



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0136/10)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Mr. Levance Fields

and

Mr. Keith Glass

vs.

B.C. Spartak St. Petersburg

Per Boytsova 7-619, 190068 St. Petersburg, Russia

- Claimant 1 -

- Claimant 2 -

- Respondent -

1. The Parties

1.1 Claimant 1

1. Mr. Levance Fields (hereinafter "Claimant 1") is a professional basketball player and citizen of the USA. He is represented in these proceedings by his agent and legal counsel, Mr. Keith Glass.

1.2 Claimant 2

2. Mr. Keith Glass (hereinafter "Claimant 2") is a professional basketball agent and attorney at law.

1.3 The Respondent

3. B.C. Spartak St. Petersburg (hereinafter the "Respondent") is a Russian basketball club based in St. Petersburg. The Respondent is not represented by legal counsel.

2. The Arbitrator

4. On 2 February 2011, the President of the Basketball Arbitral Tribunal (hereinafter the "BAT") appointed Mr. Raj Parker as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules").
5. 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. Claimant 1 and Claimant 2 (together “the Claimants”) and the Respondent entered into an employment contract dated 10 July 2009 (hereinafter the “First Contract”) for the 2009-2010 and 2010-2011 seasons.
7. Under the First Contract, the Respondent agreed to pay Claimant 1 a salary of USD 220,000.00 for the 2009-2010 season, divided into 9 monthly payments of USD 22,000.00 and one final payment at the end of the 2009-2010 season. For the 2010-2011 season, the Respondent agreed to pay Claimant 1 a salary of USD 350,000.00, divided into 9 monthly payments of USD 35,000.00, and one final payment at the end of the 2010-2011 season.
8. The First Contract contains the following provision:

“4. The Club provides medical examination for the Player within 3 (three) business days after The Player’s arrival to The Club. Unless the Player and his agent are notified in writing that he has failed to pass the medical examination, the Contract terms come into force and effect 3 (three) business days after The Player’s arrival.

[...]”

9. Clause 14 of the First Contract states:

“In case of disputes on the present Agreement the parties will take all measures to solve them by negotiations. If the dispute between the parties is not resolved by way of negotiations then it should be resolved in accordance with the FIBA Arbitral Tribunal

(FAT) as follows:

Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitration 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."

10. The First Contract does not provide for any payments to be made by the Respondent to Claimant 2.
11. On 1 August 2009, Claimant 1 and the Respondent entered into a second employment contract (hereinafter the "Second Contract"). Claimant 2 is not party to the Second Contract.
12. Clause 4.1 of the Second Contract provides:

"For the fulfillment of the obligations provided for in this contract, the Club pays to the Player a monthly salary in the amount set by additional agreement No. 1 to this contract which is indispensable part [sic]

[...]"

13. The "additional agreement No. 1" (hereinafter the "Additional Agreement") referred to in Clause 4.1 provides that the Respondent shall pay Claimant 1 a salary of USD 220,000.00 for the 2009-2010 season, divided into 10 monthly payments of USD 22,000.00; and a salary of USD 350,000.00 for the 2010-2011 season, divided into 10 monthly payments of USD 35,000.00.
14. The Second Contract also contains, among others, the following provisions:

"1.3. This time employment contract is made in accordance with p.2. of art.59, p.1 of art.348.2 of the Labor Code of the Russian Federation by agreement of the parties as

with a sportsman.

[...]

4.2 Upon an early termination of this contract the Player is paid the salary from the time actually worked, with consideration to clause 5.4 of this contract.

[...]

5. TERMINATION OF THE CONTRACT. PROCEDURE FOR TERMINATING THE CONTRACT AT AN EARLIER DATE.

5.1 The Contract is rendered ineffective upon its expiry, and due to its early termination upon the parties' consent, and also in other cases provided for by the Labor Code of the Russian Federation and this contract.

5.2 This employment contract can be terminated at an earlier date unilaterally upon the Club's initiative upon grounds provided for by the applicable legislation

[...]

6. SETTLEMENT OF DISPUTES

6.1. All disputes, differences, or demands arising out of or in relation to this contract, including those concerning its fulfillment, violation, termination, or invalidity, are subject to review according to the applicable legislation of the Russian Federation only.

6.2 All disputes related to participation in contests held by the RBF and BS, are subject to review in accordance with the regulations set by the internal regulatory documents of the RBF. Appeals against decisions of authorized bodies of the RBF are subject to review in the Sports Arbitration Court in the Autonomous Nonprofit Organization Sports Arbitration Chamber in accordance with its Regulations."

15. Claimant 1 played for the Respondent club in the 2009-2010 season and was paid his full salary for that season.
16. Claimant 1 went to the USA after the 2009-2010 season had finished and returned to the Respondent club in August 2010, prior to the start of the 2010-2011 season. On 17 August 2010, Claimant 1 developed cramps and became unwell. Claimant 1 was subsequently admitted to a hospital in St. Petersburg, where he remained until 25 August 2010.

17. By facsimile letter, dated 26 August 2010 and sent to Claimant 2 (hereinafter the “Letter of Termination”) the Respondent purported to terminate Claimant 1’s employment with the Respondent, on the basis that Claimant 1 had failed a medical examination. Claimant 1 has not played for the Respondent since.

3.2 The Proceedings before the BAT

18. On 11 October 2010, the Claimants filed a Request for Arbitration in accordance with the BAT Rules. On 5 November 2010 the BAT received a non-reimbursable handling fee of EUR 3,945.24.¹
19. On 20 January 2011, the Claimants filed a signed copy of the First Contract with the BAT. On the basis of the First Contract (among other things) the BAT President determined that BAT had *prima facie* jurisdiction to proceed with the arbitration.
20. By letter dated 2 February 2011, the BAT Secretariat fixed a time limit for the Respondent to file the Answer to the Request for Arbitration, being 23 February 2011. By the same letter, and with a time limit for payment until 16 February 2011, the following amounts were fixed as the Advance on Costs:

<i>“Claimant 1 (Mr. Levance Fields)</i>	<i>EUR 4,043.80</i>
<i>Claimant 2 (Mr. Tyson Glass) [sic]</i>	<i>EUR 1,010.95</i>
<i>Respondent (BC Spartak St. Petersburg)</i>	<i>EUR 5,000.00”</i>

21. By letter dated 1 March 2011, the BAT Secretariat informed the Claimants and the

¹ The BAT Rules provide for a non-reimbursable handling fee of EUR 4,000.00 for claims such as the present claim. The BAT received only EUR 3,945.24 in this case; however, the shortfall of EUR 54.76 was added to the Claimants’ share of the Advance on Costs.

Respondent that they had not paid their shares on the Advance on Costs and requested that each party do so, by no later than 9 March 2011.

22. Claimant 2 paid his share of the Advance on Costs on 7 March 2011 and Claimant 1 paid his share of the Advance on Costs on 11 March 2011. The Respondent failed to pay its share of the Advance on Costs. On 22 March 2011 the Claimants paid the Respondent's share of the Advance on Costs in accordance with Article 9.3 of the BAT Rules.
23. By letter dated 4 April 2011, the BAT Secretariat informed the Parties that the FIBA Arbitral Tribunal (FAT) had been renamed to Basketball Arbitral Tribunal (BAT) and that, unless one of the Parties opposed by 11 April 2011, the new name would be applied to the present proceedings. None of the Parties raised any objections within the said time limit.
24. On 7 April 2011, the Arbitrator issued a Procedural Order requesting information from the Claimants (hereinafter the "First Procedural Order"). On 20 April 2011, the Claimants submitted their response to the First Procedural Order. On 7 April 2011, the Arbitrator issued a separate Procedural Order requesting information from the Respondent (hereinafter the "Second Procedural Order"). On 22 April 2011, the Respondent submitted its response to the Second Procedural Order. All of the Parties were informed on 7 April 2011 that the Arbitrator had issued separate Procedural Orders to the Claimants and to the Respondent. The Parties were also informed that a copy of the opposing side's Procedural Order, together with the response to that Procedural Order, would be sent to the Parties after the BAT had received responses to both of the Procedural Orders.
25. By Procedural Order dated 12 May 2011 the Arbitrator declared the exchange of documents complete and requested that the Parties submit detailed accounts of their costs by 19 May 2011. By the same Procedural Order, the Arbitrator sent each of the

Parties copies of the First Procedural Order and of the Second Procedural Order, together with the Parties' respective responses to those Procedural Orders.

26. On 17 May 2011, the Claimants submitted an account of legal costs as follows:

- "1. March 22, 2011 – Wire transfer to FIBA for \$6,300.*
 - 2. November 5, 2010- Wire transfer to FIBSA [sic] for \$5,620. (total)*
 - 3. March 3, 2011- Wire transfer to FIBA for \$1,450.*
 - 4. March 9, 2011- Wire transfer to FIBA for \$5,796.*
 - 5. March 21, 2011- Wire transfer to FIBA for \$729.*
 - 6. 6 Wire fees at \$45 each. Total- \$270*
- TOTAL \$20,165"*

27. On 19 May 2011, the Respondent submitted an account of legal costs as follows:

- "1. Fees for legal services rendered in regard to the present case: **EUR 3960.00**
Report of Attorney on billable time spent under the contract with the Club is attached hereto (Attachment #1, on two pages).*
 - 2. Other expenses:*
 - 2.1. Official translation and notarization services for the documents submitted to BAT:
17180.00 RUB.
The present sum is equivalent to **EUR 429.37** as of today, according to the rate of Central Bank of Russian Federation.
Two invoices and service Act attached hereto (Attachment #2, on two pages).*
 - 2.2. Two FedEx shipments to BAT, containing the originals of the documents submitted to BAT: **3174.00 RUB**
The present sum is equivalent to **EUR 79.32** as of today, according to the rate of Central Bank of Russian Federation.
Two waybills with invoices attached hereto (Attachment #3, on two pages).*
- To summarize:
TOTAL amount of our costs is **EUR 4468.69.**"*

28. On 31 May 2011, the BAT Secretariat sent a copy of the Claimants' account of legal

costs to the Respondent and a copy of the Respondent's account of legal costs to the Claimants and invited the Parties to submit their comments, if any, on the other Party's account of costs by no later than 3 June 2011. None of the Parties submitted any comments.

29. Since none of the Parties filed an application for a hearing, the Arbitrator decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to deliver the award on the basis of the written submissions of the Parties.

4. The Parties' Submissions

4.1 The Claimants' Submissions

30. Claimant 1 submits that the Respondent unilaterally terminated the First Contract without just cause.
31. Claimant 1 submits that he was given a medical examination on arrival at the Respondent club, before the start of the 2010-2011 season. After a number of practice sessions with the Respondent, Claimant 1 fell sick and was taken to hospital. The Respondent's immediate reaction, according to the Claimants, was to send a text message to Claimant 2, informing him that the Respondent would be releasing Claimant 1 from his employment with the Respondent.
32. On 25 August 2010, the Respondent purported to terminate Claimant 1's employment by email to Claimant 2 and by the Letter of Termination. The Letter of Termination stated that Claimant 1 *"has failed a medical examination. According to paragraph "4" of the agreement between the Club and the Player, agreement is not valid unless Player*

has passed the exam.”

33. The Claimants claim that such termination was in breach of the First Contract and so Claimant 1 claims USD 350,000.00 from the Respondent, comprising Claimant 1's salary in relation to the 2010-2011 season.
34. The Claimants submit that Claimant 1 was cleared by doctors in the USA to play basketball again, shortly after 25 August 2010. However, Claimant 1 was unable to find alternative employment with another basketball club for the 2010-2011 basketball season.
35. Claimant 2 submits that he is entitled to receive USD 35,000.000 by way of an agent's fee for the 2010-2011 season, pursuant to an agent's commission agreement (hereinafter the "Commission Agreement") entered into by the Respondent and Claimant 2. The Claimants have not provided a copy of the Commission Agreement to the BAT. Claimant 2 submits that the Respondent holds the only signed copy of the Commission Agreement and that the Respondent has refused to provide both Claimant 2 and the BAT with a copy of it.
36. The Claimants' request for relief states:

"Claimant(s) requests(s):

\$350,000 – Salary

\$35,000 – Agents Fee

late payment, Interest, Costs, Legal Fees + Expenses"

4.2 The Respondent's Submissions

37. The Respondent submits that the Second Contract replaced the First Contract. The Respondent states that all disputes arising out of the Second Contract fall within the jurisdiction of the Russian Courts. The Respondent argues that, accordingly, the BAT does not have jurisdiction to determine the present dispute between the Parties.
38. The Respondent submits that, in any event, it terminated the Second Contract with just cause because Claimant 1 failed to pass a medical examination as required under the Russian Labor Code. As a result, the Respondent submits, it owes no salary payments to Claimant 1.
39. The Respondent denies that it entered into the Commission Agreement with Claimant 2 and, accordingly, no agency fee is due to Claimant 2.

5. Jurisdiction

40. Pursuant to Article 2.1 of the BAT Rules, “[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland”. Hence, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).
41. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
42. 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. The financial nature of the dispute is clear from the relief claimed by Claimants as set out in paragraph 36 of this Award.

43. 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."

44. With regard to the existence of a valid arbitration agreement between the Parties, the Arbitrator notes as follows.

45. Clause 14 of the First Contract states:

"In case of disputes on the present Agreement the parties will take all measures to solve them by negotiations. If the dispute between the parties is not resolved by way of negotiations then it should be resolved in accordance with the FIBA Arbitral Tribunal (FAT) as follows:

Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitration 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."

46. Clause 6 of the Second Contract states:

"6. SETTLEMENT OF DISPUTES

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

6.1. All disputes, differences, or demands arising out of or in relation to this contract, including those concerning its fulfillment, violation, termination, or invalidity, are subject to review according to the applicable legislation of the Russian Federation only.

6.2 All disputes related to participation in contests held by the RBF and BS, are subject to review in accordance with the regulations set by the internal regulatory documents of the RBF. Appeals against decisions of authorized bodies of the RBF are subject to review in the Sports Arbitration Court in the Autonomous Nonprofit Organization Sports Arbitration Chamber in accordance with its Regulations.”

47. There is no clause in the Second Contract which grants the BAT jurisdiction to determine disputes arising out of the Second Contract. It is evident that the Second Contract does not envisage that the BAT should have jurisdiction to determine disputes relating to the Second Contract.
48. In order to ascertain whether or not the BAT has jurisdiction to determine the present case, it must first be determined which of the First Contract and the Second Contract is the relevant contract for the purposes of the present dispute between the Parties. The Claimants submit that the First Contract is the relevant contract, whereas the Respondent submits that the Second Contract is the relevant one.
49. The Respondent submits that the Second Contract was concluded after the First Contract and so replaces the First Contract. The Claimants claim that Claimant 1 has not seen the Second Contract before and that it does not bear Claimant 1’s signature. The Arbitrator considers that the first step in determining which contract is the relevant one for the purposes of this dispute is to ascertain whether or not Claimant 1 signed the Second Contract.
50. Claimant 1 states that the Second Contract does not bear his signature: the signature states “L Fields”, whereas Claimant 1’s signature is written as “Levance Fields” (as it appears on the First Contract).
51. It is true that the Second Contract is signed “L Fields”, and not “Levance Fields”, however, the Arbitrator notes that it is not unusual for individuals to use initials or

abbreviated signatures when signing multiple pages of a document. Claimant 1 signed the Second Contract on seven different pages, as well as signing the Additional Agreement. Furthermore, the Arbitrator notes that, with the exception of Claimant 1's first name being abbreviated to an initial, the signature on the Second Contract is very similar to Claimant 1's signature on the First Contract and on the power of attorney which Claimant 1 provided to the BAT. Moreover, the Arbitrator considers that, if the Respondent were going to forge Claimant 1's signature, it would have copied the full name and not have abbreviated the first name. For these reasons, the Arbitrator finds that Claimant 1 did sign the Second Contract.

52. Given that Claimant 1 and the Respondent signed both the First Contract and the Second Contract, the next question that must be determined is: which of the two contracts is the valid and binding one? The starting point for any discussion of this nature is that the most recent contract in time will be the prevailing one, absent a sufficient reason for the Arbitrator to find that the most recent contract does not prevail (*jus posterior derogat priori*).
53. The Claimants have put forward four further reasons as to why the First Contract is the prevailing contract. The Arbitrator will deal with each of these arguments in turn.
54. Firstly, the Claimants argue that the version of the Second Contract which Claimant 1 is alleged to have signed is written in Russian; there is no signature on an English version. In light of the factual circumstances of the present case, the Arbitrator considers that a contract which is written in Russian is as valid and binding as one written in English. This is not least because the signatory was in receipt of professional advice from an attorney at law. The attorney at law would have been able to explain to Claimant 1 the binding effect of his signature to a contract.
55. Secondly, the Claimants note that Claimant 2 is not a signatory to the Second Contract, however Claimant 2 is a signatory to the First Contract. The Arbitrator does not

consider that this means that the First Contract prevails over the Second Contract. There is no provision in the First Contract which provides that any future agreement between Claimant 1 and the Respondent must be signed by Claimant 1's agent. Indeed, Clause 15 of the First Contract specifically states: "*Any modification to this Contract must be in writing and signed by both The Club and the Player.*" If it had been intended that any written modifications to the First Contract would require the written consent of Claimant 2, then wording to that effect should have been included in the First Contract.

56. Thirdly, when the Claimants requested a letter of clearance from the Russian Basketball Federation for Claimant 1 to play in the NBA Summer League, FIBA forwarded a letter from the Russian Basketball Federation to the NBA. The letter stated that the Russian Basketball Federation refused to grant the letter of clearance on the grounds that Claimant 1 had a binding contract with the Respondent, namely the First Contract. The Arbitrator notes that, while this letter may suggest that the Russian Basketball Federation considers the First Contract to be binding on the Parties, the letter is not sufficient by itself to cause the Second Contract to be invalidated from a legal perspective.³
57. In any event, both the Russian Basketball Federation and FIBA are organizations distinct and independent from the BAT, and so any view which the Russian Basketball Federation or FIBA may express in relation to the validity of a player contract is not determinative for the purposes of the BAT.
58. Fourthly, in the Letter of Termination, the Respondent states that Claimant 1 "*has failed a medical examination. According to paragraph "4" of the agreement between the Club and the Player, agreement is not valid unless Player has passed the exam.*"

³ Nor is the letter sufficient proof that Claimant 1 did not sign the Second Contract.

59. Clearly the Respondent is referring to the First Contract: paragraph 4 of the First Contract sets out the Respondent's ability to terminate the First Contract in the event that Claimant 1 fails a medical examination, whereas paragraph 4 of the Second Contract sets out details of the Respondent's salary obligations.
60. The Respondent claims that the reference to the First Contract in the Letter of Termination was made in error. The Arbitrator considers that this sentence in the Letter of Termination is the most compelling evidence submitted by the Claimants that the First Contract is the prevailing contract and is the agreement which governs the contractual relations between Claimant 1 and the Respondent. However, the Arbitrator accepts that, because two contracts were signed by Claimant 1 and the Respondent, it is certainly possible that the Respondent made a mistake by quoting paragraph 4 of the First Contract and not referring to the Second Contract instead.
61. The Respondent has established that Claimant 1 signed the Second Contract. The Second Contract was entered into after the First Contract. It is therefore for the Claimants to show that the Second Contract does not prevail over the First Contract in order to establish that the First Contract is the relevant contract for the purposes of this dispute. The Arbitrator has considered the arguments made by the Parties and particularly those set out in paragraphs 49 - 51 and 54 - 58 above, and finds that the Claimants have not proven that the Second Contract does not prevail over the First Contract.
62. The Arbitrator notes that in certain previous BAT awards, BAT Arbitrators have found that an earlier contract between two or more parties prevailed over a later contract signed between the same parties. An example of such a case is BAT (then FAT) decision 0072/09 (Mazzon, Diamantopoulos and Santrolli v KAE Aris Thessaloniki B.C.). However in all of these cases, the Arbitrator was presented with sufficiently

persuasive evidence that the parties in question had been performing their respective obligations under the earlier contract and not the later contract.⁴ In the present case, no such evidence has been presented to the Arbitrator.

63. This means that the Second Contract does in fact prevail over the First Contract and so it is the Second Contract which governs relations between Claimant 1 and the Respondent, including the resolution of disputes.
64. The Second Contract does not provide for disputes arising out of it to be submitted to the BAT. The Second Contract specifically states, at Clause 6.1, that *“all disputes, differences, or demands arising out of or in relation to this contract, including those concerning its fulfillment, violation, termination, or invalidity, are subject to review according to the applicable legislation of the Russian Federation only.”*
65. Accordingly, after having carefully reviewed the Parties’ written submissions, the Arbitrator finds that the BAT does not have jurisdiction to determine Claimant 1’s claim.
66. Claimant 2’s claim does not arise out of either the First Contract or the Second Contract: there is no provision in either of those contracts which obliges the Respondent to pay Claimant 2 an agency fee. Claimant 2’s claim is based in the Commission Agreement. None of the Parties has provided the BAT with a copy of the Commission Agreement.
67. Claimant 2 has submitted that he was paid an agency fee for the 2009-2010 season and has submitted a bank statement indicating that he received a payment of USD 22,000.00 from the Respondent accordingly. This amount constitutes 10% of Claimant 1’s salary for the 2009-2010 season. Claimant 2 submits that this is proof of the

⁴ In the case of BAT decision 0072/09, the basketball club in question had been paying the player in question wages which did not correspond to the salary obligations set out in a later contract.

existence of a binding contract between the Respondent and Claimant 2, under which Claimant 2 is entitled to 10% of Claimant 1's salary for the 2010-2011 season, as an agency fee.

68. The Arbitrator accepts that Claimant 2 did receive a payment of USD 22,000.00, however notes that the payment reference on the bank statement is for "Agent Fees For The Players". The word "Players" is in the plural, which suggests that the payment may have been for more than one player and therefore not necessarily relate to 10% of Claimant 1's salary for the 2009-2010 season.
69. In any event, the Arbitrator finds that proof that the Respondent paid USD 22,000.00 to Claimant 2 is not proof that Claimant 2 has an enforceable contract with the Respondent, entitling Claimant 2 to 10% of Claimant 1's salary for the 2010-2011 season. Nor is it proof of an enforceable contract between Claimant 2 and the Respondent, which contains a clause conferring jurisdiction on the BAT to hear disputes arising from such a contract.
70. Since no valid, written arbitration agreement in relation to Claimant 2's claim has been provided to the BAT, the Arbitrator finds that the BAT does not have jurisdiction to determine Claimant 2's claim.
71. In light of the foregoing considerations and conclusions, the Arbitrator makes no findings as to the merits of the Claimants' case.

6. Costs

72. Article 17.2 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and may either be included in the

award or communicated to the Parties separately. Furthermore Article 17.3 of the BAT 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. When deciding on such contribution, the Arbitrator shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.

73. On 30 June 2011, considering that pursuant to Article 17.2 of the BAT Rules “the BAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of BAT and the fees and costs of the BAT 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 BAT 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 BAT President determined the arbitration costs in the present matter at EUR 8,450.00.
74. In relation to the outcome of the proceedings, the Arbitrator notes that the Respondent was successful in establishing that the BAT does not have jurisdiction to determine its claim. In relation to the conduct of the Parties, the Arbitrator notes that the Respondent did not pay its share of the Advance on Costs and the Claimants paid the Respondent’s share of the Advance on Costs.
75. Having reviewed and assessed the circumstances of the case at hand and taking into account the non-reimbursable fee, the Arbitrator deems it appropriate for the Respondent to be awarded a contribution towards its legal fees and other expenses. The Arbitrator decides that in application of Article 17.3 of the BAT Rules:
- a) BAT shall reimburse EUR 1,550.00 to the Claimants, being the difference between the costs advanced by them and the arbitration costs fixed by the BAT President;



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- b) Claimant 1 shall pay to the Respondent the amount of EUR 750.00 in respect of its legal fees and expenses; and
- c) Claimant 2 shall pay to the Respondent the amount of EUR 250.00 in respect of its legal fees and expenses.

7. AWARD

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

- 1. The BAT does not have jurisdiction to determine Mr. Levance Field's and Mr. Keith Glass's claims against B.C. Spartak St. Petersburg.**
- 2. Mr. Levance Fields is ordered to pay to B.C. Spartak St. Petersburg EUR 750.00 as a contribution towards its legal fees and expenses.**
- 3. Mr. Keith Glass is ordered to pay to B.C. Spartak St. Petersburg EUR 250.00 as a contribution towards its legal fees and expenses.**
- 4. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 11 July 2011.

Raj Parker
(Arbitrator)