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FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0052/09 FAT)

rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Raj Parker

in the arbitration proceedings

Mr. Ralph Biggs, 3931 North Hill Drive, Ayden, NC, 28613, US

- Claimant 1 -

Mr. Jan Lugtenburg, Parkwijklaan229, 1326 JT Almere, the Netherlands

**- Claimant 2 -
Jointly the "Claimants"**

vs.

**Perm Regional Public Organisation Professional Basketball Club "Ural Great",
Lebedeva Street 13, 614107 Perm, Russia**

- Respondent -



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1. The Parties

1.1. The Claimants

1. Mr. Ralph Biggs (hereinafter "Claimant 1" or "the Player") is a citizen of the USA and a professional basketball player. Mr. Jan Lugtenburg (hereinafter "Claimant 2" or "the Agent") is a professional basketball players' agent. He is currently domiciled in the Netherlands.

2. The Agent has made submissions on behalf of both Claimants.

1.2. The Respondent

3. Professional Basketball Club Ural Great (hereinafter "the Club" or "the Respondent") is a Russian basketball club in Perm, Russia. It is domiciled at Lebedeva Street 13, 614107 Perm, Russia.

2. The Arbitrator

4. On 22 June 2009, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Raj Parker as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").

5. By fax dated 23 June 2009, the Arbitrator accepted his appointment and signed a declaration of acceptance and independence. None of the parties has raised objections



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to the appointment of the Arbitrator or to the declaration of independence issued by him.

3. Facts and Proceedings

3.1. Background Facts

6. On 24 June 2008, the Player and the Club entered into a contract entitled "Supplementary Agreement" (the "Player Contract"), under which the Club agreed to pay the Player certain salary and bonus payments in return for the Player playing basketball for the Club during the 2008/2009 and 2009/2010 basketball seasons.
7. On 25 June 2008, the Agent and the Club entered a contract entitled "Agreement" (the "Agent Contract") under which the Club agreed to pay a commission to Claimant 2 in respect of services rendered by the Agent in providing the Club with information about the Player and negotiating the contract between the Club and the Player for the 2008/2009 and 2009/2010 basketball seasons.
8. The Player played for the Club during the 2008/2009 season and received a number of salary payments from the Club. However, during the 2008/2009 season the Club started to experience cash-flow problems and as a result further salary payments for the 2008/2009 season were not made on time, nor were they paid in full.
9. The 2008/2009 season has now finished and according to the Claimants, the Club owes the Player a total of USD 160,000 for the months of March, April, May and June



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2009. In addition, the Player also claims that the Club owes him the following bonuses: USD 714 for one Russian League Game victory, USD 5,716 for four Euro Challenge Cup games and USD 4,286 for reaching the Euro Challenge Play-Offs. This comes to a total of USD 160,000 in salaries and USD 10,716 in bonuses.

10. The Club has not made any payments to the Agent.
11. Following the conclusion of the 2008/2009 season and after filing the current request for arbitration, the Player signed with the Russian club Krasnie Krilya Samara for the 2009/2010 season. The Player has provided a copy of the contract that he has signed with Krasnie Krilya Samara. The salary payments under the new contract are at a lower rate than under the Player Contract. The Agent has also provided a copy of a new contract that he has signed with Krasnie Krilya Samara.

3.2. The Proceedings before the FAT

12. On 29 May 2009 the Claimant filed a Request for Arbitration in accordance with the FAT Rules.
13. By letter dated 2 July 2009, a time limit until 23 July 2009 was fixed for the Club to file the Answer to the Request for Arbitration. By the same letter, and with a time limit for payment until 16 July 2009, the following amounts were fixed as the Advance on Costs:

<i>"Claimant 1 (Mr. Biggs)</i>	<i>EUR 3,500</i>
<i>Claimant 2 (Mr. Lugtenburg)</i>	<i>EUR 1,500</i>
<i>Respondent (Ural Great)</i>	<i>EUR 5,000"</i>

14. On 6 July 2009, the Claimants paid their share of the Advance on Costs.



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15. On 29 July 2009, the FAT Secretariat informed the Claimants that the Respondent had acknowledged receipt of the Request for Arbitration but had asserted a right to require the Claimants to pay the Respondent's share of the Advance on Costs. The Claimants paid the Respondent's share of the Advance of Costs on 31 July 2009.
16. The parties did not request 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.
17. The Arbitrator issued two procedural orders in this matter. The Claimants responded to both of these orders. The Respondent did not respond to either order.
18. By letter dated 24 September 2009, the Arbitrator closed the proceedings and asked the parties to submit their accounts of costs.
19. On 24 September 2009, the Claimant(s) submitted the following account:

*“EUR 3.000 non re-imbursable FAT handling fee
EUR 5.000 advanced costs
EUR 5.000 advanced costs on behalf of Ural Great
EUR 13.000 in TOTAL”*
20. The Respondent did not submit a summary of costs.



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4. The Parties' Submissions

4.1. The position of Claimant 1

21. The Player submits that the contract between him and the Club is valid and binding for seasons 2008/2009 and 2009/2010. He submits that he is owed all monies outstanding in respect of the 2008/2009 season.

22. In respect of the 2009/2010 season, because the Player has signed with another club, he submits that he is entitled to claim the difference in payments between the contract with the Club and the new contract with Krasnie Krilya Samara.

23. The Player initially made the following request for relief:

“Ralph Biggs claims USD 130,716 NET (one hundred and thirty thousand seven hundred and sixteen US Dollars), plus a 5% interest. In addition, he claims all costs involving this FAT case such as (but not limited to) the FAT handling fee, advanced costs, and legal advices.”

24. The Player later amended the request for relief as, after filing the Request for Arbitration, the June payment under the 2008/2009 contract fell due. The total amount claimed by the Player in respect of the 2008/2009 season is now USD 170,716.

25. The Player also makes a claim in respect of the 2009/2010 season as follows:

“If the net salary that Ralph Biggs received from the new club is lower than what Ural Great is contractually obliged to pay him for the 2009/2010 season, then Ural Great must pay the difference.”

26. The Player also initially requested certain relief to assist in releasing him from the Club. The Player has now signed with a new club, so the Arbitrator understands that this



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relief is no longer necessary.

4.2. The position of Claimant 2

27. The Agent signed an agreement with the Club in which he agreed to provide the Club with information about the Player and assist the Club to sign the Player for the 2008/2009 and 2009/2010 seasons. In return the Club agreed to pay him an agent fee of USD 40,000 before the 10th of November 2008 (in respect of the 2008/2009 season), and an additional USD 45,000 before the 10th of November 2009 (in respect of the 2009/2010 season).
28. To this date the Club has not paid any agent fee at all.
29. The Agent makes the following request for relief:

“Jan Lugtenburg claims USD 40,000 to be paid immediately with a 5% interest rate, plus an additional USD 45,000 to be paid no later than November 10th, 2009. In addition, he claims all costs involving this FAT case such as (but not limited to) the FAT handling fee, advanced costs, and legal advices.”

4.3. The Respondent's Submissions

30. Despite several invitations, the Club has not submitted an answer or made any submissions. The only communication with the Tribunal from the Club was the letter referred to above (para. 15) in which the Club declined to pay its share of the Advance on Costs.



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5. Jurisdiction and other Procedural Issues

31. 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).

5.1. The jurisdiction of FAT

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

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

5.1.2 Arbitrability

34. 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) PILA.²

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.



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5.1.3 Formal and substantive validity of the arbitration agreements

35. The existence of a valid arbitration agreement is to be examined in light of Article 178 PILA, 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."

36. The jurisdiction of the FAT over the dispute between the Player and the Club results from clause 8 of the Player 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.

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."

37. The jurisdiction of the FAT over the dispute between the Agent and the Club arises from clause 7 of the Agent Contract which reads as follows:

"If any disputes arising from this Agreement cannot be solved by mutual consent of the parties, such disputes have to be presented in court in the place of location of the Club (Perm, Russia) or in FIBA arbitration tribunal (Geneva)."



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38. Each of the Contracts is in written form and thus each arbitration agreement fulfills the formal requirements of Article 178(1) PILA.
39. With respect to substantive validity, the Arbitrator considers that there is no indication which could cast doubt on the validity of either arbitration agreement under Swiss law (cf. Article 178(2) PILA). In particular, the wording “[a]ny dispute arising from or related to the present contract” clearly covers the present dispute between the Player and the Club. The wording “any disputes arising from this Agreement” covers the dispute between the Agent and the Club.³
40. With respect to the arbitration agreement in the Agent Contract, the Arbitrator notes that it also allows the parties to initiate proceedings before the competent court in Perm, Russia. However, the Claimants have opted for dispute resolution by way of arbitration before the FAT, which they are equally entitled to do under the Agent Contract.⁴

5.2. Other Procedural Issues

41. The Club has not provided an Answer in these proceedings and has not responded to the Procedural Orders.
42. Article 14.2 of the FAT Rules specifies that: *“[i]f the Respondent fails to submit an Answer the Arbitrator may nevertheless proceed with the arbitration and deliver an*

³ See for instance BERGER/KELLERHALS, *Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz*, Bern 2006, No. 466, pp. 160-161.

⁴ See also FAT 0027/08 (Christian Dalmau, José Paris vs. Ural Great Professional Basketball Club).



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award'. 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 law⁵ and the practice of FAT.⁶ 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 Club 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 procedural orders issued by the Arbitrator. 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*

43. 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*", as opposed to a decision according to the rules of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

⁵ 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 PILA; RIGOZZI, L'Arbitrage international en matière de Sport, Basle 2005, No. 898; SCHNEIDER, Basel Kommentar, No. 87 ad Art. 182 PILA.

⁶ See also FAT 0001/07 (Ostojic, Rznatovic vs. PAOK); FAT 0018/08 (Nicevic vs. Besiktas JK).



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

44. 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.”

45. 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*⁷ (Concordat),⁸ 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.”⁹

46. 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”.¹⁰
47. 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”.

⁷ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA. Today, the Concordat governs exclusively domestic arbitration.

⁸ P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PIL.

⁹ JdT 1981 III, p. 93 (free translation).

¹⁰ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.



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48. In light of the foregoing matters, the Arbitrator makes the following findings:

6.2. Findings

49. The Claimants have produced numerous emails sent to the Club seeking payment of the outstanding amounts. To some of these emails, the Club provided an answer. In a letter to the Agent dated 15 January 2009, the Club stated:

“Economic Crisis is now all over the world and because of it the government of Perm region has made the financial support to our club not in full in 2008.

As you know, New Year holidays in Russia lasted till January 11th 2009, so we could not specify the time constraints and the payment-schedule of financing of the club. Up to the present day we’ve made all the activities to recommence the financing from the budget of Perm region.

We as well as you hope that up to January 22nd 2009 we will be given the information about the terms of payment. On the basic [sic] of this information we will inform you about the date of the beginning of fulfilment of our obligations according to the report of rendered services by you.

We believe that we can unite in such a difficult time. We are glad that we coped with fulfilment of obligations towards your client.

Hope for understanding and further cooperation.”

50. In a further letter to the Agent dated 23 January 2009, the Club stated:

“The staff of the Perm regional public organization Professional basketball club Ural Great presents our apologies for the delay in payment of the agent’s fee. Government regulations concerning the financing the sport teams of our region are deferred for the next week. We surely will let you know on January 29th 2009.”

51. A letter to the Agent from the Club dated 4 February 2009 stated (in part):

“Our team is financed by the government of Perm region and as a result of it sometimes



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we have delays in affirmation of documents and payments. The thing is that the structure of the Government is very complicated and in order the payment be done, the documents should be approved and affirmed by several departments.

The staff of our club is very grateful for your patience on the situation of the delay in payment of the agent's fee. We do value our cooperation and appreciate our relationship."

52. In an email dated 19 May 2009 to the Agent (after the Agent had made further enquiries about when to expect payment of amounts owing to both the Player and the Agent), a representative of the Club wrote:

"We thank you for the patience that you have in the situation which unfortunately depends not as much on us but is a result of the overall economic recession in the world.

We are very interested in participation of Ralph Biggs for our team in the next season and understand that this interest should be supported by appropriate payments to Ralph and his agent. This week we will have negotiations with our main sponsor – government of Perm region – for sponsorship of our club. By the 30th of May we should have a clear understanding of the situation. We guarantee by this time to inform you the payment schedules and in the best case to start payments. "

53. This appears to be the last communication from the Club to the Claimants. The Claimants then filed the Request for Arbitration dated 29 May 2009.
54. It is apparent from this correspondence that the Club does not dispute that it owes money to each of the Player and the Agent. Rather, the Club states that it is unable to carry out its obligations as it has not received the expected sponsorship from its major sponsor.
55. The fact that the Club does not have funds with which to carry out its obligations does not mean that it does not have such obligations. It is apparent that under the terms of the Player Contract and the Agent Contract, the Club owes both Claimants money. As set out above, this was admitted by the Respondent in various letters and emails to the Agent and has not been disputed in the present Arbitration.



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56. There are three elements of the amounts owed by the Club to the Claimants:

- (a) Amounts owing in respect of the 2008/2009 season;
- (b) Amounts owing in respect of the upcoming 2009/2010 season; and
- (c) Interest

57. The Arbitrator will deal with each of these in turn.

6.2.1 Amounts owing in respect of the 2008/2009 season

58. The Player's claim for unpaid fees in respect of the 2008/2009 season is for USD 160,000.00 in salary and 10,716 in unpaid bonuses (each of those figures being a net figure, according to the Request for Arbitration).

59. The Agent's claim for unpaid fees in respect of the 2008/2009 season is for USD 40,000.00.

60. The Club has not provided any evidence or submissions to contradict the figures put forward by the Claimants on any basis. The Arbitrator finds that these amounts are owed by the Club to the Claimants.

6.2.2 Amounts owing in respect of the 2009/2010 season

61. In respect of the 2009/2010 season, the Player claims the difference between what he would have earned under his contract with the Club and what he will earn under his new contract with Krasnie Krilya Samara. Under the contract with the Club, the Player



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was entitled to a salary of USD 642,857.00 for the 2009/2010 season. The Arbitrator understands that this is a figure that is inclusive of tax payments, so that the net figure that would have been received by the Player is USD 450,000.00.

62. The net figure that is payable to the Player under the contract with Krasnie Krilya Samara is USD 200,000.00.
63. The Player may also have been entitled to certain bonus payments under the contract with the Club. The Supplementary Agreement stated that the bonus amounts would be “discussed at the beginning of the said season” (clause 4.2.2). The Player is also entitled to certain bonus payments under the contract with Krasnie Krilya Samara.
64. In **Van de Hare, Glushkov and Hammink v Azovmash Mariupol Basketball Club (0014/08 FAT)**, the Arbitrator was there dealing with a situation where a player had signed with a new club. There, Mr. Stephan Netzle stated:

“Obviously, there is a substantial gap between the salary agreed with Respondent for the same period of time (EUR 130,000.00). However, there are no indications that (a) the player contract with AEK Larnacas did not reflect the true agreement between the parties of that contract, or (b) Claimant 1 failed to accept the best offer available when Respondent unilaterally terminated the Agreement on short notice. Under the circumstances, the Arbitrator does not deem it appropriate to impose strict requirements on the efforts of Claimant 1 to find a comparable employment. Indeed, just a few weeks or even days before the beginning of the new season, Claimant 1 found himself in a rather hopeless situation to find an employment on terms comparable to the prior Player Agreement.

The Arbitrator, deciding ex aequo et bono, therefore holds that the compensation owed by Respondent for the 2008/2009 season shall be EUR 94,000.00, i.e. the salary Claimant 1 agreed with Respondent for the 2008/2009 season minus the salary he then agreed with AEK Larnacas for the same period of time.”

65. The facts in that matter were different to those here. However, the Arbitrator considers that the principle that was applied there may be applied equally in the present case.



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66. As in the case mentioned above, although the difference between payments under the two contracts in the present case is substantial, there is no indication that the contract with Krasnie Krilya Samara did not reflect the true agreement between the parties. The Claimants provided a copy of that contract executed by Krasnie Krilya Samara. There is also no evidence before the Arbitrator that the Player failed to accept the best offer available given the Club's continued inability to honour the terms of its agreement with the Player.
67. Therefore, deciding the matter *ex aequo et bono* the Arbitrator finds that the Player is entitled to USD 250,000.00 in respect of salary for the upcoming season, being the difference between what he would have received under the contract with the Club (USD 450,000.00) and what he will receive in salaries under the new contract with Krasnie Krilya Samara (USD 200,000.00).
68. The Arbitrator does not consider that the Player is entitled to any payments in respect of differences between bonus payments that may have been earned. There is not sufficient evidence before the Arbitrator to determine the level of bonus payments that would have been negotiated by the Club and the Player for the 2009/2010 season. There is also no evidence before the Arbitrator in respect of the bonus payments that might be expected to be received by the Player from Krasnie Krilya Samara in respect of the 2009/2010 season.
69. In respect of the Agent, the Arbitrator considers that a similar principle should apply. The Agent is entitled to the difference between what he would have been paid in respect of the 2009/2010 contract with the Club (USD 45,000.00) and the amount to which he is contractually entitled under the contract with Krasnie Krilya Samara (USD 20,000.00). The Agent has also provided a copy of the new contract, executed by Krasnie Krilya Samara. The Agent is thus entitled to a payment of USD 25,000.00 from



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the Club in respect of the 2009/2010 season.

6.2.3 Interest

70. In the Request for Arbitration the Claimants claimed an interest rate of 5% on the amounts owing from the Club.

71. Clause 7.3 of the Player Agreement states:

“The Club shall compensate the Player the amount on the basis of 0,035% of the amount of the delinquency for the period of delinquency in case the delinquency of salary compensation occurs for more than 25 days.”

72. In respect of this clause, the Player stated (in response to a procedural order) that he had claimed an interest rate of 5% per annum as this was in line with previous FAT awards. The Player also submitted that if it was acceptable, he would claim the interest mentioned in clause 7.3 of the Player Agreement which he submitted *“comes down to 12.8% on an annual basis”*.

73. The Arbitrator considers that there is significant doubt as to the precise meaning of clause 7.3 and whether the interest rate therein is intended to be a daily or annual rate. In any case, the Arbitrator considers that if the Player is correct that clause 7.3 amounts to an annual interest rate of 12.8%, this is clearly excessive and would be an amount higher than necessary to compensate the Player for the fact that he has been without the outstanding amounts for a particular period of time.

74. In all the circumstances, the Arbitrator considers that the initial approach of the Claimant (described above) was correct and that interest at a rate of 5% is payable on the outstanding payments.



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75. In respect of the four outstanding salary payments claimed by the Player, interest will run from the date that the payment fell due. In respect of the bonus payments, the Arbitrator does not have any evidence to determine when these amounts fell due. The Arbitrator therefore considers that interest should run from the date when the Request for Arbitration was filed. Although the Request for Arbitration was dated 29 May 2009, it was not received filed with the Tribunal until 10 June 2009. Interest in respect of the bonus payments should run from that date.
76. In respect of the outstanding payment for the 2008/2009 season that is claimed by the Agent, interest will run from the date that the payment fell due, being 10 November 2008.
77. The amounts awarded to the Claimants in respect of the 2009/2010 season are awards in the nature of damages for future events. In the circumstances of this case (deciding the matter *ex aequo et bono*), the Arbitrator does not consider that an award of interest is appropriate in relation to that amount. In particular, the Arbitrator notes that the Claimants do not appear to make a claim for interest on the amounts claimed in respect of the 2009/2010 season.

7. Costs

78. 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, as a general rule, the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with



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the proceedings.

79. On 10 November 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 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 8,940.00.
80. In the present case, the Claimants have been successful. The costs shall therefore be borne by the Club.
81. The Arbitrator notes that the Respondent’s share of the Advance on arbitration costs was paid by the Claimants. The Arbitrator decides that the Club shall be responsible for all arbitration costs. Therefore,
- the amount of EUR 1,060.00 shall be refunded by the FAT to the Claimants and
 - the amount of EUR 8,940.00 shall be payable by the Club to the Claimants.
82. Furthermore, the Arbitrator considers it appropriate that the Claimants are entitled to the payment of a contribution towards their legal fees and expenses (Article 19.3 of the FAT Rules). The Arbitrator considers it appropriate to take into account the non-reimbursable fee when assessing the expenses incurred by the Claimants in connection with these proceedings. Hence, and after having reviewed and assessed



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the submission by the Claimants, the Arbitrator fixes the contribution towards the Claimants' expenses at EUR 3,000.00.

83. The Arbitrator notes that the summary of expenses provided by the Claimants does not indicate which Claimant paid the Advance on Costs and the non-reimbursable fee. Therefore, the Arbitrator has split the amounts payable by the Club to the Claimants in respect of expenses (both the Advance on Costs and the non-reimbursable fee) equally between the Claimants.

8. AWARD

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

- I. **Perm Regional Public Organisation Professional Basketball Club "Ural Great" is ordered to pay to Mr. Ralph Biggs the following amounts:**
 - (a) **USD 40,000.00 together with 5% interest p.a. on this amount from 5 March 2009; and**
 - (b) **USD 40,000.00 together with 5% interest p.a. on this amount from 5 April 2009; and**
 - (c) **USD 40,000.00 together with 5% interest p.a. on this amount from 5 May 2009; and**
 - (d) **USD 40,000.00 together with 5% interest p.a. on this amount from 5 June 2009; and**
 - (e) **USD 10,716.00 together with 5% interest p.a. on this amount from 10 June 2009; and**
 - (f) **USD 250,000.00; and**



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- (g) EUR 4,470.00 as a reimbursement of the advance on the arbitration costs.
 - (h) EUR 1,500.00 as a contribution towards his legal fees and expenses.
- II. Perm Regional Public Organisation Professional Basketball Club “Ural Great” is ordered to pay to Mr. Jan Lugtenburg:**
- (a) USD 40,000.00 together with 5% interest p.a. on this amount from 10 November 2008; and
 - (b) USD 25,000.00; and
 - (c) EUR 4,470.00 as a reimbursement of the advance on the arbitration costs.
 - (d) EUR 1,500.00 as a contribution towards his legal fees and expenses.
- III. Any other or further-reaching claims are dismissed.**

Geneva, seat of the arbitration, 12 November 2009

Raj Parker
(Arbitrator)



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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."