



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0185/11)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Gytis Sirutavicius

- Claimant -

represented by Mr. Raivis Ušackis, PRIME Athlete Management,
Hospitalu 8-32, 1013 Riga, Latvia

vs.

Baschet Club Mureș, Târgu Mureș

L. Rebreanu Street, No 29/A, Târgu Mureș, Mureș County, Romania

- Respondent -

1. The Parties

1.1. The Claimant

1. Mr. Gytis Sirutavicius (hereinafter "the Player" or "Claimant") is a professional basketball player of Lithuanian nationality. He is represented by his agent Mr. Raivis Ušackis domiciled in Riga, Latvia, who holds the FIBA licence No 2010023333.

1.2. The Respondent

2. Baschet Club Mures, Târgu Mureş (hereinafter "the Club" or "Respondent") is a professional basketball club located in Târgu Mureş, Romania. Respondent is represented by its President, Mr. Iosif Carol Szalkay.

2. The Arbitrator

3. On 23 June 2011, the President of the Basketball Arbitral Tribunal (hereinafter 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 29 July 2010, Claimant signed an employment contract with the Club according to which Claimant was employed as a basketball player for one season, i.e. the 2010 -2011 season (the "Player Contract").¹ The Player Contract provided for a guaranteed salary payable in nine monthly instalments, certain bonuses which depended on the match results of the Club's team and a so-called "contract sign up" fee which was payable within three days upon arrival of the Player in Romania. The Player played with the Club's team from the beginning of October 2011 until the end of November 2011.
6. On 15 December 2010, the President of the Club sent an e-mail to the Player, stating that the Club had decided to terminate the Player Contract because the Player had not met the expectations of the Club.
7. On or before January 2011, the Romanian Basketball Federation issued the Letter of Clearance for the Player. The Player then joined the Basketball Club BK Dniproazot in Ukraine where he played from 7 January 2011 until the end of the Ukrainian Championship, i.e. 17 April 2011.
8. By letter of 25 January 2011 (and again by letter of 1 March 2011), the Player's agent requested the payment of the remaining part of the guaranteed salary and repeated this request on 1 March 2011. By a letter dated 30 January 2011 and re-sent on 8 March 2011, the Club rejected these requests.
9. The Club has not paid the December 2010-salary, the salaries for the remaining 2010-2011 season, or any bonuses to the Player.

¹ Claimant has submitted the Romanian original of the Player Contract as well as a certified English translation thereof.

3.2. The Proceedings before the BAT

10. On 10 May 2011, Claimant's agent filed on behalf of Claimant, a Request for Arbitration in accordance with the BAT Rules, which was received by the BAT on 17 May 2011.
11. By letter dated 28 June 2011, 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 in the bank account on 17 May 2011 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 20 July 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 13 July 2011:

<i>"Claimant (Mr. Gytis Sirutavicius)</i>	<i>EUR 3,500</i>
<i>Respondent (BC Mures, Targu Mures)</i>	<i>EUR 3,500"</i>

12. By letter dated 22 July 2011, the BAT Secretariat informed the Parties that Claimant had paid his share of the Advance on Costs and Respondent had submitted its Answer. Furthermore, the BAT Secretariat informed the Parties that Respondent had failed to pay its share of the Advance on Costs and 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, the Claimant was invited to effect payment of the Respondent's share of the Advance on Costs by no later than 3 August 2011.
13. By letter dated 25 August 2011, the BAT Secretariat invited the Claimant to comment on the Answer and asked the Claimant to indicate within the same time limit whether he played for any other club in the 2010-2011 season and to submit a copy of the corresponding employment contract(s) indicating the total amount of the salaries and bonuses received on the basis of such contract(s).
14. By e-mail of 8 September 2011, the BAT Secretariat extended the time limit for responding to the questions of 25 August 2011 until 22 September 2011, as the Answer had not been attached to the letter of 25 August 2011.

15. By letter dated 22 September 2011, Claimant submitted his comments on Respondent's Answer. These comments were forwarded to Respondent. On 11 October 2011, Respondent filed its comments on Claimant's reply.
16. By letter of 24 October 2011, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs. The Arbitrator declared the exchange of the documents complete and invited the Parties to submit a detailed account of their costs by 3 November 2011.
17. On 2 November 2011, Claimant submitted a statement of costs and fees. On 3 November 2011, Respondent submitted an account of costs.
18. On 4 November 2011 the Parties were invited to submit their comments, if any, on the opposite party's account of costs. On 11 November 2011 Claimant submitted his comments. Respondent did not submit any comments.
19. The Parties did not request the BAT 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.

4. The Positions of the Parties

4.1. Summary of Claimant's Submissions

20. Claimant submits that since the beginning of December 2010, he was prevented from participating in the Club's games. The head coach of the Club had not explained why he did not let Claimant play. The Respondent's termination letter of 15 December 2010 simply stated that "the Player has not met our expectations" without further details.
21. Upon Respondent's later allegation that the Player had been seen several times visiting bars and night clubs where he caught the coach's attention because of his excessive alcohol consumption, Claimant replies that these allegations were false and fabricated and that Respondent just tried to avoid payment of the agreed salary. Claimant submits that the

allegations of Respondent are not supported by any evidence, which demonstrates Respondent's bad faith. The statistics show a stable performance level on the part of the Player during his entire engagement with the Club which is comparable to his performance with his new club BK Dniproazot.

22. The Club therefore dismissed the Player without justification thus entitling the Player to the full guaranteed salary until the end of the 2010-2011 season, including the bonuses to which he was entitled until the Player Contract was terminated, as well as any bonuses which he would have earned if he had played until the end of the 2010-2011 season.
23. Claimant also submits that the salary which he earned at BC Dniproazot had no influence on his claim against the Club. The principle *pacta sunt servanda* required that the contractually agreed payment must be made in full and without any deductions.

4.2. Claimant's Request for Relief

24. Claimant submits the following requests for relief:

"The player requests the court to award the Player with the following due payments from the Club:

- *To pay to the Player the remaining sum of EUR 22 500 net of guaranteed salary for 2010/2011 season;*
- *To pay to the Player bonuses of EUR 600 net earned before termination of the Contract;*
- *To pay to the Player penalty of EUR 15 000 for the delays of payments and in addition to pay penalty occurred for the following days until the end of the present proceeding (EUR 100 penalty for each day of the late payment – 150 days as of 10.05.2011);*
- *To pay the Player interest at the applicable Swiss statutory rate for the delayed payments;*
- *To pay to the Player all arbitration proceeding costs;*
- *To pay to the Player all legal fees and expenses of accrued to the Player from these arbitration proceedings;*
- *To pay to the Player possible bonuses that may have accrued should the Contract was not unilaterally terminated by the Club, i.e. EUR 100 for every win of the Club against the top 10 seeded teams in the Romanian championship after Club's unilateral termination of the Contract (sic);"*

4.3. Summary of Respondent's Submissions

25. Respondent states that it was entitled to terminate the Player Contract before the end of the agreed term because of the unsportsmanlike behaviour of the Claimant who violated several paragraphs of the Player Contract, and the internal regulations of the Club. In particular, the Player attracted negative attention because of his repeated excessive alcohol consumption and regular night club attending. This behaviour had a negative effect on his sporting activities and he showed a low level performance in the first half of the 2010-2011 season.
26. Respondent submits a decision of the Administrative Council of the Club of 14 December 2010, according to which the head coach had allegedly repeatedly seen the Player visiting night clubs where he excessively drank alcohol. This led to several fruitless discussions between the head coach and the Player. On 25 November 2010, representatives of the Club warned one of the Player's advisers, Mr Thomas Kavaliunas, that the Player Contract would be terminated if the Player did not improve his performance. On 14 December 2010, the Administrative Council of the Club decided to exclude the Player from the Club's roster as of the following day. This was communicated to Mr Kavaliunas by email on the following day.
27. Respondent refers to the written statement of the head coach who complains about the "below average performance" and the "unprofessional conduct" of the Player, and to the witness statement of the owner and manager of the bar "Jazz Club" in Târgu Mureş who confirms that the Player was a regular customer in his club. Respondent also submits that the Player had been witnessed by the head coach "during his verifying rounds" and by others when he excessively consumed alcoholic beverages.
28. Respondent confirms that the statistics provided by Claimant are accurate. However, it contests that these statistics show a satisfactory performance. Respondent compares the numbers with the statistics of the Player which he achieved with his previous teams and concludes that his earlier performance had been much better than the performance in the games he played with the Club's team.
29. Respondent finally argues that the Player must not benefit from the incomes from two different clubs since this would be against article 66 of the FIBA-regulations which do not allow a Player to be licensed for more than one club.

4.4. Respondent's Request for Relief

30. Respondent submits the following request for relief:

"As a consequence, taking into consideration the above mentioned arguments, we believe that the termination of the agreement was justified and we request the tribunal to consider our arguments in the conciliation."

31. In its response to the comments of Claimant, Respondent adds:

"Taking into consideration the facts above, the Respondent respectfully request the tribunal to consider our arguments and to reject the claim submitted by the Claimant."

5. Jurisdiction

32. 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).

33. 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

34. The Arbitrator notes that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.²

² Decision of the Swiss Federal Tribunal 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

35. 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."

36. The Arbitrator finds that the jurisdiction of the BAT over the dispute between Claimant and Respondent results from the clause titled "Arbitration" on page 1 of the Player Contract which reads as follows:

"Any dispute arising out of, or in connection with, this Agreement shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitively in accordance with the FAT Arbitration Rules. The arbitrator shall decide the dispute ex aequo et bono. Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland. To the extent legally possible under Swiss law recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal shall be excluded."

37. The Player Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA. On 1 April 2011, the FIBA Arbitral Tribunal (FAT) was renamed to Basketball Arbitral Tribunal (BAT) but has not undergone further changes which might put the validity of the arbitration agreement into question, as explicitly set out in Article 1.1 and 18.2 of the BAT Rules.
38. 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 the arbitration clause on page 1 of the Player Contract clearly covers the present dispute.³

39. The jurisdiction of BAT has not been disputed by Respondent.
40. The Arbitrator thus finds that he has jurisdiction to decide the claims of Claimant.

6. Applicable Law – *ex aequo et bono*

41. 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 et bono”.

42. In their arbitration clause in the Player Contract, the Parties have explicitly directed and empowered the Arbitrator to decide the dispute *ex aequo et bono*. Consequently, the Arbitrator will decide the present matter *ex aequo et bono*.
43. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the *Concordat intercantonal sur l'arbitrage* of 1969⁴ (Concordat),⁵ under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit*.

³ See for instance BERGER/ KELLERHALS: International and domestic Arbitration in Switzerland, Berne 2010, N 466.

⁴ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, of the Swiss Code of Civil Procedure (governing domestic arbitration).

“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.”⁶

44. 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”⁷.

45. This is confirmed by Article 15.1 of the BAT Rules in fine according to which the arbitrator applies “general considerations of justice and fairness without reference to any particular national or international law”.

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

7. Findings

7.1. Was Respondent entitled to unilaterally terminate the Player Contract before the agreed termination date?

47. The Arbitrator finds that the Player Contract was terminated by the email dated 15 December 2010. The email was sent from the “official BC Mures email” account and written by, or in the name of, the Club’s president. It has not been contested by either party that this email accurately reflected the will of the Club to dismiss the Player with immediate effect.

⁵ KARRER, in: Basel commentary to the PILA, 2nd ed., Basel 2007, Article 187 PILA N 289.

⁶ JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

⁷ POUURET/BESSION: Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

48. The fact that the Player did not need much time to find a new club and continued playing with BC Dniproazot in January 2011 does not turn the unilateral termination of the Player Contract into a consensual one.
49. The Player Contract was for a fixed term of one season. It does not explicitly provide for an early termination option except in case of “drug abuse as well as doping” (Clause 11 of the Player Contract). The Romanian original seems also to include the abuse of alcohol (“alcool”) as a reason which entitles the Club to terminate the Player Contract early. In addition, and based on generally accepted principles of labor law, other substantial breaches of an employment contract by one party may also justify the early or immediate termination of the employment by the other party.
50. The burden of proving the existence of a reason justifying an early termination of contract rests on the terminating party: it is up to Respondent to demonstrate that the Player violated his professional duties in a way which made it impossible for the Club to maintain the contractual relationship any longer.
51. Early termination of a contract is the last resort if the relationship between the parties becomes distressed. If the misconduct is reparable, the party who is allegedly in breach of the contract must be warned and given an adequate period of time to adhere to the contractual provisions.
52. Claimant says today that the termination letter of 15 December 2010 came as a surprise and did not state the reasons for his dismissal. The reasons for the dismissal were only given by the letter of 30 January 2011 which was received by Claimant on 8 March 2011.
53. On the other hand, Respondent submits that the head coach took notice of the Player’s nightlife, that the head coach repeatedly discussed the unsportsmanlike behaviour with the Player, that the poor performance of the Player was brought to the attention of Mr Kavaliunas already on 25 November 2010, and that the Player “had recognised his shortcomings.”
54. Claimant rejects these allegations flatly. The “excessive alcohol consumption” and the “regular nightclub attending” were addressed only in Respondent’s letter of 30 January 2011, but not before.

55. The Arbitrator finds that the allegation of an excessive nightlife which is negatively affecting the sporting performance is certainly an issue which requires a clear warning before it may justify an early termination of the Player Contract. No such warning is on record. The only reference to such a warning is contained in the decision of the Administrative Council of the Club which states that the player's poor performance was brought to the attention of the Player's representative Mr Thomas Kavaliunas on 25 November 2010. It has not been contested that Mr Kavaliunas was empowered to represent the Player. However, there is no direct evidence about the circumstances and the content of this warning and whether it referred only to the insufficient sporting performance or also to the excessive nightlife of the Player. Also, the letter of 30 January 2011 (which was re-sent on 8 March 2011) by which the Club explained the reasons why it terminated the Player Contract does not make reference to any warnings of the Player or Mr Kavaliunas.
56. The head coach's witness statement speaks primarily of the poor performance of the Player and, in a more general way, of the "unprofessional conduct and lack of rest in [the Player's] free time" without further specification. On the other hand, the head coach does not say whether or how the Player or his representative was ever warned and how the Player responded to such warning.
57. Finally, also the witness statement of Mr Demeter, Manager of the "Jazz Club", is not convincing evidence of the alleged rampant lifestyle of the Player. This statement is rather unspecific with regard to the frequency of the Player's night club visits and the consumption of alcoholic beverages.
58. The Arbitrator finds therefore that the Club has not demonstrated to the necessary standard of proof that the Player neglected his professional duties by excessive drinking, nor that this alleged behaviour led to a deterioration of his sporting performance. Lastly, the Arbitrator cannot conclude on the evidence before him that the Player continued this unprofessional lifestyle despite having been warned by the Club. The Club was therefore not entitled to terminate the Player Contract early.

7.2. The quantum of the claim

7.2.1 Salary

59. Article 3 of the Player Contract sets out the financial obligations of Respondent. The relevant parts read as follows:

“The club agrees to pay the Player for rendering services a fully guaranteed amount of 40,500.- EUR NETO (Forty Thousand and Five Hundred EURO “after taxes”) plus additionally all bonuses agreed and 11% contract sign up free for the 2010 – 2011 season as follows:

a) 2010 – 2011 season SALARY Payments:

Till 15 th August 2010	4500,- € - neto	(player will not practice in case not paid till this day).
Till 10 th September 2010	4500,- € - neto	
Till 10 th October 2010	4500,- € - neto	
Till 10 th November 2010	4500,- € - neto	
Till 10 th December 2010	4500,- € - neto	
Till 10 th January 2011	4500,- € - neto	
Till 10 th February 2011	4500,- € - neto	
Till 10 th March 2011	4500,- € - neto	
Till 10 th April 2011	4500,- € - neto	

b) 2010 – 2011 season “Contract SIGN UP” FEE:

4'450,- EUR NET (Four Thousand Four Hundred and Fifty Euro “after taxes”) within 3 days after Player’s arrival in Romania for the beginning of the season in August 2010. This Contract is not valid and effective until “Contract sign up” fee is paid for the Player on time agreed. If not paid on time, Player is free to leave immediately and this contract is zero with no claims from the Club’s side.

Bonuses

The Player will receive a bonus of EUR 100 NET (one hundred Euros NET) for every win against the top 10 seeded teams in the Romanian championship according to the list approved by the Club’s CA together with the Head Coach at the beginning of the regular season. In case of defeat at the hand of one of the last 5 seeded teams according to the aforementioned list the Player will be applied a EUR 100 NET (one hundred Euros NET) penalty. At the end of each month the CA and the Head Coach will analyse and determine the sum of these bonuses This sum is NET and CUMULATIVE and will be paid within 30 (thirty) days of the monthly analysis.

The Player will receive a bonus of EUR 200 NET (two hundred Euros NET) for every win in the playoffs and.

The Player will receive bonus of EUR 100 NET (One thousand Euros NET) in case of finishing in the first four in the BIBL, and another EUR 100 NET (one thousand Euros NET) in case of playing in the BIBL Final. Such bonuses will be paid regardless of any additional facts or circumstances, except team's achievement.

Additionally at the end of the 2010 – 2011 season:

- *€ net ** *For the winning of Romanian Championship - 5.000*
- *4.000 € net ** *If the Club finishes in second place in the League –*
- *3.000 € net ** *If the Club finishes in third place in the League –*
- *net *** *For playing the Finals of Romanian Cup – 1.500 €*
- *For the winning of Romanian Cup – 2.000 € net ***

** only one of these bonuses will be paid according to team's last position accomplished. No other circumstances for non-payment of this bonuses except team's accomplishment.*

*** only one of these bonuses will be paid according to team's last position accomplished. No other circumstances for non-payment of this bonuses except team's accomplishment."*

60. According to the Request for Arbitration, the monthly salaries have been paid until and including November 2010. The remaining salary for the rest of the term of the Player Contract amounts to EUR 22,500.00

61. The Contract sign up fee has not been claimed.

7.2.2 Bonuses

62. Claimant also requests the payment of the bonuses which were agreed for every win against the Top 10 seeded teams in the Romanian Championship according to the list approved by the Club's CA, together with the head coach at the beginning of the regular season. Claimant alleges that the bonuses until the termination date of the Player Contract amounted to EUR 600.00 which corresponds to six victories, whereas the amount of the bonuses for the rest of the 2010-2011 season has not been provided. Claimant has not submitted the list mentioned in clause 3 of the Player Contract or any result lists of the Club. The Arbitrator finds the bonus

claims are not sufficiently specified. It is not the task of the Arbitrator to scrutinize the results of the Romanian Championship and to calculate the bonus according to a list of which the Arbitrator has no knowledge. The claims for bonuses are therefore dismissed.

7.2.3 Salary otherwise earned during the initial term of the Player Contract

63. Claimant concedes that he earned a total salary of USD 10,500.00 for his services to BK Dniproazot during the remaining 2010-2011 season. According to standing BAT jurisprudence, the salary otherwise earned during the agreed period of the Player Contract must be deducted from the salary claim against Respondent. This deduction applies as a matter of fairness in order to avoid unjust enrichment of the Claimant. Accordingly, the salary of USD 10,500.00 at the exchange rate of the date of the Award (1 USD = 0.75 EUR), i.e. EUR 7,875.00, must be deducted from the amounts otherwise awarded to the Claimant.

7.2.4 Late Payment Penalty

64. The Player also claims the payment of a penalty of EUR 15,000.00 which is based upon a provision on top of page 4 of the Player Contract which reads as follows:

“A non-payment of any of the bonuses above on time will result same penalties or other dues as non-payment of the salary for the Player, including penalty of EUR 100 for each day of delinquency (sic).”

65. Respondent did not pay the December 2010-salary on the agreed date of 10 December 2010, nor did it pay the remaining salaries which were guaranteed by the Player Contract. As a consequence, the condition for the late payment penalty was met on 11 December 2010. According to the BAT jurisprudence, the late payment penalty can be claimed until the date of the receipt of the Request for Arbitration by the BAT. Claimant's penalty claim of EUR 15,000.00 is therefore justified.

7.3. Summary

66. The amount payable by Respondent to Claimant therefore consists of the unpaid salaries for the 2010-2011 season of EUR 22,500.00 less the salary the Player admittedly earned at BK

Dniproazot of EUR 7,875.00, plus the late payment penalty of EUR 15,000.00, and adds to a total amount of EUR 29,625.00.

7.4. Interest

67. No default interest has been explicitly agreed in the Player Contract. According to standing BAT jurisprudence, default interest at a rate of 5% may still be awarded on any outstanding amounts regardless of whether it has been explicitly provided for in the underlying agreement.⁸ However, interest will be awarded only if requested. Since the parties have explicitly agreed on a late payment penalty default interest is due only from the date of the receipt of the Request of Arbitration, i.e. as of 17 May 2011.

8. Costs

44. 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.
45. On 24 November 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*

⁸ See 0123/10 FAT, Vucurovic vs. KK Bosna ASA BH Telekom; 0092/10 FAT, Ronci, Coelho vs. WBC Mizo Pecs 2010; 0069/09 FAT, Ivezic, Draskicevic vs. Basketball Club Pecs Noi Kosariabda Kft; 0056/09 FAT, Branzova vs. Basketball Club Nadezhda.

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 7,000.00.

46. In the present case, in line with Article 17.3 of the BAT Rules and considering that Claimant prevailed in his claims by approximately 75%, the Arbitrator finds it fair that 75% of the fees and costs of the arbitration be borne by Respondent.
47. Given that Claimant paid the totality of the Advance on Costs of EUR 7,000.00, the Arbitrator decides that:
 - (i) Respondent shall pay 75% of the costs advanced by Claimant, i.e. EUR 5,250.00.
 - (ii) 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 deems it appropriate to take into account the non-reimbursable handling fee of EUR 2,000.00 and further legal costs of EUR 2,659.86 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, especially that Claimant prevailed in his claims by approximately 75%, the Arbitrator fixes the contribution towards Claimant’s legal costs at EUR 3,500.00.

9. AWARD

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

- 1. Baschet Club Mureş, Târgu Mureş is ordered to pay to Mr Gytis Sirutavicius the amount of EUR 29,625.00 plus interest of 5% p.a. since 17 May 2011.**
- 2. Baschet Club Mureş, Târgu Mureş is ordered to pay to Mr Gytis Sirutavicius the amount of EUR 5,250.00 as a reimbursement of the advance on arbitration costs.**
- 3. Baschet Club Mureş, Târgu Mureş is ordered to pay to Mr Gytis Sirutavicius the amount of EUR 3,500.00 as a contribution to his legal fees and expenses.**
- 4. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 29 November 2011

Stephan Netzle
(Arbitrator)