We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0024/08 FAT)

rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Ulrich Haas

in the arbitration proceedings between

Mr. Evangelos Sakellariou, 700 Afroditis Str., 20011 Lechaio Korinthias, Greece
represented by Mr. Sofoklis P. Pilavios, 29 Irodotou Str., 10673 Athens, Greece

- Claimant 1 -

Mr. Georgios Dimitropoulos, 12 Elassonos Str., Voula, Attica, Greece
represented by Mr. Sofoklis P. Pilavios, 29 Irodotou Str., 10673 Athens, Greece

- Claimant 2 -

- or jointly referred to as the “Claimants" -

vs.

S.S. Felice Scandone Spa. 1948 Avellino, Piazza della Libertà 39/A, Avellino, Italy

- 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 Claimants

1. Mr. Evangelos Sakellariou (hereinafter the "Player" or "Claimant 1") is a professional basketball player of Greek nationality and domiciled in Greece. He was born on 4 August 1989.

2. Mr Georgios Dimitropoulos (hereinafter the "Agent" or "Claimant 2") is a FIBA-licensed player's agent domiciled in Greece.

3. Both claimants are represented by counsel.

1.2. The Respondent

4. Società Sportiva Felice Scandone Spa 1948 Avellino (hereinafter "the Club" or "the Respondent") is an Italian professional basketball club with its seat in Avellino, Italy. The Respondent is competing in the "serie A" basketball league.

2. The Arbitrator

5. On 4 January 2009, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Prof. Ulrich Haas as arbitrator (hereinafter the "Arbitrator") 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

6. On 2 April 2008 the parties entered into an employment contract (hereinafter the "Contract") covering the remaining of the 2007-2008 season as well as the 2008-2009, 2009-2010 and 2010-2011 seasons.

7. In its relevant part, the Contract reads as follows:

> *"ARTICLE 1 – TERM*
> *Player will be an employee of Club for the seasons 2007-08 (remaining), 2008/2009, 2009/2010 and 2010/2011. […]*
>
> *The Club agrees that this Contract is a fully guaranteed, non-cut Contract, which means that neither Club nor any assigner thereof, nor the League can terminate this Agreement should any injury, illness, or death befall Player or in the event Player does fails to exhibit skill or competitive ability or fails to reach an expected level of performance. In the event of player's injury, illness or death, Club agrees to meet all payment obligations as though player had performed in all games and to pay all remaining compensation and bonuses due to player to his estate or beneficiary as though Player had fully performed. […]*
>
> *ARTICLE 3 – BENEFITS TO PLAYER*
>
> *All monies paid to Player by Club are net Euros: Club assumes all charges of any kind linked to such payments, including all taxes. The salary is to be free and clear of all taxes of Club's nation and locality. Should payment of any such taxes be required, it is the responsibility of Club to pay them. Player will receive a base salary of € 6,000 (six thousand/00) net money for the 2007/2008 season, of € 40,000 (forty thousand/00) net money for the 2008/2009 season, of € 70,000 (seventy thousand/00) net money for the 2009/2010 season, and of € 120,000 (one hundred twenty thousand/00) net money for the 2010/2011 season, NET of any and all Italian taxes, to be paid according to the following schedules.*
>
> *2007/2008 PAYMENT SCHEDULE*
>
> *May 10, 2008 € 3,000*

June 10, 2008 *€ 3,000*

2008/2009 PAYMENT SCHEDULE

September 10, 2008 *€ 4,000*
October 10, 2008 *€ 4,000*
November 10, 2008 *€ 4,000*
[…]

In the event that any of the above scheduled payments or payments to Agent set forth below are not made by Club within fifteen (15) days of the scheduled payment date, Player shall not have to perform in any practice sessions, games or any Club activities until such time as all scheduled payments and appropriate interest penalties have been paid. This possible nonperformance on the part of the Player will not be considered breach of contract in the event that Club does not make payments. If such payments are not made within twenty (20) days of the scheduled payment date, the Player has the right to cancel his obligations under this Agreement and all amounts due hereunder to Player and Agent shall become immediately due and payable.

[…]

ARTICLE 5 – TEAM ESCAPE

It is agreed that the Club retains the right to terminate this Contract, by providing the Player with a written notice within fifteen (15) days after the last official game of the season 2009-2010. In case the Club elects to terminate this Contract as described above, then the Player shall immediately become a free-agent, all his rights shall revert back to him and Player shall be free to negotiate and sign with any Club of his choice wherever in the world, without any compensation to the club whatsoever. Moreover, [t]he Club is obligated to pay the amount of €10,000 (ten thousand/00) to the Player as a compensation for such election to terminate this Contract. Such compensation must be paid within twenty (20) days of Player's written notice to Club, notifying for the termination of the Contract. After this amount has been paid to Club no further compensation can be demanded.

[…]

ARTICLE 9 – AGENCY FEES

This Agreement, by and between FELICE SCANDONE AVELLINO ("Club") and DoubleB Management and Dimitropoulos Giorgos, FIBA Licenced Agent #2007018174, is meant to clarify the arrangement between the parties regarding the contract of EVANGELOS SAKELLARIOU ("Player") to play for Club in the 2008-2009, 2009-2010 and 2010-2011 seasons. Whereas, DoubleB/ Dimitropoulos Giorgos assisted Club in locating and contracting with Player, Club promises to pay DoubleB and Dimitropoulos Giorgos €4,000

> *(€2,000 each) net of all Italian taxes by September 30, 2008, €7,000 (€3,500 each) by September 30, 2009 and €12,000 (€6,000 each) by September 30, 2010. Telefax copies of this Agreement will be considered as an original. Club agrees to make a wire transfer of the specified money to the accounts to be specified later. […]"*

8. Claimant 1 participated in a few games of the Respondent's team towards the end of the 2007-08 season. At the end of that season Claimant 1 joined the U-20 national team of Greece. Upon return to Italy at the beginning of the 2008-09 season, he was instructed by his coach to train with the junior team of the Respondent.

9. By e-mail dated 6 November 2008 Claimant 2, acting also on behalf of Claimant 1, complained for the delay in payments, reminded of Claimant 1's right to terminate the Contract and requested the Respondent to pay the outstanding salaries and agent fees *"within the next three (3) days"*, otherwise he would *"submit the issue to [the] FIBA Arbitral Tribunal […] demanding […] the full net amounts due to [the Claimants] for the 3 years of the duration of this contact"*.

10. By facsimile dated 10 November 2008 Claimant 2 sent a reminder to the Respondent, in which he asked *"until tomorrow noon (12.00) the payment of all pending amounts"* towards the Claimants, stressing that Claimant 1 had the right to *"cancel his obligations under th[e Contract]"*.

11. On 11 November 2008 the Claimants sent to the Respondent by facsimile a "Termination Notice" stating inter alia:

> *"We therefore hereby terminate the employment contract dated 02.04.2008, pursuant to art.3 therein, and request the payment of the total sum of 226.950 EUR to Evangelos Sakellariou, as the Player, and the total sum of 11.500 to Giorgos Dimitropoulos, as the Agent, within three (3) days upon receipt of this termination, otherwise we shall recourse to the FIBA Arbitration Tribunal, which is the competent body to deal with the case at*

hand by virtue of art.7 of our Agreement, for the protection of all our lawful rights.

Since no one from your Club has communicated with the Player or the Agent for the last month, we hereby call you to visit tonight with the Player the apartment and examine the condition of the car, which were at his disposal, both left to an excellent condition."

12. Claimant 1 returned to Greece on 12 November 2008.

13. Since 10 December 2008 Claimant 1 is playing for the Greek club A.O. Pagkrati ("Pagkrati") which participates in the Greek A2 league.

3.2. The Proceedings before the FAT

14. On 4 December 2008 the Claimants filed a Request for Arbitration in accordance with the FAT Rules. The non-reimbursable fee of EUR 3,000.00 was credited to the FAT account on 10 December 2008.

15. By fax dated 5 January 2009 the Arbitrator accepted his appointment and signed a declaration of acceptance and independence.

16. By letter dated 5 January 2009, the FAT Secretariat confirmed receipt of the Request for Arbitration and informed the parties of the appointment of the Arbitrator. Also, Mr. Pilavios, Counsel to the Claimants according to the Request of Arbitration, was invited to provide the FAT with a Power of Attorney. In the same letter, a time limit was fixed for the Respondent to file the Answer to the Request for Arbitration until 26 January 2009. The FAT also requested the parties to pay by no later than 19 January 2009 the following amounts as an Advance on Costs:

"Claimant 1 (Mr.Sakellariou)	*EUR 6,000*
Claimant 2 (Mr Dimitropoulos)	*EUR 2,000*
Respondent (SS FS Avellino)	*EUR 8,000"*

17. No answer was received from the Respondent within the above-mentioned time limits.

18. By letter dated 7 January 2009, the FAT Secretariat informed the parties that the Respondent had failed to pay its share of the Advance on Costs. In accordance with Article 9.3 of the FAT Rules, the Claimants were invited to substitute for the missing payment of the Respondent until 11 February 2009. The Claimants paid the Respondent's share of the Advance on Costs on 3 February 2009.

19. On 13 February 2009 the FAT issued a Procedural Order, by which it informed the parties that the entire Advance on Costs had been received and that the arbitration would proceed. In the same letter Claimant 1 was requested to inform the FAT whether he had entered into an employment contract with a club after 11 November 2008 and, if yes, to provide FAT with a copy of such contract by no later than 2 March 2009. The Respondent would then have the right to file its comments on the above issue together with all relevant documentation by no later than 9 March 2009.

20. On 16 February 2009 Claimant 1 submitted his reply to the procedural order together with a copy of an agreement between himself and the Greek club Pagkrati (the "2nd Contract").

21. On 19 February 2009 the FAT forwarded Claimant 1's reply and the 2nd Contract to the Respondent reminding of its right to answer until 9 March 2009. The Respondent did not make any submissions within the above time limit.

22. By letter dated 17 March 2009 the parties were requested to submit to the Arbitrator a

detailed account of their costs in connection with these proceedings by 25 March 2009. On 30 March 2009 the FAT extended the time limit until 3 April 2009.

23. By fax dated 3 April 2009 the Claimants submitted the following account:

Non reimbursable fee	*EUR 3,000*
Claimants' share	*EUR 8,000*
In lieu of the Respondent	*EUR 8,000*
Legal fees and expenses	*EUR 2,500*

24. The Respondent did not submit any account within the set time limits.

25. 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.

4. The Parties' Submissions

4.1. The Claimant's Submissions

26. The Claimants submit that while the Player performed his services in conformity with his contractual duties and respected the coach's decision to train with the junior team of the Respondent as of the beginning of the 2008-09 season, the Respondent breached its obligations by not paying the full salaries agreed upon in the Contract. According to the Claimants, when they decided to terminate the Contract the Respondent owed to Claimant 1 a total amount of EUR 8,950 (EUR 950 from the payment due on 10 June 2008, EUR 4,000 for the contract payment due on 10 October

2008 and EUR 4,000 for the contract payment due on 10 November 2008) and to Claimant 2 the 2008-2009 season agent fee of EUR 2,000 which was due on 30 September 2008.

27. The Claimants contend that the Respondent never replied to the reminders sent by the Claimants on 6 and 10 November 2008. Following this, the Claimants decided to terminate the Contract for just cause on 11 November 2008.

28. On the basis of the contentions set out above, the Claimants request the FAT to make an award to:

> *"a. Establish the arbitrability of the dispute and the admissibility of this request.*
>
> *b. Accept the claim of the Claimants in its entirety.*
>
> *c. Establish and confirm that the Respondent breached the employment contract concluded on 02.04.2008 without just cause and is thus liable for compensation.*
>
> *d. Establish and confirm the validity of the termination of the employment contract by the Claimants with just cause dated 11.11.2008.*
>
> *e. Establish and confirm that the Claimant 1 is a free-agent and thus entitled to enter into any employment contract with any professional basketball club and Respondent is obliged to consent to the sending of the Letter of Clearance of Claimant 1 immediately upon request.*
>
> *f. Order the Respondent, as the party in breach, to pay to **Claimant 1** the total amount of **€ 226.950 net (€ 8950 net + € 28000 net + € 70000 net + € 120000 net)** or **otherwise** the total amount of **€ 116.950 net (€ 8950 net +€ 28000 net +€ 70000 net + € 10000 net)** if your Tribunal deems that the Respondent would exercise the option to terminate the employment contract after the end of the season 2009-2010, with the default interest rate of 5% as of 12.11.2008 or in the alternative with the interest rate decided by FAT Arbitrator ex aequo et bono.*
>
> *g. Order the Respondent, as the party in breach, to pay to **Claimant 2** the total amount of **€ 11.742 net (€ 2000 net + € 242 net + € 3500 net + € 6000 net) or otherwise** the amount of **€ 5742 net (€ 2000 net + € 242 net + € 3500 net)** with the interest rated decided by the FAT Arbitrator ex aequo et bono.*

h. Order the Respondent to pay to the Claimants any additional compensation deems appropriate for breach of the Agreement dated 02.04.2008.

i. Order the Respondent to pay all expenses and costs incurred by the Claimants in connection with these proceedings."

4.2. The Respondent's Submissions

29. Despite several invitations, the Respondent did not participate in the proceedings at hand and did not make any submissions.

5. Jurisdiction and other Procedural Issues

30. 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 Federal Statute on Private International Law (PIL).

5.1. The jurisdiction of FAT

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

5.1.1 Review *ex officio*

32. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not participate in the arbitration, he will examine his jurisdiction *ex officio on* the basis of the record as it stands.[1]

5.1.2 Arbitrability

33. The Arbitrator notes that the dispute referred to him is clearly of financial nature and is thus arbitrable within the meaning of Article 177(1) PIL.[2]

5.1.3 Formal and substantive validity of the arbitration agreement

34. The existence of a valid arbitration agreement will be examined separately for each Claimant in 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."*

35. The jurisdiction of the FAT over the dispute between the Claimants and the

---

1 ATF 120 II 155, *162*.

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

Respondent results from Article 7 ("Arbitration") of the Contract which reads as follows:

> *"Any dispute arising from or related to the present Contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties' domicile. The language of the arbitration of FIBA shall be English. Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law. The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono."*

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

37. 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) PILA). In particular, the wording “[a]ny dispute arising from or related to the present contract” clearly encompasses the present dispute.

5.2. Other Procedural Issues

38. Article 14.2 of the FAT Rules, which the Parties have declared to be applicable in the Agreement, specifies that: “the Arbitrator may nevertheless proceed with the arbitration

and deliver an award" if "the Respondent fails to submit an Answer". The Arbitrator's authority to proceed with the arbitration in the case of default of one of the parties is in accordance with Swiss arbitration law[3] and the practice of FAT.[4] However, the Arbitrator must make every effort to enable the defaulting party to assert its rights. This requirement is met in the current case. The Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator, in line with the relevant rules. It was also given ample opportunity to respond to the Request for Arbitration. However, the Respondent preferred not to respond at all. In light of these circumstances, the Arbitrator considers himself fit to proceed with the arbitration and deliver the award.

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

---

3 Swiss Federal Tribunal SJ 1982, 613, *621*; see also KAUFMANN-KOHLER/RIGOZZI, Arbitrage international, Bern 2006, No. 483; LALIVE/POUDRET/REYMOND, Le Droit de l'arbitrage interne et international en Suisse, Lausanne, 1989, No. 8 ad Art, 182 PIL; RIGOZZI, L'Arbitrage international en matière de Sport, Basle 2005, No. 898; SCHNEIDER, Basler Kommentar, No. 87 ad Art. 182 PIL.

4 FAT Decision 0001/07 (Ostojic, Raznatovic vs. PAOK); FAT Decision 0018/08 (Nicevic vs. Besiktas JK).

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."*

In their agreement to arbitrate, the parties have explicitly directed and empowered the Arbitrator to decide the dispute *ex aequo et bono*. Consequently, the Arbitrator will adjudicate the present matter *ex aequo et bono.*

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'arbitrage*[5] (Concordat),[6] 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*

---

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

6 P.A. KARRER, Basler Kommentar, No. 289 ad Art. 187 PIL.

> *not inspired by the rules of law which are in force and which might even be contrary to those rules."*[7]

In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives "a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case".[8]

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".

40. In light of the foregoing developments, the Arbitrator makes the following findings:

6.2. Findings

6.2.1 Breach and Termination of the Contract

41. The Claimants have produced the Contract, pursuant to which the Player was hired by the Respondent as a professional basketball player. The Contract bears the stamp of the Respondent and, *inter alia*, sets forth a detailed schedule of salary payments. The Claimants submit that the Player rendered his services as instructed by the

---

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

8 POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

Respondent in the period between 2 April and 11 November 2008. In particular, the Claimants submit that the Player was instructed to train with the junior team at the beginning of the 2008-09 season because the Respondent had already replaced the coach Mr. Matteo Boniccioli, i.e. the person who had selected the Player, with Mr. Zare Markowski, who apparently *"didn't believe in [the Player] much"*. The Arbitrator finds this explanation plausible and that there are no circumstances which could create any doubts as to the validity and enforceability of the Contract or as to the Player's performance in compliance with his duties under the Contract. The Arbitrator also finds that the Respondent owed to the Player at the date of termination the following amounts:

- EUR 950 from the salary payment due on 10 June 2008;
- EUR 4,000 for the salary payment due on 10 October 2008, and
- EUR 4,000 for the salary payment due on 10 November 2008.

42. On the basis of the facts established above, the Arbitrator holds that the Respondent breached its obligations under the Contract, in particular its main obligation to pay to the Player the agreed remuneration. The condition of non-payment of a salary for more than 20 days past the scheduled payment date as stipulated in Article 3 of the Contract has been met in this case. Consequently, the Player was entitled to terminate the Contract by letter of 11 November 2008.

6.2.2 Consequences of termination

43. Since the notice of 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. As a consequence, the Respondent has to pay to the Player the outstanding amount of EUR 8,950.

44. The next question is whether the Respondent has to pay damages because it was responsible for the early termination of the Contract. The Arbitrator notes that Article 3 of the Contract explicitly provides that in the event of termination of the Contract by the Player because of delays in salary payments

> *"all amounts due hereunder to Player and Agent shall become immediately due and payable".*

45. The Arbitrator is of the opinion that the immediate payment of all outstanding amounts under the Contract is equitable and reasonable in the present case. However, in order to avoid the Player being in a better position as a consequence of the Respondent's breach than without said breach, everything which the Player earned because he provided his services elsewhere and everything he could have reasonably earned must be deducted from the Player's claim for damages.

46. The Arbitrator is of the view that the parties have not deviated from the aforementioned principle in the Contract. In particular the terms “fully guaranteed” or “non-cut contract” (Article 1 of the Contract) do not entitle the Player to the full amounts stipulated in the Contract irrespective of the damage actually suffered.

2008-2009 season

47. The value of the Contract’s unexpired term until the end of the 2008-09 season is EUR 28,000. The Player submits that since he terminated the Contract he *"has not entered into any employment contract"* although he *"has agreed to participate in practices and games on zero salaries of the amateur basketball club "A.O. Pagkrati"*. This is

confirmed by the 2nd Contract, signed by the Player and the president of Pagkrati on 10 December 2008.

48. In this respect, the Arbitrator notes that, as a matter of principle, the party claiming damages is under an obligation to mitigate the damage.[9] In the present case Claimant 1 is a young professional player who found himself without a team in the middle of the season, returned to his country and joined a club competing at a significantly lower level than the Respondent. On the other hand, Claimant 1 was a member of the U-20 Greek national team during the summer of 2008 and, according to Claimant 2's opinion expressed in his letter of 6 November 2008

> *"although 1 year younger than the age of 1988, [Claimant 1] proved to be the leader of [the] national team".*

The Arbitrator also notes that the 2nd Contract covers the period until the end of the 2008-2009 season and contains no clause that would enable Claimant 1 to enter into an employment agreement during the season.

49. In view of Claimant 1's admitted skills and potential, the Arbitrator holds that Claimant 1 should have made further efforts to find a new employment, even with terms substantially lower than in the Contract, instead of returning to an amateur level within less than one month after his release from the Contract. Indeed, Claimant 1 did not present any explanation why a promising young player receiving a monthly salary of EUR 4,000 at the beginning of the season accepts shortly thereafter to join an amateur

---

9 See FAT decision 0014/08 (van de Hare, Hammink, Glushkov v/ Azovmash BC) para. 68.

club and to render his services for more than six months in return of no salary at all. The difference between the salary under the Contract (EUR 28,000 until the end of the 2008-2009 season) and the 2nd Contract (no remuneration or other amenities) is significant and cannot be justified under the circumstances of this case, considering in particular that transfers in the course of a sporting season are common practice for the sport of basketball.

50. That said, it is an almost impossible task for the Arbitrator to assess the market value of Claimant 1 and the employment opportunities that would have been available for him in the current season. In light of the foregoing, the Arbitrator prefers to determine *ex aequo et bono* a flat amount of money as a hypothetical income which Claimant 1 would be expected to achieve if he had made appropriate efforts to mitigate his damage and find a new employment contract as a professional basketball player. The Arbitrator finds it reasonable and fair to fix that amount at 25% of the salary agreed with the Respondent for the 2008-2009 season. Therefore, with respect to the 2008-2009 season Claimant 1 is entitled to compensation amounting to EUR 21.000.

2009-2010 and 2010-2011 seasons

51. The situation for the next seasons must be looked at differently. Firstly, there is no player contract to rely on any more. Secondly, Claimant 1 will be in a better position without time constraints to find a new employment. Thirdly, Articles 5 and 6 of the Contract provide for a mutual “escape clause” that could have been exercised by the parties at the end of the 2009-2010 season. Had the Respondent performed in accordance with the terms of the Contract, he would have the opportunity to be released from the last season of the Contract by paying the amount of EUR 10,000 to Claimant 1. The Arbitrator finds that the Respondent cannot benefit at this stage from a right which the Respondent was unable to exercise due to its own breach of contract. It

follows that Claimant 1 shall receive compensation for both the 2009-2010 and the 2010-2011 seasons. The value of the Contract's unexpired term until the end of the 2010-2011 season is EUR 190,000 (EUR 70,000 plus EUR 120,000).

52. Here again, the Player is under an obligation to mitigate the damage.

53. In this respect, the Arbitrator notes that there are no indications that Claimant 1 would not be able to pursue his career as a professional player in the next season. This is also confirmed by the wording of the 2nd Contract

> *"After the [end of the 2008-2009 season] the Player shall be entitled to negotiate and enter into any employment agreement with any amateur sports club or Professional Basketball Club either in Greece or anywhere else globally" (emphasis added)*

54. As indicated above and consistent to the FAT case law,[10] the Arbitrator is not in a position to assess the market value of the Player and the employment opportunities available for the upcoming seasons. Rather, the Arbitrator prefers to determine a flat amount of money as a hypothetical income which Claimant 1 is expected to achieve (the "Expected Income"). That Expected Income shall reflect the expectation of Claimant 1 to find an employment for the next seasons, but which also regards that it may be unlikely for Claimant 1 to reach a salary on the level of the Contract with the Respondent. The Expected Income shall thus constitute an incentive for Claimant 1 not to rest on the compensation for damages awarded by the FAT but to try hard to find an employment with distinctly more favourable terms than the current one.

---

[10] See FAT decision 0014/08 (van de Hare, Hammink, Glushkov v/ Azovmash BC) paras. 75 et seq.

55. In order to assess the Expected Income for the 2009-2010 and 2010-2011 seasons, the Arbitrator finds it reasonable and fair to fix that amount at 50% of the salary agreed with the Respondent for the same period, which *in casu* amounts to EUR 95.000. By doing so, the Arbitrator accepts that Claimant 1 may eventually reach a higher or a lower salary than the Expected Income. However, since the Expected Income results from an *ex aequo et bono* assessment of the Arbitrator which includes a considerable margin of discretion, a deviation of the real income from the Expected Income shall not entitle either party to claim a later adjustment of the arbitral award except for truly extraordinary and unforeseeable circumstances.

56. The overall compensation for breach of contract by the Respondent therefore consists of EUR 21.000 for the 2008-2009 season, EUR 35.000 for the 2009-2010 season and EUR 60,000 for the 2010-2011 season, totally amounting to EUR 116.000.

6.2.3 Agent Fees

57. The agent fees claimed by Claimant 2 have been agreed because of his services which undisputedly led to the conclusion of the Contract. The agent fees consist of three annual instalments payable on 30 September 2008, 2009 and 2010. The Respondent failed to pay any of the instalments.

58. According to Article 9 of the Contract, the agent fees are due because Claimant 2 assisted the Respondent “in locating and contracting with Player”. The payment of the three instalments has not explicitly been made contingent upon whether Claimant 1 was still playing with the club or whether the Contract was still in force on 30 September of the respective year. On the other hand, the fact that the payment dates of the agent fees instalments correspond with the commencement of the new season cannot be completely disregarded.

59. The Arbitrator finds that, as a matter of principle, the agent fee is due in full because it relates to services already provided in the past. That service consisted in the placement of a player who would be ready to play for a three years term. If the player had left the club without just cause before the end of the contractual term, the Respondent might have been entitled to reduce the compensation accordingly. Given that in this case Claimant 1 was willing to fulfill his contractual obligations but, due to the Respondent's breach, had no other option but to terminate the contract, there is no reason why Claimant 2 should be held responsible for early termination and be penalised with a reduction of his fees.

60. Article 3 of the Contract expressly provides that the right for termination applies to both Claimant 1 and Claimant 2 and that the immediate consequence of such termination is that "all amounts due hereunder to Player and Agent shall become immediately due and payable" (emphasis added). Therefore, the Arbitrator finds that the Respondent is obliged to pay the total amount of the agreed agent fees to Claimant 2, namely EUR 11,500.

61. The Agent is further requesting the amount of EUR 242 as a reimbursement for Claimant 1's return flight ticket from Italy on 12 November 2008. The Contract contains no provision according to which Claimant 2 would be entitled to ask for the payment of expenses occurred by Claimant 2 in relation to Claimant 1. According to Article 9 of the Contract Claimant 2 may only claim agency fees from the Respondent.

62. Therefore, the Arbitrator finds that Claimant 2 is not entitled to EUR 242.00.

6.2.4 Additional compensation

63. The Claimants also ask for *"any additional compensation [the Arbitrator] deems*

appropriate for breach of the Agreement", but have not raised any further factual or legal allegations in this respect. Therefore, this claim is not substantiated and the relevant request must be dismissed.

6.2.5 Letter of Clearance

64. Further, the Claimants asked for the immediate issue of the Claimant 1's letter of clearance. The Arbitrator notes that the FAT does not have the authority to issue letters of clearance. Instead, pursuant to the FIBA Internal Regulations governing the international transfers of players, letters of clearance are issued by a club's national federation and, in some circumstances, by FIBA.

6.2.6 Interest

65. Finally, the Claimants are claiming interest at a rate of 5% p.a. starting from 12 November 2008, i.e. the day following the Contract termination, or at a rate decided by the Arbitrator ex aequo et bono. The Arbitrator considers an interest rate of 5 % p.a. to be fair and equitable in the present case and that the starting date is the day following the date of termination, since the Claimants make no distinction between contractual payments and compensation in their request for interest.

7. Costs

66. 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.

67. On 30 April 2009, the President of the FAT rendered the following decision on costs:

Considering that pursuant to Article 19.2(1) 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".

Considering that Article 19.2(2) of the FAT Rules adds 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 time'.

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 *(16 hours at an hourly rate of EUR 300)*	*EUR 4,800.00*
Arbitrator's costs	*-------*
Administrative and other costs of FAT	*-------*
Fees of the President of the FAT	*EUR 1,250 .00*
Costs of the President of the FAT	*-------*
TOTAL COSTS	***EUR 6,050.00"***

68. Claimant 1 has been awarded EUR 124,950 instead of the total requested amount of EUR 226,950. In view of the outcome of the proceedings the costs of the procedure relating to Claimants 1's request (i.e. ¾ of Total Costs of the procedure which equals to EUR 4,537.50) shall be borne by Claimant 1 and the Respondent in relation 2:3 (i.e. EUR 3,025.00 by the Respondent and EUR 1,512.50 by Claimant 1).

69. Claimant 2 has been awarded EUR 11,500, that is almost the totality of the requested amount. The Arbitrator deems it just and equitable that the costs of the procedure relating to Claimant 2's request (i.e. ¼ of Total Costs equaling EUR 1,512.50) shall be borne solely by the Respondent.

70. Given that the Claimants paid the totality of the advance of the arbitration costs of EUR 16,000.00 fixed by the Arbitrator, the Arbitrator decides that:

    (i) the FAT shall reimburse EUR 7,462.50 to Claimant 1 and EUR 2,487.50 to Claimant 2;

    (ii) the Respondent shall pay to Claimant 1 EUR 3,025.00 , being the share of the arbitration costs to be borne by the Respondent with respect to Claimant 1's prayers for relief;

    (iii) the Respondent shall pay to Claimant 2 EUR 1,512.50, being the share of the arbitration costs to be borne by the Respondent with respect to Claimant 2's prayers for relief.

71. Furthermore, the Arbitrator considers it adequate that the Claimants are entitled to the payment of a contribution towards their legal fees and other expenses (Article 19.3 of the FAT Rules). Since the Claimants submitted a joined declaration as to their legal fees and expenses Claimants are jointly entitled to a contribution towards their legal fees and expenses. 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. Therefore, the Arbitrator considers it adequate to take into account the non-reimbursable fee when assessing the expenses incurred by the Claimants in connection with these proceedings. After having reviewed and assessed the

submissions by the Claimants, the Arbitrator fixes the contribution towards Claimants legal fees and expenses at EUR 4,500.00.

8. AWARD

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

1. **S.S. Felice Scandone Spa. 1948 Avellino shall pay to Evangelos Sakellariou EUR 124,950.00 together with 5% interest p.a. from 12 November 2008.**

2. **S.S. Felice Scandone Spa. 1948 Avellino shall pay to Georgios Dimitropoulos EUR 11,500.00 together with 5% interest p.a. from 12 November 2008.**

3. **S.S. Felice Scandone Spa. 1948 Avellino shall pay to Evangelos Sakellariou EUR 3,025.00 as a reimbursement of the advance on the arbitration costs.**

4. **S.S. Felice Scandone Spa. 1948 Avellino shall pay to Georgios Dimitropoulos EUR 1,512.50 as a reimbursement of the advance on the arbitration costs.**

5. **S.S. Felice Scandone Spa. 1948 Avellino shall pay jointly to Evangelos Sakellariou and Georgios Dimitropoulos EUR 4,500.00 as a contribution towards their legal fees and expenses.**

6. **Any other or further reaching claims for relief are dismissed.**

Geneva, 11 May 2009

Ulrich Haas
(Arbitrator)

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."