



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0231/11)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Elias Kantzouris,

- Claimant -

Represented by Mr. Pantelis Dedes, Dedes-Makroglou and Associates,
Xanthou str. 2, 10673 Athens, Greece

vs.

BC Zalgiris Kaunas,
K. Donelaicio Street 60, 44248 Kaunas, Lithuania

- Respondent -

Represented by Mr. Jonas Stadalninkas, Director

1. The Parties

1.1 The Claimant

1. Mr. Elias Kantzouris (hereinafter the “Assistant Coach”) is a professional basketball coach of Greek nationality. He is represented by Mr. Pantelis Dedes, attorney-at-law in Athens, Greece.

1.2 The Respondent

2. BC Zalgiris Kaunas (hereinafter the “Club”) is a professional basketball club located in Kaunas, Lithuania. The Club is represented by its Director, Mr. Jonas Stadalninkas.

2. The Arbitrator

3. On 28 December 2011, the President of the Basketball Arbitral Tribunal (hereinafter the “BAT”), Prof. Richard H. McLaren, 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”). None 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. By agreement dated 1 July 2011, the Assistant Coach and the Club entered into an employment agreement (hereinafter the “Coaching Agreement”) for one basketball season. The first sentence of Clause 1 of the Coaching Agreement describes the term of the agreement as follows:

“Employment and Term. Club hereby retains the exclusive services of Assistant Coach and services will commence on the date of signing of this Agreement by both parties (i.e. 1st July 2011) and subject to the terms of this Agreement, will continue for a period of one season till Club’s last official game for the 2011-2012 Lithuanian Basketball season, whichever comes first, subject to other provisions herein contained concerning the early termination of this Agreement (the “Term”).”

5. According to Clause 3 of the Coaching Agreement, the Parties agreed on a net salary for the Assistant Coach of EUR 40,000.00 for the entire term of the Coaching Agreement to be paid in ten equal monthly instalments of EUR 4,000.00 on the 15th day of each month from September 2011 until June 2012. It is undisputed that the Assistant Coach received only one payment from the Club, i.e. an amount of EUR 4,000.00, on 21 September 2011.
6. On 1 August 2011, the Assistant Coach’s agent, Mr. Obrad Fimic, received an email from the Club forwarding an electronic version of the Coaching Agreement. The Assistant Coach submits that he signed the Coaching Agreement only thereafter.
7. In August 2011, the Club forwarded a flight ticket (Athens – Brussels – Vilnius) valid on 15 August 2011 to the Assistant Coach who arrived in Kaunas on that date. The Assistant Coach took up his work for the Club on the next day. The Club’s head coach, Mr. Elias Zouros, who was at the same time the coach of the Greek national basketball team, joined the Club’s team only after the Greek national team’s last game at the European Basketball Championships 2011 in Lithuania which took place on 17 September 2011.
8. On 19 October 2011, the then Club’s Director Mr. Paulius Motiejunas, informed the Assistant Coach that the Club had decided to prematurely terminate the Coaching Agreement. Mr. Motiejunas submitted a document to the Assistant Coach (the “Termination Letter”) which reads as follows:

**“To:
Mr. Ilias Kantzouris**

Assistant Coach of BC Zalgiris

NOTICE

*/Regarding termination of the contract/
Kaunas, 19th October 2011*

In accordance to Clause 7 (Premature Termination by Club) of the Contract made on 1st day of July 2011, please be informed that Vsi KAUNO "ZALGIRO" REMEJAS (hereinafter called the Club) uses the right to terminate the Contract by this written notice. The Contract shall be deemed terminated from 19th October, 2011.

Please note that You, as the Assistant Coach shall not be required to fulfil any obligations under the Contract. Furthermore, it is absolutely understood that You as the Assistant Coach shall have no rights to communicate with any of the players or personnel of BC Zalgiris as well as not to participate in any training session of the team. All the issues regarding compensation will be solved in the way of negotiations.

I would like to thank you for the work you have carried out for Zalgiris basketball team and wish you well in your future career.

Sincerely,

Vsi Kauno "Zalgirio" remejas

Director

Paulius Motiejunas"

9. There is no indication that the Assistant Coach continued providing his services to the Club thereafter. As of the date of this ruling, the Assistant Coach has not entered into any new employment agreement with another club.

3.2 The Proceedings before the BAT

10. By email of 9 November 2011, the BAT Secretariat received the Assistant Coach's Request for Arbitration dated 7 November 2011 indicating that the exhibits would be sent separately by courier.
11. On 10 November 2011, the FIBA headquarters in Geneva, Switzerland received the signed copy of the Request for Arbitration and the corresponding exhibits sent by courier. The non-reimbursable handling fee of EUR 2,000.00 was received in the BAT bank account on 11 November 2011. The BAT Secretariat did not receive the Request for Arbitration until 15 December 2011.

12. By letter of 10 January 2012, the BAT Secretariat confirmed receipt of the Request for Arbitration and the exhibits 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 January 2012. The BAT Secretariat also requested the Parties pay the following amount as an Advance on Costs by no later than 24 January 2012:

<i>“Claimant (Mr. Elias Kantzouris)</i>	<i>EUR 3,000</i>
<i>Respondent (BC Zalgiris Kaunas)</i>	<i>EUR 3,000“</i>

13. By letter of 27 January 2012, the Club requested a 30-day extension because: a) one of its main witnesses had not been available due to a business trip; b) the Club was seeking for a legal counsel in Switzerland; and c) because the parties were negotiating a settlement. By email of 27 January 2012, the BAT Secretariat invited the Assistant Coach to comment on the Club’s request by no later than 30 January 2012.
14. On 28 January 2012, the Assistant Coach submitted a personal statement that the Club had called him two days ago and offered a settlement of the dispute by paying 40% of the amount claimed but that he had rejected such offer and no further settlement talks were pending.
15. By email of 30 January 2012, the Assistant Coach’s counsel denied any negotiations between the Parties. He concluded: *“Consequently we think that no extension is needed at the present.”* By email of 30 January 2012, the Club informed the BAT Secretariat that negotiations were indeed conducted by telephone and forwarded a list of recent phone calls.
16. On 31 January 2012, the BAT Secretariat informed the Parties that the Arbitrator had decided to partially grant Club’s request on an exceptional basis and to extend the time

limit to no later than 8 February 2012 to give the Club the opportunity to talk to its former director Mr. Motiejunas. In addition, the BAT Secretariat confirmed receipt of the Assistant Coach's share of the Advance on Costs and informed the Parties that the Club had failed to pay its share and 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 had been received. Therefore, the Assistant Coach was requested to effect payment of the remaining share of the Advance on Costs in the amount of EUR 3,000.00 by no later than 10 February 2012.

17. On 8 February 2012, the Club submitted its Answer and corresponding exhibits. In its Answer, the Club requested a hearing by video conference.
18. On 5 March 2012, the BAT Secretariat acknowledged receipt of the Club's Answer and of the full amount of the Advance on Costs. In the same letter, the Arbitrator replied to the request in the Club's Answer and informed the Parties that according to Article 13.3 of the BAT Rules, he would conduct a hearing by video conference on the condition that the Club pay an additional Advance on Costs in the amount of EUR 5,000.00; such payment to be made by no later than 15 March 2012. Failing such payment, the Club's request would be deemed withdrawn. In addition, the Arbitrator requested that the Assistant Coach provide further documents and information, *inter alia* regarding any new employment, by no later than 15 March 2012.
19. By letter of 21 March 2012, the BAT Secretariat acknowledged receipt of the Assistant Coach's submissions as requested by the Arbitrator, and noted that the Club had failed to pay an additional Advance on Costs. Consequently, the Club's request for a hearing by video conference was deemed withdrawn. Furthermore, the BAT Secretariat informed the Parties about the Arbitrator's decision to conduct a second round of written submissions instead of holding a hearing. Accordingly the Assistant Coach was invited to reply to the Club's Answer by no later than 2 April 2012.

20. On 29 March 2012, the Assistant Coach's counsel submitted his reply which was then forwarded by the BAT Secretariat to the Club with the opportunity to comment on that reply by no later than 16 April 2012.
21. By email of 2 April 2012, the Assistant Coach submitted some additional information regarding the date on which the Assistant Coach received the Coaching Agreement for signature.
22. By letter of 11 April 2012, the Club asked for a 10-day extension to file its comments, i.e. until 26 April 2012, because it had not yet received a letter which it had requested from the Greek Basketball Federation.
23. On 13 April 2012, the BAT Secretariat informed the Parties that the Arbitrator had rejected the Club's request for a time extension and that the time limit to file any comments on the Assistant Coach's reply would remain 16 April 2012, as there was no reason to ask the Greek Basketball Federation for information related to the Assistant Coach. This was different to the parallel case of the head coach against the Club (BAT 0230/11) because the head coach was also the coach of the Greek national team.
24. By letter of 3 May 2012, the Arbitrator declared the exchange of documents complete and invited the parties to submit a detailed account of their costs until 14 May 2012.
25. By letter of 10 May 2012, the Assistant Coach's counsel submitted an Account of Costs as follows:

<i>"A) Claimant's Expenses for BAT</i>	
<i>Non reimbursable advance on costs</i>	<i>2,000</i>
<i>Advance on costs – Claimant's share</i>	<i>3,000</i>
<i>Advance on costs –Respondent's share</i>	<i>3,000</i>
<i>Total</i>	<i>7,000 €</i>
 <i>B) Legal fees and expenses of the Claimant</i>	
<i>Study of case</i>	<i>2,000</i>

<i>Request of arbitration</i>	3,500
<i>Remarks on the petition for extension</i>	500
<i>Remarks on tel .conférence</i>	500
<i>Remarks on Respondent's Answer</i>	500
<i>Translations, long distance calls, e-mails, photocopies etc</i>	250
<i>Account of costs</i>	500
<i>Total</i>	7,750 €”

26. On 15 May 2012, the BAT Secretariat acknowledged receipt of the account of costs submitted by the Assistant Coach. No account of costs was received from the Club. The Club was invited to submit its comments, if any, on the Assistant Coach's account of costs by no later than 21 May 2012. No comment was filed by the Club.

4. The Positions of the Parties

4.1 The Claimant's Position

27. The Assistant Coach submits the following in substance:

- The Club terminated the Coaching Agreement prematurely and failed to prove the alleged reasons such as “late arrival” and “lack of proper substitution of the Club's head coach during his absence”. Therefore, the Club's termination of the Coaching Agreement was without just cause.
- There was no obligation for the Assistant Coach to perform his services already from 1 July 2011 on: Although the Coaching Agreement was dated 1 July 2011, the Club's training season was scheduled to begin not before the end of August 2011 and there was no reason for the Assistant Coach to arrive at the Club prior to the start of the training. The Coaching Agreement was not sent to the Assistant Coach for signature until 1 August 2011. In addition, the Club sent a flight ticket to the Assistant Coach to arrive in Kaunas only on 15 August 2011.

- The Assistant Coach rendered his services according to the Club's directions. From the day after his arrival until the arrival of the Club's head coach, he supervised practise of Club's players present in Kaunas at that time. On 14 and 15 September 2011, the Assistant Coach coached the Club's team at two preparation games against DYNAMO TRIUMPH and UNICS KAZAN. After the Club's head coach had returned from his assignment with the Greek national team on 19 September 2011, the Assistant Coach continued his assignment as an assistant.
- The Club's Sports Director, Mr Vitoldas Masalskis, is not competent and qualified to criticize the performance of the Assistant Coach, and his witness statement given in this arbitration is "inaccurate and untrue".
- After the early termination of the assignment, the Assistant Coach and his agent, Mr. Obrad Fimic, undertook many efforts to find a new club which remained unsuccessful to date.
- The Assistant Coach received only one (EUR 4,000.00) of the agreed ten instalments for his salary. The payments were to be net of any deductions. The Club therefore owes the Assistant Coach the amount of EUR 36,000.00 net plus interest according to Swiss Law, since 20 October 2011.

4.2 Claimant's Request for Relief

28. In his Request for Arbitration the Assistant Coach requests the following relief:

*"4.1 Hold that the Respondent owes to the Coach the total amount of **thirty six thousand \$ (36,000) Euros net** plus interest from October 20th, 2011 till the final payment..(sic)*

4.2 Hold that the costs of the present arbitration be borne by the Respondent alone.

4.3 *Order the Respondent to reimburse the Claimant the arbitration fee as well as his legal fees and other expenses, to be ascertained."*

4.3 The Respondent's Position

29. The Club submits the following in substance:

- In its Answer, the Club states that the Assistant Coach failed to file his claim within the time limit set by Lithuanian law. Although the Parties agreed the dispute being decided *ex aequo et bono* (Clause 9 of the Coaching Agreement), the imperative norms of domestic law should be respected, taking into account the principles of private international law. The relevant law is the law of Lithuania. Thus, the Coaching Agreement is governed by the Lithuanian Code of Employment which states in its Article 6 para 3 that *"the imperative employment legal norms of the Republic of Lithuania shall be applied despite of the parties' choice of a foreign law"*(sic). In addition, Article 297 para 1 of the Lithuanian Code of Employment provides for a one month time limit for filing any claim related to employment law disputes (*"... he shall have the right to go to law within one month from the date of receipt of the respective direction (document)."*(sic)). The Assistant Coach received the termination notice on 19 October 2011. The time limit therefore expired on 19 November 2011. Given the BAT Secretariat's letter of 10 January 2012 indicates that the Request for Arbitration was received on 15 December 2011, the Request for Arbitration must be dismissed because the Claimant missed the legal time limits.
- The Club submits that it had legitimate reasons for its early termination of the Coaching Agreement according to Clause 7 of the Coaching Agreement, namely: (a) because the Assistant Coach arrived late; and (b) because he failed to ensure an adequate coaching of the Club's team during the absence of the Club's head coach.

- Given that the early termination of the Coaching Agreement was justified, the Club has no further obligation to provide any compensation to the Assistant Coach.
- In case the Arbitrator would hold that the Club's termination was without just cause, the amount for compensation as requested by the Assistant Coach was too high for the following reasons: (1) The Assistant Coach cannot claim remuneration for the period from 1 July to 15 August 2012 when he was not providing his services to the Club. The amount of EUR 6,000.00 must be deducted from the Assistant Coach's claims; (2) the Assistant Coach's behaviour "increasingly burdened" the Parties' relationship and led the Club no alternative but to terminate the Coaching Agreement; and (3) to the Club's knowledge, the Assistant Coach received remuneration from the Greek Basketball Federation after the termination of the Coaching Agreement which has to be deducted as well as any further remunerations received from any third party.
- The Assistant Coach has an obligation to mitigate his damage. However, he has not provided any evidence for the amounts earned after the termination.

4.4 The Respondent's Request for Relief

30. In its Answer, the Club requested the following relief:

"6.1 In the light of the arguments made in this Answer, the Respondent respectfully requests that the Claimant's claim be dismissed.

6.2 Should the Arbitrator hold that the termination of the Agreement was without the just cause (although it is not the case), the Respondent respectfully submits that the amount of compensation be reduced for the reasons set forth under section 5.3 of this Answer."

5. The Jurisdiction of the BAT

31. 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).
32. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
33. 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.
34. The jurisdiction of the BAT over the dispute results from the arbitration clause contained in Clause 9 of the Coaching Agreement, which read as follows:

“Governing Law. 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 appointed 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 parties’ domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono”.

35. The Coaching Agreement is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA. The Arbitrator also considers that there is no other indication in the file which 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 9 of the Coaching Agreement covers the present dispute.

36. The Club has not objected to the BAT jurisdiction but rather agreed to it by submitting in para 2.1 of the Answer as follows: *“The Respondent does not dispute the jurisdiction of BAT in respect of the present matter.”*

37. For the above reasons, the Arbitrator finds that he has jurisdiction to adjudicate the Assistant Coach’s claims.

6. Other Procedural Issues

6.1 Admissibility of the Claimant’s Request for Arbitration

38. The Club submits that the Assistant Coach failed to file his claim within a one-month time limit according to Lithuanian employment law. The Club argues that, although the Parties agreed that the dispute should be decided *ex aequo et bono* (Clause 9 of the Coaching Agreement), the imperative norms of domestic law must be respected, taking into account the principles of private international law. In particular, the Club refers to Article 6 para 3 of the Lithuanian Code of Employment (*“the imperative employment legal norms of the Republic of Lithuania shall be applied despite of the parties’ choice of a foreign law”*) and Article 297 para 1 of the Lithuanian Code of Employment which provides for a one-month time limit for filing any claim related to employment law disputes (*“... he shall have the right to go to law within one month from the date of receipt of the respective direction (document).”*).

39. The Club bases its argument on the BAT Secretariat’s letter of 10 January 2012, that the Request for Arbitration was received by the BAT Secretariat on 15 December 2011. The Club submits that the Assistant Coach received the termination notice on 19 October 2011 and therefore the legal time limit expired on 19 November 2011. The Assistant Coach has therefore not respected the time limit according to Lithuanian law.

40. The Request for Arbitration was filed as follows: By email of 9 November 2011, the BAT Secretariat received a Request for Arbitration without exhibits dated 7 November 2011. The Assistant Coach's counsel also informed the BAT Secretariat that the exhibits would be sent separately by courier. Only one day later, on 10 November 2011, the FIBA headquarters in Geneva, Switzerland received the signed copy of the Request for Arbitration and the corresponding exhibits sent by courier which is confirmed by the shipping documents and FIBA's documentation. The BAT Secretariat received the exhibits only on 15 December 2011 which is the reason why it mentioned that date in its letter of 10 January 2012.
41. According to Article 6.1 of the BAT Rules, "Requests for Arbitration shall be filed by e-mail to the BAT Secretariat (see www.fiba.com) or with Fédération Internationale de Basketball, 51-53, Avenue Louis Casaï, 1216 Cointrin/Geneva, Switzerland, Telephone: +41 (22) 545 0000, Telefax: +41 (22) 545 0099". Accordingly, anyone who wants to initiate BAT arbitration can file the Request for Arbitration either with the BAT Secretariat or with the FIBA headquarters in Geneva, Switzerland. The Arbitrator finds therefore that the Request for Arbitration was validly filed on 10 November 2012 when FIBA received the signed copy of the Request for Arbitration together with exhibits.
42. Since the Assistant Coach's Request for Arbitration was filed within one month from the termination notice of 19 October 2011, the Request for Arbitration is admissible. The Arbitrator, therefore, is not required to decide whether the rules of Lithuanian law were violated.

6.2 Claimants' Request for Relief

43. The Arbitrator notes that the Claimant has requested to "4.1 *Hold* that the Respondent owes to the Coach the total amount of" EUR 36,000.00 and to "4.2 *Hold* that the costs of the present arbitration be borne by the Respondent alone" whereas he also requested to "4.3 *Order* the Respondent to reimburse the Claimant the arbitration fee

as well as his legal fees and other expenses, to be ascertained” (italic characters added). Requests 4.1 and 4.2 might be understood as requests for declaratory judgments and not as requests for specific performance.

44. The written submissions of the Claimants do not contain any indication that the Claimants sought declaratory relief. In particular, the Claimants do not explain why they chose a different wording for requests 4.1 and 4.2 compared to 4.3. The reasons of Appellants’ submissions are clearly aimed at the payment of the due amounts by Respondent and not at the declaration that these sums are due. Also the Respondent does not address this point.
45. The Arbitrator finds therefore that it was the Claimants’ intention to obtain a directly enforceable judgment and that the ambiguous wording of requests 4.1 and 4.2 as provided by a lawyer who is not a native English speaker does not lead to a different interpretation.

7. Applicable Law – *ex aequo et bono*

46. 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”.

47. 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.”

48. In the arbitration agreement in Clause 9 of the Coaching Agreement, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to any other law. However, in its Answer the Club refers to Article 6 para 3 and Article 297 para 1 of the Lithuanian Code of Employment and argues that, although the Parties agreed on deciding the dispute *ex aequo et bono*, the imperative norms of domestic law should be regarded in deciding the case, taking into account the principles of private international law.
49. The Arbitrator finds that the Club’s reference to the Lithuanian Code of Employment was made only in connection with the one-month time limit for filing a claim related to employment law disputes and that the Parties agreed – without any reference to any other law – all other issues should be decided *ex aequo et bono*. Consequently, the Arbitrator will decide the issues submitted to him *ex aequo et bono*.
50. 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 1969¹ (Concordat),² under which Swiss courts have held that “arbitrage en *équité*” is fundamentally different from “arbitrage 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.”³

¹ 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).

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

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

51. 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”.⁴

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

8. Findings

53. The Assistant Coach requests: (a) outstanding salary in the amount of EUR 4,000.00; (b) compensation equal to the total amount of the salary instalments until the end of the Coaching Agreement (EUR 32,000.00); and (c) interest according to Swiss law on the aforementioned amounts from 20 October 2011 on.

8.1 Is the Assistant Coach entitled to outstanding salary in the amount of EUR 4,000.00?

54. The Assistant Coach claims the amount of EUR 4,000.00 as the outstanding salary instalment which became due on 15 October 2011.

55. According to the Coaching Agreement, the Assistant Coach was entitled to salaries for the season 2011-2012 in the total amount of EUR 40,000.00. Such sum had to be paid in ten equal instalments of EUR 4,000.00, each due on the 15th day of every month between September 2011 and June 2012 (Clause 3, A, (1), a) of the Coaching Agreement). It is undisputed that the Assistant Coach received only one payment from the Club, i.e. the amount of EUR 4,000.00 on 21 September 2011.

⁴ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

56. It is also undisputed that

- the Coach arrived at the Club on 15 August 2011, and that he then began working with the team by training the Club's players and coaching the team at two friendly games; and
- the Club terminated the Coaching Agreement with immediate effect on 19 October 2011.

57. On the termination date, the first instalment of the Assistant Coach's salary in the amount of EUR 4,000.00 was already paid, and one further instalment of the same amount was due, but not yet paid. The Club does not expressly justify the non-payment of the second instalment but complains about the Coach's late arrival.

58. The Arbitrator finds that although the Coaching Agreement mentions 1 July 2011 as the starting date, there is no evidence that this was also meant to be the first working day of the Assistant Coach. The fact that the first salary payment was not due until 15 September 2011, and further that the flight ticket sent by the Club to the Assistant Coach was scheduled on 15 August 2011, indicate that the Parties understood that the Assistant Coach would take up his employment not before 15 August 2011. On the other hand, there is no convincing evidence that the Club's team gathered already in July 2011 and was left unattended for more than a month. If this would have been the case, the Arbitrator would expect that the Club would have summoned the Assistant Coach with immediate effect. However, there is no evidence on record that the Club called the Assistant Coach or that any other efforts were made to stop the allegedly unlawful situation.

59. The Arbitrator finds therefore, that the second instalment of EUR 4,000.00 was due when the Coaching Agreement was terminated and must therefore be paid to the Assistant Coach.

8.2 Is the Assistant Coach entitled to compensation equal to the total amount of the salary instalments until the end of the Coaching Agreement (EUR 32,000.00)?

60. Additionally, the Assistant Coach claims compensation equal to the total amount of the salary instalments due after the Club's termination of 19 October 2011 until the end of the Coaching Agreement. Considering the already discussed amount of EUR 4,000.00 due on 15 October 2011, the remaining amount accounts to EUR 32,000.00.
61. The Club denies the Assistant Coach's claim for additional compensation because the early termination of the Coaching Agreement was justified, which means that from the termination date, the Assistant Coach was no longer entitled to any compensation (Article 7.C of the Coaching Agreement). The Club advances the following reasons for the early termination: (a) the Assistant Coach's late arrival at the Club; (b) lack of skills and efforts, especially when taking the personal qualities of the players into consideration; and (c) failure to follow the Club's instructions.
62. The Arbitrator has already found above (para. 58) that the Assistant Coach did not violate the Coaching Agreement when he arrived on 15 August 2011 instead of 1 July 2011 as now brought forward by the Club. This allegation therefore, cannot serve as a ground justifying the early termination.
63. The Club does not substantiate its allegation that the Assistant Coach lacked any skills and effort when coaching the team. Nor does it give any details, let alone any evidence, to support its allegation that the Assistant Coach disregarded any instructions from the management of the Club. Furthermore, the Club does not specify which contractual duties listed in the Coaching Agreement, were violated by the Assistant Coach.
64. Whether or not the Assistant Coach was skilled enough, cannot be an issue here for two reasons, 1) it is up to the employer to examine the competencies of an employee

before signing an employment agreement and 2) it is also the Club's obligation to step in and take action when it became aware that the coaching was substandard.

65. The Arbitrator finds therefore that the Club did not have sufficient grounds to terminate the Coaching Agreement on 19 October 2011. According to Clause 7 C of the Coaching Agreement, it is therefore obliged to compensate the Assistant Coach for the damage suffered because of the early termination.

8.3 Quantum of the compensation

66. The salary of the Assistant Coach for the remaining duration of the Coaching Agreement amounts to EUR 32,000.00 net. The Club finds that if the early termination of the Coaching Agreement would be considered unjustified, the compensation should be reduced because of several reasons:

- The Assistant Coach is not entitled to any salaries for the first six weeks when he was not yet with the Club.
- When calculating the compensation, the fault of the Assistant Coach which led the Club to terminate the employment must be taken into consideration, even if the Assistant Coach's behavior did not meet the threshold which would allow the Club to unilaterally terminate the Coaching Agreement;
- The compensation that the Assistant Coach obtained from the Greek Basketball Federation or failed to obtain from other sources must be deducted.

67. The Arbitrator finds that none of the above reasons requires a reduction of the claimed compensation. As to (a): The Parties agreed to an annual salary of EUR 40,000.00 to be paid in 10 instalments. The first instalment became due one month after the Assistant's Coach's arrival at the Club. The Assistant Coach did not receive any

compensation for the time between 1 July 2011 and 15 August 2011 when he was not yet with the Club. As to (b): the Arbitrator accepts that in principle, the Assistant Coach's fault in contributing to the worsening of the relationship with the Club and leading to the termination of the employment might be taken into consideration when calculating the compensation, however, when it comes to the calculation of the compensation, the Club must prove the fault of the Assistant Coach. As already stated above (para. 63), the allegations of the Club have not been substantiated and proven to the necessary standard and may neither justify the early termination of the employment nor lead to a reduction of the compensation. As to (c): There is no evidence on record that the Assistant Coach held any position with the Greek Basketball Federation or received any compensation from it. Furthermore, the Club has not given any indication that the Assistant Coach found new employment. The Arbitrator finds the Assistant Coach's explanation credible that he made reasonable attempts to find a new employment after his dismissal because he had no incentive to prolong his unemployment, and it is notoriously difficult for a (assistant) coach to find a coaching position during an ongoing basketball season. The Arbitrator has expressly requested the Assistant Coach to submit any new employment contract for the remaining term of the Coaching Agreement and has also searched the relevant basketball websites but not found any such information.

68. Thus, the Assistant Coach is entitled to a compensation which corresponds to the full remaining salary until the end of the contractual term, i.e. EUR 32,000.00.

8.4 Is the Assistant Coach entitled to interest?

69. Finally, the Assistant Coach requests interest on the amount of EUR 36,000.00 *"[a]s will be determined by the Arbitrator and according to Swiss Law"* from 20 October 2011.

70. According to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest⁵. Although the Coaching Agreement does not provide for the payment of default interest, this is a generally accepted principle which is embodied in most legal systems.
71. Regarding the interest rate, the Assistant Coach refers to Swiss Law as national law which contradicts the Parties' agreement in the arbitration clause that the Arbitrator should decide the dispute *ex aequo et bono*. Still and in line with BAT jurisprudence the Arbitrator considers interest in the rate of 5% p.a. to be fair and equitable in the present case without any reference to national law.
72. Regarding the commencement date, the Assistant Coach requests interest on the entire amount requested from 20 October 2011. The Coaching Agreement was terminated by the Club on 19 October 2011 without just cause and following Clause 7, C, first sentence of the Coaching Agreement the Club's liability of such termination shall be "*all remaining installments(sic) until the end of the agreement term*". The Arbitrator interprets this in the way that all remaining salary instalments until the end of the Coaching Agreement's term became due on the day of receipt of the termination note, i.e. 19 October 2011. Therefore, the commencement date for the interest is 20 October 2011 as requested by the Assistant Coach.
73. Thus, the Assistant Coach is entitled to interest in the rate of 5% on the amount of EUR 36,000.00 from 20 October 2011.

⁵ See, *ex multis*, the following BAT awards: 0092/10, *Ronci, Coelho vs. WBC Mizo Pecs 2010*; 0069/09, *Ivezic, Draskicevic vs. Basketball Club Pecs Noi Kosariabda Kft*; 0056/09, *Branzova vs. Basketball Club Nadezhda*

9. Costs

74. 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.
75. On 5 July 2012 - 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 6,000.00 .
76. Considering the circumstances of the present case, the Arbitrator finds it fair that the fees and costs of the arbitration shall be borne by the Club alone. Given that the Assistant Coach paid the total advance on costs of EUR 6,000.00, in application of Article 17.3 of the BAT Rules the Arbitrator decides that the Club shall pay EUR 6,000.00 to the Assistant Coach.
77. Furthermore, the Arbitrator considers it adequate that the Assistant Coach is entitled to 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 takes note of the Account of Costs submitted by the Assistant Coach stating further legal costs of EUR 7,750.00 when assessing the expenses incurred by the Assistant Coach in connection with these proceedings. After having reviewed and assessed all the circumstances of the case at hand, especially



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the amount in dispute, the Arbitrator awards the Assistant Coach a reduced contribution towards his legal costs in the amount of EUR 7,500.00 in total.

10. AWARD

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

- 1. BC Zalgiris Kaunas is ordered to pay to Mr. Elias Kantzouris the amount of EUR 36,000.00 net plus interest of 5% p.a. on this amount since 20 October 2011.**
- 2. BC Zalgiris Kaunas is ordered to pay to Mr. Elias Kantzouris the amount of EUR 6,000.00 as a reimbursement of his advance on arbitration costs.**
- 3. BC Zalgiris Kaunas is ordered to pay to Mr. Elias Kantzouris the amount of EUR 7,500.00 as a contribution towards his legal fees and expenses.**
- 4. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 9 July 2012

Stephan Netzle
(Arbitrator)