

ARBITRAL AWARD

(BAT 0237/11)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Nikola Ivanovic,

- Claimant 1 -

GPK Sports Management Limited,

- Claimant 2 -

Both represented by Mr. Andreas Charalambous, Chrysses Demetriades & Co LLC,
13 Karaiskakis Street, Office 228, 2nd Floor, 3601 Limassol, Cyprus

vs.

Kolossos Rhodes Basketball Club,
1 Plateia Vrouchou, 85 100, Rhodes Island, Greece

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. Nikola Ivanovic (hereinafter the “Player”) is a professional basketball player of Montenegrin nationality. He is represented by Mr. Andreas Charalambous, attorney-at-law in Limassol, Cyprus.
2. GPK Sports Management Limited (hereinafter the “Agency”) is an Agency representing professional basketball players. It is located in Limassol, Cyprus. It is also represented by Mr. Andreas Charalambous.

1.2 The Respondent

3. Kolossos Rhodes Basketball Club (hereinafter the “Club”) is a professional basketball club located in Rhodes, Greece. The Club is not represented in the present arbitration.

2. The Arbitrator

4. On 29 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

5. On 13 July 2010, the Club and the Player entered into an employment agreement (hereinafter the “Player Contract”) for the basketball seasons 2010-2011, 2011-2012 and 2012-2013. The Player Contract was identified in Article 8 as a “fully guaranteed Contract” by which the parties agreed on a net salary for the Player of EUR 16,000.00 in ten equal payments of EUR 1,600.00 for the season 2010-2011, the amount of EUR 20,000.00 in ten equal payments of EUR 2,000.00 for the season 2011-2012, and the amount of EUR 40,000.00 in ten equal payments of EUR 4,000.00 for the season 2012-2013. In addition, the Player Contract provided for the payment of bonuses to the Player and annual agent fees for the Agency (hereinafter the “Agent Fee” or “Agent Fees”).
6. According to the Claimants, the Club failed to pay the Player’s salaries and the Agent Fee for the 2010-2011 season in the total amount of EUR 7,000.00. By letter dated 27 August 2011, the Claimants terminated the Player Contract with immediate effect and asked for the issuance of the FIBA Letter of Clearance (hereinafter the “Termination Letter”). There is no response of the Club on record.
7. By letter dated 29 September 2011, the Parties’ counsel requested from the Club the payment of the outstanding amount of EUR 7,000.00 within 15 days. There is no response of the Club to this letter on record either.
8. On 29 August 2011, the Player signed a new employment agreement for the season 2011-2012 with KK Mornar Bar Basketball Club in Montenegro. Regarding the Player’s salary, this new employment agreement provides in its Article 3 as follows:

“For the Season 2011-2012, the amount of €12,000 (Euros Twelve Thousand) NET, in ten equal payments of €1,500 (Euros One Thousand Five Hundred) NET of all social

insurance and/or taxes at the end of every month starting from September 1st 2011 until April 1st 2012.” (sic)

3.2 The Proceedings before the BAT

9. On 8 December 2011, the BAT Secretariat received the Player’s Request for Arbitration. No second claimant was named.
10. On 20 December 2011, the BAT Secretariat received an “Updated Request for Arbitration” in which both the Player and the Agency were named as Claimants. The non-reimbursable handling fee of EUR 1,980.00 was received in the BAT bank account on 24 November 2011.
11. By letter of 12 January 2012, 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 2 February 2012. The BAT Secretariat also requested the Parties to pay the following amount as an Advance on Costs by no later than 26 January 2012:

<i>“Claimant 1 (Mr. Nikola Ivanovic)</i>	<i>EUR 3,500</i>
<i>Claimant 2 (GPK Sports Management Ltd)</i>	<i>EUR 500</i>
<i>Respondent (Kolossos Rhodes BC)</i>	<i>EUR 4,000”</i>

12. By letter of 3 February 2012, the BAT Secretariat acknowledged receipt of the Player’s and the Agency’s shares of the Advance on Costs, and noted that in accordance with Article 9.3 of the BAT Rules, the arbitration would not proceed until the full amount of the Advance on Costs was received. Therefore, the Claimants were requested to effect payment of the remaining share of the Advance on Costs in the amount of EUR 4,000.00 by no later than 15 February 2012.

13. By e-mail of 14 February 2012, the Claimants' counsel asked the BAT Secretariat whether it was possible to amend the claim at this stage by adding a further claim for agent fees and how this could be accomplished.
14. By letter of 1 March 2012, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs. In the same letter, the Arbitrator replied to the Claimants' request of 14 February 2012 and informed the Claimants that an amendment of the Request for Arbitration would be accepted as long as the claim was still subject to the same arbitration agreement. The Arbitrator also indicated that an amendment of the claim might result in the non-reimbursable handling fee and/or the Advance on Costs being readjusted at a higher amount, and that an amendment of the claim would in any event delay the arbitration proceedings because the Respondent would have to be given the chance to comment on the amendment.
15. Furthermore, the Arbitrator requested the Claimants reply to the following requests by no later than 8 March 2012:

"1) The Claimants are requested to submit any amended request for relief together with the corresponding grounds and evidence. Failing to provide the BAT with such submissions by the time limit set above, the Arbitrator will consider the "Updated Request for Arbitration" dated 21 November 2011 as the Claimants' final request in this arbitration.

2) The Claimants are requested to clarify the following contradiction between paragraph 1 (Facts and Legal Arguments) and paragraph 2 (Request for Relief) of the Claimants' "Updated Request for Arbitration" dated 21 November 2011:

The Arbitrator notes that the Claimants state in paragraph 1 that "the Respondent failed to pay to the Claimant the amount of EUR 7,000". However, directly thereafter the Claimants list three allegedly outstanding payments in the total amount of EUR 9,400 of which the third one is the amount of EUR 2,400 for "bonuses for the season 2011-2012". Moreover, in paragraph 2 the First Claimant requests payment of EUR 37,800.

3) Claimant 1 is requested to inform the BAT whether he has been and/or is under a new contract. If so, Claimant 1 is requested to provide a signed copy of such contract(s).

If not, Claimant 1 is requested to provide evidence of the steps taken in order to find new employment."

16. On 8 March 2012, the Claimants submitted a "2nd" updated Request for Arbitration" together with 5 attachments, including an agreement with the Player's new club KK Mornar Bar BC for the 2011-2012 season.
17. By e-mail dated 14 March 2012, the BAT Secretariat forwarded the 2nd updated Request for Arbitration to the Club and invited it to comment on it by no later than 26 March 2012. No comments were filed by the Club.
18. By letter of 3 April 2012, the Arbitrator declared the exchange of documents complete and invited the parties to submit a detailed account of their costs on or before 13 April 2012.
19. On 12 April 2012, the Claimant's counsel submitted an Account of Costs as follows:

PROCEEDING COSTS

<i>PAID BY</i>	<i>DESCRIPTION</i>	<i>AMOUNT</i>
<i>Claimant 1</i>	<i>cost of the arbitration / handling fee (Attachment 5)</i>	<i>€2.000</i>
<i>Claimant 1</i>	<i>advance on costs (Attachment 5)</i>	<i>€3.500</i>
<i>Claimant 1</i>	<i>respondents' share of costs (Attachment 5)</i>	<i>€4.000</i>
<i>Claimants 2</i>	<i>advance on costs (Attachment 5)</i>	<i>€500</i>
<i>Claimants 2</i>	<i>bank transfer fees</i>	<i>€100</i>
<i>Claimants 2</i>	<i>postal and telephone charges</i>	<i>€250</i>
TOTAL		€10.350

LEGAL FEES

<i>DESCRIPTION</i>	<i>AMOUNT</i>
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<i>Meeting and discussions with clients and review of documents</i>	€ 1.500
<i>Preparation and submission of Request for Arbitration</i>	€ 3.500
<i>Communications with BAT and review of BAT's Directions</i>	€ 500
<i>Plus 17% V.A.T.</i>	€ 935
TOTAL	€ 6.435

20. On 16 April 2012, the BAT Secretariat forwarded the Claimants' account of costs to the Club and invited it to comment on it by no later than 20 April 2012. No comments were filed by the Club.

4. The Positions of the Parties

4.1 The Claimants' Position

21. The Player and the Agency submit the following in substance:
- The Player received only a part of his salary for the 2010-2011 season. However, a salary amount of EUR 5,400.00, the Agent Fee of EUR 1,600.00 and the bonus of EUR 1,600.00 because the Club finished in the top 6 of the Greek Championship remained unpaid.
 - Since the above payments were not made within 30 days of their due dates, the Player was entitled to terminate the Player Contract with immediate effect. That is what he did with the Termination Letter.
 - Despite the termination of the Player Contract, the Club remained fully liable for the payment of the contractually agreed salaries for the seasons 2011-2012 and 2012-2013. Since the Player signed a new contract with KK Mornar BC on

29 August 2011, the salaries which he earned (EUR 12,000.00) must be deducted.

- Finally, the Agency did not receive the Agent Fees for the three seasons covered by the Player Contract which amount to EUR 7,600.00.

4.2 Claimants' Request for Relief

22. In their 2nd updated Request for Arbitration the Claimants requested the following relief:

"€53,400 unpaid salaries of Nikola Ivanovic (Claimant 1)

€ 1,600 bonus of Nikola Ivanovic (Claimant 1) for 2010-2011

€ 7,600 agent fees of GPK Sports Management Limited (Claimant 2)

€2,000 cost of the arbitration

€3.500 advance on costs of Claimant 1

€4.000 Respondents' share of costs

€500 advance on costs of Claimants 2

€ 100 bank transfer fees

Interest, legal fees and other costs"

4.3 The Respondent's Position and Request for Relief

23. Despite several invitations by the BAT, the Club neither engaged in the arbitration proceedings at hand, nor did it make any submissions within the time limits set by the Arbitrator in accordance with the BAT Rules.

5. The Jurisdiction of the BAT

24. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Club did not participate in the arbitration, he will examine his jurisdiction *ex officio*, on the basis of the record as it stands.
25. 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).
26. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
27. 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.
28. The jurisdiction of the BAT over the dispute results from the arbitration clause contained in Article 9 of the Player Contract, which reads as follows:

“Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be re-solved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT President. The seat of arbitration shall be Geneva, Switzerland.

The arbitration shall be governed by chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of parties’ domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.

In case of a dispute, the Club is responsible to cover financially all the lawyers or FAT expenses/fees”

29. In accordance with Article 1.1 of the BAT Rules, these rules “*shall apply whenever the parties to a dispute have agreed in writing to submit the same to the BAT – including by reference to its former name “FIBA Arbitral Tribunal (FAT)”* (emphasis in the original). Article 18.2 of the BAT Rules says: “*Any reference to BAT’s former name “FIBA Arbitral*

Tribunal (FAT)” shall be understood as referring to the BAT.” The Parties’ reference to the “FIBA Arbitral Tribunal (FAT)” in Clause 4 of the Player Contract as well as the Addendum is therefore understood as a reference to the BAT.

30. The Player Contract is in written form and thus the arbitration agreements fulfil the formal requirements of Article 178(1) PILA.
31. The Player Contract was also signed by a representative of the Agency. The Arbitrator finds therefore that the arbitration clause in Article 9 of the Player Contract applies also to claims between the Agency and the Club to the extent they relate to the Player Contract.
32. 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 Article 9 of the Player Contract covers the present dispute.
33. The Arbitrator finds therefore that the arbitration agreement in the Player Contract applies also to disputes between the Club and the Agent insofar as such disputes relate to the payment of the Agent Fee.
34. For the above reasons, the Arbitrator finds that he has jurisdiction to adjudicate the Claimants’ claims.

6. Other Procedural Issues

6.1 Amendments of the Request for Arbitration

35. On 8 December 2011, the BAT Secretariat received the Player’s first Request for Arbitration. In an “Updated Request for Arbitration” which was submitted on 20

December 2011, the Agency joined the Player as Second Claimant. The claimed amounts remained unchanged. Upon Claimants' request of 14 February 2012, the Arbitrator accepted on 1 March 2012, that the Claimants would submit a further amendment of their Requests for Arbitration. On 8 March 2012, the Claimants filed a "2nd Updated Request for Arbitration" with a substantially higher claim.

36. The Arbitrator reiterates what he already stated in his Order of Procedure of 1 March 2012 namely that it is permissible for a claimant in an arbitration proceeding under the BAT Rules to amend the initial Request for Arbitration as long as the amendment is still covered by the arbitration agreement and the respondent's rights to comment on the amended Request for Arbitration are not compromised.
37. In the present case, the inclusion of the Agency as a second claimant and the increase of the requested amount is based on the same Player Contract and covered by the same arbitration agreement on which the initial Request for Arbitration was founded. The Club was given an additional time limit to comment on the amended Request for Arbitration. The Arbitrator therefore finds it unproblematic to proceed on the basis of the "2nd Updated Request for Arbitration".

6.2 Respondent's failure to submit an Answer

38. Article 14.2 of the BAT Rules, which the Parties have declared to be applicable in the arbitration agreements, specifies that "*the Arbitrator may nevertheless proceed with the arbitration and deliver an award*" if "*the Respondent fails to submit an Answer.*" The Arbitrator's authority to proceed with the arbitration in case of default by one of the parties is in accordance with Swiss arbitration law and the practice of the BAT¹.

¹ See *ex multis* BAT cases 0001/07, *Ostojic and Raznatovic vs. PAOK KAE*; 0018/08, *Nicevic vs. Beşiktaş*; 0093/09, *A.S.D. Pallacanestro Femminile Schio vs. Braxton*; 0170/11, *Haritopoulos and Kallergis vs. Panionios BC K.A.E. and Gallis*.

However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.

39. This requirement is met in the current case. The Club was informed of the initiation of the proceedings and of the appointment of the Arbitrator according to the relevant rules. It was also given opportunity to respond to Claimants' Request for Arbitration, the 2nd Updated Request for Arbitration and to Claimants' account on costs. Still, the Club has chosen not to respond within the time limits set by the Arbitrator according to the BAT Rules.

7. Applicable Law – *ex aequo et bono*

40. 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".

41. 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."

42. In the arbitration agreement in Article 9 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*.

43. The concept of “*équité*” (or *ex aequo et bono*) used in Article 187(2) PILA has been 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.*”

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

8. Findings

45. The Claimants request (a) outstanding salaries for the season 2010-2011; (b) unpaid salaries for the remaining term of the Player Contract; (c) bonus concerning the season 2010-2011; (d) Agent Fees; and (e) interest on the aforementioned amounts.

8.1 Is the Player entitled to outstanding salaries for the 2009-2010 season in the amount of EUR 5,400.00?

46. According to the Player Contract, the Player was entitled to salaries for the season 2010-2011 in the total amount of EUR 16,000.00. He alleges that the amount of EUR 5,400.00 is still outstanding. The same outstanding amount was already mentioned in the correspondence between the Agency and the Club and the Claimants’ counsel and the Club. There is no document on record which would indicate that the Club ever disputed the quantum of the claimed salary for the season 2010-2011. The Arbitrator finds therefore that the Claimant is entitled to the outstanding salary for the season 2010-2011 in the amount of EUR 5,400.00.

8.2 Is the Player entitled to a bonus in the amount of EUR 1,600.00?

47. The Player claims the unpaid bonuses for the season 2010-2011 in the amount of EUR 1,600.00. Article 3 of the Player Contract provides for a “net bonus” of EUR 1,600.00 “*for finish at or above the 6th place in Greek Championship.*”

48. Despite the Claimants allegation, as a matter of fact, the Club's team was ranked 8th at the end of the 2010-2011 Greek Championship². Correspondingly, the requirements for the payment of a bonus for the season 2010-2011 are not met. The Arbitrator therefore finds that the Player is not entitled to the bonus in the amount of EUR 1,600.00.

8.3 Is the Player entitled to unpaid salaries for the seasons 2011-2012 and 2012-2013?

49. According to the Player Contract, the Player was entitled to salaries for the season 2011-2012 in the amount of EUR 20,000.00 and for the season 2012-2013 in the amount of EUR 40,000.00. He terminated the Player Contract before the beginning of the season 2011-2012 and contracted with KK Mornar Bar BC with which he agreed on a salary for the season 2011-2012 in the amount of EUR 12,000.00. The Player concedes that this amount shall be deducted from his claim for the payment of unpaid salaries for the season 2011-2012.

50. Article 10 of the Player Contract entitles the Player to terminate the Player Contract if the Club fails to make the agreed payments within 30 days of the due dates. This article reads as follows:

"Article 10, Breach and Remedies: - *If the Club does not make any scheduled payment to the Player and/or Agent on the date mentioned under this contract, within twenty (20) days, Player will not be required to practice or play basketball for the team until the payment is received, but the obligations of the Club shall continue. In addition, if any scheduled payment is not received by the Player within 30 days of the due date, the Player's performance obligations shall cease. Player shall be free to leave club within his FIBA letter of Clearance to play basketball anywhere in the world Player chooses and also the duties and liabilities of Club under this Agreement shall continue in full force and effect. The contracting parties agree that this solution is EX AEQUO ET BONO."*

² See the standings on the official website of the Greek Basketball League (www.esake.gr) and on the website "Eurobasket.com" (www.eurobasket.com/Greece/basketball-A1-League_2010-2011.asp).

51. The warning letters of the Claimants' counsel indicate that the requirement for an early termination of the Player Contract was met. According to the third sentence of Article 10, the Club's "*duties and liabilities under this Agreement*" shall continue also after the termination of the Player's Contract. This means that the Parties agreed that the Club remained liable for the contractual payments also after the termination of the Player Contract.
52. However, when examining the Player Contract, the Arbitrator came across Articles 5 and 6 of the Player Contract which provide for "buy out"-options allowing each, the Player and the Club to terminate the Player Contract unilaterally before the season 2012-2013 and which might apply to the early termination of the Player Contract in the present case. These articles read as follows:
- "Article 5 Termination by the Player - The Player has the option to buy out the season 2012-2013 by informing the club in writing and paying to the Club for the season 2012-2013 the amount of € 20'000 (twenty Thousand Euros) by July 10, 2012. In case the Player fails to inform and/or pay the Club on the mention dates then the contract will be in fully force.*
- Article 6 Termination by the Club - The Club has the option to buy out the season 2012-2013 by informing the Player in writing or paying to the Player for the season 2012 - 2013 the amount of € 5'000 (Five Thousand Euros) by June 30, 2012. In case the Club fails to inform and/or pay the Player on the mention dates then the contract will be in fully force."*
53. Since the Player Contract was terminated by the Player and not the Club, the Arbitrator excludes the direct or analogous application of Article 6. The Arbitrator also finds that the Club cannot exercise its buy-out option as long as it is in default.
54. The question remains however, whether the Termination Letter must be understood as the Player's exercise of his buy-out option in Article 5 of the Player Contract, in which case the Club would no longer be bound to pay the Player's salary and the Player would have to pay the buy-out price of EUR 20,000.00.

55. The Arbitrator rejects this interpretation of the termination letter because Article 5 addresses a different situation: Article 5 gives the Player the right to leave the Club against payment of EUR 20,000.00 *despite* the fact that the Club complied with its contractual obligations. Only then, the payment of forfeit money is justified. It would be odd if the Player had to accept the Club's default and could terminate the unsatisfactory relationship only against payment of the considerable buy-out price. This situation is better addressed by Article 10 of the Player Contract which grants the Player a right to terminate the Player Contract if the Club is in default, and maintains the Club's obligations as agreed in the Player Contract.
56. The Arbitrator must therefore calculate the compensation which is due by the Club for the period between the actual termination date and the agreed term of the Player Contract. According to Article 10 of the Player Contract, the contractually agreed salaries are due also after the Player's lawful termination of the Player Contract. According to generally accepted principles of the law of damages and also of labor law, any amounts which the Player earned or might earn by exercising reasonable care during the remaining term of the Player Contract must be deducted. Obviously, this was also the Player's understanding when he deducted his salary for the 2011-2012 season from his compensation claim without further ado although Article 10 does not explicitly mention such an obligation but states "*that this solution is EX AEQUO ET BONO*" (sic).
57. With regard to the season 2011-2012 there are no indications that the Player earns or could earn more than the amount of EUR 12,000.00 as agreed with his new club. The Arbitrator therefore finds that the Player is entitled to compensation equal to the difference between the 2011-2012 salary agreed in the Player Contract (EUR 20,000.00) and the salary actually earned in the same season (EUR 12,000.00), which amounts to EUR 8,000.00.

58. The Player has not yet signed a contract for the season 2012-2013 and it is unknown today what he will earn in the future and what must be deducted from his compensation as alternative income. The Arbitrator assumes that the Player will be successful in finding an employment for the season 2012-2013 with a salary equal to the one he is earning now, namely EUR 12,000.00. The Arbitrator has noted the obvious discrepancy between the total salary amount of EUR 12,000.00 and the sum of the “ten equal payments of €1,500” which would amount to EUR 15,000.00. However, since the first figure indicates the total salary due and the second only relates to the payment mode, the Arbitrator bases his further considerations on the total salary amount of EUR 12,000.00.
59. This amount of EUR 12,000.00 is the only figure which may give an indication of the current market value of the Player and the Arbitrator has not been provided with more information. It would therefore be the burden of the Club to demonstrate that the Player’s market value is or will be higher and that the Player might earn by exercising reasonable care a higher salary than EUR 12,000.00 in the season 2012-2013. The Club has not participated in this arbitration and must therefore bear the consequences of the lack of evidence of a higher market value of the Player. As a consequence, the Arbitrator finds that the Player is entitled to a compensation for the season 2012-2013 equal to the difference between his current income (EUR 12,000.00) and the salary which he agreed with the Club for the season 2012-2013 (EUR 40,000.00), which amounts to EUR 28,000.00.
60. When Article 10 of the Player Contract says that *“the duties and liabilities of the Club under this Agreement shall continue in full force and effect”*, this could also be understood as a reference to the payment schedule in Articles 3 of the Player Contract with the result that the Club would be obliged to pay the compensations for the seasons 2011-2012 and 2012-2013 in ten equal installments respectively. This would be in conflict with the general principle that all payment obligations of an employer become immediately due upon termination of the employment agreement. It would also

perpetuate the present dispute and lead to further controversies e.g. about the compensation for the season 2012-2013 if the actual income did not correspond to the assumption on which the Arbitrator based its calculations. This cannot have been the intention of the Parties. The Arbitrator therefore prefers to interpret Article 10 of the Player Contract as a mere reference to the amounts due by the Club but not to the payment schedule.

8.4 Is the Agency entitled to an Agent Fee of EUR 7,600.00?

61. The Agency claims that the Club did not pay any Agent Fees as agreed by Article 11 of the Player Contract. Article 11 reads as follows:

“Article 11 Agents’ fees Representation: The club will pay agents’ fee to the player agents the following amounts:

For the season 2010 – 2011 the amount of € 1,600 (One Thousand Six Hundred Euros) NET payable to GPK Sport Management LTD on October 30th 2010.

For the season 2011 – 2012 the amount of € 2,000 (Two Thousand Euros) NET payable to GPK Sports Management LTD on October 30th 2011.

For the season 2012 – 2013 the amount of € 4,000 (Four Thousand Euros) NET payable to GPK Sport Management LTD on October 30th 2012.

Player’s representative agrees to provide ongoing support, advice and participation throughout the contract period and to negotiate any future deals between the Club and Mr. Nikola Ivanovik. Both the Club and the Player agree that no subsequent agreements between the Club and Player can be made without the participation of GPK Sport management.”

62. According to Article 10 of the Player Contract, the Club remains fully obliged with regard to all “duties and liabilities under this Agreement” after the Player has lawfully terminated the Player Contract because of the Club’s default. This formula includes the Club’s obligation to pay the Agent Fee as agreed in Article 11 of the Player Contract.
63. There is no evidence that the Club paid any amounts due to the Agency. The letters of the Claimants’ counsel to the Club rather indicate the opposite, namely that the Agent

Fee for the season 2010-2011 remained unpaid and no payments have been made for the following years.

64. Similar to the compensation due to the Player, the Agency must also accept a deduction of the amount which was earned following the termination of the Player Contract and which was related to the Player's transfer to another club. Article 9 of the Player's agreement with KK Mornar Bar BC provides however that no agent fee will be paid in connection to this transfer. With regard to the season 2012 – 2013, the Arbitrator has based the Player's compensation on the agreement with KK Mornar Bar BC. The same applies to the Agent Fee and it would have been up to the Club to demonstrate that the Agency is likely to earn an Agent Fee for that season.
65. As a result, the Arbitrator finds that the Agency is entitled to Agent Fees in the total amount of EUR 7,600.00 which is due as one single payment (cf. paragraph 59 above).

8.5 Are the Player and the Agency entitled to interest on the aforementioned amounts?

66. The Player and the Agent request interest without any indication as to the rate and the starting date.
67. According to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest³. Although the Player Contract does not provide for the payment of default interest, this is a generally accepted principle which is embodied in most legal systems. The Arbitrator, deciding

³ 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*

ex aequo et bono, considers interest in the requested rate of 5% p.a. to be fair and equitable also in the present case.

68. The Claimants' last invitation to the Club for payment of the outstanding amounts for the season 2010-2011 dates back to 29 September 2011 and was subject to a 15-day payment period. Thus, the starting date for default interest on such amounts is 15 October 2011.
69. As set out in paragraph 60 above, all other payments became due on the termination date. However, no request for compensation for the seasons 2011-2012 and 2012-2013 was made before the Request for Arbitration was submitted. The Arbitrator therefore finds that the starting date for default interest on the compensations with regard to the seasons 2011-2012 and 2012-2013 is the day following the date when the 2nd Updated Request for Arbitration was forwarded to the Club, i.e. on 15 March 2012.

8.6 Summary

70. The Player is entitled to an amount of EUR 41,400.00 - consisting of the outstanding salary for the season 2010-2011 in the amount of EUR 5,400.00, compensation for the lost salaries for the seasons 2011-2012 and 2012-2013 in the amount of EUR 36,000.00 - plus interest of 5% p.a. on EUR 5,400.00 since 15 October 2011 and on EUR 36,000.00 since 15 March 2012. All amounts are to be understood net of all deductions for social insurance and/or taxes.
71. The Agency is entitled to the outstanding agent fee in the amount of EUR 7,600.00 plus interest of 5% p.a. on EUR 1,600.00 since 15 October 2011 and on EUR 6,000.00 since 15 March 2012.

9. Costs

72. 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.
73. On 3 June 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 7,960.00
74. Considering the last paragraph of Article 9 of the Player Contract (*“In case of a dispute, the Club is responsible to cover financially all the lawyers or FAT expenses/fees.”*), the Arbitrator finds it fair that the fees and costs of the arbitration still be borne by the Club alone and that it be required to cover the Claimants’ legal fees and other expenses.
75. Given that the Claimants paid an advance on costs of EUR 7,960.00 and that the Claimants paid a non-reimbursable handling fee of EUR 2,000.00, in application of article 17.3 of the BAT Rules the Arbitrator decides as follows:
- (i) The Club shall pay EUR 7,960.00 to the Claimants, being the amount of the costs advanced by them;
 - (ii) Furthermore, the Arbitrator considers it adequate that the Player and the Agency

are entitled to the payment of a contribution towards their legal fees and other expenses (Article 17.3. of the BAT Rules). The Arbitrator deems it appropriate to take into account the non-reimbursable handling fee of EUR 2,000.00 and further legal costs of EUR 6,725.00 when assessing the expenses incurred by the Claimants in connection with these proceedings. This amount includes the legal fees, the postal and telephone charges and the banking fees actually deducted by the bank, whereas no evidence has been submitted for the additional baking fees claimed.

- (iii) After having reviewed and assessed all the circumstances of the case at hand, especially the last paragraph of Article 9 of the Player Contract, the Arbitrator fixes the contribution towards Claimants' legal costs at EUR 6,725.00

10. AWARD

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

- 1. Kolossos Rhodes BC is ordered to pay to Mr. Nikola Ivanovic the amount of EUR 41,400.00 net plus interest of 5% p.a. on EUR 5,400.00 since 15 October 2011 and interest of 5% p.a. on EUR 36,000.00 since 15 March 2012.**
- 2. Kolossos Rhodes BC is ordered to pay to GPK Sports Management Limited the amount of EUR 7,600.00 net plus interest of 5% p.a. on EUR 1,600.00 since 15 October 2011 and interest of 5% p.a. on EUR 6,000.00 since 15 March 2012.**
- 3. Kolossos Rhodes BC is ordered to pay to the Claimants the amount of EUR 7,960.00 as a reimbursement of the arbitration costs advanced by them.**
- 4. Kolossos Rhodes BC is ordered to pay to the Claimants the amount of EUR 6,725.00 as a contribution towards their legal fees and expenses.**
- 5. Any other or further-reaching prayers for relief are dismissed.**

Geneva, seat of the arbitration, 15 June 2012

Stephan Netzle
(Arbitrator)