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FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0073/10 FAT)

rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr Stephan Netzle

in the arbitration proceedings between

KK "Sloboda-Dita" Tuzla, Patriotske lige 2, Tuzla, Bosnia and Herzegovina
represented by Mr Damir Cilimkovic, attorney-at-law, Tuzla, Bosnia and Herzegovina

- Claimant -

vs.

KK "Crvena Zvezda" Beograd, Mali Kalemegdan 2, Belgrade, Serbia
represented by Messrs Milorad and Miroљjub Belic, attorneys-at-law, Belgrade, Serbia

- Respondent -

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1. The Parties

1.1. The Claimant

1. Basketball club KK "Sloboda-Dita" Tuzla (hereinafter "Claimant") is a professional basketball club located in Tuzla, Bosnia and Herzegovina. Claimant is represented by Mr Damir Cilimkovic, attorney-at-law in Tuzla, Bosnia and Herzegovina.

1.2. The Respondent

2. Basketball club KK "Crvena Zvezda" (hereinafter "Respondent") is a professional basketball club located in Belgrade, Serbia. It is represented by Messrs Milorad Belic and Miroljub Belic, attorneys-at-law in Belgrade, Serbia.

2. The Arbitrator

3. On 8 February 2010, 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.



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3. Facts and Proceedings

3.1. Background Facts

6. By agreements between the Parties dated 27 August 2007 and 23 September 2008, Claimant agreed to transfer the players Elmedin Kikanovic and Milan Milosevic to Respondent ("the Transfer Agreements"). Claimant requests from Respondent the payment of outstanding transfer fees in a total amount of EUR 160,000.00, plus late payment fees in a total amount of EUR 93,000.00.
7. Respondent refers to a document which representatives of the Parties signed on 5 November 2009 ("the 5 November 2009 Agreement") and by which the Parties agreed on a reduction of the outstanding transfer fees and on new payment dates. As a consequence, Respondent denies being obliged to pay EUR 93,000.00 in late payment fees. It does, however, agree to be held liable for the payment of EUR 165,000.00 as agreed on 5 November 2009.
8. Claimant insists on the payment of the outstanding amounts according to the Transfer Agreements plus the late payment fees and maintains that the 5 November 2009 Agreement never entered into force and did not replace, nor amend the Transfer Agreements.
9. There is no evidence that, to date, Respondent has paid to Claimant any of the outstanding amounts according to the Transfer Agreements or the amount of EUR 165,000.00 as provided by the 5 November 2009 Agreement.



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3.2. The Proceedings before the FAT

10. On 25 November 2009, Claimant filed a Request for Arbitration. Upon request by the FAT Secretariat dated 2 February 2010, Claimant added the English translation of the relevant documents whereupon the Request for Arbitration was amended and signed on 25 January 2010.
11. By email and letter dated 9 February 2010, the FAT Secretariat confirmed receipt of the Request for Arbitration. In said letter, the FAT Secretariat also confirmed the payment of the non-reimbursable handling fee of EUR 4,000.00 by Claimant and informed the Parties of the appointment of the Arbitrator. Furthermore, a time limit was fixed until 2 March 2010 for Respondent to file its Answer to the Request for Arbitration in accordance with Article 11.2 of the FAT Rules (the "Answer"). The FAT Secretariat's letter also requested that the Parties pay the following amounts as an Advance on Costs by no later than 23 February 2010:

<i>"Claimant (KK "Sloboda-Dita" Tuzla)</i>	<i>EUR 6,000</i>
<i>Respondent (KK "Crvena Zvezda")</i>	<i>EUR 6,000"</i>

Claimant paid its share of the Advance on Costs on 18 February 2010. Respondent did not pay its share of the Advance on Costs.

12. On 1 March 2010, Respondent submitted its Answer to the FAT Secretariat.
13. By letter dated 4 March 2010, the FAT Secretariat informed the Parties that according to Article 9.3 of the FAT Rules, Claimant had the right to pay Respondent's share of the Advance on Costs in order to ensure the continuation of the arbitration proceedings. The time limit for such payment was set until 15 March 2010.



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14. On 10 March 2010, Claimant paid Respondent's share of the Advance on Costs in the amount of EUR 6,000.00.
15. On 8 March 2010, Claimant submitted a "Reply to Respondent's Statement from the Request for Arbitration" which was not solicited by the Arbitrator. This submission was forwarded by the FAT Secretariat to Respondent under cover of a letter dated 23 March 2010, informing the Parties that the Arbitrator had decided that Claimant's "Reply" would not be taken into consideration in the proceedings and was thus not accepted on file.
16. According to the letter of the FAT Secretariat dated 23 March 2010, the Arbitrator declared the exchange of documents completed and the Parties were asked to submit a detailed account of costs until 8 April 2010.
17. By email dated 29 March 2010, Claimant sent to the FAT Secretariat a list of the costs which it incurred in this arbitration proceeding (i.e. the non-reimbursable handling fee, the Advance on costs on behalf of both Parties and banking costs of EUR 165.00). It did not however submit an account of the fees of its lawyer, Mr Cilimkovic. Respondent failed to submit an account of costs.
18. Neither Party explicitly requested the FAT to hold a hearing. In its Answer, Respondent announced that it would present witness statements by two persons who attended the negotiations of the 5 November 2009 Agreement. However, no such witness statements have been submitted. 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 on the written submissions on file.



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4. The Parties' Submissions

4.1. Summary of the Claimant's Submissions

19. Claimant claims the payment of EUR 253,000.00, consisting of EUR 160,000.00 as the agreed transfer fees for the Players Elmedin Kikanovic and Milan Milosevic which were due but not yet paid on the date of the Request of Arbitration, plus EUR 93,000.00 in late payment fees.

20. Claimant's requests are based on the two Transfer Agreements whereby the Players Elmedin Kikanovic and Milan Milosevic were transferred during the term of their players' contracts from Claimant to Respondent¹. The agreement regarding Mr Kikanovic ("the "Kikanovic-Agreement") is dated 27 August 2007. The agreement regarding Milan Milosevic (the "Milosevic-Agreement") is dated 23 September 2008. Both Transfer Agreements provide for certain amounts to be paid by Respondent to Claimant at specified dates. In the Kikanovic-Agreement, the following payments have been agreed:

EUR 85,000.00 at the latest before September 20, 2007;

EUR 90,000.00 at the latest before August 20, 2008;

EUR 90,000.00 at the latest before August 20, 2009;

EUR 85,000.00 at the latest before August 20, 2010.

¹ The Transfer Agreements as well as the 5 November 2009 Agreement and Claimant's letter dated 25 November 2009 have been submitted in their original language (Bosnian), together with English translations by Emina Majic Martic, Tuzla, Certified Court Interpreter for English. The accuracy of these translations has not been contested by either party. Therefore, the Arbitrator relies on these translations. All quotations from the above-mentioned documents have been taken from the translations provided by Claimant.



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21. According to Article 4 of the Kikanovic-Agreement, Respondent was obliged to pay a late payment fee of EUR 150.00 for each day of delay with payments. In addition, pursuant to Article 5, Claimant was entitled (but not obliged) to terminate the Kikanovic-Agreement if the delay in payments exceeded 30 days.
22. The Milosevic-Agreement provided for the following payments:
- EUR 35,000.00 at the latest before September 30, 2007;*
EUR 40,000.00 at the latest before August 20, 2009;
EUR 45,000.00 at the latest before August 20, 2010.
23. The Milosevic-Agreement also provided for a late payment fee of EUR 150.00 for each day of delay in the above-mentioned payments and for the Claimant's right to terminate the agreement should Respondent be more than 30 days late in making the due payments.
24. According to Claimant, Respondent has not yet paid the following transfer fees:
- | | |
|--------------------|---|
| Elmedin Kikanovic: | EUR 90,000.00, to be paid by 20 August 2009 |
| Milan Milosevic: | EUR 30,000.00 to be paid by 30 September 2008 |
| | EUR 40,000.00 to be paid by 20 August 2009 |
| Total | EUR 160,000.00 |
25. In addition, Claimant requests the payment of a late payment fee of EUR 150.00 for each day of delay of payment until the date of the Request for Arbitration amounting to EUR 93,000.00, as follows:



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Elmedin Kikanovic:	95 days/EUR 150.00 =	EUR 14,250.00
Milan Milosevic:	430 days/EUR 15.00 =	EUR 64,500.00
	95 days/EUR 150.00 =	EUR 14,250.00
Total		EUR 93,000.00

26. In anticipation of Respondent's position, Claimant has also submitted as documentary evidence a document signed by the general manager of Respondent, Milan Opacic on the one side, and by the Chairman of the Board of Directors of Claimant, Marianko Divkovic on the other side, dated 5 November 2009. According to this document, the Parties reached a new agreement regarding the compensation for the transfers of Elmedin Kikanovic and Milan Milosevic.
27. In the 5 November 2009 Agreement, the payments due with regard to Mr Milosevic were set out as follows:
1. *EUR 35,000.00 before November 15, 2009*
 2. *EUR 30,000.00 before January 15, 2010*
 3. *EUR 30,000.00 before March 15, 2010*
 4. *EUR 30,000.00 before May 15, 2010*
28. With regard to Mr Kikanovic, the outstanding amount due to Claimant was reduced by EUR 35,000.00 to EUR 50,000.00, payable before August 20, 2010.
29. According to the last paragraph of the 5 November 2009 Agreement, "an Annex can be signed after an approval of Boards of Directors". Claimant submits that the 5 November 2009 Agreement was never approved by the boards of directors of the Parties and therefore never entered into effect. As a consequence, the initial payment obligations as stated in the Transfer Agreements would still stand.



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4.2. The Claimant's Request for Relief

30. The Claimant requests the FAT:

- a) To award claimant with amount of 160.000 Euros plus interest at the applicable Swiss statutory rate*
- b) To award claimant with amount of 93.000 Euros plus interest at the applicable Swiss statutory rate*
- c) To award claimant with the full covered [...] costs of this Arbitration."*

4.3. Summary of Respondent's Submissions

- 31. Respondent mainly relies on the 5 November 2009 Agreement which it considers to constitute a valid contract, replacing the initial Transfers Agreements. Accordingly, Respondent maintains that it must only pay to Claimant the amounts set out in the 5 November 2009 Agreement, namely EUR 165,000.00.
- 32. Respondent submits that this was also confirmed by Claimant's letter of 25 November 2009 which did not contradict the 5 November 2009 Agreement.
- 33. Respondent contests that it is still obliged to pay the late penalty fee of EUR 93,000.00, as its payment obligations have been limited by the 5 November 2009 Agreement to the uncontested amount of EUR 165,000.00.
- 34. Respondent also addresses the clause in the 5 November 2009 Agreement referring to the Boards of Directors' approval. However, according to Respondent approval by the Boards was merely "a technical issue", and not a *conditio sine qua non* for the validity of the 5 November 2009 Agreement.



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4.4. The Respondent's Request for Relief

35. Respondent has not formulated an explicit Request for Relief. However, the Answer contains the following submissions which summarize Respondent's position in this arbitration:

"3.5 Therefore, from the above the following conclusions should be made:

- i. The Respondent KK Crvena Zvezda does not contest that the Agreement reached between that the Agreement reached between the clubs on 05.11.2009, are [sic] binding, the agreed obligations, installments and manner of payment.*
- ii. The claims of the Claimant are not founded, as the cla[i]mant appears to rely on the false legal argumenst [sic] that the Agreement of 05.11.2009 is not valid for the reason that KK Crvena Zvezda has failed to pay the first installment of the agreement due on 03.12.2009.*
- iii. The Claim of KK Sloboda for the amount of Eur 93,000, based on the late penalty fee from article 3 of the attached Contracts, as delay is not caused by the negligence of KK Crvena Zvezda, but it is the consequence of the settlement negotiations that have been carried out by the two clubs.*

(...)

3.7 This claim of the Claimant KK Sloboda is based on the late penalty clause, and such claim the Arbitral Tribunal can decrease on the bases of ex aequo et bono, so KK Crvena Zvezda considers that the established outstanding amount in this agreement, the amount of EUR 165.000 should be confirmed by this Arbitration."

(...)

Finally the Respondent proposes to the Arbitration [sic] to refuse the Claimant claims, on the ground that the Agreement of the 05.11.2009 is in force and binding."



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5. Jurisdiction

36. 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).
37. The jurisdiction of the FAT presupposes the arbitrability of the dispute as well as the existence of a valid arbitration agreement between the parties.

6. Arbitrability

38. 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

7. Formal and substantive validity of the arbitration agreement

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

²

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.



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chosen by the parties, to the law governing the dispute, in particular the principal contract, or to Swiss law."

40. The Arbitrator finds that the jurisdiction of the FAT over the dispute between the Claimant and Respondent results from Article 7 of the Transfer Agreements, which is identical in the Kikanovic-Agreement and the Milosevic-Agreement:

"Any dispute arising from or in regard to this Agreement will be delivered to FIBA Arbitration Tribunal (FAT) in Geneva, Switzerland and will be finally settled according to FAT Arbitration Regulations. A judge-an arbitrar [sic] will settle a dispute ex aequ[o] et bono. Complaints against FAT[’s] verdicts can be sent to CAS (Arbitration Tribunal for Sport), Lausanne, Switzerland. To a measure that is legally possible by the Swis[s] Law, complaints against FIBA Arbitration Tribunal’s (FAT) settlements and decisions made by Arbitration Tribunal for Sport (CAS) to the Swiss Federal Court will be excluded."

41. The Transfer Agreements are in written form and thus the arbitration agreements contained therein fulfill the formal requirements of Article 178(1) PILA.
42. With respect to substantive validity, the Arbitrator finds that the arbitration agreements contain the necessary elements which allow settlement of the dispute by the FAT. In particular, the wording "[a]ny dispute arising from or in regard to this Agreement (...)" in Article 7 of the Transfer Agreements clearly covers the present dispute.³
43. Furthermore, there is no indication in the file which could cast doubt on the validity of the arbitration agreements under Swiss law (cf. Article 178 (2)PILA).
44. The 5 November 2009 Agreement, whose effectiveness is disputed in this arbitration proceeding, does not contain a separate arbitration clause. However, the 5 November 2009 Agreement clearly refers to the two Transfer Agreements. The Arbitrator finds

³ See for instance BERGER/ KELLERHALS: Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, N 466.



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that the issue whether or not the 5 November 2009 Agreement has any impact on the rights and duties of the Parties under the Transfer Agreements is therefore subject to the arbitration agreements contained in the Transfer Agreements. In addition, Respondent explicitly stated in its Answer that it did not contest the jurisdiction of FAT after Claimant initiated an arbitration proceeding with the FAT.

45. The Arbitrator thus finds that he has jurisdiction over the Parties and is competent to decide the present dispute.

8. Discussion

8.1. Applicable Law – *ex aequo et bono*

46. 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”.

47. 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.”



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48. In their agreements to arbitrate (see *supra* para. 40), 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*.
49. 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*⁴ (Concordat),⁵ 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.”*⁶
50. 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”.*⁷
51. 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”.
52. In light of the foregoing developments, the Arbitrator makes the following findings:

⁴ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA. Today, the Concordat governs exclusively domestic arbitration.

⁵ KARRER, in: *Basel commentary to the PILA*, 2nd ed., Basel 2007, Art. 187 PILA N 289.

⁶ JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

⁷ POUURET/BESSON, *Comparative Law of International Arbitration*, London 2007, N 717, pp. 625-626.



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8.2. Findings

8.2.1 The validity of the 5 November 2009 Agreement

53. It is common ground that the players Kikanovic and Milosevic were transferred from Claimant to Respondent on the basis of the Transfer Agreements. The Arbitrator notes that: i) with regard to the transfer of Mr Kikanovic, only the payment of EUR 90,000.00 due by 20 August 2009, and ii) with regard to the transfer of Mr Milosevic, only the payments of EUR 30,000.00 due by 30 September 2007 and EUR 40,000.00 due by 20 August 2009 are requested. Claimant does not claim future payments under the Transfer Agreements, due by August 2010.
54. The Arbitrator also notes that according to the Milosevic-Agreement, the instalment due by 30 September 2007 amounted to EUR 35,000. Whether the difference of the unclaimed amount of EUR 5,000 was already paid before or whether Claimant simply forgot to raise it must be left open since the Arbitrator is not entitled to grant a party anything beyond its request (*ne eat iudex ultra petita*).
55. Respondent does not assert that it had partially or fully paid the amounts claimed by Claimant but it submits that through the 5 November 2009 Agreement, the Parties validly agreed on new amounts and new payment dates.
56. The Arbitrator concurs with Respondent in principle. On 5 November 2009, the representatives of the Parties signed a document containing the following wording:

*"BC RED STAR GROUP d.o.o.
Mali Kalemegdan 2, Belgrade
Belgrade, November 5, 2009*



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Subject: A meeting between Basketball Club Crvena Zvezda and Basketball Club Sloboda

An agreement regarding compensation for Elmedin Kikanović and Milan Milošević was reached on a meeting between the two clubs.

Outstanding claims of Basketball Club Sloboda are EUR 165.000. Milan Milošević's status for the season [sic] of 2009/2010 in the amount of EUR 40.000 is frozen, and the rest will be paid in the following order:

- 1) EUR 35.000 before November 15, 2009*
- 2) EUR 30.000 before January 15, 2010*
- 3) EUR 30.000 before March 15, 2010*
- 4) EUR 30.000 before May 15, 2010*

According to an Agreement between Crvena Zvezda and Elmedin Kikanović, article 3, paragraph D, the amount is decreased for EUR 35.000 and the rest of EUR 50.000 will be paid before August 20, 2010.

An Annex can be signed after an approval of Boards of Directors.

Milan Opačić

Signature

General Manager

Marjanko Divković

Signature

*Chairman of the Board of Directors of
Basketball Club Sloboda"*

57. However, the Arbitrator does not find that the Parties cancelled the Transfer Agreements but only amended them with regard to the amounts and the maturity dates of the transfer payments. There is no indication that the Parties "novated" or replaced the existing Transfer Agreements. The 5 November 2009 Agreement must therefore be read together with the remaining provisions of the Transfer Agreements, which still remained in effect. This finding is also supported by the fact that the last sentence of the 5 November 2009 Agreement speaks of an "Annex" which must be understood as an annex to be appended to the (otherwise continuing) Transfer Agreements.



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58. Claimant puts forward that the last sentence which provided for an approval of the Board of Directors was a condition precedent for the validity of the 5 November 2009 Agreement. The Arbitrator does not agree for the following reasons:
- a. The 5 November 2009 Agreement was signed by recognized representatives of both Parties. Neither Party has submitted that the signatories were not entitled to sign such an agreement.
 - b. The last sentence of the 5 November 2009 Agreement does not contain any wording which must be understood as a reservation regarding the validity of the 5 November 2009 Agreement.
 - c. Also the Transfer Agreements themselves do not contain any reservation according to which any amendment required the approval of the boards of directors of the Parties.
 - d. Claimant's letter of 25 November 2009 refers to the financial obligations which were addressed in the 5 November 2009 Agreement. This letter also does not contain any reservation regarding the approval of the board of directors of the Parties.
59. Obviously, Respondent failed to execute the first payment stipulated in the 5 November 2009 Agreement in the amount of EUR 35,000.00 due before 15 November 2009. This led Claimant to issue the warning letter of 25 November 2009 in which it requested the repayment of Respondent's full financial obligations until 3 December 2009. Is this wording to be understood as a cancellation of the 5 November 2009 Agreement and the resurrection of the initial claims as set out in the Transfer Agreements?
60. The Arbitrator answers this question in the negative. The Parties have validly agreed to amend the Transfer Agreements and set new amounts and new dates for the payments of the installments of the transfer fees which were still due on 5 November



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2009. If such installments remained unpaid, Claimant was entitled to exercise its legal rights as a creditor. However, these rights did not include the right to withdraw from the 5 November 2009 Agreement and to return to the initial amounts and dates for payment as stipulated in the Transfer Agreements, for the simple reason that neither the Transfer Agreements nor the 5 November 2009 Agreement provided for such a right. The Arbitrator also finds that the power to decide the dispute *ex aequo et bono* does not include the power to create such a right if it has not been addressed in the Parties' various agreements or raised in their discussions. However, this does not release Respondent from its duty to timely pay all the amounts provided for in the 5 November 2009 Agreement.

61. As set out above, the 5 November 2009 Agreement has amended, but not replaced, the Transfer Agreements. Those issues not addressed by the 5 November 2009 Agreement must still be resolved by reference to the Transfer Agreements. This is especially true for the question of late payment. The Arbitrator finds that Article 4 of the Transfer Agreements must apply also to the payments amended by the 5 November 2009 Agreement. As a consequence, Respondent is obliged to pay a late payment fee of EUR 150 for each day of delay with the payments due under the 5 November 2009 Agreement.

8.2.2 The due payments

62. The Arbitrator must adjudicate whether at the moment when he renders the Award, the claimed amounts are due or not. According to the principle "*jura novit curia*", he is not bound by the legal reasoning of Claimant but may base his findings on other legal grounds. The Arbitrator is however limited by the Parties' requests.



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63. Claimant claims payment of EUR 253,000.00 consisting of transfer fees of EUR 160,000.00 and late payment fees of EUR 93,000.00.
64. According to the 5 November 2009 Agreement, the outstanding claims of Claimant were determined at EUR 165,000.00, which was explicitly acknowledged by Respondent. However, the sum total of the installments as set out in the 5 November 2009 Agreement amounts to EUR 175,000.00. The Arbitrator finds that the difference of EUR 10,000.00 is obviously a calculating or typing error.
65. By the date of this Award, the following payments by Respondent for the transfer of the Players in a total amount of **EUR 95,000.00** were due under the 5 November 2009 Agreement:
- EUR 35,000 (instalment due before 15 November 2009)
 - EUR 30,000 (instalment due before 15 January 2010)
 - EUR 30,000 (instalment due before 15 March 2010)
66. The fourth installment of EUR 30,000.00 will become due shortly, namely before 15 May 2010. And finally, Respondent must pay a further amount of EUR 50,000.00 before 20 August 2010 (i.e. EUR 85,000.00 corresponding to the last installment (D) set out in the Kikanovic-Agreement, minus EUR 35,000.00 as stated in the 5 November 2009 Agreement).
67. The late payment fee of EUR 150 per day applies to the outstanding payments (see para. 65 above). Up to the date of the Award, Respondent was late in paying



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EUR 35,000 (instalment due before 15 November 2009); 171 days	= EUR 26,650.00
EUR 30,000 (instalment due before 15 January 2010); 110 days	= EUR 16,500.00
EUR 30,000 (instalment due before 15 March 2010); 51 days	= EUR 7,650.00
Total	EUR 49,800.00

8.2.3 Interest

68. On the claimed amounts, the Claimant requests interests at the applicable Swiss statutory rate.
69. Payment of interests is a customary and necessary compensation for late payment and there is no reason why Claimant should not be awarded interests. In line with the constant jurisprudence of the FAT, the Arbitrator holds that an interest rate equal to the applicable Swiss statutory rate which is 5 % p.a., is reasonable and equitable in the present case. Interests are payable from the date of the present Award. Up to then, the late payment penalties according to Article 4 of the Transfer Agreements apply.

9. Costs

70. 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.



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71. The Claimant's arbitration costs include the non-reimbursable handling fee of EUR 4,000.00, the Advance on Costs paid by the Claimant (EUR 6,000.00), the Advance on Costs of Respondent, also paid by the Claimant (EUR 6,000.00) and the banking transfer fees (EUR 165.00). Such costs amount to EUR 16,165.00 in total.
72. On 4 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 10,000.00
73. In the present case, Claimant requested the payment of EUR 253,000.00 in total (EUR 160,000.00 + late penalty fee of EUR 93,000.00) whereas it has been awarded EUR 144,800.00. However, the Arbitrator has also held that further payments of EUR 85,000 must be made by Respondent as a consequence of the 5 November 2009 Agreement. Such additional payments are taken into account when the costs of the proceedings are allocated to the Parties. As a consequence, the Arbitrator finds it fair that 85% of the costs shall be borne by Respondent in line with Article 19.3 of the FAT Rules.
74. Given that the Claimant paid the totality of the Advance on Costs of EUR 12,000.00, the Tribunal decides that:
- (i) The FAT shall reimburse EUR 2,000.00 to Claimant and
 - (ii) Respondent shall pay EUR 8,500.00 to Claimant, i.e. the difference between the costs advanced by the Claimant and the amount which is going to be



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reimbursed to them by the FAT minus the amount of the costs which shall be borne by Claimant, i.e. EUR 1,500.00 (EUR 12,000.00 – EUR 2,000.00 – EUR 1,500.00).

- (iii) Furthermore, the Arbitrator considers it adequate that Claimant is entitled to the payment of a contribution towards its 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 the Claimant in connection with these proceedings. After having reviewed and assessed all the circumstances of the case at hand, the Arbitrator fixes the contribution towards the Claimant's legal fees and expenses at EUR 3,700.00.



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10. AWARD

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

- 1. KK "Crvena Zvezda" Beograd is ordered to pay to KK "Sloboda-Dita" Tuzla the amount of EUR 144,800.00 together with interests of 5% p.a. from the date of this Award.**
- 2. KK "Crvena Zvezda" Beograd is ordered to pay to KK "Sloboda-Dita" Tuzla the amount of EUR 8,500.00 as a reimbursement of the advance of arbitration costs.**
- 3. KK "Crvena Zvezda" Beograd is ordered to pay to KK "Sloboda-Dita" Tuzla the amount of EUR 3,700.00 as a contribution towards its legal fees and expenses.**
- 4. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 4 May 2010

Stephan Netzle
(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."