FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0069/09 FAT)

rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Ms. Jelena Ivezic, Radovanje 2a, 35250 Oriovac, Croatia

- Claimant 1 -

and

Ms. Elmira Draskicevic, Kalipci Sok No. 70, Ova Appt. D: 3, Tesvikiye-Istanbul, Turkey

- Claimant 2 -

jointly referred to as "the Claimants"

both represented by Mr. Salim Baki, Osmaniye Mah. Mine Sk., Emre Konutlari, A Blok D: 26, 34144 Bakirköy-Istanbul, Turkey

vs.

Basketball Club Pecsi Noi Kosariabda Kft, Dr. Veress E.U.10, 7633 Pecs, Hungary

- Respondent -

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1. The Parties

1.1. The Claimants

1. Ms. Jelena Ivezic (hereinafter “Claimant 1”) is a professional basketball player of Croatian nationality. Ms. Elmira Draskicevic (hereinafter “Claimant 2”) is a certified FIBA agent that represents professional basketball players, among others Claimant 1. Claimants are represented by Mr. Salim Baki, attorney-at- law in Istanbul, Turkey.

1.2. The Respondent

2. Basketball Club Pecsi Noi Kosariabda Kft (hereinafter "the Club" or “Respondent") is a professional basketball club with its seat in Pecs, Hungary. Respondent is not represented by counsel. The Club’s submissions in this proceeding have been signed by Mr. Gábor Rozsa, managing director of the Club.

2. The Arbitrator

3. On 18 December 2009, the President of the FIBA Arbitral Tribunal (the “FAT”) appointed Dr. Stephan Netzle as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the “FAT Rules”).

4. On the same day, the Arbitrator accepted his appointment and signed a declaration of acceptance and independence.

5. None of the Parties has raised objections to the appointment of the Arbitrator or to the

declaration of independence rendered by him.

3. Facts and Proceedings

3.1. Background facts

6. On 26 June 2007, Claimant 1 and Respondent signed a so-called "Professional Basketball Contract" (hereinafter referred to as the "Contract") according to which Claimant 1 was employed by Respondent for a period of 7 ½ months, from October 10, 2007 to May 31, 2008. Pursuant to the Contract, Respondent undertook to pay a total net salary of EUR 45,000.00 to Claimant 1, payable in monthly installments as follows (Article II.1 of the Contract):

> *"After passing the medical examinations no later than October 15, 2007 the player will receive 3,000 Euro.*
>
November 20, 2007 –	*6,000 Euro*
December 20, 2007 -	*6,000 Euro*
January 20, 2008 –	*6,000 Euro*
February 20, 2008 –	*6,000 Euro*
March 20, 2008 -	*6,000 Euro*
April 20, 2008 -	*6,000 Euro*
May 20, 2008 -	*6,000 Euro"*

7. In addition, the Parties agreed on certain bonus payments if the Club would reach the defined sporting goals.

8. On 20 December 2007, Claimant 2 sent a letter to the Respondent asking for payment of the two outstanding salaries until 26 December 2007 as Claimant 1 had only

received EUR 3,000 to that date. Respondent excused the delay with a change in the company's ownership structure and the strict control of all payments by the future owners. It promised to respond to Claimants' request at the beginning of 2008.

9. On 4 April 2008 Respondent and Claimant 2 (on behalf of Claimant 1) signed a so-called "Modification of the Professional Basketball Contract" (hereinafter referred to as the "Modification") which reads, in relevant part, as follows:

> *"Both parties of the contract agree to make some changes in the present contract (signed on June 26, 2007) because of the injury of the Player.*
> *The Club will pay to the Player net amount of 27,000 Euro according to the following payment schedule:*
> *- latest on April 30, 2008 – 9,000 Euro*
> *- latest on May 31, 2008 – 9,000 Euro*
> *- latest on June 30, 2008 – 9,000 Euro*
> *[...]*
> *If the Club is late with the payments, contract signed on June 26, 2007 will be valid again with all financial obligations to the Club."*

10. Regarding the agency fee for Claimant 2 (the "Agency Fee") the following was agreed in the Modification:

> *"Agency Fee, amount of 4,500 Euro will be paid to Player's representative, Elmira Draskicevic (FIBA official agent, lic. No. 20007018137) according to the following payment schedule:*
> *- latest on the April 30, 2008 – 2,500 Euro*
> *- latest on the May 31, 2008 – 2,000 Euro."*

11. By email of 2 September 2008, Respondent promised to Claimant 2 to send *"a (few) couple of thousand euros during [that] week"*. When Claimant 2 asked why the promised payment was still not made, Respondent replied by email of 1 November 2008 and announced that it would make at least a partial payment if it would be able to

conclude "*a bigger [sponsorship] agreement in the near future*."

12. During the proceedings before FAT, i.e. by email of 11 January 2010, Respondent made a settlement offer to Claimants, which it reiterated by email of 3 February 2010. According to this offer, Respondent acknowledged a debt in the proposed total amount of EUR 17,500.00 (EUR 15,000.00 for Claimant 1 and EUR 2,500.00 for Claimant 2). Respondent also informed the FAT Secretariat that it had effected the transfer of EUR 9,000.00 to Claimant 1 on 25 April 2008 and of EUR 2,000.00 to Claimant 2 on 29 April 2008 and that it had handed over EUR 3,000.00 directly to Claimant 1 in September 2008. Claimants did not accept Respondent's offer.

3.2. The Proceedings before the FAT

13. On 7 December 2009, the Claimants filed a Request for Arbitration in accordance with the FAT Rules.

14. By letter dated 5 January 2010, the FAT Secretariat acknowledged receipt of the Request for Arbitration. In the same letter, the FAT Secretariat also confirmed the payment of the non-reimbursable handling fee of EUR 3,000.00 and informed the Parties of the appointment of the Arbitrator. Furthermore, a time limit was fixed for Respondent to file its Answer to the Request for Arbitration in accordance with Article 11.2 of the FAT Rules until 27 January 2010 (hereinafter the "Answer"). The letter also requested the Parties to pay the following amounts as an Advance on Costs by no later than 20 January 2010:

"Claimant 1 (Ms. Ivezic)	*EUR 3,500*
Claimant 2 (Ms. Draskicevic)	*EUR 500*
Respondent (BC Pecsi)	*EUR 4,000"*

15. By email of 11 January 2010, Respondent submitted a preliminary response which included a settlement offer.

16. By email of 12 January 2010, Respondent requested the suspension of the proceedings because of the settlement offer of the previous day.

17. By email of 19 January 2010, the FAT Secretariat confirmed receipt of the Respondent's emails of 11 and 12 January 2010 and invited Claimants to inform the Arbitrator until 26 January 2010 on their position regarding Respondent's request. By the same email, the FAT Secretariat suspended the time limits stipulated in its letter dated 5 January 2010.

18. By email of 20 January 2010, Claimants informed the FAT Secretariat that they did not accept Respondent's proposal and that they wanted to pursue their case before FAT.

19. By letter dated 25 January 2010, the FAT Secretariat informed the Parties that Claimants had not accepted Respondent's settlement offer and that the Arbitrator had fixed a new time limit for the Respondent to file its Answer until 5 February 2010. In the same letter, the FAT Secretariat acknowledged receipt of Claimants' share of the Advance on Costs and requested Respondent to pay its share of the Advance on Costs by no later than 5 February 2010.

20. By email dated 3 February 2010, Respondent filed its Answer and repeated its settlement offer.

21. By letter dated 19 February 2010, the FAT Secretariat informed the Parties that Respondent had failed to pay its share of the Advance on Costs. In accordance with Article 9.3 of the FAT Rules, Claimants were invited to substitute for the missing

payment of the Respondent until 1 March 2010 and to comment on Respondent's new settlement offer until 25 February 2010.

22. By letter dated 3 March 2010, the FAT Secretariat acknowledged receipt of the full amount of the Advance on Costs. Furthermore, the Arbitrator noted that Claimants had not replied to Respondent's new settlement proposal and invited Claimants again to explicitly state until 10 March 2010 whether they accepted Respondent's settlement proposal.

23. By letter dated 10 March 2010, Claimants replied to the latest settlement proposal of Respondent. They confirmed their general willingness to settle the dispute but rejected Respondent's concrete offer.

24. By letter dated 12 March 2010, the FAT Secretariat acknowledged receipt of the Claimants' reply. It stated that in accordance with Article 12.3. of the FAT Rules, the Arbitrator was *"authorized to attempt to bring about a settlement to the dispute".* For that purpose and in view of the Parties' expressed desire to resolve the dispute amicably, the Arbitrator would explore the chances for a settlement by means of a conference call to be held on 17 March 2010. However, the conference call of 17 March 2010 did not result in a settlement either.

25. By letter dated 23 March 2010 the Arbitrator requested the Parties to submit certain bank statements demonstrating the payment of the disputed sums by no later than 31 March 2010.

26. The requested documents were received by the FAT secretariat on 31 March 2010.

27. By letter of 16 April 2010, the FAT Secretariat informed the Parties that the Arbitrator

declared the exchange of documents complete and invited the Parties to submit a detailed account of their costs until 29 April 2010.

28. By email dated 29 April 2010, Claimants submitted the following account on costs:

*"**List of costs***	
Non-reimbursable handling fee	*3,000.00 Euro*
Advance on costs	
Jelena Ivezic (Claimant 1)	*3,500.00 Euro*
Elmira Draskicevic (Claimant 2)	*500.00 Euro*
Advance on costs (Respondent's share)	*4,000.00 Euro*
Legal Fees	*4,500.00 Euro*
TOTAL	*15,500.00 Euro"*

29. Respondent did not submit an account on costs.

30. The Parties did not request the FAT to hold a hearing. The Arbitrator therefore 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.

4. The Parties' Submissions

4.1. The Claimants' submissions

31. Claimant 1 claims the payment of outstanding salaries in the amount of EUR 27,000.00. Claimant 1 also claims interest at the applicable Swiss statutory rate from the agreed dates of payment.

32. Furthermore, Claimant 2 asks for the payment of the Agency Fee in the amount of EUR 2,500.00 plus interest at the applicable Swiss statutory rate from the due date, as set out in the Modification (see para. 10 above).

33. Claimants submit that Respondent has not paid the modified salary of EUR 27,000.00 to Claimant. With regard to the Agency Fee, Respondent paid only EUR 2,000.00 to Claimant 2 whereas the remaining amount of EUR 2,500.00 was still outstanding. Finally, Claimants request the reimbursement of the arbitration fees and costs and the payment of a contribution towards Claimants' legal fees and expenses.

34. In their submission dated 10 March 2010 Claimants contend that according to the Modification the Parties agreed that if Respondent was late with the payments, the Contract signed on 26 June 2007 and all the financial obligations of the Club arising therefrom would "be valid again". According to Claimants, Respondent has explicitly acknowledged its failure to fulfill the payment schedule set out in the Modification. Therefore, the obligations of the Respondent arising from the Contract were still in effect and were not set aside by Respondent's settlement proposals. The outstanding salaries due to Claimant 1 amounted to EUR 27,000.00 in total.

35. According to Claimants, Respondent has also accepted that the amount of EUR 2,500.00 was still due to Claimant 2 as outstanding Agency Fee.

4.2. The Claimants' Request for Relief

36. The Request for Arbitration contains the following Request for Relief:

> *"According to the facts submitted above*

Claimant 1 requests:

1- 27,000 Euro for the non-paid salary and interest payment at the applicable Swiss statutory rate from the due date of each payment,

2- Compensation of arbitration fees and costs,

3- A contribution towards her legal fees and expenses

Claimant 2 requests

1- 2,500 Euro for her agency fee and interest payment at the applicable Swiss statutory rate form the due date of each payment,

2- Compensation of arbitration fees and costs,

3- A contribution towards her legal fees and expenses."

4.3. Summary of Respondent's submissions

37. Respondent acknowledges a reduced debt to Claimants of EUR 17,500.00 (EUR 15,000.00 to Claimant 1 and EUR 2,500.00 to Claimant 2) submitting that it has already paid EUR 9,000.00 to Claimant 1 on 25 April 2008, EUR 2,000.00 to Claimant 2 on 29 April 2008 and EUR 3,000.00 which was handed over directly to Claimant 1 some time in September 2008. Respondent asserts that the non-payment of the remaining debt was attributable to the global financial crisis. Respondent declares to be willing to pay an amount of EUR 15,000.00 to Claimant 1 and EUR 2,500.00 to Claimant 2, but it rejects any further claims.

4.4. Respondent's Request for Relief

38. Respondent has not submitted a formal Request for Relief.

5. Jurisdiction and other Procedural Issues

5.1. The jurisdiction of FAT

39. 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).

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

5.1.1 Arbitrability

41. 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.[1]

5.1.2 Formal and substantive validity of the arbitration agreement

a) General

42. The existence of a valid arbitration agreement will be examined in light of Article 178

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[1] Decision of the Swiss Federal Tribunal 4P.230/2000 dated 7 February 2001, cons. 1, reported in ASA Bulletin 2001, p. 523 et seq., with reference to the decision of the Swiss Federal Tribunal dated 23 June 1992, BGE 118 II 353, 356, cons. 3b.

PILA, which reads as follows:

> *"1 The arbitration agreement must be concluded in writing, by telegram, telex, telefax or any other means of communication which allow proof of the agreement by text.*
>
> *2 Furthermore, the arbitration agreement shall be valid if it conforms to the law chosen by the parties, to the law governing the dispute, in particular the principal contract, or to Swiss law."*

43. The Arbitrator finds that the jurisdiction of the FAT over the dispute between the Claimants and Respondent results from Article VII 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 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, irrespective of the parties' domicile.*
> *The language of the arbitration shall be english.*
> *Awards of the FAT can be appealed to the Court of Arbitration for Sports (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against decisions of the 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."*

b) Regarding Claimant 1

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

45. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast doubt on the validity of the 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 (…)*" in Article VII of the Contract clearly covers the present dispute.[2]

46. The Arbitrator thus finds that he has jurisdiction to decide the claim of Claimant 1.

c) Regarding Claimant 2

47. In the context of the substantive validity of the arbitration agreement, the question has to be examined whether the scope of the arbitration agreement extends not only to Claimant 1 and Respondent as the signatories of the Contract but also to Claimant 2 who has not signed the Contract.

48. While the doctrine is discordant as to the question of the formal requirements for the extension of an arbitration agreement,[3] the Swiss Federal Tribunal has adopted a liberal approach.[4] In its decision dated 16 October 2003 (BGE 129 III 727), the Swiss Federal Tribunal stated that while the validity of the arbitration agreement between the initial parties was subject to the formal requirements of Article 178 (1) PILA, the validity

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2 See for instance BERGER/ KELLERHALS: Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, N 466.

3 BERGER/KELLERHALS: Internationale und interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, N 520 and FN 400 and 401, with references to BLESSING: Introduction to Arbitration – Swiss and International Perspectives, Basel 1999, N 504; POUDRET: L'extension de la clause d'arbitrage: approches française et suisse, in: Journal du droit International (JDI), Clunet, Band 122/1995, p. 893 ff., p. 904; POUDRET/BESSON: Droit comparé de l'arbitrage international, Zurich/Basel/Geneva 2002, N 258, 260, 264 with further references; SCHWEIZER, in: SZIER 4/2002, p. 587.

4 BERGER/KELLERHALS: Internationale und interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, N 520 with further references in FN 402.

of the extension of the arbitration agreement to non-signatory parties did not have to comply with these formal requirements.[5] Therefore, once an arbitration agreement complies with the statutory requirements as to form with respect to its original signatories, the extension of that arbitration agreement to other parties does not need to satisfy such requirements.[6]

49. As stated above (par. 44), the arbitration agreement fulfills the formal requirements of Article 178 (1) PILA. Therefore, the Arbitrator deems the arbitration agreement to be formally valid and binding between Claimant 1 and Respondent as signatories, as well as towards Claimant 2 as a non-signatory to the Contract.

50. Particularly, the agreement can be deemed to validly extend to Claimant 2 by taking the Parties' conduct into consideration, including the fact that the Contract set forth obligations for Respondent towards Claimant 2. Moreover, the Arbitrator regards the arbitration agreement as concluded between Claimant 1 and Respondent in favour of a third party, i.e. Claimant 2. The conclusion of an arbitration agreement in favour of a third party implies the application by analogy of Article 112 of the Swiss Code of Obligations and is undisputedly acknowledged[7]. As mentioned above (par. 45), there is no other indication in the file which could cast doubt on the substantive validity of the arbitration agreement under Swiss law (Article 178 (2) PILA).

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5 Decision of the Swiss Federal Tribunal dated 16 October 2003, BGE 129 III 727, 735, cons. 5.3.1; PHILIPP FISCHER: When can an arbitration clause be binding upon non-signatories under Swiss law?, in: Jusletter of 4 January 2010.

6 PHILIPP FISCHER: When can an arbitration clause be binding upon non-signatories under Swiss law?, in: Jusletter of 4 January 2010.

7 BERGER/ KELLERHALS: Internationale und interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, N 514.

51. In addition, the Arbitrator notes that Respondent participated in this arbitral proceeding without any objection to FAT's jurisdiction with respect to the claims of both Claimant 1 and Claimant 2.

52. The Arbitrator thus finds that he has jurisdiction not only over Claimant 1's claims vis-à-vis Respondent but also over Claimant 2's claims.

6. Discussion

6.1. Applicable Law – *ex aequo et bono*

53. 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:

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

54. 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."*

55. Article VII of the Contract states:

> *"The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono."*

56. The Arbitrator will therefore decide the present matter *ex aequo et bono*.

57. 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*[8] (Concordat),[9] 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."*[10]

58. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives

> *"the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand".*[11]

59. 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".

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

9 KARRER, in: Basel commentary to the PILA, 2nd ed., Basel 2007, Art. 187 PILA N 289.

10 JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

11 POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

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

6.2. Findings

61. It is common ground that Claimant 1 received the initial installment of EUR 3,000.00 as defined in the Contract and that Claimant 2 received EUR 2,000.00 as a first installment of the Agency Fee but that Respondent did not make any salary payments to Claimant 1 according to the Modification. There is documentary evidence that Respondent paid EUR 9,000.00 to Claimant 1 on 25 April 2008 and of HUF 94,150.00 to Claimant 1 on 6 November 2007. No documentary evidence of Respondent's alleged direct payment by hand to Claimant 1 of EUR 3,000.00 in September 2008 has been submitted.

6.2.1 Claimant 1's claim

62. It is undisputed that Respondent did not make full and timely payments (EUR 27,000.00) as provided in the Modification. For this situation, par. 2 of the Modification provides:

> *"If the Club is late with the payments, contract signed on June 26, 2007 will be valid again with all financial obligations to the Club."*

63. It is true that in its Request for Arbitration, Claimant 1 referred only to the payment obligations as set out in the Modification and did not mention Respondent's payment of EUR 9,000.00 of 25 April 2008. However, in her additional submission of 10 March 2010 she also referred to par. 2 of the Modification and the revival of the financial obligations as set out in the Contract. Even without this referral, the Arbitrator would not be restricted to the legal reasoning of Claimant 1 and would be allowed to base his

findings on different legal grounds than those proposed by Claimant 1 *(iura novit curia)*.

64. The Arbitrator finds indeed that Respondent's financial obligations under the initial Contract resurrected when Respondent failed to pay the installments as provided in the Modification[12]. On the other hand, Claimant 1 confirms that as of 10 March 2010, *"the financial requirement [sic] of the Respondent against Claimant 1 is 27.000 Euro",* and that "*[t]he total amount of the [Contract] is 45.000 Euro and the remainder of the payments until today is 27.000 Euro*". Claimant 1 has to be committed to her own claim and the Arbitrator is not called to investigate in detail how and when the difference between EUR 45,000.00 as set out in the Contract and the claimed amount of EUR 27,000.00 (i.e. EUR 18,000.000) was paid.

6.2.2 Claimant 2's claim

65. Respondent has repeatedly admitted in this proceeding that it is obliged to pay a further EUR 2,500.00 as an Agency Fee to Claimant 2. Respondent must pay to Claimant 2 what it has promised. Under the circumstances, it would not be necessary to determine whether this amount arises from the Contract or from the Modification: the Arbitrator notes however that the Modification distinguishes between the revival of the salary payment obligations of the Contract and the Agency Fee which is due only under the Modification and to which the revival-clause does not apply.

6.2.3 Interest

66. On the claimed amounts, Claimants request interest at the applicable Swiss statutory

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[12] See also FAT Decision 0046/09 dated 26 February 2010, Mahoric, Jakse vs. BC. Kyiv, paras. 49-50.

rate from the due date of each payment. Although the Contract does not explicitly provide that the debtor must pay default interest, this is a generally accepted principle which is embodied in most legal systems. The Arbitrator, deciding *ex aequo et bono* and in line with the jurisprudence of the FAT, decides that the interest rate of 5 % per annum must be applied on the amount due. However, with regard to the dates of the payment of the salary installments, there is no sufficient information available. The Arbitrator finds therefore *ex aequo et bono* that the default interest shall be calculated as follows:

5% p.a. on EUR 3,000.00 since 20 January 2008
5% p.a. on EUR 6,000.00 since 20 February 2008
5% p.a. on EUR 6,000.00 since 20 March 2008
5% p.a. on EUR 6,000.00 since 20 April 2008
5% p.a. on EUR 6,000.00 since 20 May 2008

67. With respect to the Agency Fee, the default interest shall be calculated as follows:

5% p.a. on EUR 500.00 since 30 April 2008
5% p.a. on EUR 2,000.00 since 31 May 2008.

7. Costs

68. 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 states that the award shall grant the prevailing party a contribution towards its

reasonable legal fees and expenses incurred in connection with the proceedings.

69. The Claimants' arbitration costs include the non-reimbursable handling fee of EUR 3,000.00, the Advance on Costs paid by the Claimants (EUR 4,000.00) as well as the Advance on Costs of Respondent, also paid by Claimants (EUR 4,000.00). Such costs amount to EUR 11,000.00 in total.

70. On 25 May 2010, 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 6,500.00.

71. In the present case, the costs shall be borne by Respondent alone in line with Article 19.3 of the FAT Rules, as Claimants have been awarded their claims in their entirety and there is no indication that either the financial resources of the Parties or any other circumstance compel otherwise.

72. Given that Claimants paid the totality of the Advance on Costs of EUR 8,000.00, the Tribunal decides that:

(i) The FAT shall reimburse EUR 1,500.00 to Claimants and

(ii) Respondent shall pay the difference between the costs advanced by Claimants and the amount which is going to be reimbursed to them by the FAT, i.e.

EUR 6,500.00.

(iii) Furthermore, the Arbitrator considers it adequate that Claimants are entitled to the payment of a contribution towards their legal fees and other expenses (Article 19.3. of the FAT Rules). The Arbitrator deems 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 all the circumstances of the case at hand, the Arbitrator fixes the contribution towards the Claimants' legal fees and expenses at EUR 7,500.00.

8. AWARD

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

1. **Basketball Club Pecsi Noi Kosariabda Kft is ordered to pay to Ms. Jelena Ivezic the amount of EUR 27,000.00 together with interest as follows:**
   - **5% p.a. on EUR 3,000.00 since 20 January 2008**
   - **5% p.a. on EUR 6,000.00 since 20 February 2008**
   - **5% p.a. on EUR 6,000.00 since 20 March 2008**
   - **5% p.a. on EUR 6,000.00 since 20 April 2008**
   - **5% p.a. on EUR 6,000.00 since 20 May 2008**

2. **Basketball Club Pecsi Noi Kosariabda Kft is ordered to pay to Ms. Elmira Draskicevic the amount of EUR 2,500.00 together with interest as follows:**
   - **5% p.a. on EUR 500.00 since 30 April 2008**
   - **5% p.a. on EUR 2,000.00 since 31 May 2008**

3. **Basketball Club Pecsi Noi Kosariabda Kft is ordered to pay to Ms. Jelena Ivezic and Ms. Elmira Draskicevic the amount of EUR 6,500.00 as a reimbursement of the advance of arbitration costs.**

4. **Basketball Club Pecsi Noi Kosariabda Kft is ordered to pay to Ms. Jelena Ivezic and Ms. Elmira Draskicevic the amount of EUR 7,500.00 as a contribution towards their legal fees and expenses.**

5. Any other or further-reaching claims for relief are dismissed.

Geneva, seat of the arbitration, 27 May 2010

Stephan Netzle
(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."