



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(FAT 0088/10)
rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Raj Parker

in the arbitration proceedings

Mr. Lonny Baxter, c/o Priority Sports, 325 N La Salle Drive #650, Chicago, IL, 60654, USA

- Claimant 1 -

and

Mr. Brad Ames, c/o Priority Sports, 325 N La Salle Drive #650, Chicago, IL, 60654, USA

- Claimant 2 -

and

Mr. Murat Yenil, c/o 1x1 Sports Management, Yildiz Posta Caddesi Gonenglu, Sok Beyazoglu Apt 16/28, Gayrettepe, Istanbul, Turkey

- Claimant 3 -

vs.

Besiktas Cola Turka Basketball Club, Suleyman Seba Caddesi, No: 48 BJK Plaza, Akaretier, Besiktas 34357, Istanbul, Turkey

- Respondent -



We Are Basketball

FIBA Arbitral Tribunal (FAT)

1. The Parties

1.1. The Claimants

1. Claimant 1, Mr. Lonny Baxter (hereinafter, the “Player”) is a professional basketball player and a citizen of the USA. He is currently domiciled in the USA. In these proceedings, the Player is represented by Claimant 2.
2. Claimant 2, Mr. Brad Ames (hereinafter, the “American Agent”) is a basketball players’ agent based in Chicago, USA.
3. Claimant 3, Mr. Murat Yenai (hereinafter, the “Turkish Agent”) is a basketball players’ agent based in Istanbul, Turkey.

1.2. The Respondent

4. Besiktas Cola Turka Basketball Club (hereinafter the “Club” or the “Respondent”) is a Turkish basketball club based in Istanbul, Turkey. The Respondent has made submissions signed by its Legal Counsel, Mr. Kubilay Marangoz.

2. The Arbitrator

5. On 15 April 2010, the President of the FIBA Arbitral Tribunal (the “FAT”) appointed Raj



We Are Basketball

FIBA Arbitral Tribunal (FAT)

Parker as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules"). 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 1 July 2009, the Player and the Club entered into a contract entitled "Agreement between Beskitas Cola Turka and Lonny Baxter" (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 agency fee to the Agents.
7. During the 2009/2010 season the Player played for the Club. The Player received some salary payments from the Club for the 2009/2010 season. The Club has made no payments to the Player since 12 March 2010 and on 24 March 2010 the Player exercised an option to terminate the Contract. The Agents have not received any agency fees from the Club.
8. The 2009/2010 season has now finished and according to the Claimants, the Club owes the Player his salaries for the months of January, February, March, April and May 2010 (amounting to a total of USD 200,000). In addition, the Player also claims that the Club owes him a total of USD 18,750 in contractual penalties for late payment.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

9. The Agents claim an amount of USD 45,000 (USD 22,500 each) in outstanding agency fees.

3.2. The Proceedings before the FAT

10. On 1 April 2010 the Claimants filed a Request for Arbitration in accordance with the FAT Rules.
11. By letter dated 16 April 2010, a time limit until 11 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 4 May 2010, the following amounts were fixed as the Advance on Costs:

<i>"Claimant 1 (Mr Baxter)</i>	<i>EUR 3,000</i>
<i>Claimant 2 (Priority Sports)</i>	<i>EUR 1,000</i>
<i>Claimant 3 (1x1 Sports)</i>	<i>EUR 1,000</i>
<i>Respondent (Besiktas JK)</i>	<i>EUR 5,000"</i>

12. On 10 May 2010 the Club filed its answer to the Claimants' Request for Arbitration.
13. The Club did not pay its share of the Advance on Costs. On 11 May 2010, the Arbitrator wrote to Claimants inviting them to pay the Respondent's share of the Advance on Costs, in accordance with article 9.3 of the FAT Rules. The Club's share of the Advance on Costs was paid by the Claimants on 6 June 2010.
14. By letter dated 11 June 2010 the FAT acknowledged the payment of the complete advance on costs.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

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. Those orders required further information from the parties. The Claimants and Respondent responded to both of these orders.
17. By letter dated 3 August 2010, the Arbitrator closed the proceedings and asked the parties to submit their accounts of costs.
18. The Claimants submitted a summary of costs in the total amount of EUR 13,024, being the sum of the non-reimbursable fee of FAT and the Advance on Costs paid by the Claimants (the Claimants' share and the Respondent's share). The Respondent submitted a summary of fees in the amount of USD 2,200.

4. The Parties' Submissions

4.1. The Player's Submissions

19. The Player submits that under the Contract he was scheduled to receive salary payments of USD 450,000. The Player received a total of USD 250,000. The Player submits that the majority of payments received from the Club were late.
20. The Player submits that under clause 2 of the Contract, as a result of payments being



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

made late by the Club, the Player accrued the right to terminate the Contract and accelerate all remaining payments due. The Player submits that before doing so, the American Agent contacted the Club by letter on three occasions to ask for payments due. The Player terminated the Contract and accelerated all further payments on 24 March 2010.

21. The Player also claims late payment penalties in respect of the unpaid payments and the previous payments that were paid by the Club at a later date than that set out in the Contract.
22. The Player makes the following request for relief:

"Immediate payment from Club to Player in the amount of Two Hundred Thousand US Dollars (\$200,000.00 USD) in past-due base salary.

Immediate payment from Club to Player in the amount of Eighteen Thousand Seven Hundred Fifty US Dollars (\$18,750.00 USD) in late payment penalties as calculated in the attached spreadsheet and per Paragraph 2 of the Agreement.

[...]

Immediate reimbursement to from (sic) Club to Player, American Agent, and or Turkish Agent for the FAT application fee, plus any additional costs of arbitration, legal fees, and/or expenses related to this FAT case."

4.2. The Agents' Submissions

23. The Agents submit that the agency fee under the Contract is USD 45,000. The Agents submit that they have not received any payments under the Contract.
24. The Agents submit that the Player accrued a further right to terminate the Contract and



We Are Basketball

FIBA Arbitral Tribunal (FAT)

accelerate all remaining payments due as a result late payment of agency fees by the Club and that this was exercised on 24 March 2010.

25. The Agents makes the following request for relief:

"Immediate payment from Club to American Agent in the amount of Twenty Two Thousand Five Hundred US Dollars (\$22,500.00) in past-due commission.

Immediate payment from Club to Turkish Agent in the amount of Twenty Two Thousand Five Hundred US Dollars (\$22,500.00) in past-due commission."

4.3. The Club's Submissions

26. In respect of payments being made late, the Club accepts that there have been delays to salary payments made to the Player but submits that because of a practice between the parties, any termination by the Player on the basis of late payments should be denied.
27. The Club submits that the Player did not have good cause to terminate the Contract and that for this reason the termination is not valid. On this basis the Club submits that the full amount of the Player's claim should be denied.
28. The Club also alleges that the Player caused damage to a car that was provided to him by the Club so that his claim should be reduced in respect of the costs of repairing the car. Similarly, the Club submits that the Player's claim should be reduced because he was subject to disciplinary sanctions by the Club and the Turkish Basketball Federation which have not been paid.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

5. Jurisdiction and other Procedural Issues

5.1. The jurisdiction of FAT

29. 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).
30. The Respondent did not challenge the jurisdiction of FAT. Hence the Arbitrator asserts jurisdiction over the present dispute (Art. 186(2) PILA). For the sake of completeness, the Arbitrator will nevertheless examine the validity of the arbitration agreement contained in the Contract (see paragraphs 34-36 below).

5.1.1 Arbitrability

31. The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
32. 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

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



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

5.1.2 Formal and substantive validity of the arbitration agreement

33. 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."

34. The jurisdiction of the FAT over the dispute between the Player and the Club results from clause 11 of the Contract which reads as follows:

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

The seat of the arbitration shall be Geneva, Switzerland.

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

The language of the arbitration 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."

35. The Arbitrator considers that clause 11 of the Contract also provides for the jurisdiction of the FAT in respect of the dispute between the Club and the Agents. That dispute is one that arises from or is related to the Contract. The Agents signed the Contract, along with the Player and the Club. The payments that are claimed by the Agents are for amounts set out in the Contract, and both are for fees in respect of the Player.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

36. The Arbitrator concludes that clause 11 of the Contract establishes the jurisdiction of the FAT over the dispute between the Player and the Club and the dispute between the Agents and the Club.
37. The Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
38. 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 dispute between the Player and the Club as well as that between the Agents and the Club.

5.2. Other Procedural Issues

39. As outlined above, the Club has made submissions based on amounts said to be owed by the Player to the Club. Had the Club wished to recover those amounts from the Player, it should have filed a counterclaim under rule 11.2 of the FAT Rules. However, in the circumstances of this matter, the Arbitrator considers that it is appropriate to take into account the matters raised by the Club insofar as those amounts are said to reduce the claim by the Player.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

6. Discussion

6.1. Applicable Law – *ex aequo et bono*

40. 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.”

41. 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.”

42. As mentioned above (see paragraph 34), the Contract contemplates that the FAT arbitrator shall decide the dispute *ex aequo et bono*.

43. 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

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 PIL.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

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

44. 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
45. 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”.
46. In light of the foregoing matters, the Arbitrator makes the following findings:

6.2. The issues to be determined

47. The following are the issues to be resolved in this case:
 - I. Whether the Player validly terminated the Contract and is now entitled to unpaid salary amounts;
 - II. Whether the Player is now entitled to late payment penalties in respect of amounts that were paid late;

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

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



We Are Basketball

FIBA Arbitral Tribunal (FAT)

- III. Whether any amounts due to the Player should be reduced by reason of amounts owed by the Player to the Club;
- IV. Whether the American and Turkish Agents are entitled to payment of unpaid agency fees.

6.3. Salary payments

48. The Contact commenced on 1 July 2009. Clause 2 provided for the Club to pay the Player “a fully guaranteed net Base Salary of \$450,000.00” in accordance with the following Schedule:

Date	Payment due
Upon Player passing physical	USD 45,000
30 August 2009	USD 45,000
30 September 2009	USD 40,000
30 October 2009	USD 40,000
30 November 2009	USD 40,000
30 December 2009	USD 40,000
30 January 2010	USD 40,000
28 February 2010	USD 40,000
30 March 2010	USD 40,000
30 April 2010	USD 40,000
30 May 2010	USD 40,000



We Are Basketball

FIBA Arbitral Tribunal (FAT)

49. Clause 2 included the following:

“The payment of the guaranteed Base Salary, as stated in this Paragraph 3, to Player is not contingent upon anything other than the Player passing the Club’s physical examination given anytime prior to the start of the 2009/2010 training camp, and the Player not materially breaching this Agreement.”

50. Clause 2 also stated:

“It is agreed that any payment to Player pursuant to the above shall be subject to an interest penalty of Fifty Dollars (\$50.00 USD) per day for each day said payment was due. In the event that any scheduled payments are not made by the Club within fifteen (15) days of the applicable payment date, the Player shall not have to perform in any practice sessions or any games until such time as all of said payments have been paid. In addition, if any scheduled payment is not received by Player’s bank within thirty (30) days of the date due, the Player’s performance obligations shall cease, Player shall have the right, at Player’s option with written notice to Club, to terminate this Agreement and accelerate all future payments required under this Agreement and Player shall be free to leave Turkey with his FIBA Letter of Clearance to play basketball anywhere in the world Player chooses, but the duties and liabilities of Club under this Agreement shall continue in full force and effect.”

51. There is some dispute between the parties about the dates on which payments were received, although both parties agree that the total amount paid to the Player by the Club is USD 250,000. It is also common ground that no payments have been made by the Club to the Player since 12 March 2010.

6.4. Delays in Payment

52. The Club admits that there were delays in making payments to the Player. In its Answer submitted to the FAT on 10 May 2010 the Club submitted:

“While it is true that some delays have occurred in respect of payments made to the player owing to cash flow inconveniences suffered by our Club, no reservation has been put by him for any of the payments made into the player’s bank account, so he accepted all of such payments. As a result, an implied practice has taken shape between the



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

parties with respect to payment due dates. Therefore, termination by the claimant asserting that the Club has not fulfilled and performed its contractual obligations is unjust and, so, his claims must be denied.”

53. In a Procedural Order dated 11 June 2010, the Arbitrator asked the parties to provide copies of communications between the parties in relation to delayed or outstanding salary payments. In its response to that order, the Club stated:

“We had stated in our bill of replies that some delays have occurred in respect of payments made to the player owing to cash flow inconveniences suffered by our Club and that no reservation has been put by him for any of the payments made into the player’s bank account that, so, he accepted all of such payments and that, as a result, an implied customs/practice has taken shape between the parties with respect to payment due dates. There are no correspondences between the parties concerned in respect of payments made by our Club to the player, which imply that our such defenses are untrue.”

54. The Arbitrator does not consider that the Club has provided sufficient evidence of any implied practice or custom that has arisen in respect of delayed payments. The Claimants have provided copies of correspondence which shows that when a payment was delayed, the American Agent wrote to the Club and sought timely payment. For example, the American Agent wrote to the Club in respect of payments due to be paid in August and September 2009 on 5 October 2009 and 15 October 2009. In respect of payments that were due in November and December 2009, the American Agent wrote on 18 January 2010 demanding payment.
55. In light of these communications and the lack of any evidence put forward by the Club that demonstrates an agreement for late payment of salaries, the Arbitrator considers that the Player is entitled to rely upon his contractual right to timely payments.
56. The Arbitrator also notes clause 12 of the Contract, which states:

“Any modification of this Agreement must be in writing and signed by both Club and Player.”



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

57. The Club has not provided any evidence of any such written modification of the Contract.

6.5. Termination of the Contract

58. Following the correspondence referred to in paragraph 54, the Club made the payments referred to in those letters. The American Agent wrote to the Club again on 24 March 2010 in respect of outstanding salary payments that were due to be paid on 30 January 2010 and 28 February 2010. Those payments were more than 30 days overdue (see clause 2 of the Contract cited in para. 50 above), and the American Agent wrote:

“On behalf of Player, we hereby exercise Player’s option described in [Paragraph 2 of the Contract] to terminate the Agreement and accelerate all future payments from Club to Player required under the Agreement.”

59. The Club submits that this termination by the American Agent was invalid due to a practice or custom between the Player and the Club that payments would be made late.

60. As the Arbitrator is not satisfied that there was any such practice or custom, the termination contained in the 24 March 2010 letter was valid, so that all amounts owed by the Club to the Player under the Contract became due to the Player on 24 March 2010.

6.6. Late Payment Penalties

61. The part of clause 2 of the Contract that deals with late payment penalties is set out



We Are Basketball

FIBA Arbitral Tribunal (FAT)

above at paragraph 50. The Player submits that he is entitled to late payment penalties in respect of those payments that were made to him late, in accordance with the terms of the Contract.

62. The Arbitrator finds that the Player is entitled to interest in respect of those payments that were made late. However, the Arbitrator considers that the penalty payments provided for in clause 2 of the Contract are excessive. A daily payment of USD 50 per day in respect of each late USD 40,000 payment amounts to payments equivalent to an interest rate of approximately 45% per annum. The Arbitrator considers that this is clearly excessive and would result in payment of an amount higher than necessary to compensate the Player for the fact that he has been without the outstanding amounts for a particular period of time.
63. In the circumstances, the Arbitrator considers that it is appropriate to apply an interest rate of 5% per annum in respect of periods in which payments were outstanding. Those periods (as documented by the Player) are as follows:



We Are Basketball

FIBA Arbitral Tribunal (FAT)

Payment due date	Period for which interest is payable
30 August 2009	30 August 2009 – 23 October 2009
30 September 2009	30 September 2009 – 11 February 2009
30 October 2009	30 October 2009 – 22 December 2009
30 November 2009	30 November 2009 – 2 January 2010
30 December 2009	30 December 2009 – 12 March 2010
30 January 2010	30 January 2010 – date of payment
28 February 2010	28 February 2010 – date of payment
30 March 2010	24 March 2010 – date of payment
30 April 2010	24 March 2010 – date of payment
30 May 2010	24 March 2010 – date of payment

6.7. Damage to car provided by the Club

64. The Club has submitted evidence that a car provided to the Player was damaged during the time of the Player's use of the car. The evidence provided is an invoice in respect of the repairs of the car. The Club submits that the Player should be responsible for the costs of those repairs.
65. In response to a Procedural Order issued by the Arbitrator, the Player submitted that he was never involved in any accident with the car and that any damage to the car was caused by normal wear and tear. The Player submitted that he should not be responsible for the costs necessary to repair any such damage.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

66. The invoice that has been provided by the Club may be evidence of the need for the car to be repaired. However, it is not evidence of the cause of the need for such repairs. Apart from its assertions in written submissions, the Club has not provided any evidence in respect of what caused the car to be damaged.
67. For these reasons, the Arbitrator is not satisfied that any damage to the car was caused by the Player. The amounts owing to the Player should not be reduced by reason of any such damage.

6.8. Disciplinary fines

68. Clause 7 of the Contract provides:

“The Player agrees to:

...

d) Comply with the Club’s internal rules and regulations and accepts any disciplinary action and/or penalties or fines provided in same. Player must be provided with a copy of the Club’s rules in English upon Player’s arrival in Turkey.”

69. The Club submits that the Player violated the rules of the Club and is therefore subject to disciplinary fines. In particular, the Club submits that the Player is liable to pay to the Club the following fines:
- (a) A fine of TL 5,000 imposed by the Turkish Basketball Federation because the Player swore at a referee during a match played in Istanbul on 28 February 2010. The Turkish Basketball Federation also suspended the Player for three matches.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

- (b) A fine of USD 1,500 imposed by the Club in respect of the Player having sworn at the referee.
- (c) A fine of USD 13,500 imposed by the Club in respect of the Player having been suspended by the Turkish Basketball Federation for three matches.
- (d) A fine of USD 9,000 imposed by the Club in respect of two separate incidents where the Player said insulting words about his team mates and coach after a match on 21 March 2010 and during exercises on 23 March 2010.

70. The Club submits that the total amount of fines is USD 27,348.28.

71. In response to a procedural order dated 11 June 2010 seeking further information about the fines referred to above, the Player submitted that although he was informed verbally of the fine imposed by the Turkish Basketball Federation, neither he nor the American Agent or the Turkish Agent have ever received written notification of this fine or the other fines imposed by the Club. For this reason, the Claimants stated:

"It is the opinion of the Claimants that the Club is introducing costs and expenses attributed to the Player that were never previously communicated to any of the Claimants in order to reduce the amount that Club owes to Player. We respectfully request that the Arbitrator take into consideration that the Club never responded to any of the Claimant's letters regarding late payments, and that the introduction of fines and car repair costs at this juncture cannot be considered reasonable."

72. There is a further issue that arises under clause 7(d) of the Contract. This is the question of whether the Club provided the club rules to the Player upon his arrival in Turkey, as required by clause 7(d) of the Contract. In a Procedural Order dated 11 June 2010, the Arbitrator requested further submissions from each party on this topic. The Club submits that the rules were provided, but that the Player did not sign an acknowledgment that he had received the rules of the Club. The Player submits that



We Are Basketball

FIBA Arbitral Tribunal (FAT)

the rules were never provided to him and that the provision of those rules with the Club's answer in the proceedings before FAT was the first time that the Player had seen those rules.

Whether the fines were imposed by the Club

73. Clause 7(d) of the Contract requires the Player to accept any penalties or fines imposed by the Club. The Arbitrator considers that whether the Player was provided with formal written notification of fines or penalties imposed by the Club prior to the proceedings is not directly relevant. However, such matters are relevant in assessing whether the fines were actually imposed by the Club or are a recent invention of the Club, designed to avoid liability.
74. Subject to the comments below in respect of the quantum of the fines, the Arbitrator considers that the fines referred to above have been properly imposed by the Club in respect of actions carried out by the Player. In particular, the letter that the Club relies upon in showing that notification of the fines was provided to the Player is dated 8 April 2010. The letter therefore has an earlier date than the letter by which the FAT informed the Club of the Request for Arbitration filed by the Claimants (16 April 2010). In addition, the Arbitrator notes that the Claimants did not dispute that the events for which the fines have been imposed took place.

Whether the rules were provided to the Player

75. The Club has not provided any evidence of the rules having been provided to the Player, other than written submissions that they were so provided. The Arbitrator is not satisfied that the Player was provided with the internal rules of the Club when he arrived in Turkey, as the Contract required. This was a breach of the Contract – the Player should have been provided with the rules.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

76. However, deciding the matter *ex aequo et bono* the Arbitrator considers that in the circumstances of this case, the Player must have been aware that a professional basketball club and competition are subject to rules in relation to discipline. In those circumstances, it is not inequitable for the Club to impose ordinary rules of discipline that would be expected within such a club. In particular, the Arbitrator considers that the Player should have known that:
- (a) he would be subject to fines and a suspension from the league for swearing at a referee during a match;
 - (b) he would be subject to fines from the Club by reason of his suspension from the league; and
 - (c) he would be subject to fines from the Club for saying insulting words about team-mates and his coach before and after matches or during training sessions.
77. The Arbitrator turns to the fines imposed by the Club in respect of the incident involving swearing at a referee. The amounts of the fines are comparable to those set out in article 55 of the FIBA Europe Regulations for European Club Competitions. The Arbitrator also does not consider that the fines are disproportionate, having regard to the Player's monthly salary under the contract.
78. However, in respect of the fine imposed by the Club for saying insulting words to his team-mates and coach on two occasions, the Arbitrator considers that the amount of the fine is significantly larger than the Player (or any reasonable basketball player in the Player's position) would have expected. If the Club intended to impose such a fine, it should have provided the Player with a copy of the rules that provide for such fines, as required by the Contract. As set out above, the Arbitrator is not satisfied that the Club provided the Player with those rules. In particular, the Arbitrator notes that the



We Are Basketball

FIBA Arbitral Tribunal (FAT)

incident occurred at a training session. Behaviour during an official game attracts public attention and brings the Club and the sport into disrepute. Such considerations do not apply in respect of incidents occurring after a match or during training. For that reason, the Arbitrator does not consider that such violations should reasonably be expected to lead to a fine that is comparable in amount to the violation that occurred during a game.

79. Therefore, deciding the matter *ex aequo et bono* in the circumstances of this particular case, the Arbitrator finds that the Player's claim should be reduced by the following amounts:
- (a) TL 5,000, in respect of the fine imposed by the Turkish Basketball Federation. According to the Answer provided by the Club, this is equivalent to USD 3,348.28;
 - (b) USD 1,500 in respect of the fine imposed by the Club because the Player swore at a referee.
 - (c) USD 13,500 in respect of the fine imposed by the Club in respect of the Player because the Player was suspended by the Turkish Basketball Federation for three matches; and
 - (d) USD 500 in respect of the fine imposed by the Club in respect of the Player saying insulting words about his team mates and coach after a match and during a training session.
80. The Arbitrator finds that these amounts, totalling USD 18,848.28, should be taken to be deducted from the salary that was due to be paid to the Player on 30 April 2010 (USD 40,000.00), being the first payment date following the notice of fines that the Club submits was sent to the Player. Thus, an amount of USD 21,151.72 is owed to the



We Are Basketball

FIBA Arbitral Tribunal (FAT)

Player for the month of April 2010.

81. The Contract was terminated by the Player on 24 March 2010. Pursuant to clause 2 of the Contract (see paragraph 50), the Club's future obligations to make payments (on 30 March 2010, 30 April 2010 and 30 May 2010) were accelerated to become payable on 24 March 2010. Therefore, the amounts payable to the Player on 24 March were:

- (a) USD 40,000.00 (originally due on 30 March 2010);
- (b) USD 21,151.72 (originally due on 30 April 2010);
- (c) USD 40,000 (originally due on 30 May 2010).

82. The total amount of unpaid salaries payable by the Club to the Player on 24 March 2010 was USD 101,151.72.

6.9. Agents' fees

83. At the end of the Contract, the following clause appears, under the heading "Agent's Commission":

"Besiktas Cola Turka ("Club") agrees to pay \$22,500.00 USD to Priority Sports & Entertainment and \$22,500.00 USD to 1x1 Sports Management upon the Player's passage (or deemed to have passed) of his physical examination for the Agreement year 2009/2010, but no later than September 15, 2009."

84. It is apparent, by reason of the fact that the Club made any payments to the Player at all, that the Player passed his medical test upon joining the Club. That is the only requirement for the fees set out under the heading "Agent's Commission" to become



We Are Basketball

FIBA Arbitral Tribunal (FAT)

payable to the American Agent and the Turkish Agent.

85. The Club has not made any submissions in respect of amounts owed to the Agents.
86. The Arbitrator finds that the Club owes each of the American Agent and the Turkish Agent USD 22,500.

7. Costs

87. 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.
88. On 23 September 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 8,701,72.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

89. The Arbitrator issued a Procedural Order dated 3 August 2010 asking the parties for the amounts of their legal costs of the FAT proceedings. Each of the parties responded to this Procedural Order.
90. In the present case, 90% of the reasonable costs of the Claimants shall be borne by the Club. The Player was substantially successful on his claim, although this was subject to a deduction in respect of amounts owed to the Club. The Agents were wholly successful on their claim. As the arbitration costs were fixed by the FAT President at EUR 8,701.72, and the total sums paid to FAT (excluding the non-reimbursable fee, which will be taken into account when considering the Claimants' legal fees and expenses) were EUR 9,970.72, that leaves a figure of EUR 1,269.00 which can be reimbursed to the Claimants.
91. Thus, the Arbitrator decides that in application of Article 19.3 of the FAT Rules:
- (i) FAT shall reimburse EUR 1,269.00 to the Claimants, being the difference between the costs advanced by them and the arbitration costs fixed by the FAT President;
 - (ii) The Club shall pay to the Claimants EUR 7,832.00, being 90 % of the difference between the costs advanced by them and the amount they are going to receive in reimbursement from the FAT;
 - (iii) The Club shall pay to the Claimants EUR 2,700.00 in respect of their legal fees and expenses.
92. The Arbitrator leaves it to the Claimants to share these amounts in order to reflect their respective expenses.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

8. AWARD

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

- I. **Besiktas Cola Turka Basketball Club is ordered to pay to Mr. Lonny Baxter USD 181,151.72 in respect of unpaid salary.**
- II. **Besiktas Cola Turka Basketball Club is ordered to pay to Mr. Lonny Baxter interest at 5% per annum in respect of the amounts shown in the table, for the periods shown in the table:**

Amount	Period for which interest is payable at the rate of 5% p.a.
USD 45,000	30 August 2009 – 23 October 2009
USD 40,000	30 September 2009 – 11 February 2009
USD 40,000	30 October 2009 – 22 December 2009
USD 40,000	30 November 2009 – 2 January 2010
USD 40,000	30 December 2009 – 12 March 2010
USD 40,000	30 January 2010 – date of payment
USD 40,000	28 February 2010 – date of payment
USD 101,151.72	24 March 2010 – date of payment

- III. **Besiktas Cola Turka Basketball Club is ordered to pay to Mr. Brad Ames USD 22,500.00 in respect of agent fees.**
- IV. **Besiktas Cola Turka Basketball Club is ordered to pay to Mr. Murat Yenil USD 22,500.00 in respect of agent fees.**



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

- V. Besiktas Cola Turka Basketball Club is ordered to pay to the Claimants EUR 7,832.00 as reimbursement of the Advance on Costs.**
- VI. Besiktas Cola Turka Basketball Club is ordered to pay to the Claimants EUR 2,700.00 as a contribution towards their legal fees and expenses.**
- VII. Any other or further-reaching claims are dismissed.**

Geneva, seat of the arbitration, 24 September 2010

Raj Parker
(Arbitrator)



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."