll slips. Second, the quality of information does not meet the requirement to allow any interested third party, including arbitrators, to evaluate in depth an entity's economic performance and to verify in depth whether true and fair values were used for measuring, presenting and disclosing specific components of assets, liabilities and the like (CAS 2009/A/1810 & 1811 Award of 5 October 2009, para 57 and the further references cited there).
83. The Sole Arbitrator did not have a chance to hear any testimony on the "*Information Memorandum*" as neither Party brought any witness or expert to the Hearing.

84. As pointed out by Respondent, there is an immense discrepancy between the sum of USD 1,5 million paid by Zamalek for a period of five years according to the contract between Zamalek and the player dated 14 August 2011 and the modest all inclusive cost for training of the junior Player of less than EUR 1'228.66 according to the Information Memorandum filed by Zamalek.
85. The Sole Arbitrator is aware of the discussions among lawyers and FIFA officials whether the system of indemnification of training costs put into place by FIFA is designed to simply reimburse the club for its actual costs for educating its youth teams or also to provide financial assistance to weaker clubs by stronger ones. The Sole Arbitrator took note of the critics put forward by the Appellant against the second alternative. However, he is of the view that the following points should be taken into consideration:
- (i) The wording of article 5 para 1 to Annex 4 to the FIFA Regulations provides in clear terms the general rule that the hypothetical costs incurred by the new club have to be taken.
 - (ii) The Appellant did not question the validity of article 5 para 1 to Annex 4 to the FIFA Regulations;
 - (iii) European law and jurisprudence as well as article 6 to Annex 4 of the FIFA Regulations are not applicable to the dispute at hand between two clubs belonging to the African Confederation.
86. The Sole Arbitrator finds that (i) the method of calculation provided for in Article 5 of Annex 4 of the FIFA Regulations must be respected and (ii) the indicative amount of USD 30'000 according to the FIFA Circular Letter no. 1223 is not disproportionate in relation to the training costs that would have been incurred by the new club for the (first) season 2008/2009 the Player played with Respondent.
87. In view of the Parties' submissions and in consideration of the evidence the Sole Arbitrator concludes that Zamalek should pay to Accra the indicative amount of USD provided for in the FIFA Regulations, i.e. USD 30'000.
88. The Appellant requested interest at a rate of 5% on the amount due. The Respondent did not address the issue of the interest rate to be paid. The Sole Arbitrator, in the absence of a specific contractual clause applies the legal interest rate due pursuant to article 104 of the Swiss Code of Obligations, which is 5% per annum.
89. The FIFA Dispute Resolution Chamber ordered the Appellant to pay the financial compensation due to the Respondent with interest of 5% from 20 October 2011. The Sole Arbitrator did not see any reason to establish a different starting date for the interest.

B. Conclusion

90. The Sole Arbitrator concludes that Accra is entitled to training compensation for the player Karimu Alhassan for the season 2008/2009.
91. The Sole Arbitrator finds that Accra is entitled to a training compensation in the amount of US Dollar 30'000 corresponding to the indicative amount pursuant to the FIFA Circular Letter no. 1223.

X. COSTS

92. (...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Zamalek Sporting Club is partially upheld.
2. Item 2 of the decision of the Dispute Resolution Chamber of the FIFA dated 17 May 2013 is modified as follows:

Zamalek sporting Club is ordered to pay to Accra Hearts of Oak Sporting Club, within 30 days as from the date of notification of the present award, an amount of USD 30'000 (thirty thousand US Dollars), with interests at a rate of 5% per annum from 20 October 2011 until the date of payment.

3. (...).
4. (...).
5. All other motions and requests for relief are dismissed.

Place of Arbitration: Lausanne, Switzerland

Date: 31 October 2014

THE COURT OF ARBITRATION FOR SPORT

Hans Nater
Sole Arbitrator