FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(FAT 0082/10)

rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Raj Parker

in the arbitration proceedings

Mr. Lee A Benson, 185 Candelero Drive FL614, Humacoa, Puerto Rico, 00791

- Claimant 1 -

and

Mr. José F. Paris, 185 Candelero Drive FL614, Humacoa, Puerto Rico, 00791

- Claimant 2 -

vs.

Shanxi Zhongyu Professional Basketball Club, Taiyuan, Shanxi, China 030032

- Respondent -

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1. The Parties

1.1. The Claimants

1. Claimant 1, Mr. Lee Benson (hereinafter, the “Player”) is a citizen of the USA. He is currently domiciled in Puerto Rico. In these proceedings, the Player is represented by Claimant 2.

2. Claimant 2, Mr. José Paris (hereinafter, the “Agent”) is a basketball players’ agent based in Puerto Rico.

1.2. The Respondent

3. Shanxi Zhongyu Professional Basketball Club (hereinafter the “Club" or the "Respondent") is a Chinese basketball club based in Taiyuan, China. The Respondent is not represented by counsel but has made submissions signed by its manager, Mr. Zhang Beihai.

2. The Arbitrator

4. On 12 April 2010, 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 1 April 2010, the Arbitrator accepted his appointment and signed a declaration of acceptance and independence. None of the Parties has raised objections to the appointment of the Arbitrator or to the declaration of independence issued by him.

3. Facts and Proceedings

3.1. Background Facts

6. On 26 August 2009, the Player and the Club entered into a contract entitled “Chinese Basketball Association Uniform Foreign Player Contract” (the “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 2009/2010 basketball season. Under the Contract the club also agreed to pay an agent’s fee to the Agent.

7. The Player received some salary payments from the Club for the 2009/2010 season. The Club paid agency fees to a Chinese agent, Mr Liang (the “Chinese Agent”) and part of these agency fees were paid by the Chinese Agent to the Agent. During the 2009/2010 season the Club stopped making salary and agency fee payments.

8. On 28 January 2010, the Player and the Club signed a document of the same date which referred to the Club releasing the Player from the Contract on 30 January 2010 (the "Release Document"). The Release Document consists of one line of Chinese characters and the Player’s signature. There is a dispute between the Parties as to the

effect of the document and whether any agreement was reached upon the Player leaving the Club.

9. The 2009/2010 season has now finished and according to the Claimants, the Club owes the Player salary for the months of January, February and March 2010 (amounting to a total of USD 120,000). In addition, the Player also claims that the Club owes him a total of USD 8,800 in bonuses. The Player also claims interest.

10. The Agent has received a payment of USD 7,500 and claims an amount of either USD 28,500 or USD 10,500 in outstanding agency fees.

3.2. The Proceedings before the FAT

11. On 17 March 2010 the Claimant filed a Request for Arbitration in accordance with the FAT Rules.

12. By letter dated 12 April 2010, a time limit until 4 May 2010 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 27 April 2010, the following amounts were fixed as the Advance on Costs:

"Claimant 1 (Mr Benson)	*EUR 4,000*
Claimant 2 (Mr Paris)	*EUR 1,000*
Respondent (BC Shanxi Zhongyu)	*EUR 5,000"*

13. On 28 April 2010 the Club filed its answer to the Claimants' Request for Arbitration.

14. By letter dated 6 May 2010 the FAT acknowledged the payment of the complete advance on costs by the Claimants and the Respondent.

15. 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.

16. The Arbitrator issued two further procedural orders in this matter, requiring further information from the Parties. The Claimants and Respondent responded to both of these orders.

17. By letter dated 30 June 2010, the Arbitrator closed the proceedings and asked the Parties to submit their accounts of costs.

18. The Player submitted a summary of fees in the amount of USD 7,800.

19. The Club did not submit a statement of costs.

4. The Parties' Submissions

4.1. The Player's Submissions

20. The Player submits that the Contract was a guaranteed six month contract and that the Release Document amounted to a rescission of the Contract by the Club. Therefore the Player is entitled to payment from the Club for the entire 2009/2010 season notwithstanding the fact that the Player was released from the Contract.

21. The Player also submits that after rescinding the Contract the Club has only partially

paid sums due to the Player in January 2010 and has made no payments in February and March.

22. Under the heading "Request for Relief" in the Request for Arbitration, the Claimants state the following in respect of the Player:

> *"We are requesting the sum of $120,000 owed to the Player plus bonuses and interest."*

23. In a different section of the Request for Arbitration, the unpaid salaries are said to amount to USD 140,000. This discrepancy is discussed further at paragraphs 90 and 91, below.

4.2. The Agent's Submissions

24. The Agent submits that the Agent's fee under the Contract is USD 36,000. The Club hired a third party, Mr. Tom Yang to conclude the contract. Mr. Tom Yang informed the Agent that in accordance with the rules of the Chinese Basketball Association (CBA) it was necessary to hire the Chinese Agent to conclude the Contract on behalf of the Player. The Agent understood that the agency fee provided for in the Contract would then be shared in equal parts with the Chinese Agent. The Agent submits that he has received one payment of USD 7,500 from the Chinese Agent.

25. The Agent further submits that if the Chinese Agent is not CBA registered the Agent did not have to share the agency fees with the Chinese Agent and is therefore entitled to the full outstanding amount of USD 28,500 (USD 36,000 minus USD 7,500). If the Chinese Agent is CBA registered then the Agent accepts that he is obliged to share the agency fees with the Chinese Agent and is only entitled to an outstanding amount of USD 10,500 (USD 18,000 minus USD 7,500). The Agent also claims interest on the

outstanding fees.

4.3. The Club's Submissions

26. The Club submits that the Contract is not a guaranteed contract. The Club also submits that the Contract and the Release Document are not the entire agreement entered into between the Parties.

27. The Club submits that on 11 December 2009 the Club and the Player entered into a Contract Termination Agreement (the "Termination Agreement"). The Club submits that the Contract was terminated by means of this agreement. The Termination Agreement states that the Club should pay to the Player an amount of USD 51,373. The Club submits that a payment of USD 49,373 was made in December 2009 and that the Player was only entitled to this payment by virtue of having entered into the Termination Agreement.

28. The Club submits that on 13 January 2010 the Parties entered into a further agreement entitled Chinese Basketball Uniform Foreign Player Contract (the "Second Contract") and a supplementary agreement entitled Chinese Men's Basketball Professional League Foreign Player's Employment Contract (Annex 1) (the "Annex").

29. The Second Contract is substantially the same as the Contract, but with three material differences. First, the Second Contract does not include a clause providing for disputes to be resolved by the FAT and states that disputes arising under the Second Contract should be resolved through CBA mediation. Secondly, clause 9B of the Second Contract explicitly states:

> *"The Player and the team have reached the agreement that each party may terminate this Contract. Since the termination date of the contract, the Team will suspend the Player's payment".*

30. Thirdly, the Second Contract does not include provision for the Player to be represented by an agent or for any agency fees to be paid.

31. The Club submits that, on 30 January 2010, the Second Contract was terminated by the Release Document in accordance with clause 9B of the Second Contract and that the Club was therefore entitled to suspend payments to the Player from that date onwards.

32. The Club submits that it has paid RMB 100,000 (which it says was 10% of the Player's salary) to the Chinese Agent. The Club submits that by doing so it has fulfilled its obligations under the Contract and that it is for the Agents to determine between themselves how this money should be shared.

5. Jurisdiction and other Procedural Issues

5.1. The jurisdiction of FAT

33. Pursuant to Article 2.1 of the FAT Rules, "[t]he seat of the FAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland". Hence, this FAT arbitration is governed by Chapter 12 of the Federal Statute on Private International Law (PILA).

34. In its Reply submissions dated 20 April 2010 and 27 April 2010, the Respondent challenged the jurisdiction of FAT. Hence, before the Arbitrator can assert jurisdiction over the present dispute (Art. 186(2) PILA) the Arbitrator will examine the validity and scope of the arbitration agreement contained in the Contract (see 5.1.2 below).

35. In the Reply dated 20 April 2010 the Club submitted that:

> *"Based on section 9 of the contract the club has signed with Lee A Benson, we suggest Lee A Benson can follow the contract let the CBA to a modulation for the dispute between both parties. If modulation fails, then we can let FAT give us an efficient and effective means of resolving this disputes."*

36. The Club expanded on these submissions and challenged the validity of the arbitration agreement by letter dated 27 April 2010 in which it stated:

> *"We have been advised by our PRC attorneys that under the PRC laws, by reason of the terms of the Employer Contract, especially clause 9 and 12 referred to above, there has not been any or any binding arbitration agreement between the parties and as such, FAT do not have jurisdiction over the present dispute."*

37. However, the Arbitrator notes that despite having challenged the jurisdiction of the FAT the Respondent has actively participated in the proceedings. In its Reply dated 20 April 2010 the Respondent made several submissions on the merits of the case. In addition, the Arbitrator finds that the Respondent may be understood to have withdrawn its jurisdictional challenge by its e-mail to FAT dated 28 April 2010, where, having expressed its intention to pay its share of the Advance on Costs, it went on to state: "*[…] we believe that FAT can (sic) us an efficient and effective means of resolving these disputes*". Finally, the Respondent did indeed pay its share of the Advance on Costs and has provided submissions in response to each of the Procedural Orders.

5.1.1 Arbitrability

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

39. 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

40. 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."*

41. The Contract contains two clauses in respect of how disputes between the Parties will be dealt with.

42. Clause 9 of the Contract allows the Parties to resolve disputes through CBA mediation (in the first instance, with the possibility of bringing the dispute before the Chinese or US courts should the mediation fail), stating as follows:

> *"In the event of any dispute arising between the Player and the Team concerning the performance or interpretation of this Contract, the Player or the Team may refer such*

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

dispute to the CBA for mediation. If the mediation fails, the Player or the Team may bring a suit to the People's Court or in the United States"

43. Clause 10 of the Contract provides for dispute resolution by the FAT, and reads as follows:

"Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT President.

The seat of the arbitration shall be Geneva, Switzerland.

The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties' domicile.

The language of the arbitration shall be English.

Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law.

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

44. The Player and Agent submit that jurisdiction of the FAT results from Clause 10 of the Contract.

45. The Arbitrator notes that the Contract contains no provisions stating whether particular disputes should be submitted to clause 9 or clause 10. Given the existence of both clauses, the Arbitrator considers that the Parties must have intended that if a party wished to resolve a dispute under the Contract, that party could use either mechanism. This is particularly the case in relation to clause 9, which uses the word "may" rather than "shall" (as is used in clause 10). The Claimants have opted for dispute resolution by way of arbitration before the FAT, which according to the terms of the Contract, they are entitled to do.

46. The Contract is in written form and thus the arbitration agreement contained in clause

10 fulfils the formal requirements of Article 178(1) PILA.

47. With respect to substantive validity, the Arbitrator considers that there is no indication 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" clearly covers the present dispute between the Claimants and the Club.

48. However, as noted above, the Club has raised the argument that under Chinese law, clause 10 does not amount to a valid, binding, arbitration agreement.

49. Chinese law would be relevant to determine the validity of the arbitration agreement only if the latter was *not* valid under the law chosen by the parties to govern the arbitration agreement and was also not valid under Swiss law (Article 178(2) PILA). As the arbitration agreement is clearly valid according to Swiss law (see above paragraph 47), Chinese law is thus irrelevant for the purpose of determining the validity of the arbitration agreement.

50. In any case, if Chinese law were relevant, the Arbitrator considers that insufficient evidence has been put forward to establish that Chinese law means that the arbitration agreement in clause 10 of the Contract is invalid.

51. In light of the above, the Arbitrator considers himself fit to proceed with the arbitration and deliver the award.

6. Discussion

6.1. Applicable Law – *ex aequo et bono*

52. 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 rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

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

53. 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."*

54. The Contract provides that it is governed by Chinese law (clause 12), but also contemplates that the FAT arbitrator shall decide the dispute *ex aequo et bono* (clause 10). It is therefore a matter of interpretation of the Contract to determine how deciding the case *ex aequo et bono* fits with the reference to Chinese law.

55. The Arbitrator considers that in the present case the Parties' common intention was to account for the mandatory rules of local labour law (in this case the laws of China) to regulate matters such as working hours, safety, insurance, etc. as long as they did not become contentious, but that, as is made clear by the terms of clause 10, any disputes deriving from the performance of the Parties' obligations under the contract would be

decided *ex aequo et bono* if submitted to the FAT.

56. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding

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*[2] (Concordat),[3] under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

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

58. 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".[5]

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".

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

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

3 P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

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

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

6.2. The issues to be determined

61. The following are the issues to be resolved in this case:

62. Whether the Contract and the Release Document constitute the entire agreement between the Parties;

63. Whether the Player was entitled to his salary for the months of January – March 2010 (including any relevant bonus payments) in light of the Release Document;

64. Whether the Agent is entitled to agency fees under the Contract.

6.3. Factual findings

65. The central issue in these proceedings is whether the Parties entered into the Termination Agreement and the Second Contract.

66. The Contract commenced on 30 September 2009. Clause 1 provided for payment to be made by the Club to the Player of a monthly salary of USD 60,000 beginning on 20 September 2009. The Club began to make payments. Exhibit A of the Contract provided that payments would be made in accordance with the payments schedule below.

Payment schedule	Payment due	Payment received
20 September 2009	USD 20,000	USD 20,000
10 October 2009	USD 40,000	USD 40,000

20 November 2009	USD 60,000	USD 60,000
20 December 2009	USD 60,000	USD 60,000
20 January 2010	USD 60,000	USD 40,000
20 February 2010	USD 60,000	-
20 March 2010	USD 60,000	-

67. There are some differences between the Parties as to how payments were received. However, it is common ground that payments were received by a mixture of wire transfer and cash payment and that four complete payments were received and a partial payment was received in January.

68. It is common ground that in December 2009 the Club made a payment to the Player of USD 49,373 by bank transfer. The Player submitted that the full amount of USD 60,000 was received in December 2009 and that the remaining USD 10,627 was paid in cash. The Club has provided a receipt for a cash payment of USD 2,000 but has not submitted that this was the only cash payment made in December 2009.

69. The Player submits that a payment of USD 35,000 was made by wire transfer on 25 January 2010 and has submitted a wire transfer summary. The Player also submits that a further payment of USD 5,000 was paid in cash but no receipt for this payment has been submitted. The Club has not made any submissions in relation to these payments.

70. It is common ground that agency fees were paid by the Club to the Chinese Agent and by the Chinese Agent to the Agent. The Club has submitted a receipt showing that a payment of RMB 100,000 (USD 14,200) was made to the Chinese Agent. It is common ground that the Agent received a payment of USD 7,500 from the Chinese Agent.

71. It is common ground that no further payments were made by the Club to the Player or to the Agent after 25 January 2010.

6.4. Guaranteed Contract

72. The Claimants have submitted that the Contract is a guaranteed contract so that the Player would be entitled to payment of his salary under the Contract irrespective of whether or not he has played any or all matches for the Club during the contract term.

73. Clause 1 of the Contract refers to the Player being employed by the Club for a "guaranteed term of 6 Months". Clause 3 of the Contract states:

> *"The [Club] agrees to pay to the Player for rendering the services described herein the salary in the amount of USD$ 60,000.00 (after tax) per month, or USD$ 2000.00 (net of tax) per day, for the term of this Contract.*"

74. Clause 8 of the Contract states:

> *"[…]*
>
> *(3) For any violation of the Team rules or any breach of this Contract or any absence from the game without justifiable reason the Team may reasonably impose fines upon the Player and deduct the appropriate amount from his salary accordingly.*
>
> *(4) If the Player in the judgment of the Team's physician, is not in good physical condition at the beginning of or during any Season (unless such condition results directly from an injury sustained by the Player as a direct result of participating in any basketball practice or game played for the Team during such Season), so as to render the Player, in the judgment of the Team's physician, unfit to play skilled to basketball, the Team shall have the right to suspend such Player until such time as, in the judgment of the Team's physician, the Player is in sufficiently good physical condition to play skilled basketball, in the event of such suspension, the salary payable to the Player shall be deducted in the same proportion as the number of games missed by the Player*
>
> *[…]*

> *(7) If the Player failed to report to the Team due to circumstances under his control in a timely manner in accordance with the contract, or if the Player cannot play because of his existing injury proved unable to meet competition requirements upon his arrival, or if the Player left the Team without permission, or, other serious breaches, [sic] disciplines, or offences occurred on the part of the Player the Team may terminate this contract and / or make deduction of wages."*

75. In summary, the Contract provides for the Player to be paid for the term of the Contract, and provides that in the circumstances set out in sub-clauses 8(3), 8(4) and 8(7) the Club has the right to suspend salary payments to the Player or even terminate the Contract.

76. However, whilst the Contract provides for certain situations in which the Club is able to suspend payments to the Player it does not provide that payments can be suspended in any other situation. The Club has not made submissions or provided any evidence to the effect that the Player has breached the Contract.

77. Clause 11B of the Contract states that the Parties "*may terminate the Contract through consultations and mutual agreement*". The Club submits that the Parties did agree to a termination, such that no further payments were due. The Player and Agent submit that although the Player no longer played for the Club after January 2010, there was no agreement to forego the Player's guaranteed salary for the remaining months.

78. The Arbitrator does not consider that the content of the Release Document amounts to an agreement by the Player to forego the payments due to him in February and March 2010. There is also no evidence of any breach of Contract by the Player or of the existence of the matters set out in sub-clauses 8(3), 8(4) and 8(7) of the Contract. In these circumstances the Arbitrator finds that the Player remains entitled to the full salary payments for January, February and March 2010, in accordance with clause 3 of the Contract, unless it can be shown that the Contract was terminated or varied by the Parties "*by consultations and mutual agreement*".

6.5. Central issue: Validity of the Termination Agreement and the Second Contract

79. The central issue in the proceedings is whether the Parties did in fact enter into the Termination Agreement on 11 December 2009 and the Second Contract on 13 January 2010. The Club submits that the Termination Agreement terminated the Contract and the Second Contract was terminated by the Release Document.

80. The Player submits that he signed neither the Termination Agreement nor the Second Contract and that the signatures which appear on the Termination Agreement and the Second Contract do not belong to him. The Player has provided a sample of his signature.

81. The Parties have submitted numerous documents in evidence before the Arbitrator which bear the signature of the Player and the Arbitrator has also considered the evidence of these signatures.

82. The Arbitrator considers that the signature on the Termination Agreement which the Club submits belongs to the Player is markedly different from that which is on all other signed documents provided to the Arbitrator (including on the Contract, about which there is no dispute). Further, the Arbitrator notes that it is not clear that the Player's purported signature appears in the correct place on the Termination Agreement. In fact it appears in a place where it is conceivable that someone may have printed the Player's name.

83. In a Procedural Order dated 11 June 2010 the Arbitrator required the Club to provide any further evidence of the signature of the Termination Agreement and the Second Agreement on which it wished to rely. The Club responded to this request on 21 June 2010 and submitted that the payment to the Player of USD 49,373 on 16 December 2009 would not have been made if the Player had not signed the Termination

Agreement.

84. However, the Arbitrator notes that even if the Parties had not entered into the Termination Agreement a payment of USD 60,000 would have been due on 20 December 2009 in accordance with the payment schedule set out in Exhibit A of the Contract. That payment was due irrespective of whether or not the Termination Agreement had been entered into. The fact that the payment of USD 49,373 was made does not evidence either that the Parties did, or that the Parties did not, enter into the Termination Agreement.

85. The Arbitrator considers that the signatures purportedly belonging to the Player which appear on the Second Contract and on the Annex are not as markedly different from the signatures on other documents which have been submitted to the Arbitrator as that which appears on the Termination Agreement.

86. The Second Contract was first put before the Arbitrator on 28 April 2010 in the Respondent's answer to the Request for Arbitration (dated 20 April 2010). The signatures on that copy of the Second Contract were not clear. The Respondent submitted a further copy of the Second Agreement on 19 May 2010. The Arbitrator notes that there are inconsistencies between the two versions of the Second Contract provided by the Club. The version provided on 28 April 2010 includes handwritten payment amounts which appear to have been inserted by the Club. The later copy of the Second Contract does not include any payment amounts filled in by the Club.

87. The Arbitrator also notes that the Club has not submitted any evidence as to the circumstances in which the Termination Agreement and the Second Contract were entered into, or the circumstances under which the Player stopped playing for the Club.

88. The Arbitrator further notes that only the Player has made submissions on the

circumstances surrounding the Release Document. Those submissions have been consistent throughout. The Player has submitted that he was told by the Club that he did not meet the team's style of playing.

89. For each of these reasons the Arbitrator considers that the Club has not demonstrated that the Player signed either the Termination Agreement or the Second Contract. Therefore, the Arbitrator concludes that the Player was entitled to payments in respect of the full 6-month term agreed under the Contract

90. The amount of those salaries as claimed in the Prayer for Relief at paragraph 2 of the Request for Arbitration is USD 120,000. However in the schedule of payments set out in paragraph 1 of the Request for Arbitration the Player submits that the Club owes the Player a balance of USD 140,000. Further, the Parties do not dispute the amount of payments which were received by the Player. The Arbitrator considers that a clerical error has been made in the Prayer for Relief and that this should correctly read:

> *"We are requesting the sum of $140,000 owed to the Player…"*

91. The Arbitrator is entitled to take into account the body of the Request for Arbitration when interpreting the Prayers for Relief and therefore considers that the Player is entitled to the amount of USD 140,000 for outstanding salary payments.

6.6. Bonus payments

92. Clause 3(2) of the Contract provides that

> *"For every Regular Season game or Playoff game the Team has won and the Player has played therein, the Team shall pay to the Player the Game reward in the amount of home: $700.00 USD; away: $1,000.00 USD three (3) days prior to the beginning of the*

month."

93. By a procedural order dated 14 May 2010 the Arbitrator required the Player to specify the amount that he claims in bonus payments and the dates of matches and names of opponents for which it is said that bonus payments are due. On 26 May 2010 the Player submitted the following schedule of the bonus payments to which he submits he is entitled:

Date of match	Amount	Opponent
22 December 2009	USD 700	DongGuan
27 December 2009	USD 1000	Zhejiang G.L.
3 January 2010	USD 700	Zhejiang C.
6 January 2010	USD 1000	TianJin R.
7 February 2010	USD 700	Shaanxi
10 February 2010	USD 1000	Zhejiang C.
19 February 2010	USD 1000	Beijing
21 February 2010	USD 700	TianJin R.
26 February 2010	USD 1000	Shaanxi
10 March 2010	USD 1000	Liaoning
Total	USD 8,800	

94. The Arbitrator notes that under clause 3(2) of the Contract the Player is entitled to bonus payments with respect to games in which he played. The Player has not submitted any evidence to show that he has played in any of the games for which he claims a bonus payment. Further, the Player has claimed bonus payments for games

which occurred after he had signed the Release Document. The Arbitrator finds that the Player has provided insufficient evidence to demonstrate that he is entitled to any bonus payments.

6.7. Agent's fees

95. The Arbitrator notes that the Contract specifically provides that the agency fee is payable to the Agent and the Chinese Agent and that each is entitled to 50% of the agency fee.

96. The Arbitrator also notes that there is no mention in the Contract that the payment of 50% of the agency fee to the Chinese Agent is conditional upon him being CBA registered.

97. The Arbitrator notes that the Agent and the Chinese Agent are defined in the Contract as "the Representative". The Contract states "*an agent's fee of 10% [...] shall be wired into the Representative bank account*." Therefore a payment to the Chinese Agent is a payment to the "Representative bank account" in accordance with the Contract.

98. There is no provision in the Contract to allow the Club to suspend payment of the agency fee. The Arbitrator notes that a payment has been made to the Chinese Agent of RMB 100,000 (USD 14,200) and payment was made to the Agent of USD 7,500. The Arbitrator notes that RMB 100,000 (USD 14,200) is not equal to 10% of the salary due to the Player under the Contract, i.e. USD 36,000 (10% of USD 360,000).

99. The Arbitrator considers that the Agent was entitled to the payment of an agency fee of USD 18,000 (50% of USD 36,000) in respect of the whole Contract term. No reason for

non-payment of the Agent has been put forward.

100. The Club has not discharged its obligation to the Agent under the Contract by making a payment of RMB 100,000 (USD 14,200) to the Chinese Agent. The Agent is entitled to the payment of a balance of USD 10,500 (being the amount due to the Agent under the Contract, i.e. USD 18,000, less the amount already paid to the him, USD 7,500).

6.8. Interest

101. In respect of all unpaid amounts, the Claimants seek payment of interest, without however specifying the rate to be applied.

102. With respect to the Player's claim for salary payments, the Arbitrator in exercising his powers *ex aequo et bono* finds it just and equitable to apply a rate of 5% per annum to the outstanding debts, from the date that the salary payment fell due. Those dates are set out in the first column of the table in paragraph 66.

103. The Arbitrator is satisfied that the payment obligation from the Club to the Agent arose on 25 September 2009 in accordance with the Contract. Therefore, in exercising his powers *ex aequo et bono,* the Arbitrator finds it just and equitable to apply a rate of 5% per annum to the outstanding debt, in an amount of USD 10,500, from 25 September 2009.

7. Costs

104. 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 the proceedings.

105. On 31 August 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.

106. In the present case, the reasonable costs of the Claimants shall be borne by the Club. The Player and Agent were each substantially successful on their claims. The Arbitrator decides that the Club shall pay to the Claimants EUR 5,140.91 as reimbursement of the Advance on Costs.

107. 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

the submission by the Claimants, the Arbitrator fixes the contribution towards the Claimant's legal fees and expenses at EUR 8,000. The Arbitrator leaves it to the Claimants to share the amount in order to reflect their respective expenses.

8. AWARD

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

I. Shanxi Zhongyu Basketball Club is ordered to pay to Mr. Lee Benson the following amounts in respect of salary, together with 5 % interest p.a. on those amounts from the date shown:

Amount	Date from which interest should be calculated
USD 20,000	20 January 2010
USD 60,000	20 February 2010
USD 60,000	20 March 2010

II. Shanxi Zhongyu Basketball Club is ordered to pay to Mr. José Paris USD 10,500.00 together with 5 % interest p.a. on that amount from 25 September 2009.

III. Shanxi Zhongyu Basketball Club is ordered to pay to Mr. Lee Benson and Mr. José Paris EUR 5,140.91 as reimbursement of the Advance on Costs.

IV. Shanxi Zhongyu Basketball Club is ordered to pay to Mr. Lee Benson and Mr. José Paris EUR 8,000.00 as a contribution towards their legal fees and expenses.

V. Any other or further-reaching claims are dismissed.

Geneva, seat of the arbitration, 31 August 2010

Raj Parker
(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."