



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0017/08 FAT)

by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr Quentin Byrne-Sutton

in the arbitration proceedings between

Mr Jan Lugtenburg, c/o Court Side, Parkwijklaan 229, 1326 JT Almere, The Netherlands

- Claimant 1 -

and

Mr Pavao Kukic, c/o Court Side, Parkwijklaan 229, 1326 JT Almere, The Netherlands

- Claimant 2 -

hereinafter referred to collectively as the “**Agents**” or “**Claimants**”

vs.

Mr Mladen Sekularac, Pozarevacka 1, Bar, Montenegro

- Respondent -



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

1. The Parties

1.1. The Claimants

1. Mr Jan Lugtenburg ("Agent 1") and Mr Pavao Kukic ("Agent 2") are FIBA-licensed basketball agents who at the time of the relevant facts acted within a basketball agency called "Court Side".

1.2. The Respondent

2. Mr Mladen Sekularac (the "Player") is a professional basketball player, who was playing for Racing Basket Antwerpen ("Racing Basket") in Belgium and subsequently at Spirou Basket ("Spirou Basket"), also in Belgium, at the time of the relevant facts.
3. The Player has represented himself in this proceeding but has also been represented by an authorized representative named Nebojsa Ivic.

2. The Arbitrator

4. On 11 November 2008, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Mr. Quentin Byrne-Sutton, as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").



We Are Basketball

FIBA Arbitral Tribunal (FAT)

None of the parties has raised objections to the appointment of the Arbitrator or to the declaration of independence issued by him.

3. Facts and Proceedings

3.1. Background Facts

5. The Claimants represented Court Side in negotiating an agreement with the Player, which was signed on 22 January 2008 (the “Agent Agreement”).

6. According to Article 1.2 of the Agent Agreement:

“The Agent shall advise, assist and represent the Player in connection with the engagement of the Player as a skilled basketball player by clubs worldwide. Particularly, the Agent shall introduce the Player to any basketball club which might be interested to retain his services, shall negotiate on behalf of the Player the relevant player contract to be signed by the Player and will subsequently liaise and deal in the Player’s interest with the club on all matters of interest of the Player in connection with his engagement with the club.”

7. According to Article 3:

“For any contract signed by the Player with a club, the Agent shall be entitled to an agent fee equal to 10% of the Player’s base net salary for the duration of his contract with the club. In negotiating the Player’s contract, the agent shall include a clause (or draft a separate intermediating agreement) according to which the agent collects his agent fee directly from the club. If, for whatever reason, the Agent is unable to collect his fee (or part of his fee) from the Club then the player shall be liable to pay the agent fee. The Agent’s fee shall be compensation for all the services to be provided by the Agent according to this contract. ”



We Are Basketball

FIBA Arbitral Tribunal (FAT)

8. Article 4 provides that:

"This Agreement shall begin on the day of signature hereof by both parties and shall continue in effect for one (1) Year. If this agreement is not terminated, it will automatically be prolonged for one (1) year under the same condition. Termination of this agreement has to be done in writing and sent by certified mail to the other party. The termination letter has to be sent at least 60 days prior to the prolongation date of this agreement."

9. Article 5 provides that the Agent Agreement:

"... shall be subject to the laws of the country in which the player plays professional basketball."

10. Article 6 stipulates that:

"The parties agree to keep confidential the contents of this Agreement and any matters related thereto."

11. Article 8 stipulates that:

"Any dispute arising out of, or in connection with, this Agreement shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitively in accordance with the FAT Arbitration Rules. The arbitrator shall decide the dispute ex aequo et bono. Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), in Lausanne, Switzerland. To the extent legally possible under Swiss law recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal shall be excluded."

12. At the point in time when the Agent Agreement was signed, the Player was under a fixed-term guaranteed contract with Racing Basket covering two seasons (2 x 10 months), with the second season ending on 15 June 2008.

13. During the spring of 2008, the Player had various difficulties with Racing Basket and asked Agent 1 to intervene to help resolve the issues.

14. Discontent with what he deemed an absence of support from Agent 1, the Player



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

decided to terminate the Agent Agreement and did so by means of a letter posted on 21 April 2008 to an address the Player previously used for sending Christmas cards to Agent 1. The letter itself was addressed to the name of Agent 2, contained the date 09/04/2008 and was formulated as follows:

“Sir, I am taking this opportunity to inform you that I am hereby cancelling the power of attorney, representation contract, or any assistance and engagement issued to you 22/01/2008. Accordingly I am free to sign an agreement with another agent, so thank you for your assistance you provided to me. Sport Greetings. Mladen Sekularac. Antwerpen – Belgium”.

15. The Player proceeded to negotiate an engagement with a new club – Spirou Basket – using the services of a new agent named Nebojsa Ivic.
16. On 29 May 2008, the Player signed an engagement with Spirou Basket under a contract to come into effect on 15 August 2008 and to end on 14 June 2010 (the “Spirou Contract”). According to article 3 of the Spirou Contract, the Player would be paid monthly installments of EUR 12’000 at the end of each month starting on 31 August 2008.
17. The previous day, on 28 May 2008, Mr Ivic had signed a “Mediation Agreement” with Spirou Basket. Under article 2 of the Mediation Agreement, in exchange for his help “in negotiating and finalizing [the] contract between the Club and the Player”, Mr Ivic was entitled to receive a commission of EUR 12’000 in relation to the 2008-2009 season (to be paid in one installment on 1 October 2008) and a second commission of EUR 12’000 in relation to the 2009-2010 season (to be paid in one installment on 1 October 2009).
18. Article 4 of the Mediation Agreement provides that:

“The present agreement immediately comes to an end, in case the labour contract of



We Are Basketball

FIBA Arbitral Tribunal (FAT)

29/05/2008 between the Club and Player is prematurely terminated either under mutual agreement, either unilaterally by the Player, either unilaterally by the Club for any severe cause on the Player's account. From that moment on, no further payments will be due by the Club, except for the sums that would remain due on a pro rata temporis base for the current season in which the termination has occurred".

19. On 6 November 2008, the Player signed an agreement with Spirou Basket (the "Termination Agreement"), whereby

"The Player has requested the Club to be released with immediate effect from his Contract obligations, wishing to return to his home country. [...] The Club understands the Player's wish and accepts to end the contract in mutual agreement, with immediate effect on the day of signature of the present document, without any term of notice. [...] [The Player] acknowledges that he has been paid all due monies by the Club and [...] renounces to any claim towards the Club pertaining to the payment of salaries, bonuses, advantages of any kind".

3.2. The Proceedings before the FAT

20. On 20 October 2008, the Claimants filed a Request for Arbitration in accordance with the FAT Rules, and subsequently duly paid the non-reimbursable fee of EUR 3,000.00. The Request for Arbitration included Mr Ivic as Respondent 2.

21. On 17 November 2008, the FAT informed the parties that Mr Quentin Byrne-Sutton had been appointed as the Arbitrator in this matter and fixed the amount of Advance on Costs to be paid by the Parties as follows:]

<i>"Claimant 1 (Mr Lugtenburg)</i>	<i>EUR 4,000</i>
<i>Claimant 2 (Mr Kukic)</i>	<i>EUR 4,000</i>
<i>Respondent 1 (Mr Sekularac)</i>	<i>EUR 4,000</i>
<i>Respondent 2 (Mr Ivic)</i>	<i>EUR 4,000"</i>

22. On 19 November 2008, the Claimants paid their advance on costs in a total amount of EUR 8,000.00.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

23. On 2 December 2008, Mr Ivic submitted an Answer on behalf of the Player and simultaneously submitted that he himself (Nebojsa Ivic) could not be named validly as a Respondent in this proceeding since he had not entered into an arbitration agreement with Claimants.
24. On 18 December 2008, the FAT Secretariat informed the Claimants that they would have to substitute for the Respondents with respect to the advance on arbitral costs because the latter had not paid their portion thereof, which they did on 22 December 2008
25. On 9 February 2009, the Claimants withdrew their claim against Mr Ivic. Thereafter, the FIBA Secretariat reduced the amount of the advance of costs by EUR 4,000.00 and a corresponding amount was then reimbursed to Claimants.
26. The Arbitrator issued several Procedural Orders requesting, among others, additional submissions and documents from the parties.
27. On such basis, the Claimants submitted further particulars on 26 February 2009 and the Player commented thereon on 30 March 2009; each party effectively filing the requested documents, including copies of the invoked agreements and contracts.
28. Since none of the parties filed an express application for a hearing, the Arbitrator decided in accordance with Article 13.1 of the FAT Rules not to hold a hearing and to deliver the award on the basis of the written submissions of the parties.
29. On 16 April 2009, by Procedural Order No. 5, the Arbitrator closed the proceedings subject to the parties submitting their accounts of costs.
30. On 16 April 2009, the Claimants submitted their costs. The Player did not make any



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

submissions in that respect.

4. The Positions of the Parties

4.1. The Claimants' Position

31. The Claimants submit the following in substance:

- *The Player was not entitled to terminate the Agent Agreement before its first fixed term.*
- *The Player had no cause for termination of the Agent Agreement.*
- *The Player violated his contractual obligations by entering into an agreement with Mr Ivic to represent him as agent while he was still under contract with the Claimants.*
- *Mr Ivic acted in violation of FIBA Rules.*
- *As a result of the Player's unjustified termination of the Agent Agreement long before its term, they sunk costs which they were investing in marketing the Player and lost the opportunity to negotiate a new contract for the Player and the corresponding commission they would have been entitled to on such basis.*
- *Consequently, the Claimants should be entitled to the commission they would have received if they had had the opportunity to negotiate the Spirou Contract.*

32. On such basis, the Claimants request the following relief:

"a) That Mladen Sekularac pay us the agent fee for the 2008/2009 and 2009/2010 seasons out of his own pocket, or instructs [Spirou Basket] to pay it on his behalf.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

b) *That Mladen Sekularac reimburses us for all costs we have had to [sustain] in order to enforce our agreement with him and collect [our] agent fee. This includes, but is not limited to, all FAT costs.*

c) *That since Mladen Sekularac knowingly and deliberately breached his representation agreement with us and disrespected the FIBA rules and regulations governing Player Agents (despite numerous warnings and explanations) he should be subject to paragraph H.5.7.2.1 (sanctioning of players).*

d) *That the FIBA should take into consideration the unacceptable behaviour of Nebojsa Ivic and list him as an agent who is NOT in good standing (paragraph H.5.4.2). This fact should be considered if Nebojsa Ivic ever applies for a FIBA Agent licence. Furthermore, Nebojsa Ivic should be subject to paragraph H.5.6.3 (sanctioning of agents). If a monetary sanction is imposed upon Nebojsa Ivic, he should be forced to pay such monetary sanction before he ever becomes eligible to apply for a FIBA Agent licence.*

d) *That the FIBA should ask [Spirou Basket] in writing to reveal the contract value of Mladen Sekularac for the 2008/2009 and 2009/2010 seasons, so it can be determined how much the 10% agent fee should be.*

f) *That [Spirou Basket] should be notified in writing by the FIBA that the FIBA has adopted certain rules and regulations regarding Player Agents and that clubs are prohibited from dealing with agents who are not FIBA certified. The FIBA should make clear to [Spirou Basket] that Nebojsa Ivic is NOT a certified agent. In addition, the FIBA can direct [Spirou Basket] to a link on the FIBA website where the certified FIBA Player Agents are listed.*

g) *That the Belgian Basketball Federation and all Belgian 1st Division clubs should be notified in writing by the FIBA that the FIBA has adopted certain rules and regulations regarding Player Agents and that clubs are prohibited from dealing with agents who are not FIBA certified. The FIBA should make clear that Nebojsa Ivic is NOT a certified FIBA agent. In addition, the FIBA can point to a link on the FIBA website where the FIBA Player Agents are listed."*

4.2. Respondent's Position

33. The Respondent submits the following in substance:

- *He had good cause to terminate the Agent Agreement because when he began having*



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

serious problems with various measures taken by Racing Basket that he deemed abusive, the Agents did nothing to help him despite several requests on his part, thereby not fulfilling their contractual duties.

- *He was therefore entitled to engage a new agent in the person of Mr Nebojsa Ivic.*
- *He only then entered into a contract with Spirou Basketball.*
- *He terminated the Spirou Contract before its term because Spirou Basketball was incapable of making the necessary arrangements for his family to join him in Belgium.*
- *Claimants are not entitled to any compensation from him.*

5. The jurisdiction of the FAT

34. 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, this FAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA). The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

35. 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) PILA¹.

36. The jurisdiction of the FAT over the dispute results from the arbitration clause in the Agent Agreement which reads as follows (article 8):

“Any dispute arising out of, or in connection with, this Agreement shall be submitted to the

¹ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitively in accordance with the FAT Arbitration Rules. The arbitrator shall decide the dispute ex aequo et bono. Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), in Lausanne, Switzerland. To the extent legally possible under Swiss law recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal shall be excluded.”

37. The Agent Agreement is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PILA. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording “[a]ny dispute arising out of, or in connection with, this Agreement” clearly encompasses the present dispute. In addition, the Respondent has not challenged the Arbitrator’s jurisdiction.

38. Furthermore, in his submissions the Player has not contested that the two Agents have standing to sue rather than Court Side, while the notice of termination was addressed to Agent 2 personally, not to Court Side, and posted to where the Player was accustomed to sending Agent 1 Christmas cards, i.e. not to the address of Court Side. That said, with regard to Claimants’ prayers for relief aimed at FIBA or referring to disciplinary sanctions that may be imposed only by FIBA’s internal bodies. (prayers c, d, e, f and g), the Arbitrator has no jurisdiction to address them since FIBA is not a party to this arbitration.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

6. Discussion

6.1. Applicable Law – *ex aequo et bono*

39. With respect to the law governing the merits of the dispute, Article 187(1) PILA 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) PILA adds that the parties may authorize the Arbitrators to decide “*en équité*”, by opposition to the decision according to the rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

“the parties may authorize the arbitral tribunal to decide ex aequo et bono”.

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.”

40. Article 5 of the Agent Agreement provides that it shall be subject to the laws of the country in which the Player is playing, i.e. in this case the laws of Belgium. However, article 8 of the Agent Agreement stipulates that any disputes under the agreement shall be decided by the Arbitrator “*ex aequo et bono*”. It is therefore a matter of interpretation of the Agent Agreement to determine how deciding the case *ex aequo et bono* fits with the reference to the laws of the country in which the Player was playing.

41. The Arbitrator considers that, in the present case, the parties' common intention was to



We Are Basketball

FIBA Arbitral Tribunal (FAT)

account for the mandatory rules of local labour law (in this case Belgium) to regulate matters such as working hours, safety, insurances, etc. as long as they did not become contentious, but that any disputes deriving from the performance of the parties' obligations under the contract would be decided *ex aequo et bono* if submitted to the FAT.

42. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding.
43. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l'arbitrage² (Concordat)³, under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

*"When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*⁴

44. This is confirmed by Article 15.1 of the FAT Rules *in fine*, according to which the Arbitrator applies "general considerations of justice and fairness without reference to any particular national or international law".
45. In light of the foregoing developments, the Arbitrator makes the following findings:

² That is the Swiss statute that governed international and domestic arbitration before the enactment of the PIL. Today, the Concordat governs exclusively domestic arbitration.

³ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PIL.

⁴ JdT 1981 III, p. 93 (free translation).



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

6.2. Findings

46. The primary issue the Arbitrator must decide in this case is whether the Player breached his contractual obligations and, if so, with what consequences. In order to answer that question it is important to account for the nature and content of the Agent Agreement as well as the circumstances surrounding its termination by the Player.
47. It is clear from the wording of the Agent Agreement and in particular its article 1.2 (see para. 6) that it constitutes a form of service agreement, whereby the Agents undertook to assist and advise the Player in marketing himself, to act as intermediaries to seek his employment by a good basketball club and to help manage the relationship with the club engaging the Player. According to article 1.2, this assistance was to be worldwide in scope.
48. In exchange, the Agents were entitled to “... a fee equal to 10% of the Player’s base net salary for the duration of his contract with the club” (article 3) and this fee was to cover the services as a whole. Indeed, according to article 3, “*The Agent’s fee shall be compensation for all the services to be provided by the Agent under the contract*”. Consequently, the Agents were taking the risk of certain investments in time and money in exchange for the assurance that they would have the opportunity to recoup their investments and make a profit by enjoying the right to represent the Player.
49. The Agent Agreement does not state whether the Agents’ right to represent the Player was exclusive. However, the Arbitrator finds there are three indications that such was the case. First, because under article 4 the Agents are engaged for a fixed term of 1 year, whilst the contract can only be terminated with a notice of 60 days prior to the otherwise automatic prolongation for a second year. This would tend to engender a good faith belief on the part of the Agents that during the fixed period in question they



We Are Basketball

FIBA Arbitral Tribunal (FAT)

and nobody else were the Player's agents. Second, the Player's submissions in this proceeding and his behaviour at the time of the relevant facts in the spring of 2008 tend to demonstrate he was under the same belief, since he felt it necessary to terminate the Agent Agreement before having recourse to the new agent Mr Ivic. Furthermore, the preamble of the Agent Agreement states that "*This contract is based on a master agreement provided by FIBA ... pursuant to FIBA's Internal Regulations governing Players Agents*", and those FIBA materials position the agent's relationship with a player as being exclusive, in accordance with Article H.5.7.1 of the FIBA Internal Regulations governing Agents, which reads *inter alia*: "A player may use the services of only one Agent licensed under the terms and conditions of these Regulations".

50. For the above reasons, the Arbitrator finds it fair and reasonable to consider that in this case the Agent Agreement was deemed to give exclusive representation rights to the Agents for a period of at least 1 year ending in January 2009.
51. Considering the Player should normally have respected this fixed term of the Agent Agreement, the question arises whether he was entitled to terminate the Agreement early for just cause.
52. It is a generally accepted contractual principle that before terminating a contract for just cause, the party invoking a breach must put the other party on reasonable notice thereof, in order to afford that party the possibility of curing the breach. In this case, the Player has offered no proof that he formally put the Agents on notice of any breach of their duties before terminating the Agent Agreement and, apart from the Player's own allegations, there is no evidence that the Agents failed to fulfil their duties.
53. In addition, the content and tone of the notice of termination would tend to demonstrate the opposite, since therein the Player makes no reproaches to the Agents and instead



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

uses the following rather friendly manner:

“Sir, I am taking this opportunity to inform you that I am hereby cancelling the power of attorney, representation contract, or any assistance and engagement issued to you 22/01/2008. Accordingly I am free to sign an agreement with another agent, so thank you for your assistance you provided to me. Sport Greetings. Mladen Sekularac”.

54. Consequently, the Arbitrator finds that the Agent Agreement must be deemed wrongfully terminated by the Player.
55. That being said, it is not clear whether the Player terminated the Agent Agreement in bad faith or necessarily understood all the implications of his choice and of the lack of advance notice. Therefore, the only relief that can in fairness come into consideration is financial compensation.
56. In that respect, the Claimants have not established the existence or quantum of any sunk costs caused by the unjust termination, so the main question is whether the Claimants are entitled to receive a 10% commission on the value of the contract with Spirou Basket which the new agent Mr Ivic negotiated for the Player after the termination of the Agent Agreement, and, if so, on what part of that value.
57. In the particular circumstances of this case, the Arbitrator finds it just and fair that the Claimants receive some compensation for the lost opportunity that they suffered due to the unjust termination of the Agent Agreement.
58. Indeed, under the fixed term of the Agent Agreement, which was to expire at the earliest in January 2009, i.e. well after the Spirou Contract was signed, the Agents would have had 6 months left from the end of the Player’s contract with Racing Basket (in June 2008) to seek a new contract for the Player worldwide. Therefore, and considering the Claimants’ submission that the Player is very gifted, there was a very



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

good chance that they would have found another club within that timeframe, especially if they had settled for a reasonable salary, as was the salary under the new Spirou Contract according to the Claimants' own admission. In other words, in the circumstances of this case the Arbitrator finds that due to the termination of the Agent Agreement, the Claimants lost the opportunity of being nearly certain to find a new employment for the Player at a salary similar to the one negotiated by his new agent with Spirou Basket.

59. On the other hand, the Arbitrator is unconvinced by the Claimants' allegation that the salary stipulated in the Spirou Contract was not the real salary and accepts the Player's firm assertion to the contrary.
60. Accordingly, it is fair that the Claimants be entitled to the commission of "... 10% of the Player's base net salary for the duration of the contract with the club" (article 3 of the Agent Agreement), but calculated on the basis of the Spirou Contract. In this case there is no doubt that the contract in question, i.e. the Spirou Contract, lasted a mere three months and in addition was terminated by the Player. This is established with certainty by the wording and content of the Termination Agreement.
61. Furthermore, in keeping with the logic of the contracts entered into by basketball clubs with agents to pay their commissions on behalf of the players, article 4 of the Mediation Agreement signed by the new agent (Mr Ivic) with Spirou Basket expressly provides that if the underlying employment contract is terminated by mutual consent or by the Player unilaterally, the agent's commission shall only be due on the salary owed to the Player *pro rata temporis* until the date of termination.
62. It thus stems from the Agent Agreement, the mode of termination of the Spirou Contract and the logic of such mediation agreements (unless the parties agree



We Are Basketball

FIBA Arbitral Tribunal (FAT)

otherwise in the terms of the contract) that the Claimants are only entitled to receive in compensation an amount equivalent to a commission of 10% of the salary paid to the Player before his decision to leave Spirou Basket. In this case, any other solution would not only be contrary to the Agent Agreement, but would also be unjust and unfair.

63. For the above reasons, the Claimants are not entitled to 10% of the agent fee for the seasons 2008/2009 and 2009/2010, as being claimed, but are entitled to 10% of the Player's net salary contractually owed to him under the Spirou Contract before its termination in the beginning of November 2008, i.e. **EUR 3,600.00**, representing 10% of EUR 36,000.00 (salaries of August-October 2008 as provided by article 3 of the Spirou Contract).

7. Costs

64. 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 reasonable legal fees and expenses incurred in connection with the proceedings.
65. On 2 June 2009, considering that pursuant to Article 19.2 of the FAT Rules "the FAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of FAT and the fees and costs of the FAT President and the Arbitrator", and that "the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the FAT President from time to



We Are Basketball

FIBA Arbitral Tribunal (FAT)

time”, taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised, the FAT President determined the arbitration costs in the present matter at EUR 6,800.00.

66. Considering that Claimants prevailed in their claim as to liability and that the question of quantum had very little effect on the length of the proceedings and work to be undertaken by the Arbitrator, it is fair that the fees and costs of the arbitration be borne by the Player.
67. Given that the Claimants paid the totality of the Advance on Costs of EUR 12,000.00 as fixed by the Arbitrator, the Arbitrator decides that:
 - (i) FAT shall reimburse EUR 5,200.00. to the Claimants, being the difference between the costs advanced by the Claimants and the arbitration costs fixed by the FAT President;
 - (ii) The Respondent shall pay to the Claimants EUR 6,800.00, being the difference between the costs advanced by the Claimants and the amount which is going to be reimbursed to them by the FAT.
 - (iii) Furthermore, the Arbitrator considers it adequate that Claimants are entitled to the payment of a contribution towards their reasonable legal fees and other expenses (Article 19.3 of the FAT Rules). Since in the case at hand the payment by Claimants of the non-reimbursable handling fee was not taken into account when allocating the costs of the arbitration, the Arbitrator considers it adequate to take into account the non-reimbursable fee when assessing the expenses incurred by Claimants in connection with these proceedings. After having reviewed and assessed the submissions by the Claimants, the Arbitrator fixes the contribution towards their legal fees and expenses at EUR 3,000.00.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

8. AWARD

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

- 1. Mladen Sekularac shall pay to Jan Lugtenburg and Pavao Kukic an amount of EUR 3,600.00, as compensation for wrongful termination of the Agent Agreement of 22 January 2008.**
- 2. Mladen Sekularac shall pay to Jan Lugtenburg and Pavao Kukic an amount of EUR EUR 6,800.00, as a reimbursement of the Advance on Costs.**
- 3. Mladen Sekularac shall pay to Jan Lugtenburg and Pavao Kukic an amount of EUR 3,000.00, as a contribution towards Jan Lugtenburg's and Pavao Kukic's legal fees and expenses.**
- 4. Any other or further-reaching requests for relief are dismissed.**

Geneva, 3 June 2009.

Quentin Byrne-Sutton
(Arbitrator)



FIBA

We Are Basketball

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."