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LATE WAIVERS: AN ANALYSIS OF THE COURT OF ARBITRATION FOR SPORT'S INTERPRETATION OF DISPUTES ARISING FROM THE ELECTRONIC PLAYER PASSPORT (EPP) PROCESS

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ABSTRACT

This article analyses the jurisprudence of the Court of Arbitration for Sport (CAS) in disputes related to the Electronic Player Passport (EPP) process, which has been in place since the advent of the FIFA Clearing House (FCH) in November 2022. Particular focus is placed on cases where the player's new club (in a transfer or first professional registration) has produced a specific and decisive document late in the process: the waiver by a training club of its entitlement to training rewards (training compensation or solidarity contribution). In examining the admissibility and validity of waivers, CAS has not followed a consistent approach, but some trends can be identified. The article highlights the considerations and decisions of CAS and offers critical reflections and ideas on the right balance between procedural diligence and substantive fairness within the regulatory framework for training rewards.

KEYWORDS

FIFA Clearing House, Electronic Player Passport, Training Rewards, Waivers, Admissibility, Validity, CAS.

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Summary: 1. Introduction. 2. From a claims system to the Electronic Player Passport (EPP) process. 2.1. The Electronic Player Passport (EPP) process. 2.2. Legal basis for CAS appeals. 3. Analysis of CAS appeals related to EPP and Allocation Statement determinations. 3.1. Overview of the appeals. 3.2. The admissibility of waivers not submitted during the EPP process: a new landscape. 3.3. The validity of training reward waivers according to CAS jurisprudence. 3.4. CAS jurisprudence on late waivers – the acceptance of waivers not submitted during the EPP process. 4. Main takeaways and impact on the EPP process.

1. INTRODUCTION

Respect for the principles of transparency and integrity is essential to promoting the development of football globally and to protecting the game. In this regard, FIFA introduced a revolutionary initiative in November 2022: the FIFA Clearing House, which ensures the correct calculation and distribution of training rewards to training clubs through the implementation of an automatic, centralised and integrated system.

Moreover, it makes an immense contribution to the prevention of financial fraud through the creation of the FIFA Clearing House entity (FCH SAS), which ensures compliance with financial regulation and processes those payments. Since the entry into force of the FIFA Clearing House and up to 1 October 2026, more than USD 1 billion has been allocated to thousands of training clubs worldwide, of which more than USD 800 million has been paid out in full.

In this context, FIFA has issued thousands of decisions granting training reward entitlements to training clubs and ordering payments via the FCH. These decisions, namely the EPP and Allocation Statement determinations, may be appealed to CAS, in accordance with the FIFA regulatory framework.

Among the FCH decisions that have been appealed to CAS to date, one specific subject stands out, not only because of the substantive issues involved, but mainly because it raised a new procedural matter: the acceptance of waivers issued by training clubs after the EPP process has concluded and the FIFA decision has been taken.

2. FROM A CLAIMS SYSTEM TO THE ELECTRONIC PLAYER PASSPORT (EPP) PROCESS

The substantive rules on training rewards (training compensation and solidarity contribution) have remained largely untouched for the past 20 years. However, the process for identifying and distributing training reward

entitlements has changed drastically since the Clearing House went live in November 2022.

Previously, training clubs carried the burden of identifying training reward triggers and lodging claims if they had not received the training rewards due from the new club. This posed great difficulties for clubs, owing to a lack of resources and the challenge of tracking player transfers and registrations around the world. As a result, around 80% of entitlements were lost.[2]

With the advent of the Clearing House, training rewards are identified automatically through the integration of the national registration systems of all FIFA Member Associations with the FIFA Transfer Matching System (TMS), and are then calculated through the EPP process; at the end of this process, the player's exact career history is established and the exact amounts to which each training club is entitled are set out in the corresponding FIFA decisions.

2.1. THE ELECTRONIC PLAYER PASSPORT (EPP) PROCESS

Whenever an international transfer, a national transfer with fees or a first professional registration is declared by a Member Association, a provisional EPP is automatically generated in TMS. An inspection phase of ten days allows any interested Member Associations and clubs to request to participate in the process.[3]

If the international dimension required under the FIFA regulations for training clubs to be entitled to training rewards is confirmed, the FIFA general secretariat opens the EPP review process in TMS and invites the parties to participate; Member Associations can request to add, delete or amend the registration information of the player on their own initiative or at the request of their affiliated club(s), while clubs can provide relevant documentation that affects the distribution of training rewards, such as contract offers and waivers.[4] Waivers are the most common and important type of document provided by the player's new club.

The FIFA general secretariat evaluates and assesses all the relevant information and documentation provided (validation phase) and, if needed, requests clarification and additional information (completion phase) before

2 Fédération Internationale de Football Association (FIFA), *FIFA Clearing House Annual Report 2024* (Zurich: FIFA, 2025), 15, https://inside.fifa.com/transfer-system/clearing-house/annual-report.

3 Article 8, paragraphs 1, 2 and 3 of the FIFA Clearing House Regulations (FCHR).

4 Article 9 of the FCHR.

a final decision is taken.[5] In the case of waivers, the FIFA general secretariat assesses the validity of the waiver and, where appropriate, sends it to the training club concerned for confirmation or comments.

The final decision is taken by the FIFA general secretariat. In cases of legal or factual complexity, however, the Dispute Resolution Chamber (DRC) of the Football Tribunal is responsible for deciding on the final EPP.[6]

2.2. LEGAL BASIS FOR CAS APPEALS

At the end of the process described in section 2.1, the FIFA general secretariat issues the EPP determination. Where training clubs are entitled to training rewards, the FIFA general secretariat also issues a second decision: the Allocation Statement determination, which sets out the amounts to be distributed to training clubs, as calculated automatically by TMS.

In cases of training compensation, both determinations are issued at the same time,[7] whereas in cases of solidarity contribution, the Allocation Statement is tied to the upload in TMS of the proof of payment of the transfer compensation,[8] which is the basis for calculating the solidarity contribution.

It should be noted that both EPP and Allocation Statement determinations are final decisions issued by FIFA and may therefore be appealed to CAS within 21 days of receipt of the decision.[9]

Although both decisions can be appealed to CAS, they have different natures and, consequently, different scopes. Whereas the EPP determination defines the registration history of the player (including, but not limited to, the dates on which they were registered with a club, their status at that club and the training category of the club in question) and determines whether or not training clubs are entitled to training rewards, the Allocation Statement calculates the exact amount that each training club is entitled to receive from the engaging club. Consequently, they constitute separate and independently appealable decisions.

Where the EPP and Allocation Statement determination(s) are issued and notified on the same date, they may be jointly appealed to CAS. However, if they are issued and notified on different dates, each decision can only be

5 Article 10, paragraphs 1 and 2 of the FCHR.
6 Article 10, paragraph 3, letter c) of the FCHR.
7 Article 12, paragraph 3, letter a) of the FCHR.
8 Article 12, paragraph 3, letter b) of the FCHR.
9 In accordance with Article 50, paragraph 1 of the FIFA Statutes, Article 10, paragraph 5, letter b) of the FCHR, and Article R47 of the Code of Sports-related Arbitration (CAS Code).

appealed within 21 days of its own notification. Consequently, a party cannot use an appeal against the Allocation Statement to revisit aspects of the EPP determination that were not appealed in a timely manner.

3. ANALYSIS OF CAS APPEALS RELATED TO EPP AND ALLOCATION STATEMENT DETERMINATIONS

3.1. OVERVIEW OF THE APPEALS

To give a sense of the scale and volume of cases generated by the FIFA Clearing House system, it should be noted that, as a general rule, an EPP is generated for each trigger event[10] that may give rise to a training reward entitlement for training clubs. For each EPP that is not discarded,[11] an EPP determination is issued by FIFA and notified to the parties. Depending on the training reward trigger and the entitlement of training clubs, one or more Allocation Statements may be generated per EPP and notified to the relevant parties.

Since the launch of the FIFA Clearing House, more than 26,500 EPP determinations and more than 45,000 Allocation Statements have been notified to the parties, amounting to more than 71,500 appealable FIFA decisions in relation to the FCH.

Of this total, as at 1 October 2026, 156 cases have been appealed to CAS, which corresponds to 0.2% of the decisions issued by FIFA. If one considers that decisions could potentially be appealed to CAS by multiple parties (normally the engaging club that has to pay, but also training clubs challenging the amount in an Allocation Statement), this ratio would be lower still.

Of those cases, 108 have led to a final decision by CAS. The outcome of the decisions rendered by CAS also confirms the success and effectiveness of the Clearing House: only nine appeals were upheld and three partially upheld.

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10 Training reward trigger events are the first professional registration of a player, the national transfer of a player with payment of compensation, and the international transfer of a player. To date, more than 76,000 EPPs have been generated.

11 In accordance with Article 8, paragraph 4 of the FCHR, an EPP may be discarded in cases where, according to the registration information available in the provisional EPP, there is no indication that the player was registered with a different Member Association.

None of these appeals contested the automatic calculation of training rewards performed by TMS, which confirms the accuracy of the system. In the few cases where the amount due was challenged, it was the information provided by the Member Association in the EPP (e.g. incomplete training period, incorrect club category) affecting the calculation of training rewards that was contested, and not the calculation *per se*. A few other cases concern, *inter alia*, the validity of a contract offer or the player's status with the former club in cases of first professional registration.

However, the vast majority of the FCH decisions appealed concern the late submission of waivers by the player's new club.

3.2. THE ADMISSIBILITY OF WAIVERS NOT SUBMITTED DURING THE EPP PROCESS: A NEW LANDSCAPE

The high volume of EPP cases (compared with the number of claims under the previous system) and the automation and efficiency of the system have drastically changed the obligations and responsibilities of clubs in relation to the distribution of training rewards via the EPP process.

It must be highlighted that the EPP process was built and designed to accommodate the right of training clubs to waive their training rewards voluntarily. To that end, the FIFA Clearing House Regulations (FCHR) provide that, where a training club waives its entitlement to training rewards, proof of the waiver must be uploaded by the new club during the review phase of the EPP process (which lasts at least 15 days).[12] In other words, one phase of the EPP process is specifically dedicated to the submission by the new club of waivers signed by the training clubs.

Similarly, if a valid waiver is uploaded by the new club in due time, the EPP process allows the club that has allegedly waived its right to training rewards to challenge the validity of that document.[13]

In this regard, the advent of the FIFA Clearing House introduced a new and strict approach to waivers in the context of training rewards, under which clubs must meet procedural deadlines for training reward waivers to be duly accepted or challenged.[14]

12 Article 9, paragraph 7 of the FCHR.

13 Article 9, paragraph 8 of the FCHR.

14 Despite this strict approach, the system allows a certain flexibility in favour of clubs: during the EPP review process, in addition to the 15-day window for submitting waivers, clubs are generally invited by the FIFA general secretariat to submit waivers at different stages before the EPP determination is issued.

This new procedural dynamic has, in turn, given rise to a new issue in CAS appeals, namely the admissibility of documents that clubs did not submit in a timely manner during the EPP process.[15]

It should be emphasised that CAS has long been ruling on waivers in the context of training rewards. However, until the introduction of the FCH, this discussion was limited to the substantive validity of the waivers submitted; in this regard, the interpretation by CAS and the DRC of the requirements for a waiver to be considered valid had been settled long before the entry into force of the FCH.

3.3. THE VALIDITY OF TRAINING REWARD WAIVERS ACCORDING TO CAS JURISPRUDENCE

Before turning to the debate on whether CAS should accept waivers that have not been submitted during the EPP process, it is important to step back and clarify the concept of a waiver and the requirements for it to be considered valid.

In the same way that the parties involved in a given agreement are free to decide on the terms and conditions of a specific transfer, clubs that are entitled to receive training rewards under the FIFA Regulations on the Status and Transfer of Players (RSTP) may also choose to waive such rewards. However, if they do so, it is extremely important that the document that reflects this intention is legally correct and in accordance with the requirements established by the DRC and CAS. In The Jurisprudence of the FIFA Dispute Resolution Chamber, Frans de Weger states the following:[16]

> "[...] *for the new club it is of utmost importance that provisions in that respect will be drafted in a legally correct manner and in accordance with the basic principles of well-established jurisprudence. For example, the entitlement for training compensation cannot be excluded by an agreement between the new club and a player, an intermediary or any other third party, not being the club that is entitled to receive training compensation in accordance with the RSTP".*

In other words, the document must leave no doubt that the club which would otherwise be entitled to training compensation is clearly waiving that right in favour of the new club that would otherwise have to pay it.

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15 It should be noted that, in order to avoid the costs of a CAS appeal, nothing prevents the parties from agreeing on the (partial or total) reimbursement of the training rewards once they have been paid via FCH SAS; the fact that clubs must pass the FCH SAS compliance assessment guarantees that such an agreement does not lead to any circumvention of the system (in terms of compliance with financial regulation).

16 Frans de Weger, *The Jurisprudence of the FIFA Dispute Resolution Chamber*, 2nd ed. (The Hague: T.M.C. Asser Press, 2016), 410.

CAS has extensively examined the validity of training reward waivers, noting that parties may voluntarily waive their rights unless the waiver is contrary to law, public policy or good morals.[17] Accordingly, since neither the FIFA regulations nor Swiss law prohibits parties from waiving their rights to training rewards, a waiver may be considered valid as long as it does not conflict with public policy or good morals. Given the nature of the rights concerned, such waivers are unlikely to affect public policy or good morals; indeed, to the authors' knowledge, no waiver has ever been declared invalid on those grounds.

Moreover, the well-established DRC and CAS jurisprudence on the validity of waivers has established three main requirements that a waiver must meet to be considered valid: (i) the document must contain a clear and unequivocal renunciation of the training reward; (ii) it must be issued by the party concerned by such renunciation; and (iii) the person renouncing must have the capacity or authority to do so.

Regarding the first criterion, it is extremely important that the document shows which training rewards are being waived by the training club and leaves no room for interpretation. Vague wording such as "*the club waives compensation*" or "*the club waives development rights*" is not sufficient to identify the right being waived, and documents worded in this way will not be considered valid waivers under CAS jurisprudence.[18]

In addition, documents that do not clearly identify the "beneficiary" of the waiver will not be considered valid waivers. In recent CAS jurisprudence concerning loan agreements, where the waiver formed part of a loan agreement between a player's former club and a training club, the waiver was not deemed valid because the new club was not party to the loan agreement, which is binding only on its signatories. In this context, the obligation to pay the training reward rests with the new club (and the right to receive it remains with the training club), and that obligation cannot be

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17 See, e.g., CAS 2025/A/11492 Club Deportivo Leganés, S.A.D. v. Cheman des Parcelles Assainies & Fédération Sénégalaise de Football & FIFA; CAS 2023/A/9976 Klubi I Futbollit Vllaznia Shkoder v. Valletta FC.

18 CAS 2023/A/9775 & 9776 C.D. Tenerife SAD v. Waa Banjul FC & Banjul Football Academy & FIFA, para. 151: *"Since it is the new club – in the present case, the Appellant – that wishes to limit its liability to pay training rewards, the Appellant bears the onus of ensuring that any waiver is clearly drafted to show that the Player's former club or clubs have waived an entitlement to 'training rewards' as that term is defined in the FIFA RSTP. Since 'development rights' are undefined and are not 'training rewards' as that term is defined in the FIFA RSTP, the Sole Arbitrator finds that the Waiver Letter does not clearly and unequivocally show that Banjul FC waived its right to receive training compensation, and determines that the Waiver Letter is invalid."*

waived through the terms of a loan agreement concluded between other parties.[19]

Regarding the second criterion, it is fundamental that the party waiving its entitlement is the entity entitled to training rewards. Only the club with the right to receive such rewards can waive its entitlement, and no third party can do so on its behalf. In other words, if a player's last training club waives its right to training compensation, this waiver applies to that training club only, and not to any other club that may have trained the player during their career. Consequently, neither the player nor a third club has the authority to exclude the entitlement of the training club in an agreement concluded with the new club.

In a CAS case concerning a club's authority to waive the training rewards in dispute,[20] CAS found that the waiver submitted by the Appellant had been issued by another entity. Although both entities had similar names, it was established that they were in fact separate entities and, therefore, the waiver was not considered valid.

In the same award, the Sole Arbitrator also highlighted the following:[21]

> *"The agreement on amicable termination of the employment contract whereby the Player undertook to bear the costs of any training compensation in connection with the registration with FK Vozdovac is completely irrelevant with respect to the Appellant's obligation towards the Respondent."*

Furthermore, it should be emphasised that the person renouncing a right on behalf of a club must have the capacity or authority to do so. CAS jurisprudence[22] has held that a waiver must be signed by a person with the authority and capacity to execute and deliver the statement and to assume the obligations agreed.

3.4. CAS JURISPRUDENCE ON LATE WAIVERS – THE ACCEPTANCE OF WAIVERS NOT SUBMITTED DURING THE EPP PROCESS

Having addressed the criteria for the validity of waivers, this article now turns to the consequences of the new club's failure to submit waivers in a timely manner during the EPP process, analysing some of the cases appealed to CAS on this matter – the so-called "late waivers" jurisprudence.

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19 CAS 2024/A/10694 JSC FC Lokomotiv v. FC Mariupol.
20 CAS 2022/A/8634 FK Vozdovac v. FC Kolomyagi.
21 CAS 2022/A/8634 FK Vozdovac v. FC Kolomyagi, para. 135.
22 See CAS 2017/A/5277 FK Sarajevo v. KVC Westerlo; CAS 2023/A/9976 Klubi I Futbollit Vllaznia Shkoder v. Valletta FC

CAS 2023/A/9682 Tuzlaspor A.S. v. FIFA

This case was one of the earliest CAS awards addressing the consequences of a new club's failure to submit a valid waiver within the deadline prescribed by the FCHR. Following the relevant EPP process, Tuzlaspor filed an appeal against the EPP determination and the corresponding Allocation Statement ordering the club to pay training compensation.

Tuzlaspor's main argument was that it had obtained waivers from the training clubs but had been unable to upload them during the EPP process because the devastating earthquakes that struck Turkey had prevented it from connecting to TMS. The club invoked *force majeure* to justify its failure to submit the documents during the EPP process. After examining Tuzlaspor's argument and concluding that the club had failed to provide sufficient evidence to justify its delayed response to FIFA's requests, the Sole Arbitrator reaffirmed the strict procedural framework established by the FCHR.

In particular, the Sole Arbitrator emphasised that, as a matter of principle, training reward waivers must be provided during the review phase of an EPP in order to be taken into account; any negligence on the part of the new club in submitting valid waivers in due time will result in such documents not being considered in the decision on the distribution of training rewards.

The Sole Arbitrator went on to conclude that, if a negligent club, through its own fault, fails to comply with the time limits set out in the FCHR, it should not be permitted to remedy its culpable inaction by filing an appeal accompanied by the missing waivers. This would constitute an abuse of rights and would compromise the efficiency and reliability of the entire process.

As a result, the appeal was dismissed, thereby confirming FIFA's decision ordering the club to pay training compensation.

CAS 2023/A/9940 & 9941 1927 FK Shkupi v. FIFA & FC Aarau & FC Baden

In other awards, however, CAS has shifted its jurisprudential position regarding the acceptance of waivers not submitted during the EPP process. It held that, even though the club acted negligently in failing to submit the waiver during the EPP review process, there was no abuse or bad faith that would justify excluding the evidence under Article R57(3) of the CAS Code. CAS consequently held that the waivers not uploaded by the new club during the EPP process were admissible, valid and legally effective.

In these cases, the disputes concerned two appeals against an EPP determination and the related Allocation Statement, which ordered the new club to pay training compensation.

In his decision, the Sole Arbitrator recognised that the waiver produced before CAS by the Appellant had never been submitted during the EPP process, despite their having been invited to do so by FIFA on numerous occasions. The Sole Arbitrator also recognised and endorsed the purpose of the Clearing House and the rules governing the proper functioning of the EPP process.

However, in the Sole Arbitrator's view and in accordance with the *de novo* principle, evidence that was not submitted by a party at first instance may be considered by CAS, unless the applicable rules and regulations dictate otherwise or Article R57(3)[23] of the CAS Code applies.

The Sole Arbitrator added that there was no provision in the FIFA regulatory framework requiring an exception to the *de novo* principle in the case at hand, i.e. restricting the analysis by CAS of waivers not provided by the parties during the EPP process.

In his conclusions, the Sole Arbitrator agreed that the Appellant had acted negligently by not submitting the waiver on time but held that, in the absence of abuse, justice was better served by admitting evidence that had already been available when the Appealed Decisions were issued. The Sole Arbitrator confirmed not only the admissibility but also the validity of the waivers; the decisions issued by FIFA were therefore set aside and the obligations to pay training compensation revoked.

CAS 2023/A/10041 FC Noah v. FIFA

As in the previous cases, FC Noah filed an appeal against the EPP determination and the corresponding Allocation Statement ordering it to pay training compensation.

In its appeal, the club argued that a valid waiver signed by the entitled club had been uploaded in TMS with the corresponding transfer instruction and that, although the document had not been submitted during the EPP process and had not been translated into one of FIFA's official languages, it should have been considered a valid waiver, since it reflected the parties' intentions in the context of the player's transfer.

[23] According to Article R57(3) of the CAS Code: "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."

The Sole Arbitrator noted that, despite the waiver having been uploaded by the Appellant in TMS, it had not been provided during the EPP process. Furthermore, the document provided in TMS was not in one of FIFA's official languages.

Besides the Appellant's failure to submit a translated version of the waiver at first instance, another key issue was discussed in this case: the lack of passive mandatory joinder. In FIFA's view, the entitled training club had a legitimate interest in the outcome of the case, and the fact that the club was not named as a Respondent in the CAS proceedings violated the principle of passive mandatory joinder, which constituted sufficient grounds for dismissing the appeal.

In this regard, the Sole Arbitrator noted that the entitled training club did indeed have a legal interest in the proceedings and would be affected by an award that merely annulled the appealed decision. However, in the Sole Arbitrator's view, the club would not be affected if the case were referred back to the first instance, since the training club would then have the opportunity to challenge the validity of the waiver within the EPP process.

Accordingly, since the Appellant had provided a translated version of the waiver in the CAS proceedings, the Sole Arbitrator decided to refer the case back to FIFA and reopen the EPP process to determine, in the light of that translation, whether the training club had validly waived its entitlement.

The above interpretation of the lack of passive mandatory joinder appears, however, to be an exception in CAS jurisprudence and a potential violation of the training club's right to be heard in the CAS proceedings, which cannot be remedied by referring the case back to FIFA.

CAS 2023/A/10002, 10009 & 10010 FK Liepāja v. FIFA

Although the appeal arose from the Appellant's failure to provide the relevant waivers in time during the EPP process, the key issue was that the Appellant named FIFA as the sole Respondent and did not include as parties to the CAS proceedings the training clubs that had allegedly waived their entitlements to training rewards (the creditors).

In its defence, the Appellant argued that the training clubs had no "*direct and legitimate interest in the dispute*", contending that the dispute was purely "*vertical*", between the Appellant and FIFA.

In the Sole Arbitrator's view (in line with FIFA's arguments), the training clubs entitled to training compensation had a legitimate interest in the dispute, and by not naming them as Respondents the Appellant had deprived them of the opportunity to challenge the validity of the waivers, in violation

of the principle of passive mandatory *litis consortium*. Consequently, the appeals were dismissed.

This interpretation is also confirmed by the majority of CAS awards in similar cases.[24] In summary, CAS has held that, by not naming the training clubs concerned (or, in certain cases, the relevant Member Association)[25] as Respondents, the Appellants prevent them (once again) from defending their legal and financial interests. In the view of the CAS panels that have addressed the issue, training clubs must be named as Respondents in CAS proceedings where their entitlement to compensation is directly challenged.

4. MAIN TAKEAWAYS AND IMPACT ON THE EPP PROCESS

Less than four years after the FIFA Clearing House went live, it has proved very successful and has become increasingly consolidated over time. At the foundation of that success lies the EPP process, which records the player's full history and calculates the training rewards owed by the new club to the training clubs.

The EPP process has been widely accepted by the parties involved, principally clubs and Member Associations. More than 99.8% of decisions issued by FIFA became final and binding without being contested; most importantly, not a single decision has been challenged on the grounds of an incorrect calculation of training rewards.

A second indicator of success is that, among the decisions appealed to CAS (the remaining 0.2%), the issue accounting for the largest number of appeals is late waivers. This demonstrates that most of these appeals relate to the parties' failure to comply with procedural deadlines for submitting documents, rather than to a disagreement regarding the substance of the matter or the decision itself.

Although CAS's position on late waivers was initially inflexible, a different interpretation has emerged in recent decisions, with CAS accepting late waivers.

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[24] See, e.g., CAS 2024/A/10718 KAA Gent v. FIFA; TAS 2024/A/10858 Guidars FC c. FIFA; CAS 2024/A/10478 Hapoel Tel Aviv FC v. FIFA.

[25] In TAS 2024/A/10858 Guidars FC c. FIFA, the Sole Arbitrator found that the participation of the training club's Member Association in the appeal was necessary under the principle of passive mandatory *litis consortium*, given the subject matter of the appeal, i.e. the period during which the player was registered with the training club, and the fact that a Member Association is responsible for the registration information submitted to the EPP for its affiliated clubs.

A further trend has also emerged in CAS decisions: instead of ruling on the validity of the waivers, CAS refers EPPs back to FIFA so that (i) the Appellant has the opportunity to submit the waiver and (ii) the corresponding training club has the opportunity to challenge the document. This new trend (as opposed to CAS issuing a new decision) is welcome, since it allows FIFA to carry out all administrative tasks within the EPP process, as instructed by the relevant CAS panel, so that the different stages of the process are respected while ensuring transparency for all participants.[26]

An exception applies in cases involving passive joinder. Where the affected training clubs (or the corresponding Member Associations) are not named as Respondents in the CAS proceedings, the prevailing view at CAS is that the appeal should be dismissed for violation of the principle of passive mandatory *litis consortium*. This approach seems reasonable, since (i) any decision to the contrary would violate the right of training clubs to be heard at CAS; and (ii) referral back to FIFA would not remedy any violation of due process or of the right to be heard of parties that were not named as Respondents in the relevant CAS proceedings.

What, then, are the lessons learnt from CAS jurisprudence, and what is its impact on EPP cases?

From the perspective of the system and of FIFA's role as regulator, setting and respecting deadlines in the EPP process remains extremely important. More than 70,000 decisions have been issued, and the process must remain automatic, fast and efficient, mainly to protect the legitimate interest of training clubs in receiving their training rewards in a timely manner. This argument is all the more compelling given that the Allocation Statements are subsequently sent to FCH SAS for compliance checks and further processing (good reason), which take a few months. This is impossible to achieve without a clear and enforceable process.

Even though the most recent CAS jurisprudence establishes that new evidence may be admitted on appeal after the EPP determination has been issued (in the absence of bad faith and provided that the evidence was already available when the original decision was issued), the balance struck between procedural diligence and substantive fairness remains reasonable.

The acceptance of *de novo* material and respect for passive mandatory litis consortium have led to fairer decisions in individual cases, without giving the parties an incentive to disregard the EPP process. Indeed, the costs of the CAS appeals could have been avoided had the parties complied with

[26] See, e.g., CAS 2025/A/11492 Club Deportivo Leganés, S.A.D. v. Cheman des Parcelles Assainies & Fédération Sénégalaise de Football & FIFA; CAS 2024/A/10673 Torres Srl v. FIFA & Club Atlético Independiente & Asociación Atlética Argentinos Juniors.

the deadlines established by the FCHR. This effect is confirmed by the fact that parties are becoming increasingly familiar with the system: while the number of EPP and Allocation Statement decisions has increased steadily since 2023, the number of appeals has followed the opposite trend.

Only in the (very unlikely) event of a proliferation of CAS appeals on the grounds of late waivers should CAS – through its jurisprudence – or FIFA – through its regulatory powers – reconsider the threshold of (in)flexibility with regard to the admission of late evidence in the EPP process.

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