



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0143/10)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Christos Tapoutos

- Claimant -

represented by Ms. Gianna Panagopoulou,
Katouni 28, 54625 Thessaloniki, Greece

vs.

Basketball Club PAOK KAE

Antoniou Tritsi 12, 55510 Thessaloniki, Greece

- Respondent -

1. The Parties

1.1. The Claimants

1. Mr. Christos Tapoutos (hereinafter “Player” or “Claimant”) is a professional basketball player of Greek nationality. He is represented by Ms. Gianna Panagopoulou, attorney-at-law in Thessaloniki, Greece.

1.2. The Respondent

2. Basketball Club PAOK KAE (hereinafter “Club” or “Respondent”) is a professional basketball club located in Thessaloniki, Greece. Respondent is represented by its president, Mr. Miltiades Kanotas, and its legal counsel, Mr. Georgios Dakouras.

2. The Arbitrator

3. On 11 December 2010, the President of the Basketball Arbitral Tribunal (the “BAT”) appointed Dr. Stephan Netzle as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”).
4. Neither of the Parties has raised objections to the appointment of the Arbitrator or to the declaration of independence rendered by him.

3. Facts and Proceedings

3.1. Background Facts

5. On 18 August 2009, Claimant and Respondent signed an employment contract (hereinafter referred to as the “Contract”) according to which Claimant was employed by Respondent as a professional basketball player for the 2009-2010 season. According to Clause 2 of the Contract, the employment started on 18 August 2009 and ended on 30 June 2010.

6. Clauses 4 and 5 of the Contract stated a base salary of EUR 70,000.00 net payable in instalments stipulated in Clause 4 of the Contract as follows:

“4. CONTRACT TERMS Club irrevocably pays 10.000 EURO to Player with the signature of contract. Then Club irrevocably pays as follows: 30 October 2009 (6.000 euro), 30 November 2009 (6.000 euro), 30 December 2009 (6.000 euro), 30 January 2010 (6.000 euro), 27 February 2010 (6.000 euro), 30 March 2010 (6.000 euro), 30 April 2010 (6.000 euro), 30 May 2010 (6.000 euro), 30 June 2010 (6.000 euro), 30 July 2010 (6.000 euro).”

7. In addition to the salary, the Club agreed to provide the Player with some amenities. The relevant part of Clause 4 of the Contract reads as follows:

“- Club agrees to provide to the Player a fully furnished modern 2 bedroom apartment, TV, wash machine (sic), phone, Internet, etc. Player will only pay the phone bill. Club shall pay electricity services for the apartment.

- Medical Expenses. The Club shall pay for all medical and dental expenses incurred by the Player while in Greece. Only non-cosmetic procedures unless caused by basketball are covered. Player has the right to get a second doctor's opinion (doctor of Player's choice) in any case of illness and/or injury.

-Residence. Club shall provide at their expense to Player the following, or arrange for Player to receive, all necessary visas, FIBA transfers working permits, and all other documents necessary for Player to legally be employed by and play for the Club.”

8. On 4 August 2008, the Player and his wife, Ms. Anastasia Chatzakou, signed a lease agreement concerning a house in Thessaloniki, Greece for the period of one year, i.e.

from 1 September 2009 to 31 August 2010. The monthly rent amounted to EUR 800.00.

9. The Player played the entire 2009-2010 season for the Club's team. Until today, the Club has failed to pay the total amount of the agreed salaries and to compensate the Player's housing costs such as the rent or the electricity expenses. The precise sum of the salary payments made by the Club to the Player and the compensation for the housing costs are disputed between the Parties.

3.2. The Proceedings before the BAT

10. On 19 November 2010, Claimant's counsel filed, on behalf of Claimant, a Request for Arbitration in accordance with the BAT Rules, which was received by the BAT on the same date.
11. By letter dated 21 December 2010, the BAT Secretariat confirmed receipt of the Request for Arbitration as well as the payment of the non-reimbursable handling fee of EUR 2,000.00 received in the BAT bank account on 22 November 2010 and informed the Parties about the appointment of the Arbitrator. Furthermore, a time limit was fixed for Respondent to file its Answer to the Request for Arbitration in accordance with Article 11.2 of the BAT Rules by no later than 17 January 2011 (hereinafter the "Answer"). The BAT Secretariat also requested the Parties to pay the following amounts as an Advance on Costs by no later than 10 January 2011:

<i>"Claimant (Mr. Christos Tapoutos)</i>	<i>EUR 4,000</i>
<i>Respondent (Basketball Club PAOK KAE)</i>	<i>EUR 4,000"</i>

12. By email of 14 January 2011, Respondent asked for an extension of the time limit for the submission of the Answer and informed the BAT Secretariat that Claimant had agreed on such an extension. On 17 January 2011, the Arbitrator granted an extension of the time limit for the submission of the Answer by no later than 24 January 2011.

13. By letter of 28 January 2011, the BAT Secretariat acknowledged receipt of Respondent's Answer dated 24 January 2011. In addition, it acknowledged receipt of Claimant's share of the Advance on Costs and informed the Parties that Respondent had failed to pay its share. Furthermore, the BAT Secretariat noted that in accordance with Article 9.3 of the BAT Rules the arbitration would not proceed until the full amount of the Advance on Costs was received. Therefore, Claimant was invited to effect payment of Respondent's share of the Advance on Costs by no later than 9 February 2011.
14. On 23 February 2011, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs. In the same letter, Claimant was invited to comment on Respondent's Answer by no later than 7 March 2011. By letter dated 3 March 2011, Claimant submitted his comments.
15. By email of 11 March 2011, the BAT Secretariat forwarded Claimant's comments to Respondent for its information and the Arbitrator invited Respondent to comment on Claimant's submissions by no later than 18 March 2011. On 16 March 2011, Respondent submitted its comments.
16. By letter of 22 March 2011, the Arbitrator declared the exchange of documents complete and invited the Parties to submit a detailed account of their costs until 1 April 2011.
17. On 31 March 2011, Claimant submitted an account of costs as follows:

"A) Claimant's Expenses for FIBA (FAT)

Date	Amount in euros	Claimant	Description-Cause
19-11-2010	2.000,00€	Tapoutos Christos	Handling Fee
11-01-2011	4.000,00€	Tapoutos Christos	Advance on costs (Claimant's Share)



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10-02-2011	4.000,00€	Tapoutos Christos	Advance on costs (Respondent's Share)
total	10.000,00€		

For every bank transfer the transferring fee was 12 €. So the sum is 12 x 3= 36 €.

B) Legal Expenses of the Claimant

Claimant	Description-Cause	Legal Fee in Euros
Tapoutos Christos	Study of the case	1.500€
	Preparation and submission of the Request for Arbitration with documents	2.650€
	Preparation and submission of the Claimant's comment on the Respondent's answer dated 03-03-2011	1.300€
	Costs of translation of 20 documents from Greek to English	270,60 €
	Procedural and Telephone Expenses of my lawyer, for example: Long distance phone calls, fax services, exchange of emails, photocopies	260€
	Preparation and submission of present "Detailed account of costs"	700€
total		6.680,60€

Total amount: 16.716, 60€"

18. Respondent did not submit an account of costs.

19. Respondent was invited to submit its comments, if any, on Claimants' account of costs by no later than 8 April 2011. Respondent did not submit any comments.
20. The Parties did not request the BAT to hold a hearing. The Arbitrator therefore 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.
21. By e-mail dated 5 April 2011, the BAT Secretariat informed the Parties that the FIBA Arbitral Tribunal (FAT) had been renamed into Basketball Arbitral Tribunal (BAT) and that, absent any objections by the Parties by 11 April 2011, the new name would be applied also to the present proceedings. Neither of the Parties raised any objections within the said time limit.

4. The Positions of the Parties

4.1. Summary of Claimant's Submissions

22. Claimant submits the following:
 - Regarding salaries, Respondent has only paid EUR 28,000.00 in total which covered the period from 20 August 2009 to 15 February 2010. Therefore, Respondent still owes Claimant salaries in the total amount of EUR 42,000.00. In addition, Respondent has never paid any compensation for Claimant's housing costs. Therefore, Respondent owes Claimant EUR 8,258.46 in total for the rent of the house and the utility costs.
 - In its Answer, the Club acknowledges that it owes the Player EUR 37,000.00 plus interest for salaries and EUR 490.00 plus interest for the electricity expenses.

- The Player “strongly” denies that he had ever waived his claim regarding the compensation of the housing costs. On the contrary, the Player continually asked the Club to compensate those costs and the Club confirmed that it would pay them soon but, to date, has failed to do so.
- The Player was under time pressure to find a house. Since the Club failed to provide him with a residence, he had no other choice but to rent the house in question. The amount of EUR 800.00 per month is a regular rent for family houses in most of the areas in Thessaloniki and the Club pays similar amounts for the rental costs of other players. In addition, Clause 4 of the Contract does not specify the location of the Player’s residence, nor does it limit the amount of the rent to be paid by the Club.

4.2. Claimant’s Request for Relief

23. Claimant submits the following request for relief:

“Claimant requests:

Following the above it is clearly proved that

- a) During the season 2009/2010, I provided my services to the Club in the most efficient and professional way, being all the time fully committed to the team and having respected and honoured all my obligations towards my team.*
- b) My contract is a “fully guaranteed no cut contract/agreement” and as a result the Club owes me all the agreed from the Contract amounts*
- c) The Club owes me and must be obliged by your decision to pay me the following amounts:*

FOR MY SALARY

- 1) 6.000€ net of taxes, that were to be paid on 30-01-2010, with the legal rate of interest from the very next day*



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- 2) 6.000€ net of taxes, that were to be paid on 27-02-2010, with the legal rate of interest from the very next day
- 3) 6.000€ net of taxes, that were to be paid on 30-03-2010, with the legal rate of interest from the very next day
- 4) 6.000€ net of taxes, that were to be paid on 30-04-2010, with the legal rate of interest from the very next day
- 5) 6.000€ net of taxes, that were to be paid on 30-05-2010, with the legal rate of interest from the very next day
- 6) 6.000€ net of taxes, that were to be paid on 30-06-2010, with the legal rate of interest from the very next day
- 7) 6.000€ net of taxes, that were to be paid on 30-07-2010, with the legal rate of interest from the very next day

The Club must be obliged to pay me for my Salary the amount of 42.000€ net of taxes, with the legal rate of interest as already mentioned.

FOR THE HOUSING INCLUDING UTILITY COSTS

For the rent of the house

- 1) (800€ x 9 months)=7.200€ net of taxes, with the legal rate of interest from the beginning of each month.

For electricity expenses in my house

- 1) 85€, covering the period of consumption from 04/09/2009 to 10/11/2009
- 2) 80€, covering the period of consumption from 10/11/2009 to 12/01/2010
- 3) 133€, covering the period of consumption from 10/11/2009 to 13/3/2010
- 4) 97€, covering the period of consumption from 13/3/2010 to 11/05/2010
- 5) 95€, covering the period of consumption from 13/3/2010 to 14/07/2010

For the expenses of electricity, the Club must be obliged to pay me the total amount of 490€, with the legal rate of interest.

For gas expenses

- 1) 51€ covering the period of consumption from 06/11/2009 to 05/01/2010, with the legal rate of interest from the expiry date of the bill 04/02/2010



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- 2) 204,43€ covering the period of consumption from 6/01/2010 to 01/03/2010, with the legal rate of interest from the expiry date of the bill 01/04/2010
- 3) 90,79€ covering the period of consumption from 02/03/2010 to 10/05/2010, with the legal rate of interest from the expiry date of the bill 07/06/10
- 4) 52,24€ covering the period of consumption from 11/05/2010 to 07/09/2010, with the legal rate of interest from the expiry date of the bill 05/10/2010

For the expenses for gas, the Club must be obliged to pay me the total amount of 398,46€, with the legal rate of interest.

For water expenses

- 1) 109€ , covering the period of consumption from 06/11/2009 to 05/03/2010, with the legal rate of interest from the expiry date of the bill, 31/05/2010
- 2) 61€, covering the period of consumption from 06/03/2010 to 05/07/2010 with the legal rate of interest from the expiry date of the bill, 27/09/2010

For the expenses for water, the Club must be obliged to pay me the total amount of 170€, with the legal rate of interest.

For my salary, for housing and utility costs the Club must be obliged by your decision to pay me 50.258,46 € net, with the legal rate of interest, as above mentioned.

FOR LEGAL FEES AND OTHER EXPENSES

Apart from all the above mentioned demanding amounts, it is required that the Club should be obliged to pay me also all the Arbitration expenses, the FAT application fee (handling fee), plus any additional costs of arbitration, together with the legal fees of the two lawyers who handle my case (eg. For the study of my case and the procedure before FAT, for preparation and submission of the Request for Arbitration with the supporting documents, costs of translation of 20 documents from Greek to English etc) and all the expenses that I spent and will have spent, until the end of the legal procedure related to this FAT case eg. For long distance phone calls, for bank transferring fees, for fax services, for photocopies etc, as all of these expenses shall be included in detail in my account of costs that will be submitted when requested at a later stage of the procedure.” (sic)

4.3. Summary of Respondent's Submissions

24. Respondent submits the following in substance:

- The Club acknowledges “a large part of its debts towards the player”. However, on 26 March 2010, the Club paid to the Player the amount of EUR 5,000.00 which was not considered in the Player’s request. Thus, the salaries owed to the Player are EUR 5,000.00 less than the amount initially claimed.
- At the time of the signing of the Contract, the Player decided to live in a residence which was rented by his wife. He did not even bother to have a look at one of the houses which the Club was providing for its players. As a gesture of good will the Player orally waived his right to claim the housing costs stipulated in the Contract. Since the Club trusted the Player, it did not amend the relevant clause in the Contract.
- According to Clause 4 of the Contract the Club is obliged to provide an apartment only. Undisputedly, the Player rented a house and not an apartment. The house is located in the most expensive area of Thessaloniki and the lease contract is not in the Player’s name but in the name of his then fiancée and now wife. In similar cases of other players the rent never exceeded EUR 300.00.
- According to the Contract the Club is not obliged to pay gas and water bills.

4.4. Respondent's Request for Relief

25. Although Respondent did not submit an explicit request for relief, the Answer’s two last paragraphs read as follows:

“Therefore, for all of the reasons above, it is shown that PAOK BC has no obligation whatsoever to cover any bills for the renting of the house and the bills in question, and his relevant claim should be rejected as non – founded.”

Following all the above, it is proven that the required funds in regard to the player's salaries should be reduced by the amount of five thousand (5,000.00€) euro, which has been already paid to him, as for the claimed funds cover for the leasing of his house to be rejected in their whole, since they are not owed to him according to a later agreement, otherwise, since they are related to a totally different (larger, more expensive etc.) type of housing from what we had the obligation to provide, as for the bills of gas and water to be rejected as non-owed."

5. Jurisdiction

26. 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).
27. The jurisdiction of the BAT presupposes the arbitrability of the dispute as well as the existence of a valid arbitration agreement between the parties.

5.1 Arbitrability

28. 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 Swiss Federal Tribunal 4P.230/2000 dated 7 February 2001, cons. 1, reported in ASA Bulletin 2001, p. 523 et seq., with reference to the decision of the Swiss Federal Tribunal dated 23 June 1992, BGE 118 II 353, 356, cons. 3b.

5.2 Formal and substantive validity of the arbitration agreement

29. The existence of a valid arbitration agreement will be examined in light of Article 178 PILA, which reads as follows:

"1 The arbitration agreement must be concluded in writing, by telegram, telex, telefax or any other means of communication which allow proof of the agreement by text.

2 Furthermore, the arbitration agreement shall be valid if it conforms to the law chosen by the parties, to the law governing the dispute, in particular the principal contract, or to Swiss law."

30. The Arbitrator finds that the jurisdiction of the BAT over the dispute between Claimant and Respondent results from Clause 8 of the Contract which reads as follows:

"8. Arbitration Both parties agree that any dispute arising out of or in connection with this Agreement shall be settled exclusively by [arbitration by F.A.T. of FIBA with a possibility to appeal the award to CAS]. The parties have signed their names below as evidence of their willingness to be bound by the terms of this agreement, which they enter into of their own free will." (sic)

31. The Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
32. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast doubt on the validity of the arbitration agreement under Swiss law (cf. Article 178(2) PILA). In particular, the wording *"any dispute arising out of or in connection with this Agreement"* in Clause 8 of the Contract clearly covers the present dispute.
33. The jurisdiction of BAT has not been disputed by Respondent.
34. The Arbitrator thus finds that he has jurisdiction to decide the claims of Claimant.

6. Applicable Law – *ex aequo et bono*

35. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the arbitrators to decide “*en équité*”, as opposed to a decision according to the rules of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

“the parties may authorize the arbitral tribunal to decide ex aequo”.

36. Under the heading “Applicable Law”, Article 15.1 of the BAT 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.”

37. In the present case, the Parties have not agreed otherwise. The Contract does not contain an express choice of law but refers explicitly to “arbitration by F.A.T. of FIBA” which is governed by the BAT Rules. Therefore, the Arbitrator finds that Article 15.1 of the BAT Rules applies and that the merits of this dispute shall be decided *ex aequo et bono*.

38. 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* of 1969² (Concordat),³ under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit*.

² That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

³ KARRER, in: Basel commentary to the PILA, 2nd ed., Basel 2007, Article 187 PILA N 289.

“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

39. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives

*“the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand”.*⁵

40. In light of the foregoing developments, the Arbitrator makes the following findings:

7. Findings

41. Claimant requests outstanding salaries and housing/utility expenses plus interest. Therefore, the Arbitrator has to decide, whether Claimant is entitled
- to outstanding salaries in the requested amount of EUR 42,000.00,
 - to housing and utility expenses in the requested amount of EUR 8,258.46 in total, and
 - to interest from the dates requested in the Request for Arbitration.

⁴ JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

⁵ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

7.1 Is Claimant entitled to outstanding salaries in the amount of EUR 42,000.00?

42. In his Request for Arbitration, Claimant lists the outstanding salaries and the payments he obtained from Respondent. In its Answer, Respondent confirms that it owes the agreed salaries to Claimant and that a substantial amount is still unpaid, but it submits that in addition to the payments listed by Claimant, it also paid another EUR 5,000.00 on 26 March 2010 which is demonstrated by a document called “proof of payment” which bears the same signatures as the proofs of payment submitted by Claimant. This additional payment of EUR 5,000.00 has not been disputed by Claimant in his “Comment on the Answer of BC PAOK KAE” of 3 March 2011. The Arbitrator therefore accepts Respondent’s assertion that it paid another EUR 5,000.00 to Claimant and finds that the outstanding salaries to which Claimant is entitled amount to EUR 37,000.00 (i.e. EUR 42,000.00 – EUR 5,000.00).

7.2 Is Claimant entitled to housing and utility expenses in a total amount of EUR 8,258.46?

43. According to the Contract, Respondent undertook to “provide to the Player a fully furnished modern 2 bedroom apartment”. Undisputedly, Claimant moved into a house in Kalamaria, Thessaloniki. The Contract does not say anything about the price and the location of the apartment to be provided by the Club. Whether Claimant is entitled to a compensation for the full costs of the rented house must therefore result from the interpretation of the Contract.
44. A literal interpretation of Clause 4 para. 4 of the Contract indicates that it was the Club’s duty to provide an apartment of a certain standard to Claimant. Clause 4 para. 4 of the Contract does not say, however, that Claimant was entitled to rent an apartment or a house at whatever costs and then return to Respondent and claim full compensation.

45. It may well be that Respondent also accepted that other players did not move into an apartment provided by the Club but rented an apartment in their own name and on their own account and reclaimed the housing costs from Respondent. The Arbitrator therefore finds the submission of Respondent credible according to which the Parties discussed the matter of the housing in advance and Claimant informed Respondent that he intended to move into a house rented together with his wife instead of accepting one of the apartments provided by the Club.
46. The Arbitrator finds it however difficult to imagine that Respondent gave a “carte blanche” to Claimant and agreed to compensate any housing costs claimed. Any careful manager of a club would only compensate those housing costs to which he agreed in advance. Claimant bears the burden of proof that Respondent was ready to compensate higher housing costs than those related to the apartments it provided to other players. Claimant has not submitted any evidence which would demonstrate that Respondent agreed to compensate any higher costs than those related to apartments provided to other players.
47. The Parties failed to submit any evidence of the situation in the real property market in the Thessaloniki region which would enable the Arbitrator to compare the prices of apartments and houses. Under these circumstances, deciding *ex aequo et bono* the Arbitrator finds that an amount of EUR 400.00 is appropriate to cover the monthly costs, i.e. the rent and all utility costs, of an apartment the Club provided to other players. Any exceeding amounts must be borne by Claimant himself.
48. The Arbitrator thus finds that Claimant is entitled to a reimbursement of housing and utility costs in the total amount of EUR 3,600.00 (EUR 400 x 9 months).

7.3 Is Claimant entitled to interest from the requested dates?

49. Claimant asks for interest on the monthly salaries at “the legal rate of interest” from the dates following the days when the individual salary amounts became due and, with respect to the housing costs, from the beginning of each month, and, with respect to the costs for electricity, gas and water, when the respective bills became due.
50. Although the Contract does not explicitly provide for the obligation of the debtor to pay default interest, this is a generally accepted principle which is embodied in most legal systems. Furthermore, according to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest on overdue salaries⁶ and even if a player is entitled to the full compensation after making use of his right to unilaterally terminate⁷. The Arbitrator, deciding *ex aequo et bono*, considers the claimed interest rate of 5% p.a. to be fair and equitable in the present case.
51. When calculating the interest due on the outstanding salary payments, the EUR 5,000.00 payment made on 26 March 2010 must be taken into consideration. This leads to the following calculation:
- Interest on EUR 5,000.00 from 31 January 2010 to 25 March 2010
 - Interest on EUR 1,000.00 since 31 January 2010
 - Interest on EUR 6,000.00 since 28 February 2010
 - Interest on EUR 6,000.00 since 31 March 2010

⁶ See FAT 0069/09, Ivezic, Draskicevic vs. Basketball Club Peci Noi Kosariabda Kft and FAT 0056/09, Branzova vs. Basketball Club Nadezhda.

⁷ See FAT 0080/10, Dacic vs. Besiktas Jimnastik Kulübü and 0062/09 FAT, Harper et al. vs. Besiktas Jimnastik Kulübü and FAT 0027/08, Dalmau, Paris vs. Ural Great Professional Basketball Club.

- Interest on EUR 6,000.00 since 1 May 2010
- Interest on EUR 6,000.00 since 31 May 2010
- Interest on EUR 6,000.00 since 1 July 2010
- Interest on EUR 6,000.00 since 31 July 2010

52. With regard to the housing and utility costs, the Arbitrator has determined that Claimant is entitled to a flat compensation of EUR 400.00 per month including all utility costs. However, the Contract only states the Club's obligation to provide the Player with an apartment but does not contain any regulation about the payment dates of a reimbursement of housing costs. Since in most jurisdictions the rent of a house or apartment has to be paid in advance and since Claimant's lease contract states in its Clause 3 that "the rent will be advanced paid (sic) by the tenant in the first five days of each month" the Arbitrator, deciding *ex aequo et bono*, finds that interest on the flat compensation for housing costs begins on the sixth day of each month from September 2009 until May 2010. This leads to the following calculation:

- Interest on EUR 400.00 since 6 September 2009
- Interest on EUR 400.00 since 6 October 2009
- Interest on EUR 400.00 since 6 November 2009
- Interest on EUR 400.00 since 6 December 2009
- Interest on EUR 400.00 since 6 January 2010
- Interest on EUR 400.00 since 6 February 2010
- Interest on EUR 400.00 since 6 March 2010
- Interest on EUR 400.00 since 6 April 2010
- Interest on EUR 400.00 since 6 May 2010

8. Costs

53. 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 states that the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.
54. On 29 April 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 6,430.00.
55. In the present case, in line with Article 17.3 of the BAT Rules and considering that Claimant prevailed by approximately 80% of his claim, the Arbitrator finds it fair that 80% of the fees and costs of the arbitration be borne by Respondent.
56. Given that Claimant paid the totality of the Advance on Costs of EUR 8,000.00, the Tribunal decides that:
- (i) The BAT shall reimburse EUR 1,570.00 to Claimant.
 - (ii) Respondent shall pay 80% of the difference between the costs advanced by Claimant and the amount which is going to be reimbursed to him by the BAT, i.e. EUR 5,144.00.



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- (iii) Furthermore, the Arbitrator considers it adequate that Claimant is entitled to the payment of a contribution towards his legal fees and other expenses (Article 17.3. of the BAT Rules). The Arbitrator holds it adequate to take into account the non-reimbursable handling fee of EUR 2,000.00 and the further legal costs of EUR 6,680.60 when assessing the expenses incurred by Claimant in connection with these proceedings. After having reviewed and assessed all the circumstances of the case at hand, the Arbitrator fixes the contribution towards Claimant's legal fees and expenses at EUR 6,945.00.

9. AWARD

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

- 1. Basketball Club PAOK KAE is ordered to pay to Mr. Christos Tapoutos the amount of EUR 37,000.00 plus interest as follows:**
 - 5% p.a. on the amount of EUR 5,000.00 from 31 January 2010 to 25 March 2010;**
 - 5% p.a. on the amount of EUR 1,000.00 since 31 January 2010;**
 - 5% p.a. on the amount of EUR 6,000.00 since 28 February 2010;**
 - 5% p.a. on the amount of EUR 6,000.00 since 31 March 2010;**
 - 5% p.a. on the amount of EUR 6,000.00 since 1 May 2010;**
 - 5% p.a. on the amount of EUR 6,000.00 since 31 May 2010;**
 - 5% p.a. on the amount of EUR 6,000.00 since 1 July 2010;**
 - 5% p.a. on the amount of EUR 6,000.00 since 31 July 2010.**

- 2. Basketball Club PAOK KAE is ordered to pay to Mr. Christos Tapoutos the amount of EUR 3,600.00 plus interest as follows:**
 - 5% on the amount of EUR 400.00 since 6 September 2009;**
 - 5% on the amount of EUR 400.00 since 6 October 2009;**
 - 5% on the amount of EUR 400.00 since 6 November 2009;**
 - 5% on the amount of EUR 400.00 since 6 December 2009;**
 - 5% on the amount of EUR 400.00 since 6 January 2010;**
 - 5% on the amount of EUR 400.00 since 6 February 2010;**
 - 5% on the amount of EUR 400.00 since 6 March 2010;**
 - 5% on the amount of EUR 400.00 since 6 April 2010;**
 - 5% on the amount of EUR 400.00 since 6 May 2010.**



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3. **Basketball Club PAOK KAE is ordered to pay to Mr. Christos Tapoutos the amount of EUR 5,144.00 as a reimbursement of the advance on arbitration costs.**
4. **Basketball Club PAOK KAE is ordered to pay to Mr. Christos Tapoutos the amount of EUR 6,945.00 as a contribution towards his legal fees and expenses.**
5. **Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 3 May 2011

Stephan Netzle
(Arbitrator)