



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0105/10 FAT)

by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Quentin Byrne-Sutton

in the arbitration proceedings between

Mr. Dalibor Bagaric,

Represented by Mr. Federico Dettori and Mrs. Alexia Armaroli,
Gianni, Origoni, Grippo & Partners
Via D'Azeglio n. 25, 40123 Bologna, Italy

- Claimant -

vs.

Fortitudo Pallacanestro SrL,
Via San Felice 103, 40122 Bologna, Italy

- Respondent -



We Are Basketball

FIBA Arbitral Tribunal (FAT)

1. The Parties

1.1. The Claimant

1. Mr. Dalibor Bagaric (hereinafter referred to as “the Player”) is a Croatian professional basketball player, who during the 2008-2009 season was playing for the basketball club Fortitudo Pallacanestro.

1.2. The Respondent

2. Fortitudo Pallacanestro SrL (“the Club”) was during the 2008-2009 season an Italian professional basketball club.

2. The Arbitrator

3. On 20 July 2010, the President of the FIBA Arbitral Tribunal (the “FAT”) appointed Mr. Quentin Byrne-Sutton as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the “FAT Rules”). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1. Summary of the Dispute

4. On 8 October 2008, the Player and the Club entered into an agreement whereby the latter engaged the Player for the season 2008-2009 (the “Main Agreement”).
5. Article 1 of the Main Agreement provides, among others, that: “*Club hereby employs*



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

Player as a skillful basketball player for the 2008/2009 basketball season”.

6. With respect to the Player’s remuneration, article 2 of the Main Agreement stipulates that:

“In consideration for the services to be performed by Player hereunder, the Club agrees to pay to Player the amount (net of any applicable Italian taxes) of Euros 325,000 (three hundred twenty five-thousand) for the 2008/2009 basketball season [...] All Salary shall be fully guaranteed, and vested and owing in full upon execution of a formal agreement by the Player and Club and shall not be contingent upon any further events”.

7. Under article 4 of the Main Agreement, the coverage of medical expenses is guaranteed by the Club in the following terms:

“The Club shall provide full medical (doctors, including specialists, and hospitals), dental (non-cosmetic), coverage for the Player and his family whenever the need for such services arises and Club shall pay for all such services.”

8. On the same date, the Player and the Club entered into a short side agreement (the “Side Agreement”) with the following content:

“The undersigned parties agree that the Agreement is hereby amended as follows to allow for a split of Player’s Compensation, as follows:

- (i) 100.000,00 Euros net by means of an Italian League contract; and*
- (ii) 225.000,00 Euros net by means of an image contract to enhance your imagin (sic) as a professional player playing for the Club. The relevant payments shall be made as follows: Euros 56.250,00 net on December 1, 2008; Euros 56.250,00 net on January 15 2009; Euros 56.250,00 net on March 15, 2009 and Euros 56.250,00 net on May 15, 2009.”*

9. The Player and the Club signed the Italian League contract on the same day (the “League Contract”).

10. Article 2 of the League Contract stipulated that the Player would receive for the 2008-2009 season a total remuneration of EUR 176,000.00. No schedule of payments was included in the League Contract.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

11. The League Contract refers to certain provisions of the Italian Civil Code, and under article 6 stipulates that all disputes relating to the contract shall be deferred to a Permanent Board of Conciliation and Arbitration with its seat in Bologna as provided by articles 29 and following of the Professional Players 2003 collective Labour Agreement.
12. On 28 November 2008, the Player also entered into an exclusive license agreement (the "License agreement") with a third party named "Krisken Management SA" ("Krisken"), a company having its seat in Geneva, Switzerland, whereby he licensed all his image rights to Krisken for the duration of the 2008-2009 season.
13. According to article 9 of the License agreement, as consideration for the use of the Player's image rights, Krisken would pay the Player the net amount of EUR 225,000 stipulated in the Side Agreement in four installments of EUR 56,250 on the dates stipulated in the Side Agreement.
14. Article 7 of the License agreement stipulated that Krisken

"... is authorized to sublicense to third parties, including to Fortitudo Pallacanestro SrL, the rights under the Agreement".
15. Article 11 of the License agreement provided that Swiss law governs the agreement and that any disputes relating thereto would be submitted to the exclusive jurisdiction of the courts of Switzerland.
16. On the same day 28 November 2008, the Club entered into a sublicense agreement with Krisken (the "Sublicense"), which in content was largely back-to-back with the License agreement, whereby Krisken sublicensed the Player's same image rights to the Club for the season 2008-2009.
17. As consideration for the sublicensing of the Player's image, article 3 of the Sublicense provided that the Club would pay Krisken four installments net of any taxes of EUR 59,625 on the same dates as Krisken undertook to pay the Player under the License



We Are Basketball

FIBA Arbitral Tribunal (FAT)

agreement.

18. According to article 12 of the Sublicense, Italian law governs the agreement and any disputes relating thereto are subject to the exclusive jurisdiction of the courts of Bologna, Italy.
19. Also, on 28 November 2008, the Player signed a side letter (the "Side letter") whereby he declared

"... reference is made to the agreement entered into as of October 8, 2008 between myself and your Club (the "Agreement") and I hereby acknowledge that the contract between Fortitudo Pallacanestro SrL and Krisken Management SA has been entered into in execution of the Agreement and that the consideration of Euro 225.000 provided for in such contract between Fortitudo Pallacanestro SrL and Krisken Management SA, dated November 28, 2008 is part of the global salary compensation provided for in the Agreement".

20. From the beginning of the Player's engagement and throughout the 2008-2009 season covered by the Agreement, the salary payments were made late by the Club and in lower amounts than contractually-stipulated, i.e. without regard for the agreed schedule.
21. Thus, between November 2008 and May 2009, the Player only received a total amount of EUR 71,183.00, by means of the following payments:
 - 28 November 2008: EUR 10,930.00
 - 12 December 2008: EUR 11,100.00
 - 12 March 2009: EUR 18,200.00
 - 18 March 2009: EUR 11,100.00
 - 29 May 2009: EUR 9,100.00



We Are Basketball

FIBA Arbitral Tribunal (FAT)

➤ 29 May 2009: EUR 10,753.00

22. Thereafter, further to discussions between the Parties, the Club paid the Player an amount of EUR 10,370.86 on 30 March 2010, i.e. nearly one year later.
23. Faced with the absence of any undertakings from the Club regarding when the outstanding amount of salary would be paid, the Player hired legal counsel to put the Club on notice.
24. On 2 April 2010, the Player's lawyers sent a first letter of notice to the Club in which they enjoined it to pay as follows (free translation by Claimant):

"[...] Considering the above stated, we formally appeal for a payment of a due amount of Euro 245.000,00 - net of taxes applicable in Italy, together with overdue interest and due legal expenses amounting to EUR 2,000,00, all to be done within and not beyond 15-days term starting from a date of receipt of the present one [...] otherwise we will be constrained to take legal proceedings with no further notice."

25. On 13 April 2010, the Club paid the Player an additional amount of EUR 12,758.55 but no other payments followed despite further attempts by the Player to discuss the matter with the Club.
26. Consequently, on 21 June 2010, the Player's lawyers sent a second notice letter to the Club.
27. The Club having made no payment within the deadline of 24 June 2010 as fixed in the foregoing letter, the Player filed a Request for Arbitration with the FAT.

3.2. The Proceedings before the FAT

28. On 28 June 2010, the Player filed a Request for Arbitration in accordance with the FAT Rules.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

29. On 10 August 2010, the FAT confirmed receipt of the Request for Arbitration and of the non-reimbursable fee of EUR 4,000 paid by the Player, informed the Parties of the appointment of Mr. Quentin Byrne-Sutton as the Arbitrator in this matter, set the time limit for the Club to file its Answer and fixed the Advance on costs to be paid by the Parties as follows:

<i>“Claimant (Mr. Bagaric)</i>	<i>€ 5,000</i>
<i>Respondent (Fortitudo BC)</i>	<i>€ 5,000“</i>

30. On 26 August 2010, upon the Player’s request, he was granted an extension of time within which to pay the Advance on costs.
31. On 24 September 2010, the Player paid his portion of the Advance on costs in an amount of EUR 5,000.
32. The Club failed to submit an Answer to the Request for Arbitration within the fixed deadline and to pay its share of the Advance on costs.
33. On 5 October 2010, the FAT informed the Player that the Club had failed to pay its share of the Advance on costs and that, as a result, under Article 9.3 of the FAT Rules the Player was required to substitute for the Club if he wished for the proceedings to continue.
34. On 14 October 2010, the Player made the substitute payment in an amount of EUR 5,000.
35. By procedural order of 2 November 2010, the proceedings were closed and the Parties invited to submit their statements of cost.
36. On 5 November 2010, the Player submitted his account of costs in a total amount of EUR 31,160.00, including EUR 14,000 as the costs of arbitration and EUR 17,160.00 as attorneys fees and corresponding expenses.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

37. The Club did not submit any account of costs nor did it file any comments on the Player's account of costs, despite having been invited by the FAT to do so.

4. The Positions of the Parties

4.1. The Claimant's Position

38. The Player submits the following in substance:

- The consideration (total net salary) owed to the Player for the 2008-2009 season derives from the Main Agreement to which the other agreements were linked simply "... *to decrease the tax costs to be sustained by the Respondent*" (the salary being owed net of any applicable Italian taxes).
- "*Due to its difficult financial situation, the Respondent was late in the executions of the payments since the beginning of the 2008/2009 season*".
- Therefore, by 29 May 2009, "... *at the expiry of the Agreement, only a part of the agreed consideration had been paid by the Respondent to the Claimant, i.e. for an amount equal to Euro 71,183.00 ...*".
- The Respondent affirmed on a number of occasions to the Player, his agent and his wife, including after the end of the relationship, "... *that the remaining part of the consideration would be paid as soon as possible and, in any case, not later than December 31st, 2009*".
- Despite those promises, "[i]t was only on March 30th, 2010 [i.e. nearly one year after the end of the relationship] *that the Respondent paid another part of its debt*



We Are Basketball

FIBA Arbitral Tribunal (FAT)

vis a vis the Claimant for an amount equal to Euro 10,370.86 ...". In addition, such amount was partly to reimburse medical expenses in an amount of EUR 7,553.86 paid by the Player for medical expenses of his daughter, which had to be covered by the Club in accordance with provisions of the Main Agreement.

- Thereafter, considering the delay in payment and the promises not kept, the Player had no other option but to engage a lawyer to put the Club on written notice, by letter of 2 April 2010, to pay his outstanding remuneration in an amount of at least EUR 245,000.
- Despite the written notice, the Club only paid a further amount of EUR 12,758.55, on 13 April 2010, which it qualified as being a form of severance indemnity ("*Trattamento di Fine Rapporto*"), thereby leaving a large balance of unpaid salary.
- The Player made two other aborted attempts to obtain full compensation: first by trying without success to meet in Italy with the Club's representative Mr Gilberto Sacrati (who did not make himself available), and then by means of a second notice letter, dated 21 June 2010, whereby his lawyers unsuccessfully requested full payment with a deadline expiring on 24 June 2010.
- Faced with this continued breach by the Club of its obligation to pay his full outstanding salary, he had no option but to file a Request for Arbitration with the FAT in order to recuperate the sums owed.

39. The Player's Request for Arbitration of 28 June 2010 contains the following Prayers for relief:

"Claimant requests:



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

According to the facts submitted above, Claimant seeks relief, whereby FAT would rule as follows:

1. *Respondent is ordered to pay the amount of EUR 251,000.00 (two hundred fifty-one thousand /00) for the non-paid salary and interest payment at the at (sic) 5% (five per cent) rate starting from the end of the 2008/2009 season;*
2. *compensation of arbitration fees and costs, i.e. the non-reimbursable handling fee of EUR 4,000.00 (four thousand/00) as well as the further costs determinate (sic) by FAT;*
3. *a contribution towards the legal fees and expenses concretely related to the execution of the present request for arbitration."*

4.2. Respondent's Position

40. Despite several invitations from FAT, the Club did not file any submission setting out its position in this arbitration.

5. The jurisdiction of the FAT

41. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not participate in the arbitration, he will examine his jurisdiction *ex officio*, on the basis of the record as it stands.¹
42. 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). The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

¹ ATF 120 II 155, 162.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

43. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA².
44. The jurisdiction of the FAT over the dispute results from the arbitration clause in article 11 of the Agreement, which reads as follows:
- “Any dispute arising 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 Sports (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.”*
45. The Main Agreement is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PILA.
46. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).
47. However, given the fact that it is by means of several linked contracts that the Club undertook to organize the payment of the Player’s salary – i.e. the Main Agreement, the Side Agreement, the League Contract, the License agreement, the Sublicense and the Side letter – several of which contain a dispute-resolution clause of their own that does not refer to the FAT, the question arises whether the claim for payment made by the Player in these proceedings falls within the scope of the above-quoted FAT arbitration clause contained under in 11 of the Main Agreement.

² Decision of the Swiss Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

48. That is a matter of interpretation of the arbitration clause in light of the content of the Main Agreement.
49. The Arbitrator finds that for a combination of the following reasons the Player's claim as formulated in the Request for Arbitration does fall within the scope of the FAT arbitration clause contained in article 11 of the Main Agreement:
 - The Club and the Player are parties to the Main Agreement containing the FAT arbitration clause.
 - The terms of the Main Agreement include all the essential elements of agreement between the Club and the Player relating to the latter's right to remuneration for the season 2008-2009, i.e. the total amount (net of taxes) of the Player's salary (EUR 325,000), the detail and timeframe (2008-2009 season) of the services to be rendered by the Player in exchange for his full remuneration as well as the provision of the fringe benefits and guarantees offered to the Player.
 - It is clear from those terms of contract that, irrespective of any modalities that would be agreed upon in other agreements and side agreements as to the mode and schedule of payments, the Parties' common intent under the Main Agreement was that the Club itself was fully guaranteeing to the Player the payment of a total salary of EUR 325,000 by the end of the season 2008-2009.
 - It follows that the broad terms of the arbitration clause stating that "*Any dispute arising or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland ...*" necessarily encompass and were intended by the Parties to cover any disputes relating to the non payment by the end of the season 2008-2009 of any part of the Player's total guaranteed salary of EUR 325,000 stipulated in the Main Agreement.
 - Payment by the Club of the balance of the total salary of EUR 325,000 due to the



We Are Basketball

FIBA Arbitral Tribunal (FAT)

Player under the Main Agreement is precisely what the Player is claiming in this FAT arbitration.

50. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Player's claim.

6. Discussion

6.1. Applicable Law – *ex aequo et bono*

51. 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*" instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

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

52. 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."

53. Article 11 of the Main Agreement stipulates that any disputes under said agreement shall be decided by the Arbitrator "*ex aequo et bono*", and there is no choice-of-law clause in the Main Agreement.
54. Accordingly, the Arbitrator finds that in deciding the dispute under the terms of the Main Agreement he must decide the dispute *ex aequo et bono*.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

55. 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'arbitrage³ (Concordat)⁴, 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.”⁵

56. 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*”.
57. In light of the foregoing considerations, the Arbitrator makes the findings below.

6.2. Findings

58. It is incontestable that under the terms of the Main Agreement the Player was guaranteed payment by the Club of a total salary of EUR 325,000, net of taxes, by the end of the 2008-2009 season.
59. In making his claim that EUR 251,000 in salary payments remain outstanding, the Player is alleging that he only received six payments relating to his salary during the 2008/2009 season, totalling an amount of EUR 71,183.00, and another payment of EUR 10,370.00 on 30 March 2010 of which only one part, in an amount of EUR 2,818.00, concerned his salary, the remaining part (EUR 7,552.00) having been paid

³ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA. Today, the Concordat governs exclusively domestic arbitration.

⁴ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

⁵ JdT 1981 III, p. 93 (free translation).



We Are Basketball

FIBA Arbitral Tribunal (FAT)

by the Club to reimburse contractually-owed medical expenses.

60. The Player admits to having been paid by the Club a further sum of EUR 12,758.55 on 13 April 2010 but he does not account for such sum in the total amount being claimed and does not offer any clear explanation of the reasons for not doing so.
61. In terms of the evidence adduced, the Arbitrator finds that the bank statements (credit notes of the "*bancatercas*") filed by the Player establish that he received the eight payments as referenced, i.e. six payments during the 2008/2009 season and two in 2010.
62. The bank statements also establish that one of the payments made by the Club, i.e. the payment of EUR 10,370.00 dated 30 March 2010, included an amount to cover the reimbursement of medical expenses, since the bank credit note of 30 March 2010 stipulates that the payment is being made to cover the Player's salary plus the reimbursement of medical expenses dated 28 April 2009 (the bank statement in Italian contains the reference "*+ spese mediche del 28-04-2009*").
63. At the same time the Player has filed an invoice of 28 April 2009 of a public hospital in Bologna establishing expenses for "*Stay in Hospital – paediatric surgery*" amounting to EUR 7,552.05. Consequently and considering the coverage of medical expenses of family members forms part of the Player's entitlements under article 4 of the Main Agreement, the Arbitrator finds it fair and contractually correct for the Player to have discounted EUR 7,552.05 from the amounts received from the Club when calculating the part pertaining to his salary.
64. On the other hand, the Arbitrator finds that, in fairness and contractually-speaking, there is no good reason for the Player to have discounted the payment of EUR 12,758.55 received from the Club on 13 April 2010, since according to the corresponding bank statement such payment was being made to liquidate the



We Are Basketball

FIBA Arbitral Tribunal (FAT)

contractual relationship and was therefore linked to the consideration for which the Player entered into the Main Agreement.

65. At the same time - and despite having had the opportunity to file an Answer to the Request for arbitration - the Club has offered no evidence that it made any other payments to the Player in any form in addition to the above-mentioned eight bank transfers via "*bancatercas*" referred to by the Player or that it answered and/or contested the requests for payment made by the Player in his notice letters of 2 April and 21 June 2010.
66. For the foregoing reasons, the Arbitrator considers the Player to have established that he only received in payments from the Club in relation to his services rendered during the 2008/2009 season a total amount of EUR 94,311.55 (EUR 71,183.00 + EUR 10,370.00 + EUR 12,758.55), from which EUR 7,552.05 need to be deducted since they were paid by the Club to reimburse contractually-covered medical expenses; leaving an unpaid balance in salary of **EUR 238,240.50** out of the total amount of EUR 325,000.00 guaranteed under the Main Agreement (EUR 325,000.00 – EUR 94,311.55 + EUR 7,552.05 = EUR 238,240.50).
67. Furthermore, the Arbitrator finds that from a contractual perspective the terms of the Main Agreement entitle the Player to claim the entire amount owed to him on the basis of that contract alone, since it guarantees him a total salary of EUR 325,000 by the end of the 2008-2009 season.
68. Thus, and given the fact that the Club has not invoked any actions and/or breaches by the Player that would justify the non-payment of the balance of the salary guaranteed under the Main Agreement, it is fair and contractually justified to admit the Player's claim for the payment of outstanding salaries in the amount he has established; which, for the reasons indicated above, the Arbitrator finds to be **EUR 238,240.50**.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

69. Accordingly, the Player's request for payment shall be awarded in an amount of **EUR 238,240.50**.
70. The Player is also requesting the payment of interest on the sum owed at an annual rate of 5%.
71. Although the Main Agreement does not regulate interest for late payments, it is a generally recognized principle embodied in most legal systems, which is underpinned by motives of equity, that late payments give rise to interest – in order that the creditor be placed in the financial position she/he would have been in had payments been made on time. Therefore and despite the Main Agreement not specifying an interest rate, it is normal and fair that interest is due on the late payments. Since the Player has invoked an interest rate of 5%, which in this case seems fair and reasonable and corresponds to the rate having been allowed by the FAT in other cases, interest will be awarded at that rate.
72. It is an established principle that interest runs from the day after the date on which the principal amounts are due.
73. According to the Side Agreement of 8 October 2008 amending in part the Main Agreement, the final instalment of the total salary to be paid to the Player was due on 15 May 2009. The Claimant asks for interest to run “from the end of the 2008/2009 season”, the last game of which was played on 16 June 2009. Consequently, with respect to the amount of salary that remains outstanding today, which the Arbitrator has determined to represent a principal amount of **EUR 238,240.50**, it is fair that interest be deemed to run from 16 June 2009 onwards.

7. Costs

74. Article 17 of the FAT Rules provides that the final amount of the costs of the arbitration



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

shall be determined by the FAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule, shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

75. On 28 November 2010 - considering that pursuant to Article 17.2 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 to be EUR 4,750.00.
76. Considering, that the Claimant almost entirely prevailed in his claim, it is fair that the fees and costs of the arbitration be borne by the Club and that it be required to cover its own legal fees and expenses and to contribute to those of the Claimant. In light of the legal expenses submitted by Claimant, the Arbitrator finds it fair that the Respondent be required to contribute an amount of EUR 10,000.
77. Given that the Claimant paid advances on costs of EUR 10,000.00 as well as a non-reimbursable handling fee of EUR 4,000.00, while the Club paid no advances on costs, the Arbitrator decides that in application of article 17.3 of the FAT Rules:
- (i) FAT shall reimburse EUR 5,250.00 to the Claimant, being the difference between the costs advanced by the Claimant and the arbitration costs fixed by the FAT President;
 - (ii) The Club shall pay EUR 4,750.00 to the Claimant, being the difference between



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

the costs advanced by him and the amount he is going to receive in reimbursement from the FAT;

- (iii) The Club shall pay to the Claimant EUR EUR 10,000 representing a contribution to his legal fees and other expenses.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

8. AWARD

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

1. Fortitudo Pallacanestro SrL shall pay Mr. Dalibor Bagaric an amount of **EUR 238,240.50** net of taxes for unpaid salary payments, plus interest at an annual rate of 5% from 16 June 2009 onwards.
2. Fortitudo Pallacanestro SrL shall pay Mr. Dalibor Bagaric an amount of **EUR 4,750.00** as reimbursement for his arbitration costs.
3. Fortitudo Pallacanestro SrL shall pay Mr. Dalibor Bagaric an amount of **EUR 10,000** as reimbursement for his legal fees and expenses.
4. Any other or further requests for relief are dismissed.

Geneva, seat of the arbitration, 3 December 2010

Quentin Byrne-Sutton
(Arbitrator)