

**ARBITRAL AWARD**

**(BAT 0262/12)**

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Raj Parker**

in the arbitration proceedings between

**Mr. Sasa Nikitovic**

**- Claimant -**

represented by Mr. Andrea Raffaelli, attorney at law,  
Raffaelli Segreti Studio Legale, Via Marco De Marchi 2, 20121 Milan, Italy

vs.

**KK Crvena Zvezda**  
Mali Kalemegdan 2, 11000 Belgrade, Serbia

**- Respondent 1 -**

**KK Crvena Zvezda Beograd – DIVA**  
Stjepana Supanca 15a, 11000 Belgrade, Serbia

**- Respondent 2 -**

both represented by Mr. Rajko Ignjačević, attorney at law,  
Attorneys at Law Ignjačević, Starube Novaka, 11000 Belgrade, Serbia

## **1. The Parties**

### **1.1 The Claimant**

1. Mr. Sasa Nikitovic (hereinafter the "Claimant") is a Serbian basketball coach.
2. In these proceedings, the Claimant is represented by Mr. Andrea Raffaelli, attorney at law, of Raffaelli Segreti Studio Legale, Via Marco De Marchi 2, 20121 Milan, Italy.

### **1.2 The Respondents**

3. KK Crvena Zvezda (hereinafter the "First Respondent") is an entity which played as a professional basketball club in Serbia until the end of the 2010-2011 season. The First Respondent is domiciled at Mali Kalemegdan 2, 11000 Belgrade, Serbia.
4. KK Crvena Zvezda Beograd – DIVA (hereinafter the "Second Respondent" and together with the First Respondent, the "Respondents") is a professional basketball club. The Second Respondent is domiciled at Stjepana Supanca 15a, 11000 Belgrade, Serbia.
5. In these proceedings, the Respondents are both represented by Mr. Rajko Ignjačević, attorney at law, of Attorneys at Law Ignjačević, Starube Novaka, 11000 Belgrade, Serbia.

## **2. The Arbitrator**

6. On 16 March 2012, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (hereinafter the "BAT"), appointed Mr. Raj Parker as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules").

7. None of the Parties has raised objections to the appointment of the Arbitrator or to the declaration of independence issued by him.

### 3. Facts and Proceedings

#### 3.1 Background Facts

8. On 20 March 2011, the Claimant and the First Respondent entered into an employment contract in the English language in relation to the 2010-2011, 2011-2012 and 2012-2013 seasons (hereinafter the "First Contract"). The First Contract contains, among others, the following provisions:

*"THIS AGREEMENT (hereinafter referred to as the "Agreement" or the "Contract") is entered into this 20<sup>th</sup> day of March, 2011 by and between KK Crvena Zvezda (hereinafter referred to as the "Club") a basketball club located in Belgrade, Serbia, represented by Mr Mirko Pavlovic (General Manager) and Mr Sasa Nikitovic (hereinafter referred to as the "Coach") and Reed Nopponen/Entersport LLC, 128 Heather Drive, New Canaan, CT 06840, Connecticut, United States of America (hereinafter referred to as the "Agent").*

*[...]*

*2. The Club agrees to pay the Coach for rendering services to the Club during the term, a fully guaranteed net salary\* as set out below in accordance with the following schedule:*

#### **2010-11 season**

*10,000 EUR*

*The season's net compensation set forth above shall be paid in two (2) equal payments:*

*first payment of 5.000 EUR on March 20, 2011 (upon the [sic] signing the contract)*

*second payment of 5.000 EUR on May 20, 2011*

#### **3. 2011-12 season**

*50.000 EUR – if Club qualifies for Adriatic league*

*30.000 EUR – if Club qualifies for Serbian league*

*The season's net compensation set forth above shall be paid in ten (10) equal monthly payments beginning on August 15, 2011 and finishing on May 15, 2012.*

**2012-2013 season**

*70.000 EUR – if Club qualifies for Adriatic league*

*40.000 EUR – if Club qualifies for Serbian league*

*The season's net compensation set forth above shall be paid in ten (10) equal monthly payments beginning on August 15, 2012 and finishing on May 15, 2013.*

[...]

12. *Any and all disputes arising from or related to the present Contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT 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 (PIL), irrespective of the parties' domicile. The language of the arbitration shall be English. Awards of the FAT can be appealed to the Court of the Arbitration for Sport (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law. The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono."*

9. Also on 20 March 2011, the Claimant and the First Respondent entered into an employment contract in the Serbian language in relation to the 2010-2011, 2011-2012 and 2012-2013 seasons (hereinafter the "Second Contract"). The Second Contract contains, among others, the following provisions:

**“Article 3**

*The Club hereby undertakes to reimburse the Coach with the amount of EUR 80.000 in the dinar equivalent, as his total reimbursement, for the following:*

- the 2010/2011 season – the amount of EUR 10,000 in the dinar equivalent*
- the 2011/2012 season – the amount of EUR 30.000 in the dinar equivalent*
- the 2012/2013 season – the amount of EUR 40.000 in the dinar equivalent*
- the \_\_\_\_\_ season – the amount of EUR \_\_\_\_\_ in the dinar equivalent*

*The total reimbursement shall include all the payments relating to the wages and other emoluments based on the employment, including the fee for entering into the Agreement.*

*[...]*

**Article 14**

*In the event of a dispute, the parties shall try to settle the dispute in the spirit of sportsmanlike and amicable relations, failing which the parties submit to the arbitration provided for by the Regulations on Issuing Licences.”*

10. Following the 2010-2011 season, the First Respondent ceased competing as a professional basketball club because of financial difficulties. The Claimant was not paid any monies pursuant to either the First Contract or the Second Contract in relation to the 2011-2012 or the 2012-2013 seasons.

**3.2 The Proceedings before the BAT**

11. On 27 February 2012, the Claimant filed a Request for Arbitration in accordance with the BAT Rules. The BAT received the non-reimbursable handling fee of EUR 3,000.00 from the Claimant on 27 February 2012.

12. By letter dated 22 March 2012, the BAT informed the Parties that Mr. Raj Parker had been appointed as the Arbitrator in this matter and fixed the Advance on Costs to be paid by the Parties as follows:

<i>“Claimant (Mr. Sasa Nikitovic)</i>	<i>EUR 5,000</i>
<i>Respondent 1 (KK Crvena Zvezda)</i>	<i>EUR 2,500</i>
<i>Respondent 2 (KK Crvena Zvezda Beograd – DIVA)</i>	<i>EUR 2,500”</i>

13. By the same letter dated 22 March 2012, the BAT Secretariat fixed a time limit until 13 April 2012, for the Respondents to file their Answers to the Request for Arbitration.
14. On 16 April 2012, the Respondents filed their Answers to the Request for Arbitration, which was admitted on record by the Arbitrator.
15. On 16 April 2012, the Claimant requested an extension for the parties to pay their respective shares of the Advance on Costs, on the basis that they were engaged in negotiations in an attempt to settle the dispute, but required further time. On 16 April 2012, the Arbitrator granted the Parties an extension of until 21 May 2012 to pay their respective shares of the Advance on Costs.
16. On 21 May 2012, the Claimant paid his share of the Advance on Costs. The Respondents failed to pay their respective shares of the Advance on Costs. By letter dated 23 May 2012, the BAT Secretariat informed the Parties that, pursuant to Article 9.3 of the BAT Rules, the arbitration would not proceed unless the BAT received the full amount of the Advance on Costs, and invited the Claimant to pay the Respondents’ share of the Advance on Costs by no later than 1 June 2012.
17. On 31 May 2012, the Claimant paid the Respondents’ share of the Advance on Costs.
18. On 15 June 2012, the Arbitrator issued a Procedural Order (hereinafter the “First

Procedural Order”) requesting that the Respondents provide an English translation of the Second Contract.

19. On 31 July 2012 and 4 September 2012 the Arbitrator issued further Procedural Orders, requesting additional information and documentation from the Parties.
20. By Procedural Order dated 2 October 2012, the Arbitrator declared the exchange of documents complete, and requested that the Parties submit detailed accounts of their costs by 12 October 2012.
21. On 11 October 2012, the Claimant submitted the following statement of costs:

<i>Expenses</i>	<i>Amount</i>
<i>Counsel's Fees (study of the case; drafting of the request for arbitration; drafting of the defensive statement; examination of the further Respondents' defensive statements)</i>	€ 7,500.00
<i>Handling Fee</i>	€ 3,000.00
<i>Advance on costs (Claimant)</i>	€ 5,000.00
<i>Advance on costs (Respondents)</i>	€ 5,000.00
<b>TOTAL</b>	<b>€ 20,500.0</b>

22. On 11 October 2012, the Respondents requested an extension to submit their respective statements of costs on the basis that their legal representatives were abroad. On the same day, the Arbitrator granted the Respondents an extension of until 19 October 2012 to submit their respective statements of costs.

23. On 18 October 2012, the First Respondent submitted the following statement of costs:

<i>"1. Legal fees</i>	€6,000
<b>TOTAL:</b>	<b>€ 6.000'</b>

24. Also on 18 October 2012, the Second Respondent submitted the following statement of costs:

<i>"1. Legal fees</i>	€ 5.700
<i>2. Costs of the translation of documents</i>	€ 818
<b>TOTAL:</b>	<b>€6,518'</b>

25. By email dated 24 October 2012, the BAT Secretariat invited the Parties to submit any comments on each other's statement of costs by no later than 24 October 2012. None of the Parties submitted any such comments.

26. None of the Parties requested 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 Parties' written submissions and evidence.

#### **4. The Parties' Submissions**

##### **4.1 The Claimant's Submissions**

27. The Claimant submits that the contract which governs the relationship between the Parties is the First Contract. In support of this submission, the Claimant argues that the Second Contract was signed for the exclusive reason that Serbian League licensing rules required such a contract. The Claimant further argues that it is apparent from the payments made by the First Respondent to the Claimant in relation to the 2010-2011 season, that the First Contract was the contract pursuant to which the First Respondent

and the Claimant were performing their obligations to one another.

28. The Claimant submits that the First Respondent terminated the First Contract prior to the start of the 2011-2012 season without just cause.
29. The Claimant acknowledges that the corporate entity of the First Respondent ceased to operate the club named KK Crvena Zveza after the 2011-2012 season. However, the Claimant submits that the Second Respondent fully replaced the First Respondent and that the Second Respondent has assumed all of the obligations of the First Respondent. The Claimant submits that the First Respondent and the Second Respondent were “*jointly and severally*” in breach of the First Contract, and therefore are jointly and severally liable to pay the Claimant salary payments relating to the 2011-2012 and the 2012-2013 seasons.
30. In his Request for Arbitration, the Claimant requested the following relief:

***“Request for Relief***

*Therefore, in light of the foregoing arguments, the Claimant hereby requests to the Basketball Arbitral Tribunal:*

- 1) *to establish that the Respondents are, jointly and severally, in default with respect to its [sic] obligations deriving from the Agreement;*
- 2) *to condemn the Respondents, jointly and severally, to pay in favour of Nikitovic the amount of **Euro 120,000.00**, plus the interests at the rate of 5% per annum, or at the different rate deemed appropriate by the Arbitrator ex aequo et bono;*
- 3) *to condemn the Respondents, jointly and severally, to pay all expenses and costs, including the costs for the arbitration and Counsel’s fees and costs, incurred by the Claimant in connection with the proceeding.”*

#### **4.2 The First Respondent’s Submissions**

31. The First Respondent submits that the contract which governed the relationship

between the Claimant and the First Respondent is the Second Contract. The First Respondent argues that, as a matter of Serbian law, the applicable law to any employment relationship between the Claimant and the First Respondent must be Serbian law. Furthermore, the Second Contract is governed by Serbian law and so the only contract that can validly govern the relationship between the Claimant and the First Respondent is the Second Contract.

32. The First Respondent submits that the BAT does not have jurisdiction to determine the merits of the Claimant's claim because the Second Contract does not provide that disputes arising out of the Second Contract shall be submitted to the BAT for resolution. Instead, the First Respondent argues, such disputes must be submitted to a "solo domestic arbitrator" or "regular courts". The First Respondent further submits that, as a matter of Serbian law, only Serbian national courts or Serbian arbitral tribunals have jurisdiction to determine a dispute between the Claimant and the First Respondent.
33. The First Respondent submits that it terminated the contractual relationship between the Claimant and the First Respondent because extreme financial difficulties caused the First Respondent to enter into bankruptcy proceedings. This meant that the First Respondent was forbidden to play in international or domestic competitions and so had no need for a coach or any players.

#### **4.3 The Second Respondent's Submissions**

34. The Second Respondent submits that it has not concluded any contract of employment or any arbitration agreement with the Claimant. The Second Respondent argues that, as such, the Second Respondent has no "legal capacity to be the party to this arbitration".
35. The Second Respondent submits that it is not a legal successor to the First

Respondent. Instead it is a different Serbian club, formerly known as Basketball Club FMP, which, following the insolvency of the First Respondent, acquired rights to use certain assets of the First Respondent.

36. The Second Respondent submits that it entered into an Agreement on Strategic Business-Technical Cooperation with the First Respondent on 18 August 2011 (hereinafter the “Cooperation Agreement”), pursuant to which the First Respondent transferred the right to use the brand “*BC Crvena Zvezda*” to the Second Respondent. At this time, the Second Respondent changed its name to ‘KK Crvena Zvezda Beograd – DIVA’. The Second Respondent submits that after it changed its name from Basketball Club FMP, it continued to compete in the league position that it was entitled to as Basketball Club FMP, and not in the league position of the First Respondent.
37. The Second Respondent notes that the Cooperation Agreement explicitly provides that the Second Respondent assumes none of the obligations of the First Respondent.
38. Finally, the Second Respondent submits that the Claimant has not provided any services to it in return for the sums which he claims.

## **5. Jurisdiction**

39. 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).
40. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
41. The Arbitrator finds that the dispute in question is of a financial nature and is thus

arbitrable within the meaning of Article 177(1) of the PILA.<sup>1</sup>

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

*"1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.*

*2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law."*

43. In order to determine whether a valid arbitration agreement exists between the Parties, it is necessary first to determine which agreement governed the contractual relationship between the Claimant and the Respondents. As set out in paragraph 8 above, article 12 of the First Contract provides that any and all disputes arising from the First Contract shall be submitted to the FIBA Arbitral Tribunal.<sup>2</sup> There is no provision in the Second Contract which provides for disputes related to or arising out of the Second Contract to be submitted to the BAT. Article 14 of the Second Contract states:

*"In the event of a dispute, the parties shall try to settle the dispute in the spirit of sportsmanlike and amicable relations, failing which the parties shall submit to the arbitration provided for by the Regulations on Issuing Licences."*

44. The Claimant asserts that the First Contract governed the contractual relationship between the Claimant and the First Respondent, whereas the Respondent claims that the Second Contract governed the contractual relationship between the Claimant and

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<sup>1</sup> Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

<sup>2</sup> The Arbitrator notes that the FIBA Arbitral Tribunal was renamed the Basketball Arbitral Tribunal on 1 April 2011 (see also article 18.2 of the BAT Rules).

the First Respondent.

45. The First Respondent argues that the Second Contract is the operative agreement because it is governed by Serbian law and, under Serbian law: (i) all employment agreements between Serbian employers and Serbian employees must be governed by Serbian law; and (ii) any disputes arising out of such employment agreements fall within the exclusive jurisdiction of either a Serbian arbitrator who is expert in Serbian law, or the Serbian courts.
46. The Arbitrator does not agree that the Second Contract is necessarily the operative agreement simply because the applicable law is Serbian. Firstly, there may be factors which indicate that the First Contract is in fact the operative agreement (for example, the parties may have performed their obligations to one another in accordance with the First Contract but not the Second Contract).
47. Secondly, it does not follow that the BAT does not have jurisdiction to determine a dispute (where a valid arbitration agreement granting jurisdiction to the BAT exists between the parties) simply because Serbian law provides that any disputes arising out of employment agreements between Serbian employers and Serbian employees fall within the exclusive jurisdiction of either a Serbian arbitrator who is expert in Serbian law, or the Serbian courts. This BAT arbitration is governed by Chapter 12 of the PILA. There is no requirement under the PILA which would, by itself, prevent the BAT from taking jurisdiction in a case where foreign national legislation provides for the mandatory jurisdiction of domestic tribunals or courts over disputes arising out of domestic employment agreements. Furthermore, the Swiss Federal Tribunal has confirmed in previous cases that such a provision in foreign national legislation does not, by itself, oust the jurisdiction of Swiss arbitral bodies in arbitration proceedings

governed by the PILA.<sup>3</sup> The Federal Tribunal has considered whether such provisions in foreign national legislation should be taken into account when assessing whether an award issued in an arbitration governed by the PILA is incompatible with Swiss public policy (*ordre public*) for the purposes of Article 190(2) of the PILA. However, none of the Parties has challenged the jurisdiction of the BAT or the arbitrability of the dispute on Swiss public policy grounds and, in any event, the Arbitrator finds that Swiss public policy is not violated in this respect. Furthermore, the Arbitrator notes the case CAS 2010/A/2234 *Basquet Menorca SAD v/ Vladimer Boisa*. In that case, the appellant argued that the BAT (then FAT) had wrongly taken jurisdiction to determine a dispute on the grounds that, *inter alia*, the national law of the parties' domicile provided that a domestic employment tribunal had exclusive jurisdiction over employment disputes. The Court of Arbitration for Sport found that the BAT was not wrong to have not taken jurisdiction over the dispute and that it was "*the Swiss Supreme Court's well-established case law that the arbitrability of a dispute where the seat of the arbitration is Switzerland shall be determined exclusively pursuant to Article 177(2) PILA*".<sup>4</sup>

48. With regard to the Claimant's submissions concerning which contract is the operative agreement, the Arbitrator finds that the Claimant has failed to show that the First Contract governed the relationship between the Parties. The Claimant argues that the First Respondent made salary payments in accordance with the First Contract and not the Second Contract. Article 2 of the First Contract obliges the First Respondent to make a salary payment of EUR 5,000.00 to the Claimant on 20 March 2011 and one salary payment of EUR 5,000.00 on 20 May 2011. The Second Contract obliges the First Respondent to pay the Claimant EUR 10,000.00 (in the dinar equivalent) for the 2010-2011 season; it does not specify a date for payment. The bank statements submitted show that one payment of 465,239.00 dinars (approximately EUR 4,500.00)

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<sup>3</sup> Decision of the Federal Tribunal 4A.654/2011 of 23 May 2012 at 3.4.

<sup>4</sup> See paragraph 43 of CAS 2010/A/2234 *Basquet Menorca SAD v/ Vladimer Boisa*.

was made on 23 March 2011 and a second payment of 561,075.00 dinars (approximately EUR 5,500.00) was made on 28 August 2011.

49. The Arbitrator notes that both the First Contract and the Second Contract provide that the Claimant shall be paid EUR 10,000.00 in total for the 2010-2011 season, and that approximately this amount was paid by the Respondent. The salary was paid in two payments (as provided by the First Contract), but it was not paid in equal shares (as provided by the First Contract), nor was it paid on the dates stipulated in the First Contract (indeed, the second payment was made more than three months after the date stipulated in the First Contract). Furthermore, it would appear from the bank statements submitted by the Claimant that the salary payments made by the First Respondent were paid in dinars and not in Euros. The Second Contract stipulates that the salary is to be paid "*in the dinar equivalent*", whereas the First Contract merely states the Euro amount that will be paid. For these reasons, the Arbitrator finds that the Claimant has not proven conclusively that the First Contract was the contract which governed the relationship between the Claimant and the First Respondent.
50. In light of the above, it falls to the Arbitrator to determine which contract is the operative agreement between the Claimant and the First Respondent. In BAT (then FAT) decision 0136/10 (*Fields and Glass vs. B.C. Spartak St. Petersburg*), the Arbitrator considered that "*[t]he starting point for any discussion of this nature is that the most recent contract in time will be the prevailing one, absent a sufficient reason for the Arbitrator to find that the most recent contract does not prevail (jus posterior derogat priori)*". Adopting the same approach in the present case, the starting point is that the Second Contract is the prevailing one (it is not in dispute that the Second Contract was signed after the First Contract). The Arbitrator has examined at paragraphs 44 to 49 above the Claimant's and the First Respondent's respective arguments concerning which contract is the operative agreement and finds that the Claimant has not submitted sufficiently persuasive evidence that the First Contract should "prevail". Accordingly, the Arbitrator finds that the Second Contract is the agreement which

governs the contractual relationship between the Claimant and the First Respondent.

51. The Arbitrator is aware of previous BAT jurisprudence where the BAT has found that the earlier of two contracts purporting to govern the same relationship actually governs the contractual relationship between the parties and not the later (see for example, BAT (then FAT) decision 0072/09 (*Mazzon, Diamantopoulos, and Santrolli vs. KAE Aris Thessaloniki B.C.*)). The present case can be distinguished from each of those cases on its facts. For example, in *Mazzon, Diamantopoulos, and Santrolli vs. KAE Aris Thessaloniki B.C.*, the earlier contract provided that any later contracts filed with the national federation would incorporate terms of the earlier contract and would not limit the claimant's rights under the earlier contract. There is no such provision in the First Contract.
52. The Arbitrator finds that the Second Contract, and not the First Contract, is the operative agreement between the Claimant and the First Respondent. As such, there is no valid written arbitration agreement between the Claimant and the First Respondent which provides BAT with jurisdiction to determine disputes between the Claimant and the First Respondent. Therefore, the Arbitrator finds that the BAT does not have jurisdiction to determine the present dispute between the Claimant and the First Respondent.
53. The Claimant's claim against the Second Respondent is predicated on the assertion that the Second Respondent assumed all of the obligations of the First Respondent. The First Respondent's obligations to the Claimant are set out in the Second Contract. Therefore, even if the Claimant could show that the Second Respondent had assumed the obligations of the First Respondent, the Second Respondent would have assumed the First Respondent's obligations to the Claimant under the Second Contract. Hence, even if it could be shown that the Second Respondent has assumed all of the obligations of the First Respondent, there would not be a valid written arbitration agreement between the Claimant and the Second Respondent which provides BAT

with jurisdiction to determine disputes between Claimant and the Second Respondent. Therefore, the Arbitrator finds that the BAT does not have jurisdiction to determine the present dispute between the Claimant and the Second Respondent and that the issue whether the Second Respondent assumed the First Respondent's obligations can be left undecided.

54. In light of the foregoing considerations the Arbitrator makes no findings as to the merits of the Claimant's claims. The Claimant's claims are therefore dismissed.

## 6. Costs

55. Article 17.2 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and may either be included in the award or communicated to the parties separately. Furthermore, Article 17.3 of the BAT Rules provides that, as a general rule, the award shall grant the prevailing party a contribution towards its legal fees and expenses incurred in connection with the proceedings. When deciding on such a contribution, the Arbitrator shall take into account, the outcome of the proceedings, as well as the conduct and the financial resources of the parties.
56. On 3 December 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 "*[t]he 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 of 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 this matter to be EUR 7,400.00.

57. The Arbitrator notes that the Respondents did not pay their share of the Advance on Costs and that the Claimant paid the Advance on Costs of EUR 10,000.00 in its entirety, as well as a non-reimbursable handling fee of EUR 3,000.00.
58. The Arbitrator further notes that the Respondents have been successful in establishing that the BAT does not have jurisdiction to determine the merits of the Claimant's claim. Having reviewed and assessed: (i) the circumstances of the case; (ii) the nature and volume of submissions required by each of the Parties; and (iii) the conduct of the Parties, the Arbitrator considers it appropriate that the Claimant bears the costs of this arbitration and that the Respondents be awarded a contribution in connection with these proceedings. Thus, the Arbitrator decides that in application of Article 17.3 of the BAT Rules:
- (i) The BAT shall reimburse to the Claimant EUR 2,600.00 being the difference between the amount advanced by him and the amount of the arbitration costs fixed by the BAT President.
  - (ii) The Claimant shall pay to the First Respondent the amount of EUR 2,500.00 in reimbursement of the legal fees and expenses incurred by the First Respondent.
  - (iii) The Claimant shall pay to the Second Respondent the amount of EUR 2,500.00 in reimbursement of the legal fees and expenses incurred by the Second Respondent.

## **7. AWARD**

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

- 1. The BAT does not have jurisdiction to determine Mr. Sasa Nikitovic's claims against KK Crvena Zvezda and KK Crvena Zvezda Beograd – DIVA.**
- 2. Mr. Sasa Nikitovic is ordered to pay KK Crvena Zvezda EUR 2,500.00 as reimbursement of its legal fees and expenses.**
- 3. Mr. Sasa Nikitovic is ordered to pay KK Crvena Zvezda Beograd – DIVA EUR 2,500.00 as reimbursement of its legal fees and expenses.**
- 4. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 7 December 2012.

Raj Parker  
(Arbitrator)