

## The Webster Effect

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As the transfer window is about to open on yet another turbulent transfer season are you already feeling a little despondent? May one of your favourite players hand in a transfer request or engineer their own transfer out of the club? If so, I hate to break it to you, but things may only get worse.

On 30 January 2008 the Court of Arbitration for Sport (CAS), the highest arbitration authority in sport, ruled that Andy Webster was allowed to invoke Article 17 of the FIFA transfer regulations (the Regulations) to cancel his contract at Tynecastle. It was hailed by some as the new Bosman ruling which in years to come may well change the transfer market in much the same way Mr Bosman did in the mid 1990's.

Webster had one year remaining of his four-year contract at Hearts. However, frozen out of the team and still wanting to play, he decided to use the Regulations to escape the remaining year of his contract. He invoked Article 17 of the Regulations and Webster left his club. Wigan became interested and he signed for them.

Hearts appealed to FIFA and were awarded £625,000 in compensation in August 2007 by the FIFA Dispute Resolution Chamber (the DRC). Clubs that lose a player to another club under Article 17 of the Regulations are due some form of compensation as set out in the Regulations. Considering Hearts originally demanded a £4million transfer fee from Wigan and has previously turned down a £1.5million bid from Southampton, it was perhaps understandable for Hearts to appeal the DRC decision.

Interestingly too, Wigan and Webster also challenged the DRC decision stating £625,000 was too much compensation. All parties to the DRC decision appealed to the Court of Arbitration for Sport (CAS) who issued the final judgment.

Article 17 of the Regulations works by allowing a player to leave his club after a protected period is served and notice is given to the club of the player's intention to use Article 17. A player is then free to leave having served a notice period. For players under the age of 28 the protected period is three years of their contract, and for those 28 or over the protected period is two years. A two week time

period (after the final competitive game of the season) is the allotted timeframe for a player to invoke the rule and then a compensation fee must be decided upon. The player is then free to find a new club, provided the switch is to another member state and not to a club in the same country.

The matter for the CAS to determine was whether the DRC was correct in its assessment of the £625,000 compensation and in particular the substantive elements. The CAS decided that it was the residual value of the contract (i.e. the amount Webster would have been paid during his remaining year at Hearts). In the DRC decision, resulting in a £625,000 compensation payment, other elements such as the time the player stayed with the club and the value of the first year of the new contract with the new club were ruled out by the CAS.

Consequently, the CAS decided that the compensation to be paid by Andy Webster and Wigan would be £150,000, significantly less than the £625,000 previously awarded to Hearts and far smaller than the £4million Hearts originally demanded. The CAS ruled that a club could not claim the market value of a player as lost profit. FIFPro spokesman Tony Higgins stated that the CAS decision has made it "...clear what kind of compensation a club and a player can expect."

Although SPFA general secretary Fraser Wishart stated that "footballers are entitled to the same freedom of movement and contract rights as any other employee in the European Union or global market place," this authors' opinion is that footballers still do not have similar employment rights to the average fan. Whilst there remains an inherent value attached to a player's contractual status, a club will still expect (even after this decision) to be richly compensated if a player terminates his contract two weeks after signing for £20million pounds only to sign for another team on a free transfer (because amongst other things he will be breaching his protected period).

Sepp Blatter, the president of FIFA, reacted angrily to the CAS ruling:

*"because of this unfortunate decision, the principle of contractual stability, as agreed in 2001 with the European Commission as part of the new transfer regulations and which restored order to the transfer*

*system, has been deemed less important than the short-term interests of the player.”*

The effect on the transfer system could be that instead of large sums of money being paid for players, a club wishing to induce a player to sign for them by using Article 17 as an exit route could instead assist the player by merely paying the compensation due to the club and taking the player on the cheap! Indeed, Frank Lampard before signing his new deal with Chelsea was heavily rumoured to be considering invoking Article 17 of the Regulations as a player over the age of 28, having completed at least two years of his protected period and potentially free to use Article 17 to his advantage.

Perhaps until a big name player worth a large transfer fee uses this path, this may continue to be an underused avenue for footballers wishing to leave their club in search of pastures new. Could the Fabregas or Torres Rule in a few years be as common place as the Bosman Rule? Arsenal or Liverpool fans alike would certainly hope not!

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