FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0005/08 FAT)

rendered on 25 July 2008 by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Ulrich Haas

in the arbitration proceedings between

Mr. **Smiljan Pavić**, 22 Stihova, 1000 Ljubljana, Slovenia
represented by Mr. Pantelis Dedes, Attorney at Law, 2 Xanthou Str., 10673 Athens, Greece

- Claimant -

vs.

AEK Basketball Club BC, 233 Syngrou Avenue, Athens, Greece
represented by Mr Evaggelia Diamantopoulou, Attorney at Law, 3 Nikitara Str., Athens, Greece

- Respondent -

Av. Louis Casaï 53
P.O. Box 110
1216 Cointrin / Geneva
Switzerland

Tel: (+41-22) 545 0000
Fax: (+41-22) 545 0099
info@fiba.com
www.fiba.com

1. The Parties

1.1. The Claimant

Smiljan Pavić (hereinafter “Mr. Pavić” or “Claimant”) is a professional basketball player of Slovenian nationality. He was born on 5 February 1980.

1.2. The Respondent

AEK Basketball Club BC (hereinafter "AEK" or the "Respondent") is a Greek basketball club with its seat in Athens, Greece. AEK is a professional basketball club competing in the superior (A1) Greek basketball league.

2. The Arbitrator

On 15 April 2008, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Prof. Ulrich Haas as arbitrator (hereinafter referred to as the “Arbitrator” or the “Tribunal”) pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").

3. Facts and Proceedings

3.1. Background Facts

The Claimant and the Respondent concluded an employment contract (hereinafter the "Contract") for "the 2007/2008 basketball season" dated 16 October 2007. In its most relevant part the Contract reads as follows:

> *"EMPLOYMENT AND DUTIES*
>
> *Club hereby employs Player as a skilled Basketball Player to perform his exclusive playing services for Club during the term of this agreement.*
>
> *2. TERMS OF AGREEMENT*
>
> *The term of this agreement shall be deemed to have commenced on the date of signature of this agreement and shall continue for the periods covering the 2007/2008 basketball season. This is a fixed term contract starting on 20/08/07 and ending 28/05/2008.*
>
> *3. GUARANTEED CONTRACT*
>
> *Club agrees that this contract is a fully guaranteed no cut contract / agreement, which means that neither Club nor any assignee thereof, nor the League can terminate this contract / agreement for any reason. This clause will operate even in case of injury and illness of the Player which means that if Player stops playing for any reason related to injury and illness, all moneys contracted in this contract must be irrevocably paid to Player within the terms.*
>
> *4. CONTRACT TERMS*
>
> *Club irrevocably pays 10,000 € to Player upon Player's passing medicals and drug test. Then Club irrevocably pay as follows: 30 November € 20000, 30 December € 20000, 30 January € 20000, 28 February € 20000, 30 March € 20000, 30 April € 10000, 30 May € 20000, total 150.000€ net of social law costs and income taxes which are at Club's sole and only charge and paid for by the Club without further deductions on Player's salary. […]*

5. SALARY COMPENSATION

Club irrevocably guarantees to pay Player for 2007-08 season a base salary of 150.000€ net as described above. Club irrevocably also guarantees to pay Player the following bonuses: 6.000€ for being the team in the top 3 teams in the regular season and 11000€ for being the team in the top 2 teams in the regular season. 15.000€ for winning title. …

8. ARBITRATION

Both parties agree that any dispute arising out of or in connection with this Agreement shall be settled exclusively by [arbitration by F.A.T. of FIBA with the possibility to appeal the award to CAS]. The parties have signed their names below as evidence of these willingness to be bound by the terms of this agreement which they enter into of there own free will. This contract need to be signed by all parties within 5 hours in order to be valid."

On 12 February 2008 the Claimant terminated the Contract with Respondent and then left Greece**.** On 27 February 2008 he then concluded a new employment contract (hereinafter referred to as the "New Contract" with the Latvian club ASK Riga (hereinafter referred to as "ASK"). The contract runs until the end of the 2007/2008 season and stipulates a fee of €30,000 for the Claimant.

3.2. The Proceedings before the FAT

The Claimant filed a Request for Arbitration dated 9 April 2008 in accordance with the FAT Rules. The non-reimbursable fee of EUR 3,000.00 has been credited to the FAT account.

On 15 April 2008 the President of FAT appointed Prof. Ulrich Haas as the arbitrator in this matter.

In a letter of the same date, the Arbitrator accepted his appointment and signed a declaration of acceptance and independence provided by the FAT Secretary.

By letter dated 15 April 2008 the parties were informed that Mr. Ulrich Haas had been appointed as the Arbitrator in this matter. In addition, a deadline was fixed for the Respondent to file its Answer to the Request for Arbitration by 2 May 2008. The letter also advised the Respondent of the consequences in the event that it did not file an Answer or filed an incomplete Answer.

By letter received on 28 April 2008 the Respondent submitted the following request:

> "*Of the Anonymous Basketball Company with registered name "Athlitiki Enosi Konstantinoupoeos Anonymh Etaireia" (AEK BC) which is located in Athens, 233 Syggrou Avenue and is legally represented. In order to contest al the allegations made by the athlete Smiljan Pavic, we consider advisable that we ask to postpone the affair in front of you up to the publication of the decision from our 22.1.2008 practised charge from the responsible bodies, the discussion of which has been fixed for the 5-5-2008 in front of the First degree Committee of Resolution of Economic Differences of E.S.A.K.E.*"

The document, which the Respondent called the "practised charge", was attached to the request.

By letter dated 30 April 2008 the Claimant was asked to comment on the Respondent's request for extension of the time limit by 7 May 2008. The Claimant submitted his response on 5 May 2008.

By letter dated 9 May 2008 the Arbitrator invited the Claimant and the Respondent to submit details about the proceedings before the Committee of Resolution of Economic Differences of E.S.A.K.E., the legal status of that judicial body and the circumstances, upon which the competence of said judicial body is based in the case at hand.

The Respondent did not follow up on the Arbitrator's invitation of 9 May 2008.

On 28 May 2008 the Claimant submitted a letter dated 20 May 2008 addressed to his legal counsel informing him that, "the hearing of the case AEK KAE versus Smiljan

Pavic […] on 6-5-2008 was cancelled."

On 30 May 2008 the Arbitrator issued a procedural order (Order No. 1), in which the parties were informed that the Respondent failed to provide the FAT with "considerable reasons" justifying a stay of the proceedings. In addition, the Arbitrator fixed the following amounts for the advance on costs:

"Claimant (Mr Pavic):	*EUR 4,000*
Respondent (AEK):	*EUR 4,000*

Only the Claimant had paid his share of the advance on costs by the deadline of 6 June 2008. The Respondent did not submit any additional Answer; nor did it pay its advance on costs.

On 9 June 2008 the Claimant was advised that, in accordance with 9.3 of the FAT Rules, he had the possibility of paying the Respondent's share of the advance on costs so that the arbitration could proceed.

On 18 June 2008 the Claimant paid the Respondent's share of EUR 4,000 into the FAT account. Following the payment by the Claimant the Arbitrator declared the exchange of documents completed. Furthermore the parties were invited to provide to the FAT Secretariat "by no later than Tuesday, 24 June 2008 a detailed account of their costs, particularly their legal costs and expenses, incurred in connection with these proceedings".

On 19 June 2008, the Claimant submitted the following account:

Non reimbursable fee	*EUR 3,000.00*
Advance on costs (Claimant's share)	*EUR 4,000*
Advance on costs (in lieu of Respondent)	*EUR 4,000*
Legal fees & Expenses	*EUR 3,000*
TOTAL:	*EUR 14,000*

The Respondent did not submit any account within the deadline.

4. The Positions of the Parties

4.1. The Claimant's Position

The Claimant submits that while he performed his services in conformity with his contractual duties the Respondent breached its obligations by not paying the full salaries agreed upon in the Contract. Out of the € 70,000 agreed upon for the period between passing the medical exams and 30 January 2007 the Respondent paid only € 30,000. In addition Mr. Pavić claims that the payments effectuated to him were belated.

The Claimant further contends that the Respondent had taken the decision around mid-January to dismiss him. For this reason the Respondent offered the Claimant that the Contract be terminated by mutual agreement. However, the Claimant did not accept this offer to enter into a mutual termination agreement because - according to the Claimant - the draft contained a waiver under point 2. By signing the mutual termination agreement the Claimant would have waived his claims arising out of the Contract, in

particular the outstanding salary payments, which the Claimant was not willing to do.

According to the Claimant the Respondent then excluded him from games and training because of his refusal to sign the mutual termination agreement. Thus, he was no longer listed for the game between AEK and Kolossos Rhodes BC on 26 January 2008. At the beginning of February 2008 the Club stopped handing out training clothes to him. When he then attended training in his own training clothes he was not permitted to take part. Finally on 9 February 2008 the team manager, Mr. Kostas Kotsis, refused to take him along to the championship game against Olimiada Patron. Following this, the Claimant terminated the Contract by letter of 12 February 2008.

On the basis of the contentions set out above, the Claimant requests the Tribunal – inter alia - to make an award to:

> *"hold that the Contract was justly terminated by the Claimant due to the exclusive fault of the Respondent";*
>
> *"order the Respondent to pay to the Claimant the amount of 40'000 EUR for rendered services, with the interest rate of 5 % or in the alternative with the interest rate decided by the FAT Arbitrator ex aequo et bono, as follows*
>
> - *20'000 EUR as from 30 December 2007*
> - *20'000 EUR as from 30 January 2008"* and
>
> *"order the Respondent to pay to the Claimant the arbitration fee of 50'000 EUR for compensation, with the interest rate of 5% or in the alternative with the interest rate decided by the FAT Arbitrator ex aequo et bono, as from 12 February 2008."*

4.2. The Respondent's Position

The Respondent initially only applied for a "postponement" of the proceedings before

the Tribunal in reference to the document it called the "practised charge". In said document the Respondent claims that, although the parties concluded a contract on 18 October 2007, the Claimant "demonstrated complete indifference towards his contractual obligations". According to the Respondent, the Claimant's conduct was, "entirely unacceptable for a professional Basketball athlete". Furthermore, the document states that Claimant, "has been absent since 3-1-2008 and hence defiantly and without excuse (not calling upon any health problems), without any warning, from most practices, causing upset and trouble to the team, while he reacted with scorn to the comments from the team technician."

Finally, the document called the "practised charge" states that in view of the Claimant's conduct the Respondent's board of directors in an extraordinary meeting held on 22 January 2008 unanimously resolved to replace the Claimant by another player.

5. Jurisdiction and other Procedural Issues

Pursuant to Article 2.1 of the FAT Rules, “[t]he seat of the FAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland”. Hence, the present FAT arbitration is governed by Chapter 12 of the Federal Statute on Private International Law (PIL).

Pursuant to Art. 186 (1) PIL the arbitral tribunal decides on its own competence. As a clarification, Article 186 (1bis) PIL adds that “it shall decide on its juridiction notwithstanding an action on the same matter between the same parties already pending before a State Court or another Arbitral Tribunal, unless there are serious reasons (*beachtenswerte Gründe*) to stay the proceedings."

5.1. Lis pendens

The Respondent appears to be of the opinion that the present arbitration shall be stayed on the ground of lis pendens. Indeed, in its letter of 28 April 2008 it made an application to "postpone the affair" before the Tribunal in view of the proceedings before the "Committee of Resolution of Economic Differences of E.S.A.K.E.". Inasmuch as Respondent's position can be understood as an application to stay the present arbitration for serious reasons within the meaning of Article 186 (1bis) PIL, said application must be rejected because the conditions of Art. 186 (1bis) PIL are clearly not met in the present case.

5.1.1 .Legal Status of the "Committee of Resolution of Economic Differences of E.S.A.K.E."

The first precondition for a stay based on Article 186(1bis) PIL is that a parallel action is pending "before a State Court or another Arbitral Tribunal".

In the present case, the legal status of the "Committee of Resolution of Economic Differences of E.S.A.K.E." is unclear. It is obviously not a state court. Moreover, it is also doubtful whether it constitutes a (true) arbitral tribunal. Neither the PIL nor the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 define the term "arbitral tribunal". However, Swiss case law sets high standards for there to be an arbitral tribunal. Thus, in order for the deciding body to qualify as an arbitral tribunal it must be a third party "whose person is distinct from" the parties and, in addition, demonstrate a certain degree of

independence from the parties.[1] As for the degree of independence, Swiss law - in principle - requires the strict standards applied to state courts.[2] Whether the "Committee of Resolution of Economic Differences of E.S.A.K.E." satisfies these standards in order to be classified as an arbitral tribunal within the meaning of Art. 186 (1bis) PIL is not known. Although the Tribunal requested the Respondent by letter of 9 May 2008 to advise whether the "Committee of Resolution of Economic Differences of E.S.A.K.E." satisfied the requirements of a (true) arbitral tribunal, the Respondent did not answer. However there is no need to make a final ruling as the other conditions are clearly not met, as will be shown below.

5.1.2 Instituted Proceedings

Pursuant to Art. 186 (1bis) one must also examine whether proceedings (concerning the same subject matter) had in fact been instituted prior to this arbitration. However, the Respondent has not furnished sufficient evidence of this as the document put forward by the Respondent called the "practised charge", which allegedly instituted the proceedings before the "Committee of Resolution of Economic Differences of E.S.A.K.E.", is not dated. It is therefore not apparent whether the proceedings before the "Committee of Resolution of Economic Differences of E.S.A.K.E." were - as claimed by the Respondent - instituted on 22 January 2008. Although the Respondent further submitted that an appointment for an oral hearing before the "Committee of Resolution of Economic Differences of E.S.A.K.E." had been set for 5 May 2008, it has not attached to its written pleadings any summons to the hearing. On the contrary, Claimant submitted a

[1] BGE [Decisions of the Swiss Federal Tribunal] 117 Ia 166, 168 ; 119 II 271, 275 f. ; 129 III 445, 454.

[2] BGE [Decisions of the Swiss Federal Tribunal] 129 III 445, 454.

letter from the Secretary of the "Committee of Resolution of Economic Differences of E.S.A.K.E.", which shows that no hearing before the "Committee of Resolution of Economic Differences of E.S.A.K.E." took place on 6 May 2008 (sic!).

5.1.3 Considerable Reasons

Even if the Arbitral Tribunal would have found that proceedings concerning the same subject matter were pending before the "Committee of Resolution of Economic Differences of E.S.A.K.E.", the Tribunal is of the opinion that there are no "considerable reasons" within the meaning of Art. 186(1bis) PIL to suspend the proceedings before the FAT. Although the Tribunal requested the Respondent to expand on its submissions, the Respondent failed to advise the Tribunal when the proceedings before the "Committee of Resolution of Economic Differences of E.S.A.K.E." were instituted or when the written pleadings instituting the proceedings were served on the Claimant. The Respondent also - despite being asked by the Tribunal - failed to inform the Tribunal of the basis upon which the "Committee of Resolution of Economic Differences of E.S.A.K.E." had jurisdiction to decide the dispute. In any event the Contract did not contain any indication that the "Committee of Resolution of Economic Differences of E.S.A.K.E." has jurisdiction. Finally, the Respondent also failed to advise the Tribunal of when a decision in the proceedings before the "Committee of Resolution of Economic Differences of E.S.A.K.E." could be expected and whether its decision was binding on the parties. The Respondent has therefore not notified the Tribunal of any "considerable reasons" that would justify an exception to the rule in Art. 186(1) PIL, whereby an action that is *lis pendens* elsewhere does not prevent the arbitral tribunal from pursuing the arbitration.

5.2. Valid Arbitration Agreement

In the present case the Tribunal assumes that a valid arbitration agreement exists between the parties.

5.2.1 Arbitrability

The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

The Arbitrator notes that the dispute referred to him is clearly of a financial nature and is thus arbitrable within the meaning of Article 177 (1) PIL.[3]

5.2.2 Formal and Substantive Validity of the Arbitration Agreement

Furthermore, the existence of a valid arbitration agreement must be examined in the light of Article 178 PIL, which reads as follows:

> *"1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.*
>
> *2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law."*

The jurisdiction of the FAT over the dispute between the parties ensues from Clause 8 of the Contract which reads as follows:

> *"Arbitration Both parties agree that any dispute arising out of or in connection with*

---

[3] Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

> *this Agreement shall be settled exclusively by [arbitration by F.A.T. FIBA with a possibility to appeal the award to CAS]. …"*

The Contract is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178 (1) PIL.

With respect to substantial validity, the Arbitrator considers that there is no indication in the file that could cast doubt as to the validity of the arbitration agreement under Swiss law (referred to by Article 178 (2) PIL). In particular, the wording "*any dispute arising out of or in connection with this Agreement*" clearly encompasses the present dispute.[4]

6. Merits of the Claim: Discussion

6.1. Applicable Law – *ex aequo et bono*

With respect to the law governing the merits of the dispute, Article 187 (1) PIL provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187 (2) PIL adds that the parties may authorize the arbitrators to decide *"en équité",* in derogation from the rule of law referred to in Article 187 (1). Article 187 (2) PIL is generally translated into English as follows:

> *"the parties may authorize the arbitral tribunal to decide ex aequo et bono".*

---

4 *See* for instance BERGER/KELLERHALS, Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, No. 466, pp. 160-161.

Under the heading “Applicable Law”, Article 15.1 of the FAT Rules reads as follows:

> *“Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.”*

In the present case the parties have not agreed otherwise. Consequently, the Arbitrator shall adjudicate the claims *ex aequo et bono*.

6.2. Findings

6.2.1 Contract Conclusion

It is not disputed between the parties that a contract was concluded, however the date of its conclusion as stated by the respective parties diverge. The Claimant submits that it was concluded on 16 October 2007, whereas the Respondent claims that it was concluded on 18 October 2007. However, in the Tribunal's opinion there is no need to determine the precise date, as neither party claimed that two separate contracts had been concluded. Moreover the copy of the Contract dated 16 October 2007 submitted to the Arbitral Tribunal bears the signatures of - inter alia - the Claimant and the Respondent's President (Mr. Drosos Dimitris).

6.2.2 Assessment of the Facts

It is also not disputed between the parties that the Respondent resolved in January 2008 to replace the Claimant by another player. However, the reasons behind Claimant's replacement are highly disputed as is evidenced by the parties'

respective accounts of the facts which differ considerably. Having studied the documents submitted, the Tribunal agrees with the Claimant's submissions. This is supported by the fact that the Claimant has substantiated his submissions on the course of events. He submitted a copy of the notice of termination of 12 February 2008 and proof of service of the notice of termination on the Respondent. In addition the reasons stated in the notice of termination and the Claimant's accounts of the facts before this Tribunal correspond. Furthermore, the Claimant submitted witness statements by his wife, Ms. Elena Lazarevski, and by Mr. Niksa Tarle, which support his account of the facts. The latter worked for the basketball agency XL, which represents the Claimant exclusively and worldwide. Mr. Niksa Tarle was therefore in contact with the Claimant professionally and had first-hand information about the events, to which he has testified in the witness statement. The Claimant also submitted a plausible reason why the Respondent wanted to replace him with another player: the Claimant submitted that he was brought to Athens by the Respondent's head coach at the time, Mr. Agelos Koronios. However, shortly after the Claimant's arrival in Greece, Mr. Agelos Koronios was replaced by a new head coach. The new coach in turn informed the Claimant already in December 2007 that he was no longer planning on using him and was therefore looking for another foreign player.

By contrast, there is little to substantiate the Respondent's account of the facts. The Respondent claims that the Claimant, *"has been absent since 3-1-2008 […] from most practices".* It is neither claimed (let alone proven) that the player was missing from certain club games, nor are the training days stated, which the Claimant allegedly failed to attend without being excused. Furthermore, the chronology of the facts described by the Respondent is questionable. According to the Respondent's account, the Respondent's board of directors is supposed to

have resolved to replace the Claimant by another player in an extraordinary meeting on 22 January 2008. In addition, in a letter of the same date the proceedings before the "Committee of Resolution of Economic Differences of E.S.A.K.E.", including a request that the Contract be declared terminated, was also supposed to have been instituted. Moreover the mutual termination agreement also bears the date of 22 January 2008. However, the Respondent did not fax the Claimant's player's agent the offer to conclude the mutual termination agreement until 23 January 2008. This date is stated firstly in the Claimant's letter of termination served on the Respondent and secondly this date of receipt is also stamped on the fax, a copy of which the Claimant submitted to the Tribunal. Therefore, it does not seem very plausible that the Respondent first (or almost simultaneously) instituted proceedings before the "Committee of Resolution of Economic Differences of E.S.A.K.E." for the Contract to be cancelled and then made the Claimant the offer of terminating the Contract by mutual consent. There are thus numerous reasons to support the argument that no proceedings had been instituted before the "Committee of Resolution of Economic Differences of E.S.A.K.E." at all, or at least not at that time. This assumption is also supported by the fact that - as mentioned above - the letter, whereby cancellation of the Contract was requested before the "Committee of Resolution of Economic Differences of E.S.A.K.E.", is not dated. In any event, any such proceedings before the "Committee of Resolution of Economic Differences of E.S.A.K.E." would not have done the Respondent much good; as Clause 3 of the Contract reads:

> *"Club agrees that this contract is fully guaranteed no cut contract / agreement, which means that neither Club nor assignee thereof, nor the League can terminate this contract / agreement for any reason …"*

The Respondent could therefore not terminate or cancel the Contract at all for the

reasons stated by it. Even the League or its organs (and therefore also the "Committee of Resolution of Economic Differences of E.S.A.K.E.") could not cancel the Contract given the wording of the Clause 3.

6.2.3 Breach and Termination of the Contract

On the basis of the facts established above, the Tribunal holds that the Respondent breached its obligations under the Contract, in particular its main obligation to pay the Claimant the agreed remuneration. The Claimant has submitted bank account statements as proof of the belated or missed salary payments. These show the credits and debits on the Claimant's accounts in the relevant period. According thereto, the Respondent transferred EUR 30,000 to the Claimant in the period from 18 October 2007 to 12 February 2008. However, for that period and pursuant to Clause 4 of the Contract the Respondent was obliged to pay the Claimant EUR 70,000. In the opinion of the Tribunal, the non-payment of a sum of EUR 40,000 owed constitutes a grave breach of the Respondent's contractual obligations. Such a grave breach justifies early termination of the fixed-term Contract. Consequently the Claimant was justified in terminating the Contract by letter of 12 February 2008.

6.2.4 Consequences of Termination

Since the termination terminates the contractual relationship only for the future, and not retroactively, the Respondent must make all payments which he should have made according to the Contract until the date of termination. Of the contractually agreed EUR 70,000 the Respondent only paid EUR 30,000 with the consequence that the Respondent still has to pay the Claimant the outstanding EUR 40,000.

The next question is whether the Respondent has to pay damages because it was responsible for or provoked the early termination of the Contract and therefore denied the Claimant the contractually agreed payments for the future. The Tribunal is of the opinion that this is equitable and reasonable in the present case. However, in order to avoid the Claimant being in a better position as a consequence of the Respondent's breach than without said breach, everything which the Claimant earned because he provided his services elsewhere (for consideration) must be deducted from the Claimant's claim for damages. The value of the Contract's unexpired term is EUR 80,000. Since the Claimant earned EUR 30,000 by providing his services elsewhere (namely to ASK), the amount of compensation amounts to EUR 50,000.

Finally, the Claimant is demanding interest at a rate of 5%. The Tribunal considers this interest rate to be reasonable and equitable. A distinction must - in principle - be made for the period as of when interest is owed. While the date of termination (12 February 2008) is the relevant date with respect to the claim for damages (in the amount of EUR 50,000), in the Tribunal's opinion, the relevant dates for the claim for contractual payments are the dates in which the contract payments became due. The Respondent therefore owes 5% interest p.a. on the sum of EUR 20,000 as for 30 December 2007, a further 5% interest p.a. on the sum of EUR 20,000 as for 30 January 2008 and 5% interest p.a. on the sum of EUR 50,000 as for 12 February 2008.

7. Costs

Article 19.2 of the FAT Rules provides that the final amount of the costs of the arbitration

shall be determined by the FAT President and may either be included in the award or communicated to the parties separately. Furthermore Article 19.3 of the FAT Rules provides that the award shall grant the prevailing party a contribution towards its legal fees and expenses incurred in connection with the proceedings.

On 24 July 2008, the President of the FAT rendered the following decision on costs:

> *Considering all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and of the procedural questions raised, the President of the FAT determines the arbitration costs as follows:*
>
> - *Arbitrator's fees (18 hours at an hourly rate of EUR 300)* — *EUR 5,400*
> - *Arbitrator's costs* — *EUR 00.00*
> - *Administrative and other costs of FAT* — *-------*
> - *Fees of the President of the FAT* — *EUR 1,000.00*
> - *Costs of the President of the FAT* — *-----*
>
> ***TOTAL*** — ***EUR 6,400***

In the present case, the costs shall be borne by the Respondent alone in line with Article 19.2 of the FAT Rules, as the Claimant has been awarded his claims in their entirety and there is no indication that either the financial resources of the parties or any other circumstance compels otherwise.

Moreover, the Arbitrator wishes to note that given the above allocation there is no need to take into account the handling fee when allocating the costs of the arbitration to the parties as provided for by Article 19.1(2) of the FAT Rules.

Given that in accordance with the Procedural Order No. 1 dated 30 May 2008 and the directions given by the Tribunal on 9 June 2008 the Claimant paid the totality of the advance of the arbitration costs of EUR 8,000 the Tribunal decides that:

(i) the FAT shall reimburse EUR 1,600,00 to the Claimant and

(ii) the Respondent shall pay to Claimant the difference between the costs advanced by Claimant and the amount which is going to be reimbursed to him by the FAT, i.e. EUR 6,400.00 (EUR 8,000 – EUR 1,600.00).

(iii) Furthermore, the Arbitrator considers it adequate that the Claimant is entitled to the payment of a contribution towards his legal fees and other expenses (Article 19.3 of the FAT Rules). Since in the case at hand the payment by Claimant of the non-reimbursable handling fee was not taken into account when allocating the costs of the arbitration, the Arbitrator thinks it adequate to take into account the non-reimbursable fee when assessing the expenses incurred by the Claimant in connection with these proceedings. After having reviewed and assessed all the circumstances of the case at hand the Arbitrator fixes the contribution towards the Claimant's legal fees and expenses at EUR 6,000;

8. AWARD

For the reasons set forth above, the Arbitrator decides as follows:

1. **The Arbitrator assumes jurisdiction over Mr. Smiljan Pavić's claims.**

2. **The arbitrator holds that Mr. Smiljan Pavić terminated the employment contract dated 16 October 2008 with just cause.**

3. **AEK Basketball Club BC shall pay to Mr. Smiljan Pavić EUR 90,000.00.**

2. **AEK Basketball Club BC shall pay interest to Mr. Smiljan Pavić in the amount of 5% p.a. as of 30 December 2007 on the amount of EUR 20,000.00, 5% p.a. as of 30 January 2008 on the amount of EUR 20,000.00 and 5% p.a. as of 12 February 2008 on the amount of EUR 50,000.00.**

3. **The costs of the present arbitration proceedings shall be borne by AEK Basketball Club BC. Hence, AEK Basketball Club BC shall pay EUR 6,400.00 to Mr. Smiljan Pavić as reimbursement of the advance of arbitration costs.**

5. **AEK Basketball Club shall pay EUR 6,000.00 to Mr. Smiljan Pavić as a contribution towards his legal fees and other expenses.**

6. **Any other or further reaching relief is dismissed.**

Geneva, place of the arbitration 25 July 2008

Ulrich Haas
(Arbitrator)

FIBA Arbitral Tribunal (FAT)

Notice about Appeals Procedure

cf. Article 17 of the FAT Rules
which reads as follows:

"**17. Appeal**

Awards of the FAT can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within 21 days from the communication of the award. The CAS shall decide the appeal *ex aequo et bono* and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure."