BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0209/11)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Jeremy Pargo,

Represented by Mr. Brad S. Grayson, Strauss & Malk LLP,
135 Revere Drive, Northbrook, IL 60062, USA

- Claimant -

vs.

Maccabi Tel Aviv Basketball Club (1995) Ltd.,
293 Hayarkon St, 63504 Tel Aviv, Israel

Represented by Dr. Tal Rotman, Ron Rotman & Co. Advocates,
12 Abba Hillel Silver Street, Raman-Gan 52506, Israel

- Respondent -

1. The Parties

1.1 The Claimant

1. Mr. Jeremy Pargo (hereinafter the “Player”) is a professional basketball player of US nationality. He is a client of Priority Sports & Entertainment, an agency serving professional basketball players and located in Chicago and Los Angeles, USA. The Player is represented by Mr. Brad S. Grayson, attorney-at-law in Illinois, USA.

1.2 The Respondent

2. Maccabi Tel Aviv Basketball Club (1995) Ltd. (hereinafter the “Club”) is a professional basketball club located in Tel Aviv, Israel. The Club is represented by Dr. Tal Rotman, attorney-at-law in Raman-Gan, Israel.

2. The Arbitrator

3. On 24 August 2011, Mr. Richard H. McLaren, 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"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

4. On 24 August 2010, the Club and the Player signed an agreement (hereinafter the “Previous Agreement“) for the 2010/2011 basketball season. During the 2010/2011 season, the Player became one of the Club’s key players and the Club’s coach

intended to appoint him as the leading point guard and the team's leader for the upcoming season and beyond.

5. On 24 May 2011, the Player and the Club entered into a contractual agreement whereby the Club engaged the Player for two basketball seasons, i.e. the 2011/2012 and the 2012/2013 season (hereinafter the "Player Contract"). The Player Contract took into account the Player's success in the previous season and provided for a substantially higher net base salary than the Previous Agreement.

6. The Parties agreed that the Player Contract should be a "fully guaranteed agreement" subject to the Player's right to terminate the Player Contract pursuant to Clauses 15 and 16.

7. Clause 15 of the Player Contract provides for an early termination right of the Player if he has not received all payments earned and due according to the Player Contract. This provision does not apply in this dispute.

8. Clause 16 of the Player Contract reads in its relevant parts as follows:

> *"16. Player Options to Terminate*
>
> *A.* ***2011 Player Option to Terminate for NBA****. It is understood and agreed that Player shall have the right and option to terminate the Agreement upon satisfaction of the following condition: Player's Certified Agent, Priority Sports & Entertainment, shall provide written notice to Club that Player shall sign a guaranteed contract with an NBA club for the 2011/2012 NBA season ("2011 Player NBA Option Notice") given on or before August 1, 2011 ("2011 Player NBA Option Date"). In the event Club receives the 2011 Player NBA Option Notice on or before the 2011 Player NBA Option Date, this Agreement shall terminate and Club shall have no payment obligations to the Player for the 2011/2012 and/or 2012/2013 seasons, and Club will immediately issue to Player his FIBA Letter of Clearance upon request.*
>
> *B.* ***2012 Player Option to Terminate for NBA*** *[…]*
>
> *In the event Player does not terminate this Agreement in accordance with any of Paragraphs A or B above, then it is understood and agreed that this Agreement shall continue in full force and effect through the 2012/2013 season in accordance with the terms hereof."*

9. Also on 24 May 2011, the Club announced on its website that the Player Contract had been signed with the Player. It also stated the following:

> *"(…) The deal includes the standard option of the player leaving the club if offered an NBA deal. (…)"*

10. On 26 July 2011, the certified FIBA agent Mr. Brad Ames from the agency "Priority Sports & Entertainment" (hereinafter the "Agent") sent a letter to the Club which reads as follows (hereinafter the "Termination Notice"):

> *"Dear Mr. Mizrahi,*
>
> *Reference is made to that certain Agreement by and between Jeremy Pargo (hereinafter referred to as "Player") and Maccabi Tel Aviv Basketball Club (1995) LTD. ("Club") dated May 24, 2011 ("Agreement").*
>
> *In accordance with Paragraph 16(A) of the Agreement, we hereby exercise Player's option to terminate the Agreement, and this letter shall constitute the "2011 Player NBA Option Notice" to terminate the Agreement years 2011/2012 and 2012/2013.*
>
> *Player shall sign a fully-guaranteed contract with an NBA club for the 2011/2012 season upon conclusion of the current NBA lockout.*
>
> *In accordance with Paragraph 16(A) of the Agreement, we acknowledge that Club has no obligations to Player for the 2011/2012 and/or 2012/2013 seasons, and hereby request that Club issue Player's FIBA Letter of Clearance immediately upon request by the NBA."*

11. By letter of 27 July 2011, the Club replied that it did not accept the Termination Notice since, due to the NBA lockout, it was not possible for the Player to have a guaranteed contract with an NBA club for the 2011/2012 season at the time of the Termination Notice. The condition for the termination of the Player Contract was therefore not met. The Club deemed the Player Contract to remain in full force and effect.

12. By letter dated 29 July 2011, the Agent insisted on the termination of the Player Contract and explained why he considered the Termination Notice to be consistent with Clause 16 of the Player Contract.

13. By letter of 31 July 2011, the Club rejected the Agent's interpretation of Clause 16 of

the Player Contract and insisted again on the validity and enforceability of the Player Contract. The Club added that it would hold the Player, the agency and any NBA club which negotiated with the Player during the period of the NBA lockout liable for breach of contract and for inducement of breach of contract if the Player failed to comply with his contractual duties towards the Club.

14. By letter of 4 August 2011, the Club informed the Agent that it had hired the player Jordan Farmer for the duration of the NBA lockout period.

15. On 9 August 2011, the Club announced to its players that the team's training for the 2011/2012 season would commence soon and that they were requested to attend the first practice on 28 August 2011 at 11:00 in the Nokia Arena in Tel-Aviv. The Player did not attend that training or any further trainings or games of the Club.

3.2 The Proceedings before the BAT

16. On 23 August 2011, the BAT received a Request for Arbitration dated 22 August 2011 which was filed by the Player's counsel on behalf of the Player. Since no value of the dispute was specified in the Request for Arbitration, in accordance with Article 17.1 of the BAT Rules the BAT President determined the non-reimbursable handling fee to be EUR 3,500.00 and the Agent provided the BAT with the respective bank transaction reference number on 23 August 2011.

17. By letter of 24 August 2011, the BAT Secretariat confirmed receipt of the Request for Arbitration and informed the Parties about the appointment of the Arbitrator. Furthermore, a time limit was fixed for the Club to file its answer to the Request for Arbitration in accordance with Article 11.2 of the BAT Rules (hereinafter the "Answer") by no later than 31 August 2011. The BAT Secretariat also requested the Parties to pay the following amounts as an Advance on Costs by no later than 29 August 2011:

"Claimant (Mr. Jeremy Pargo)	*EUR 6,000*
Respondent (Maccabi Tel Aviv Basketball Club (1995) Ltd.)	*EUR 6,000"*

18. By letter dated 25 August 2011, the Club's counsel informed the BAT that the Club had never agreed to expedited proceedings and therefore requested an extension of the time limit to file the Answer. On 26 August 2011, the Arbitrator invited the Player to comment on the Club's request and requested the Club to submit a power of attorney for its counsel. The Player's comments were received by the BAT on 27 August 2011 and the Club's power of attorney on 28 August 2011.

19. On 28 August 2011, in view of the circumstances invoked by the Parties, the Arbitrator decided to grant an extension of the time limit for the Answer until 15 September 2011.

20. By letter of 21 September 2011, the BAT Secretariat acknowledged receipt of the Club's Answer and its counterclaim (hereinafter the "Counterclaim") and informed the parties about the Arbitrator's decision to hold a telephone conference regarding the next steps of the proceedings. Although several dates were proposed, the parties failed to agree on any of the proposed dates and no alternative dates for a telephone conference could be found. Therefore, on 26 September 2011 the Arbitrator decided to continue the proceedings without a telephone conference, and invited the Player to file a Reply to the Counterclaim (hereinafter the "Reply"), which should be strictly limited to commenting on the Counterclaim, by no later than 10 October 2011.

21. On 10 October 2011, the Player submitted his Reply.

22. On 16 October 2011, the Club requested the Arbitrator to remove the Reply from the file as it breached the Arbitrator's instruction to limit the Reply to comments on the Counterclaim.

23. On 24 October 2011, the Player requested provisional and permanent relief regarding the Club's obligation to provide the Player with a *"FIBA Clearance Letter upon request*

when Pargo [the Player] *signs a guaranteed contract with an NBA club at the conclusion of the NBA lockout"*.

24. By letter of 27 October 2011, the BAT Secretariat acknowledged receipt of the Club's and the Player's requests of 16 and 24 October 2011 respectively. In the same letter the Parties were informed about the Arbitrator's finding regarding the Parties' requests, i.e. that the sections I to IV of the Reply should be excluded from the file and that the Arbitrator lacked jurisdiction to issue the provisional and permanent relief requested by the Player (see para. 44 below). Furthermore, the Arbitrator declared the exchange of documents complete and announced that he would render the final award based on the written submissions. In addition, the Arbitrator invited the Parties to submit a detailed account of their costs by 3 November 2011.

25. On 3 November 2011, the Player submitted an account of costs as follows:

> *"1 €3.500 for BAT Application Fee (paid on August 23, 2011)*
>
> *2 €6,000 for Claimant's Share of Advanced Costs (paid on August 24 2011)*
>
> *3 $28,750 in attorney's fees (equal to approximately €20,872.50) for the period through October 31, 2011."*
>
> *Total €30,372.50*

26. Also on 3 November 2011, the Club submitted the following account of costs:

> *"1 Arbitration Costs: 6000 Euros paid by Maccabi to the BAT*
>
> *2 Legal Costs: Once the Procedure ends and a final award is issued by the arbitrator, Maccabi is expected to pay its legal costs to its attorneys, Ron Rotman & Co. Law Firm, with respect to legal work carried out by advocates Dr. Tal Rotman and Ze'evi Cohen, in accordance with the following details:*

		Amount in Euros (approx.)
Total hours spent on case	99	
Billing rate per hour (approx.)	718.9 NIS[1]	142.6
Total legal fees due (excluding VAT)	71.172 NIS	14.121
VAT (16 %)	11.388 NIS	2.259
Total legal fees due	**82.560 NIS**	**16.380**

27. By email of 3 November 2011, the BAT Secretariat invited the Parties to comment on the other party's account of costs.

28. By letter dated 8 November 2011, the Club provided its comments on the Player's account of costs and requested to receive details concerning the number of hours spent on the proceedings and the billing rate of the Player's counsels. Only then, would the Club be in a position to assess the reasonableness of the Player's statement.

29. The Player did not submit any comments on the Club's account of costs.

30. 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 available.

[1] New Israeli Shekels.

4. The Positions of the Parties

4.1 The Claimant's Position

31. The Player submits the following in substance:

(a.) The Player, through the Agent, properly and timely exercised his right and option according to Clause 16.A of the Player Contract to terminate the Player Contract. Clause 16.A clearly and unambiguously grants the right to terminate the Player Contract upon notice from the Agent sent on or before 1 August 2011, advising the Club that the Player shall *sign a guaranteed Contract with an NBA club for the 2011/2012 NBA season.* The term "shall" as used in the Player Contract plainly references an event (signing a guaranteed contract with an NBA club) that necessarily will occur in the *future.* The parties included such language in the Player Contract, rather than requiring proof of an already signed contract with an NBA club, in recognition of the fact, that the then-expected NBA lockout would prevent the Player from being able to actually sign such a contract with an NBA club prior to 1 August 2011.

(b.) Accordingly, under its clear and unambiguous express terms, the Player Contract had been terminated. This result is supported by all recognized methods of interpretation of contract.

(c.) In addition, the custom and practice between "Priority Sports" and the Club supports the Player's position here. In all other player contracts negotiated between Priority Sports and the Club, a player's right and option to terminate the agreement, unlike here, was conditioned on the player already having signed the agreement with, or received a written offer from, an NBA club and providing proof to the club of such agreement or written offer. In the present case, the Parties did not make the Player's termination right conditional upon the presentation of an

already signed agreement with an NBA club. Here, the Parties merely required notice that the Player shall sign such a contract in the future, which is the precise notice that the Player, through the Agent, gave to the Club.

(d.) Upon the Club's submission that the unilateral termination of the agreement by the Player constituted a breach of the Player Contract which entitled the Club to claim damages, the Player submits that the Club's claims for damages are unsupported in fact or in applicable law: the Player did not breach the Player Contract, rather, he terminated it. Even assuming *arguendo* that the Player somehow did breach the Player Contract, the Club has not established any proper basis for the recovery of damages from the Player.

(e.) The Club bases its Counterclaim, i.e. the claim for damages on regulations of the FIFA but not the FIBA. FIFA is governing another sport with specific regulations. The Club provides no authority for applying FIFA regulations to a basketball player contract.

(f.) Furthermore, the Club provides no authority or support for its supposedly lost transfer fee of USD 500,000.00. In fact, the Player Contract expressly bars the Club from seeking or recovering such a transfer fee in Clause 8 of the Player Contract. This clause states that the Club shall have no right to recover such a fee for the Player playing elsewhere in the world upon the termination of the Player Contract.

(g.) In the BAT case *Panellinios KAE Basketball Club v. Kelly (0041/09)*, which was firstly cited by the Club, the BAT held that a party "*can only request damages actually suffered. It has to prove the damage claim and the causal connection. The agreement [at issue in that case] does not contain any provision on the rigid claim for compensation for sporting damages could be based. The Claimant does not specify the sporting damages allegedly suffered. Nor does it provide any*

guidance as to how a compensation for such sporting damages should be calculated. The arbitrator thus finds that this claim does not reach the minimum standard of substantiation and therefore is dismissed." These principles should also apply in the present case. Consequently, the Club's damage claim shall be rejected.

(h.) The only evidence beyond "arbitrary numbers, pure speculations and sport specific damages, awarded in cases involving another sport under that other sport's regulations" concerned the Club's claim that it should get extra replacement cost damages for the cost of *two* player's that the Club allegedly needs to replace just the Player. The Player submits that the Club should not be allowed to claim the costs of two players to replace the Player.

(i.) Finally, there is no evidence for bad faith on the part of the Player so as to warrant extra or punitive damages of any kind. If any party acted in bad faith, it was the Club in refusing to recognize the Player's valid contract termination and attempting to exhort a transfer fee from the Player to which nobody agreed and to which the Club is not entitled.

4.2 Claimant's Request for Relief

32. In his Request for Arbitration dated 22 August 2011, the Player requested the following relief:

> *"Claimant(s) request(s):*
>
> *A declaration that the Agreement between Maccabi Tel Aviv Basketball Club (1995) LTD and Jeremy Pargo dated May 24, 2011 was terminated by Jeremy Pargo effectively July 26, 2011, and that the Agreement is of no further force and effect."*

33. By letter dated 26 August 2011, the Player additionally requested *"leave to amend his claim to seek recovery of his reasonable legal fees and costs incurred in this matter"* pursuant to Articles 17.2 and 17.3 of the BAT Rules.

34. In its Reply to the Counterclaim submitted on 10 October 2011, the Player requested the following relief:

> *"For all of the foregoing reasons, Maccabi's Counterclaim and all of the relief it requests should be denied and rejected."*

4.3 Respondent's Position

35. The Club submits the following in substance:

(a.) The Club explains that the Player joined the Club for the 2010/2011 basketball season after he had played for "Galil Gilboa", a local team in Israel which at that time did not participate in any international league. The Player was, at the time, unknown outside the borders of Israel. The 2010/2011 season was very successful for both the Player and the Club. The Player's game improved considerably and he became one of the Club's most important and admired players in a very successful season. The Club won the Israeli Championship and the Israeli Cup and reached the final of the Euroleague.

(b.) Because of the Player's extraordinary performance, the Club was determined to make all efforts to keep the Player on the team for the following seasons. As a consequence, the Club agreed to radically improve the terms of the Player's employment: the Player Contract was a guaranteed contract for two seasons and the Player's net base salary was increased to USD 1,9 Mio. (equal to about USD 2,99 Mio. gross incl. all amenities). Actually, the Player's annual pay quadrupled and he became the Club's top earner.

(c.) During the negotiations for the Player Contract, the Parties discussed the Player's NBA exit option. Initially, the Club strictly opposed giving the Player such an option for the 2011/2012 season since the Player was so central in the Club's plans for the next season. The Club did not want any uncertainty with regard to the Player's participation on the Club's team for the 2011/2012 season. The

Agent assured the Club that the probability that the Player would sign a contract with an NBA club for the 2011/2012 season was very remote due to the looming NBA lockout. The Agent explained to the Club's representatives that if the lockout started at the beginning of July 2011 as expected, the Player simply could not be in a position to get an NBA contract for the next season by 1 August 2011. Until the end of June 2011, NBA clubs were not allowed to contract or negotiate with players, and once the lockout started, a similar provision on contracts (and even negotiations) applied.

(d.) The Club therefore believed that if the lockout started on 1 July 2011, it was practically impossible that a guaranteed contract would be signed by the Player with an NBA team by 1 August 2011. Only in the unlikely event that the lockout would end before 1 August 2011, there was a remote possibility of a guaranteed contract actually being signed before 1 August 2011. Under this condition, the Club agreed to an NBA exit option for the 2011/2012 season.

(e.) The Club's representatives insisted that the NBA exit option was subject to the Player signing a *guaranteed* contract with an NBA club. The word "guaranteed" was inserted because of the explicit request of the Club. The Club's representatives then believed that in order for the Player to exercise the exit option, the Player had to have a guaranteed NBA contract signed by no later than 1 August 2011. Relying on the Player Contract, the Club's coach built the team around the Player and looked to recruit players with complementing skills to that of the Player in order to assemble a well-balanced team. On 1 July 2011, the NBA lockout started as expected. The Club's representatives now felt completely reassured that due to the lockout and the prohibition of negotiation between NBA clubs and players, the Player could not get a guaranteed contract with an NBA club by 1 August 2011.

(f.) On 4 July 2011, the Agent visited the Club. However, he did not mention anything

about any interest of NBA clubs in the Player, nor did he mention any intention on behalf of the Player to exercise his NBA exit option. Only on or around 12 July 2011, the Agent called the Club's coach and for the first time told him that the Player planned to "opt out" of the Player Contract. During the following two weeks, the Agent called the representatives of the Club several times, said that the Player wanted to "opt out" of the Player Contract and urged the Club to release him from his contractual obligations. The Club refused to discuss any terms for the Player's release and insisted on the Player strictly abiding by the Player Contract. On 26 July 2011, the Agent sent the Termination Notice to the Club. The Termination Notice was immediately rejected by the Club. The Club also refused to issue the requested clearance letter, if it were requested.

(g.) The Club submits that the Termination Notice must be read as an irrevocable admission on behalf of the Player that at the time of the termination notice:

- the Player did not have any guaranteed contract with an NBA team;
- no negotiations whatsoever had taken place between the Player and any NBA team with respect to any contract, let alone a "guaranteed contract";
- no NBA team had submitted any formal or informal offer to the Player;
- undisclosed NBA teams had merely showed interest (the specifics of which are unrevealed) in the Player during the month of June 2011 but stopped doing so in July 2011, as the lockout started and no contacts were allowed between the NBA teams and any player agents;
- at the end of July 2011, unnamed persons at Priority Sports, whose experience and proficiency are unknown, concluded solely based on said "interest" (showed, if at all, more than a month earlier) that "player shall sign a guaranteed contract with an NBA team".

(h.) Because of the Player's fundamental breaches of the Player Contract and, inter alia, not reporting for training with the Club's team on 28 August 2011 as requested by the Club on 8 August 2011, the Club "hereby" (i.e. in the context of its Answer dated 15 September 2011) gives notice, for avoidance of any doubt, of the termination of the Player Contract. The Club is therefore excused and discharged from abiding by the Player Contract as from the date of its Answer.

(i.) Because of the alleged breach of the Player Contract, the Player is liable for the damage suffered by the Club as a result of his breach. To determine the damages, the Club refers to the rules applicable to such circumstances in the world of football and the rationale of these rules, especially Article 17 of the Regulations on the Status and Transfer of Players of the FIFA. The NBA team with which the Player shall eventually contract and be released to, should be held jointly and severally liable with the Player for compensating the Club for said damages.

(j.) Based on the principles developed in football, the Club refers to the following elements of damages amounting to a total sum of USD 1,498,053.00:

- *Value of the Player's Services ("The Remuneration Element")*
- *Lost Earnings and missed transfer Fees*
- *Extra replacement Costs*
- *The specificity of the Sport*

4.4 Respondent's Request for Relief

36. In its Answer and Counterclaim dated 15 September 2011, the Club requested the following relief:

"124. On the above grounds, the Arbitrator is hereby requested to adjudicate as follows:

124.1. The Termination Notice was invalid, did not terminate the Agreement and constituted a material breach of the Agreement;

124.2. The Player's actions following the Termination Notice, including without limitation, his refusal to report for training with the Club, constituted a further fundamental breach of the Agreement;

124.3. The Player's breach of the Agreement caused Damages to the Club;

124.4. The Player together with the NBA club with which the Player shall eventually contract and be released to, are liable for compensating the Club for the Damages, ***totaling***(sic) ***USD 1,498,053****, as follows:*

124.4.1. For the remuneration element (see Sec. 100 above): USD 200,000.

124.4.2. For lost earnings and missed transfer fees and/or Contribution (see Sec. 106 above): USD 500,000.

124.4.3. For extra replacement costs (see Sec. 109 above): USD 198,203.

124.4.4. For additional special indemnity (see Sec. 116 above): USD 599,850.

124.5. The Damages shall carry interest at the rate of 5% per annum, as of July 27, 2011 and until they are fully paid to the Club;

124.6. That the Club is discharged and excused from abiding by the Agreement;

124.7. After payment of the Damages, the Club will allow the Player to receive a Clearance Letter upon the request of the NBA team extending a guaranteed contract to the Player;

124.8. The Player is liable to reimburse the Club for all the costs and expenses incurred by the Club in connection with this arbitration procedure."

5. The Jurisdiction of the BAT

37. 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).

38. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

39. 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) PILA.[2]

40. The jurisdiction of the BAT over the dispute results from the arbitration clause contained in Clause 11 of the Player Contract, which reads as follows:

> *"Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator by the BAT 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, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute* ex aequo et bono*."*

41. The Player Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.

42. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording *"[a]ny dispute arising from or related to the present contract"* in clause 11 of the Player Contract clearly covers the present dispute.[3]

43. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Player's claim and the Counterclaim.

44. However, the Arbitrator found that he lacks jurisdiction to issue the provisional and permanent relief requested by the Player on 24 October 2011. Consequently, in the

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2 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.

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

procedural order of 27 October 2011, the Arbitrator noted that *"[as] a matter of principle, the BAT does not have the authority to issue letters of clearance or to order a club to do so. Instead, letters of clearance are issued by a club's national federation and, in some circumstances, by FIBA (see also the final awards BAT 0024/08, para. 64; BAT 0027/08, page 18)"*.

6. Other Procedural Issues

6.1 Non-reimbursable handling fee

45. Given that no value of the dispute was specified in the Request for Arbitration, in accordance with Article 17.1 of the BAT Rules the BAT President determined the non-reimbursable handling fee to be EUR 3,500.00

6.2 Request for expedited Proceedings

46. Together with his Request for Arbitration, the Player also asked that the proceedings be expedited to the extent possible. He also stated that this request would be submitted "jointly" with the Club. Respondent denies that it supported the request for expedited proceedings.

47. The Arbitrator has decided to carry out this arbitration according to the BAT rules and the practice of the BAT without reference to any exceptionally short time limits, because of the following reasons:

(a.) According to the Answer and Counterclaim, the Club shares the Player's opinion that the Player Contract has been terminated. There is no urgency to confirm the termination of the Player Contract by a holding of the Arbitrator.

(b.) Already on 27 October 2011, the Arbitrator found that he lacked jurisdiction to

issue the declaration requested by the Player that the Club must provide him "*with a release and FIBA Clearance Letter upon request when* [the Player] *signs a guaranteed contract with an NBA club upon the conclusion of the NBA lockout".* To obtain the so-called Letter of Clearance was one of the reasons why the Player requested that the arbitration proceeding shall be expedited.

(c.) The Arbitrator's attempts to conduct a conference call with the Parties representatives in order to find a quick and pragmatic solution failed. The Arbitrator therefore decided to continue with the regular arbitration proceeding.

6.3 Counterclaim and Reply

48. According to Article 11.2 of the BAT rules, the Club was entitled to submit its Counterclaim together with the Answer. The Counterclaim is closely related to the subject matter of the Player's claim. The Player has not disputed the admissibility of the Counterclaim which will therefore be decided in the framework of this arbitration procedure.

49. By letter of 16 October 2011, the Club requested the Arbitrator to remove the Reply from the file because it breached the Arbitrator's instruction to limit the Reply to comments on the Counterclaim. The Arbitrator has decided that the sections I to IV of the Reply should be excluded from the file because they were actually not strictly limited to commenting on the Counterclaim as requested in the Procedural Order dated 26 September 2011.

6.4 Request for more detailed account of the Player's legal costs

50. Regarding the Club's request of 8 November 2011, the Arbitrator has decided to accept the Player's account of costs but to reduce the stated "attorneys' fees" to the amount of EUR 16,380.00, i.e. the same amount notified by the Club as being its own legal costs.

When reducing the Player's claim to attorneys' fees, the Arbitrator took into consideration that (a) the sections I to IV of the Reply were excluded from the file because they were not strictly limited to comments on the Counterclaim as explicitly requested by his order of 21 September 2011 and (b) the legal costs of both parties for comparable work then resulted in similar amounts. Thus, the Arbitrator did not find it necessary to ask for more details of the Player's attorneys' fees.

7. Applicable Law – *ex aequo et bono*

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

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

52. Under the heading "Applicable Law", Article 15.1 of the 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."*

53. In their arbitration agreement in Clause 11 of the Player Contract, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to any other law. Consequently, the Arbitrator will decide the issues submitted to him in this proceeding *ex aequo et bono*.

54. 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 1969[4] (Concordat)[5] under which Swiss courts have held that arbitration *"en équité"* is fundamentally different from arbitration *"en droit"*:

> *"When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*[6]

55. 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"*.

56. In light of the foregoing considerations, the Arbitrator makes the findings below:

8. Findings

57. Claimant requests the Arbitrator to hold that "the Agreement is of no further force and effect" and to dismiss the Counterclaim. Strictly speaking, the first part is no longer disputed. However, when taking the second request and also Claimant's reasons for these requests into consideration, the Arbitrator understands that it is the Claimant's position (a) that the Player Contract was indeed no longer effective but also (b) that he was entitled to terminate it and (c) that for this reason, the Counterclaim is unfounded.

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4 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).

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).

8.1 Was the Player entitled to terminate the Player Contract by the Termination Notice?

58. It is common ground that the Player, through the Agent, sent the Termination Notice to the Club on 26 July 2011; that the Club did not agree to the termination; and that the Player did not participate in any further sporting activities of the Club's team. It is also undisputed that the Player did not present a player contract with an NBA club for the 2011/2012 season (whether guaranteed or not), or any other document from which the clear intent of the Player and an NBA club could be derived that the Player would be contracted by an NBA club for the 2011/2012 season, when he terminated the Player Contract.

59. The answer of the initial question requires therefore an interpretation of Clause 16.A of the Player Contract.

60. Clause 16.A of the Player Contract makes the early termination option subject to two conditions, namely (1) the Termination Notice must be given on or before August 1st 2011, and (2) the Termination Notice must indicate that the Player *"shall sign a guaranteed contract to an NBA club for the 2011/2012 NBA season"*.

61. While it is undisputed that the Termination Notice was notified to the Club in time, it is the second condition which is in dispute.

62. The Player submits that this second condition was met by expressing his clear intent to join an NBA club for the 2011/2012 season. The language "shall sign a guaranteed contract" means that the Player will sign such a contract in the future. It does not however mean that Clause 16.A of the Player Contract required the Player to submit an already signed guaranteed agreement with an NBA club, or to provide any written evidence that the Player had received a written offer from an NBA club. This understanding is also supported by the fact that the language of the Player Contract

was decisively different from the wording of other NBA exit options which had been negotiated between the Agent and the Club for other players. These other clauses explicitly required the players to provide the Club with a written offer from an NBA club or even a signed NBA contract for the following season. This was not required in the Player Contract. Finally, the Player refers to the negotiations with the Club which took place while it seemed very likely that the NBA would become subject to a lockout which prohibited the NBA clubs from signing or even negotiating new agreements with players. Under these circumstances, the second requirement of Clause 16.A of the Player Contract would not have made any sense if it required the Player to submit written evidence of an offer or an already signed agreement.

63. The Club disagrees. It submits that the Club did not want an NBA option clause in the Player Contract at all and agreed to it only because the forthcoming lockout made it very unlikely that the Player would be drafted by an NBA club for the 2011/2012 season. To reduce such likelihood even more, the Club insisted that only a "fully guaranteed" contract with an NBA club would meet the second condition of the exit option.

64. The goal of the interpretation of a contract by the Arbitrator is to determine the corresponding intention of both parties. If the parties disagree on the content of their consensus, the Arbitrator must determine how the disputed clause must be understood by a reasonable third party. The wording of the disputed clause is indeed the starting point, but the Arbitrator shall take all relevant circumstances into account when identifying the presumptive meaning of the Parties' agreement.

65. Clause 16.A of the Player Contract does not require that the Termination Notice must be accompanied by a written offer from an NBA club or even a signed agreement. The Player is therefore correct in saying that the language *"shall"* refers to an event which takes place in the future. On the other hand, Clause 16.A of the Player Contract is rather specific when it describes the kind of agreement which entitles the Player to

terminate the Player Contract. There must be an agreement with an NBA club, it must be *"guaranteed"* and it must cover the 2011/2012 season. No reference is made to the lockout which was then already approaching. The Arbitrator therefore finds that Clause 16.A of the Player Contract required the Player to demonstrate more than just an expression of his own desire. In the light of all circumstances, the Arbitrator reads the language *"shall"* as concrete indication from which a third party draws the conclusion that the signing of a guaranteed agreement with an NBA club for the 2011/2012 season was imminent or at least very likely. The Arbitrator therefore does not agree with the Player that the conditions of Clause 16.A of the Player Contract were met if the Player simply and without further evidence expressed his desire to join an NBA club. Otherwise, one would expect that the Parties would have agreed to a simple and unilateral termination clause which gave the Player the right to terminate the Contract by giving notice without any reasons.

66. This result is also reinforced by the general principle of "*pacta sunt servanda*": the Parties shall live up to their agreement until the regular expiry date. Any prior termination is exceptional. The grounds for the application of the exception must be proven by the party which is invoking it, whereby the wording of the agreement on which a claimant bases the exception must be interpreted narrowly.

67. The Player has not provided any indication that he had good reasons to believe that the signing of a player contract with an NBA club for the 2011/2012 season was immediately forthcoming. It may be that the lack of such evidence was due to the NBA lockout. However, when the Parties signed the Player Contract, both of them were aware that such a lockout could arise and that it would not be possible for the Player to join the NBA during the lockout. The NBA lockout and the inability of the NBA clubs to hire new players is a risk which has to be borne by the Player alone. Further, the lockout does not excuse the Player's failure to submit evidence that the signing of a player contract with an NBA club was imminent.

68. The Arbitrator therefore finds that the conditions for an application of the exit option in Clause 16.A of the Player Contract have not been met and that the early termination of the Player Contract constituted a material breach of this agreement by the Player.

8.2 Is the Player Contract still in force?

69. In para. 43 of its Answer, the Club *"hereby [gave] notice, for avoidance any of doubt, of the termination of the Agreement."* Reason for this termination was the undisputed fact that the Player did no longer provide his services to the Club. The Club was therefore entitled to unilaterally terminate the Player Contract.

70. It can be left open for the purposes of this dispute whether the Player Contract was terminated already by the Termination Notice (without the Club accepting the Player's reason for the termination) or only by the Club's notice of 15 September 2011 since the financial consequences claimed by the Club do not depend on the termination date.

8.3 Is the Club entitled to damages?

71. In its Counterclaim, the Club submits that it suffered financial damages because of the Player's breach of the Player Contract. The Club bases its Counterclaim mainly on the FIFA Regulations on the Status and Transfer of Players (hereinafter the "FIFA Transfer Regulations"), especially Article 17 of the FIFA Transfer Regulations, and the relating jurisprudence of the Court of Arbitration for Sport (CAS), in particular the award in *CAS 2008/A/1519-1520 FC Shakhtar Donetsk v. Matuzalém Francelino da Silva ("Matuzalém").*

72. The Arbitrator disagrees: the FIFA Transfer Regulations are specific to football. No comparable provision exists in the regulations of FIBA. The laws of Switzerland which is the jurisdiction in which both organisations have been established recognise the principle of the autonomy of associations. Associations are free to govern their own

affairs and to establish the respective rules. The rules of one association do not apply to another association even if the underlying facts may be comparable.

73. However, this does not mean that the breach of the Player Contract goes without consequences for the Player. According to the employment laws of all known legal systems, the employee who walks away without reasons must compensate the employer for all proven costs and damages which have been caused as a direct consequence of his breach.[7] In addition, it is generally accepted – and in compliance with principles of justice and fairness – that the judge may grant the employer compensation for the damage which is either non-monetary or difficult to calculate and which may also include a punitive part. On the other hand, the Player's salary and other costs which the Club retained because of the early termination must be taken into account.

74. The Arbitrator accepts that Article 17 of the FIFA Transfer Regulations and the corresponding CAS jurisprudence are based on, and further specify, the general obligation of the employee to compensate the employer for all costs and damages caused by his breach of contract. However, the Arbitrator prefers not to apply the FIFA Transfer Regulations and the respective CAS jurisprudence to the sport of basketball – not even by analogy – but to base his ruling on *ex aequo et bono* considerations which include the legal principle of compensation for damages.

75. The Club's Counterclaim for compensation is based on several grounds which will be addressed individually below.

[7] See also BAT 0041/09 Panellinios KAE Basketball Club v. Kelly, paras. 77-78.

(a) "The Remuneration Element"

76. The Club submits that it lost a valuable player and that the value of the Player's services can be determined by reference to third parties' offers. According to the Club, the Agent reported that a Spanish club was interested to hire the Player and to pay a salary of USD 200,000.00 more than what the Player obtained from the Club. The difference reflected the value of the Player in excess of the salary due by the Club.

77. In addition, the Club refers to para. 91 of the award in *Matuzalém* to determine the value of the Player's service. In *Matuzalém*, the CAS based its findings on Article 17 of the FIFA Transfer Regulations which explicitly refers to the remuneration of a football player as an element to take into calculation. No such provision exists in basketball.

78. To say that the Player was actually worth more than the salary paid to him is highly speculative. The Parties had just signed the Player Contract with a much higher salary than before, and the Player was represented by an agent experienced in basketball. On the other hand, there is no further evidence of the Club's allegation that, according to the Agent, a Spanish club offered to pay an even higher salary to the Player. Under these circumstances, there are no sufficient legal or factual grounds for the Arbitrator to hold that the Club lost services worth more than what the Parties agreed as a salary and other benefits when the Player walked away.

(b) "Lost earnings and missed transfer fees"

79. The Club claims that it is entitled to remuneration because the unilateral termination of the Player Contract made it impossible for the Club to profit from any earnings and transfer fees which it would have been able to obtain if another club had bought out the Player from the Player Contract. The Club estimates that it could have obtained a transfer fee of at least USD 500,000.00.

80. The Club submits that if the Player had not breached the Player Contract, then at the end of the NBA lockout, the Player would still have been a player of the Club. If at such later date, after the lockout, an NBA club offered the Player a guaranteed contract, then the Club would most likely have agreed to release him, although it would have insisted on getting an appropriate transfer fee from the NBA club recruiting the Player. Allegedly, the Club would have agreed to release the Player to an NBA team under these circumstances for a transfer fee of at least USD 500,000.00 and by breaching the Player Contract the Player caused the Club to miss the opportunity to receive such transfer fees.

81. Again, the Arbitrator repeats that Article 17 of the FIFA Transfer Regulations is not directly applicable. The CAS has refused to accept missed transfer opportunities as a general head of damage for which compensation shall be due.[8] A party claiming compensation because of a missed transfer opportunity must rather demonstrate that a sufficiently specific offer was made by another club which would have been accepted by the current club, and that this transaction was frustrated because of the player's breach of contract.

82. The Club has not demonstrated any facts which would show that (a) there were any concrete transfer offers from third parties, or (b) that another club was willing to compensate the Club by an amount of USD 500,000.00, and (c) that the Club would have been ready to release the Player, despite its allegation that it had agreed paying the Player a very high salary to keep him because he was considered to be a key to the success of the team.

83. The Arbitrator therefore finds that the Club's claim for compensation of lost earnings and missed transfer fees are not sufficiently substantiated and are therefore dismissed.

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8 *See, for instance*, Matuzalém case (CAS 2008/A/1519-1520, para. 116 et seq.) with further references.

(c) "Extra Replacement Costs"

84. The Club then requests compensation for the additional costs when the Club replaced the Player by Mr. Jordan Farmar and Mr. Theodoros Papaloukas. These costs consist of the difference of the combined annual salaries of Mr. Farmar and Mr. Papaloukas and the Player which amounts to USD 198,203.00. The Club again refers to the Matuzalém case where the replacement costs were accepted as part of the damage caused by the player's breach of contract.

85. The Arbitrator repeats that the jurisprudence developed for the interpretation of Article 17 of the FIFA Regulations may not apply here since no comparable regulations exist. However, the replacement costs can still be a part of the damage if the Club may demonstrate that they accrued as a direct consequence of the Player's breach of contract.

86. The salary amounts of Mr. Farmar and Mr. Papaloukas have not been disputed by the Player. However, the Player does not accept that he was replaced by *two* other players. The Club submits that the engagement of two players became necessary because it had to accept that Mr. Farmar was an NBA player who had to return to his NBA team within 48 hours of termination of the NBA lockout. The Club was therefore required to hire an additional player (Mr. Papaloukas) to fill in the possible gap. Mr. Papaloukas however, was still not an adequate substitute because of his age, he was not a starter and not capable to effectively play more than 20 minutes per game. That is why the Club was still in search of another point guard to be prepared when Mr. Farmar had to leave the team.

87. The Arbitrator does not accept the claimed extra replacement costs. The Player has been replaced primarily by Mr. Farmar at least for the duration of his engagement with the Club which corresponds to the duration of the NBA lockout. Since Mr. Farmar's salary does not exceed the Player's agreed salary, his engagement did not lead to

damage to the Club. To the extent Mr. Papaloukas was hired to become a substitute with reduced playtime for Mr. Farmar, his salary cannot be regarded as damage caused by the Player's departure either. The Club does not assert that it would not have hired a substitute point guard if the Player was still playing. The costs of Mr. Papaloukas (at least for the period until Mr. Farmer's leave) can therefore not be recovered from the Player.

88. While the lockout seems to come to an end and Mr. Farmer will probably leave the Club, no reasonable prognosis of the needs of the Club for the time after Mr. Farmer's departure can be made. Will the team rely mainly on Mr. Papaloukas or will Mr. Farmar be replaced for the remaining season by a player who is more or less expensive to the Club than the Player? These questions are simply impossible to answer. The Arbitrator is therefore not in a position to grant damages on the basis of speculations and worst case scenarios. This is why he rejects the compensation claim based on the extra replacement costs.

(d) "The specificity of the Sport"

89. The Arbitrator accepts that the departure of the Player caused substantial complications for the Club in maintaining its competitive level which are difficult or even impossible to quantify. However, this should not deprive the employer from claiming an adequate compensation (or "special indemnity"), as it has been generally accepted in employment law that the employee owes a compensation to the employer because of his unjustified departure from his employment.

90. The Arbitrator agrees with the Club that especially the behaviour of the Player who walked away despite the fact that the Club was heavily relying on his services for the upcoming season and that he was offered a very lucrative new contract must have disturbed the Club's preparation for the new season and reduced its chances of

success. The Arbitrator therefore finds that the Player's surprising behaviour justifies awarding a special indemnity in favour of the Club.

91. The Arbitrator is also sympathetic to the Club's argument according to which the rules of the Israeli Basketball Superleague Administration concerning a new (Israeli) club hiring a player from another (Israeli) club must compensate the former club for its contribution to the improvement and training of the transferred player. Under this rule, unless the new club and the old club reach an agreement to the contrary, that new club has to pay the old club an amount equal to 20% to the difference between (a) the gross annual compensation paid to the player by the old club and (b) the gross annual compensation paid by the new club to the same player. The new club has to pay the contribution irrespectively of the fact that the contract between the player and the old club has already expired and that from a contractual prospective the player is completely free to play for the new club without paying any compensation to the old club.

92. If the Player had been transferred from the Club to another Israeli club at the end of the 2010/2011 season, in which his gross salary paid to him by the Club was USD 333,250.00, and his new club had agreed to pay the Player an amount of USD 1,199,700.00 (which is equal to the gross annual salary the Club agreed to pay the Player in the Player Contract), then the Club would have been entitled to receive a contribution amounting to 20% of the difference between the two amounts and representing the Club's share in the Player's appreciation in value. The Club's share in the Player's appreciation in value during the last season he played for the Club would have amounted to USD 173,290.00.

93. While this calculation is based on the regulations of the Israeli Basketball Superleague Administration which apply only to domestic transfers, such compensation is not regulated and may therefore be part of the negotiated compensation payable by a foreign club to an Israeli club in international transfers while a player is still under

contract. Although the rule does not immediately apply in the present context, the Arbitrator recognises that the Club has made certain investments in the Player which call for compensation when this Player decided to change clubs. This shall be taken into consideration when calculating the "special indemnity."

94. When calculating the quantum of the special indemnity, the Arbitrator has a wide range of discretion, especially when he is empowered to decide *ex aequo et bono*. Considering the circumstances of the present case, where the Player left the Club shortly before the commencement of the preparation and the start of the new season, and also taking into calculation the efforts of the Club to increase the potential of the Player, the Arbitrator finds a compensation in the amount of three basic (net) monthly salaries as agreed in the Player Contract (i.e. USD 270,000.00 in total) as fair and appropriate.

8.4 Interest

95. The Club requests default interest at the rate of 5% p.a. from 27 July 2011, i.e. the day after the Termination Notice. According to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest.[9] Although the Player Contract does not provide for default interest, this is a generally accepted principle which is embodied in most legal systems. The Arbitrator, deciding *ex aequo et bono*, considers interest in the requested rate of 5% p.a. to be fair and equitable in the present case.

96. Although the Termination Notice was submitted on 26 July 2011, the Club claimed damages only by its Counterclaim of 15 September 2011. The Arbitrator finds therefore

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[9] *See, ex multis,* the following BAT awards: 0092/10, *Ronci, Coelho vs. WBC Mizo Pecs 2010;* 0069/09, *Ivezic, Draskicevic vs. Basketball Club Pecsi Noi Kosariabda Kft;* 0056/09, *Branzova vs. Basketball Club Nadezhda.*

that the default interest cannot be due on an earlier date but only from the day following the filing of the Counterclaim. The Player Contract does not contain any provision which would support another finding. Thus, default interest at 5% p.a. shall run from 16 September 2011.

9. Costs

97. Article 17 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule, shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

98. On 4 December 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 to be EUR 11,973.00.

99. When calculating the ratio of success of both the Request for Arbitration and the Counterclaim, the Arbitrator allocates the same value in dispute to both of them. Considering that the Club fully prevailed in the claim and prevailed in the Counterclaim by approx. 20% (which leads to an overall success rate of 60%), it is fair that 60% of the fees and costs of the arbitration are borne by the Player and 40% by the Club.

100. Given that the Club paid an advance on costs of EUR 5,993.00 while the Player paid an advance on costs of EUR 5,980.00 as well as a non-reimbursable handling fee of EUR 3,493.00, in application of article 17.3 of the BAT Rules the Arbitrator decides as follows:

(i) The Player shall reimburse to the Club the difference between the costs advanced by it (EUR 5,993.00) and the percentage of costs that shall be borne by it (40% of EUR 11,973.00, i.e. EUR 4,789.20) which results in an amount of EUR 1,203.80.

(ii) Furthermore, because the Parties prevailed in a different way in the two claims (the Player's claim and the Club's counterclaim, *see* para. 99 above) the Arbitrator considers it adequate that basically both Parties are entitled to a contribution towards their legal fees and other expenses (Article 17.3. of the BAT Rules). Taking into consideration the Parties' accounts of costs and the reduction of the Player's legal costs (*see* para. 50 above) the Arbitrator determines the Player's legal costs at EUR 19,873.00 (EUR 16,380.00 + EUR 3,493.00) and the Club's legal costs at EUR 16,380.00. Also considering how the Parties prevailed in the claim and the counterclaim, the Arbitrator holds it adequate to determine a contribution to the Player's costs to be paid by the Club at EUR 7,949.20 (40%) and a contribution to the Club's costs to be paid by the Player at EUR 9,828.00 (60%). Finally, after charging these contributions against each other, the Club shall be entitled to a contribution which results in an amount of EUR 1,878.80.

10. AWARD

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

1. **The contract between Mr. Jeremy Pargo and Maccabi Tel Aviv Basketball Club (1995) Ltd. dated 24 May 2011 has been terminated and is no longer in force.**

2. **Mr. Jeremy Pargo is ordered to pay to Maccabi Tel Aviv Basketball Club (1995) Ltd. the amount of USD 270,000.00 plus interest of 5% p.a. since 16 September 2011.**

3. **Mr. Jeremy Pargo is ordered to pay to Maccabi Tel Aviv Basketball Club (1995) Ltd. the amount of EUR 1,203.80 as a reimbursement of its advance on arbitration costs.**

4. **Mr. Jeremy Pargo is ordered to pay to Maccabi Tel Aviv Basketball Club (1995) Ltd. the amount of EUR 1,878.80 as a contribution towards its legal fees and expenses.**

5. **Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 06 December 2011

Stephan Netzle
(Arbitrator)