



**BASKETBALL**  
ARBITRAL TRIBUNAL

## **ARBITRAL AWARD**

**(BAT 0336/12)**

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Ms. Annett Rombach**

in the arbitration proceedings between

**Mr. Jurica Golemac**

**- Claimant -**

represented by Mr. Miodrag Raznatovic, Attorney at Law,  
Strahinjica bana 18,11000 Belgrade, Serbia

vs.

**Kolossos Rhodes Basketball Club**  
1 Plateia Vrouchou, 85100 Rhodes Island, Greece

**- Respondent -**

represented by Mr. Aris Lychnaras, Attorney at Law,  
28 Ioulianou & 3<sup>rd</sup> Septemvriou, 104 34 Athens, Greece

## **1. The Parties**

### **1.1 The Claimant**

1. The Claimant, Mr. Jurica Golemac (the "Player" or "Claimant"), is a professional basketball player of Slovenian nationality.

### **1.2 The Respondent**

2. Kolossos Rhodes Basketball Club (the "Club" or "Respondent") is a professional basketball club located in Rhodes Island, Greece.

## **2. The Arbitrator**

3. On 26 November 2012, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (the "BAT") appointed Ms. Annett Rombach as arbitrator (the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator nor to her declaration of independence.

## **3. Facts and Proceedings**

### **3.1 Summary of the Dispute**

4. On 16 November 2010, the Parties entered into a contract (the "Player Contract"), pursuant to which Respondent engaged the Player as a professional basketball player for the season of 2010/2011. According to Clause 2 of the Player Contract, Respondent undertook to pay a total base salary of EUR 75,000 net of all Greek taxes and charges, due and payable as follows:

- "1) after the player successfully passes medical exam and drug test, amount of 6.250 Euros net*
- 2) on the 30<sup>th</sup> of December 2010 amount of 12.500 Euros net*
- 3) on the 30<sup>th</sup> of January 2011 amount of 12.500 Euros net*
- 4) on the 28<sup>th</sup> of February 2011 amount of 12.500 Euros net*
- 5) on the 30<sup>th</sup> of March 2011 amount of 12.500 Euros net*
- 6) on the 30<sup>th</sup> of April 2011 amount of 12.500 Euros net*
- 7) on the 30<sup>th</sup> of May 2010 [sic] amount of 6.250 Euros net"*

5. Respondent further agreed to pay Claimant certain bonuses contingent upon the Club's performance in the Greek league as follows:

*"BONUSES (net and cumulative)*

*(i) If the Club reaches play off shall earn amount of 5.000 Euro Net (iii) [sic]  
For each playoff round what the Club advances at Player shall earn amount of 2.000 Euro, net / per round"*

6. It is undisputed that Respondent made certain (partial) payments under the Player Contract. The dispute revolves around a remainder of EUR 40,000 which Respondent allegedly failed to pay to Claimant to date.

### **3.2 The Proceedings before the BAT**

7. On 18 October 2012, the BAT Secretariat received a Request for Arbitration (with several exhibits) dated April 3, 2012. The non-reimbursable handling fee of EUR 2,000 was received in the BAT bank account on 30 May 2012.
8. On 28 November 2012, the BAT informed the Parties that Ms. Annett Rombach had been appointed as Arbitrator in this matter, invited Respondent to file its Answer in accordance with Article 11.2 of the BAT Rules by no later than 18 December 2012 (the "Answer"), and fixed the amount of the Advance on Costs to be paid by the Parties by no later than 7 December 2012 as follows:

<i>"Claimant (Mr Jurica Golemac)</i>	<i>EUR 4,000</i>
<i>Respondent (Kolossos Rhodes)</i>	<i>EUR 4,000"</i>

9. By e-mail of 13 December 2012, Respondent's counsel informed the BAT Secretariat that he had been retained by Respondent to represent the Club in the present proceedings and submitted a power of attorney. He requested an extension of the time limit for filing the Answer for at least one week.
10. By letter to the Parties dated 17 December 2012, the BAT Secretariat acknowledged receipt of the power of attorney submitted by Respondent's counsel and extended the time limit for filing the Answer until 27 December 2012. The BAT Secretariat also acknowledged receipt of Claimant's share of the Advance on Costs and urgently requested Respondent to pay its share of the Advance on Costs by 27 December 2012.
11. By letter of 4 January 2013, the BAT Secretariat informed the Parties that Respondent had failed to submit its Answer within the extended time limit and granted a final and non-extendable time limit until 8 January 2013 for Respondent to file its Answer. It further acknowledged receipt of the full amount of the Advance on Costs (with Claimant having substituted for Respondent's share).
12. On 10 January 2013, the Parties were informed that Respondent had failed to submit its Answer in accordance with the BAT's correspondence. The Arbitrator declared the exchange of documents completed and invited the Parties to submit a detailed account of their costs by no later than 17 January 2013.
13. By e-mail of 16 January 2013, Claimant submitted the following account of costs:

*"4.000,00 claimant share of the costs  
4.000,00 respondent share of the costs  
2.500,00 legal expenses (request and correspondence by the attorney at law)  
Total: 10.500,00 (ten thousand five hundred) Euro"*

14. On 22 January 2013, the BAT Secretariat forwarded Claimant's account of costs to the Club and invited it to comment on it by no later than 28 January 2013. No comments were filed by the Club.
15. The Parties did not request the BAT to hold a hearing. The Arbitrator therefore decided in accordance with Article 13.1 of the BAT Rules not to hold a hearing.

#### **4. The Positions of the Parties**

##### **4.1 Claimant's Position and Request for Relief**

16. Claimant submits that the Club did not make certain salary and bonus payments due under the Player Contract despite his continuous efforts to receive the outstanding payments from it.
17. In his Request for Arbitration, Claimant requests the following relief:

*"a) To award claimant player Jurica Golemac with amount of 40.000 Euro.*

*b) To award claimant interest on mentioned amount at the applicable Swiss statutory rate, starting from the 30<sup>th</sup> June 2011*

*d) [sic] To award claimant with the full covered the [sic] costs of this Arbitration."*

##### **4.2 Respondent's Position and Request for Relief**

18. Despite several invitations by the BAT, the Club did not make any submissions within the time limits set by the Arbitrator in accordance with the BAT Rules.
19. Respondent's only correspondence with the BAT is its Counsel's e-mail to the BAT Secretariat of 13 December 2012, requesting an extension of the time limit for the Answer. Although the Arbitrator extended the time limit for Respondent's Answer twice,

invited the Respondent to submit its account of costs and later to comment on the Claimant's account of costs, the Respondent failed to make any submissions in this arbitration.

## **5. The Jurisdiction of the BAT**

20. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not make any submissions in relation to the merits of this case, she will examine her jurisdiction *ex officio* on the basis of the record as it stands.
21. Pursuant to Art. 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).
22. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
23. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Art. 177(1) PILA.
24. The jurisdiction of the BAT over Claimant's claim results from the arbitration clause contained in Clause 9 (“Governing Laws”) 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 resolved in accordance with the FAT Arbitration Rules.*

*The Arbitrator shall decide the dispute ex aequo et bono.*

*[...] Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. To the extent legally possible under Swiss law recourse to the Swiss Federal Tribunal against Awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal shall be excluded.”*

25. 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 added). 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 9 of the Player Contract is therefore understood as a reference to the BAT.
26. The Agreement is in written form and thus the arbitration clause fulfils the formal requirements of Article 178(1) PILA.
27. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast any doubt on the validity of the arbitration agreement in the present matter under Swiss law (cf. Article 178(2) PILA). In particular, the wording “[a]ny dispute arising from or related to the present contract” in Clause 9 of the Player Contract clearly covers the present dispute.
28. Finally, the Arbitrator notes that the jurisdiction of BAT has not been contested by either Claimant or Respondent. In view of all the above, the Arbitrator, therefore, holds that she has jurisdiction to decide the present dispute.

## 6. Other Procedural Issues

29. Article 14.2 of the BAT Rules specifies that “*the Arbitrator may [...] 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 BAT.<sup>1</sup>

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<sup>1</sup> 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.

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

30. This requirement is met in the present case. Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator in accordance with the relevant rules. It was also given sufficient opportunity to respond to Claimant's Request for Arbitration and to its Account on Costs. Respondent, however, chose not to participate further in this Arbitration.

## 7. **Applicable Law – *ex aequo et bono***

31. 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 reads as follows:

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

32. 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."*

33. In Clause 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

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law. Consequently, the Arbitrator will decide the issues submitted to her in this proceeding *ex aequo et bono*.<sup>2</sup>

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

## 8. Findings

35. Claimant essentially requests the payment of outstanding salaries and bonuses (8.1), and interest “at the applicable Swiss statutory rate” on all outstanding amounts (8.2).

### 8.1 Salaries and Bonuses in the Amount of EUR 40,000

36. According to the Player Contract, Claimant was entitled to a base salary for the 2010-2011 season in the total amount of EUR 75,000 net of all Greek taxes and charges, and to a bonus of EUR 5,000.00 as a result of the Club reaching the Greek play-offs.<sup>3</sup> He alleges that the amount of EUR 40,000 is still outstanding. Respondent neither disputed the very existence, nor the quantum of the claimed amounts before or during this arbitration. Based on the record before her, the Arbitrator finds that there is no indication that would cast doubt on the existence of the Club’s obligation to pay Claimant the (outstanding) salaries and bonuses as stipulated under the Player Contract. The Arbitrator therefore finds that Claimant is entitled to the claimed salary and bonus payments for the season 2010/2011 in the amount of EUR 40,000.

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<sup>2</sup> This also applies to Claimant’s claims for the payment of interest, despite the fact that Claimant, in his request for relief, claims interest “at the applicable Swiss statutory rate”. The parties’ choice of law generally extends to ancillary claims (such as claims for the payment of interest) absent any agreement between them to the contrary. There is nothing in the record suggesting that the parties agreed to have interest claims governed by Swiss law.

<sup>3</sup> See the standings on the website “eurobasket.com” ([http://www.eurobasket.com/Greece/basketball-League-A1\\_2010-2011.asp](http://www.eurobasket.com/Greece/basketball-League-A1_2010-2011.asp) - retrieved on 26 January 2013).

## 8.2 Interest on Outstanding Salaries and Bonuses

37. Claimant requests the payment of interest on the outstanding salaries and bonuses from 30 June 2011 “at the applicable Swiss statutory rate”.
38. As a preliminary matter, the Arbitrator finds that the issue of (default) interest is one that is governed by the same substantive law applicable to Claimant’s main (salary and bonus) claims, i.e. must be decided in accordance with the principles of *ex aequo et bono*.<sup>4</sup>
39. The Player Contract does not provide for any obligation by the Club to pay interest in case of a non-payment. However, it is a generally accepted principle embodied in most legal systems and reflected in the BAT jurisprudence<sup>5</sup> that default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. The Arbitrator, deciding *ex aequo et bono* and in accordance with constant BAT jurisprudence, considers an interest rate of 5% to be fair and just to avoid that the Club derives any profit from the non-fulfillment of its obligations.
40. The starting date of 30 June 2011 requested by Claimant is justified. Pursuant to the payment schedule in Clause 2 of the Player Contract, the last salary instalment became due on 31 May 2011. Irrespective of whether default interest accrues immediately from the day after a payment becomes due or at some later point in time, the Arbitrator finds that, in the present case, a sufficient amount of time has elapsed between the due date of the (last) salary payment and the requested starting date for the interest calculation. Because the due date for each instalment is explicitly set out in

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<sup>4</sup> See above Fn. 2.

<sup>5</sup> 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); 0237/11, Ivanovic, GPK Sports Management Limited vs. Kolossos Rhodes Basketball Club.

the Player Contract, there was no need for Claimant to notify the Club of his outstanding claims by means of a notice letter.

## **9. Costs**

41. 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 legal fees and expenses incurred in connection with the proceedings.
42. On 20 February 2013 – 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”; 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”, and 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 7,000.
43. Considering that Claimant prevailed with all of his claims, it is appropriate that all of the fees and costs related to this arbitration be borne by Respondent and that Respondent be required to cover its own legal costs as well as all of Claimant’s legal costs (i.e. EUR 2,500), which, in the Arbitrator’s view, are reasonable.
44. Although, in his cost account, Claimant did not explicitly address the handling fee paid by him in accordance with Article 9.2 of the BAT Rules, Respondent must reimburse Claimant also for this amount. In awarding Claimant the handling fee (despite the respective omission in his cost account), the Arbitrator does not act *ultra petita*,

because Claimant expressly requests the “full covered [...] costs of this Arbitration” in his request for relief. The request for “full covered costs” can only be understood to include all expenses in connection with the arbitration, including the handling fee.

45. Given that Claimant paid both shares of the Advance on Costs in the amount of EUR 4,000 each (in total EUR 8,000), the Arbitrator decides that in application of Article 17.3 of the BAT Rules:
- (i) BAT shall reimburse EUR 1,000 to Claimant, being the difference between the costs advanced by him and the arbitration costs fixed by the BAT President;
  - (ii) Respondent shall pay EUR 7,000 to Claimant, being the difference between the costs advanced by Claimant and the amount to be reimbursed by the BAT.
  - (iii) Furthermore, as stated above, the Arbitrator considers it appropriate to take into account the non-reimbursable handling fee of EUR 2,000 when assessing the expenses incurred by Claimant in connection with these proceedings. Hence, because the further amount of EUR 2,500 for Claimant’s legal fees and expenses is reasonable, the Arbitrator fixes the contribution towards the Claimant’s legal fees and expenses at EUR 4,500.

## **10. AWARD**

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

- 1. Kolossos Rhodes Basketball Club is ordered to pay to Mr. Jurica Golemac EUR 40,000 together with interest of 5% p.a. on this amount from 30 June 2011.**
- 2. Kolossos Rhodes Basketball Club is ordered to pay to Mr. Jurica Golemac EUR 7,000 as a reimbursement of the Advance on Costs.**
- 3. Kolossos Rhodes Basketball Club is ordered to pay to Mr. Jurica Golemac EUR 4,500 as a contribution towards his legal fees and expenses.**
- 4. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 25 February 2013

Annett Rombach  
(Arbitrator)