BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0346/12)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Quentin Byrne-Sutton

in the arbitration proceedings between

Mr. Joshua Lee Fisher

- Claimant 1 -

U1st Sports Basket España S.L.
c/ Maestro Ripoll 9, 28006 Madrid, Spain

- Claimant 2 -

Both represented by Mr. Guillermo López Arana
and Mr. Mikel Abete Vecino, U1st Sports Basket España S.L.

vs.

Fujian SBS Xunxing Basketbal Club., Ltd.
Ying Xun Sports Center Basketball Club
362200 Jinjiang City, Fujian Province, China

- Respondent -

represented by Mr. Richard Faulkner and Mr. Chuck Bennett,
Blume, Faulkner, Skeen & Northam, PLLC, 111 W. Spring
Valley Rd. Suite 250, Richardson, Texas 75081, USA

1. The Parties

1.1 The Claimants

1. Mr. Joshua Lee Fisher is a professional basketball player (hereinafter referred to as “the Player” or “Claimant 1”).

2. U1st Sports Basket España S.L. is a basketball agency established by FIBA-certified agents (hereinafter “the Agent” or “Claimant 2”) and is representing the Player.

3. Claimants 1 and 2 are referred to jointly as “the Claimants”.

1.2 The Respondent

4. Fujian SBS Xunxing Basketbal Club, Ltd. (hereinafter also referred to as “the Club” or “the Respondent”) is a professional basketball club in China.

2. The Arbitrator

5. On 20 December 2012, Prof. Richard H. McLaren, President of the Basketball Arbitral Tribunal (the "BAT"), appointed Mr. Quentin Byrne-Sutton as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules"). Neither of the parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

6. During the 2011/2012 season, the Player played 48 games (30 games in the ACB League competition and 18 games in the Euroleague competition), with the Spanish

club Bizkaia Bilbao Basket.

7. Thereafter, on 24 May 2012, the Player signed an employment contract (the "Contract") with Fujian SBS Xunxing Basketbal Club, whereby the Player was engaged for the 2012/2013 season. The Contract included a signed appendix (the "Appendix") governing the Agent's fees.

8. The Contract is in bilingual format (English and Chinese), however article 9 stipulates that: "… *If there are differences between the two versions the parties agree that the English version will prevail*".

9. Article 1 of the Contract provides that:

> *"Player will be an employee of the Club from Sep 20th, 2012 to the last official game of the 2012-13 season. Player will attend a physical check, including a drug test after Player's arrival on Sep 20th, 2012. Physical and drug test results will be given within 48 hours. If Player fails physical and drug test, the contract will be considered null and void and considered expired with no obligations by the Club to pay the Player any amounts. If Player passes his physical and drug test, Player's salary will start on Sept 20th, 2012 and will be monthly guaranteed from Sep 20th to Nov 28th, 2012, date on which the Club shall have the unilateral right to terminate the contract by formal communication of its intention to the Player and his Representative. In case by Nov 28th 2012, the Club has not communicated its intention to terminate the contract, Player's salary payment will be guaranteed from Nov 28th to the last game day of the regular season of 2012-2013. In this regard, from such date, even if Player is removed or released from the Club or this Agreement is terminated or suspended by Club due to Player's lack of or failure to exhibit sufficient skill. Player's death, illness, injury or physical disability (whether incurred on or off the court) or for any other reason whatsoever other than Player's direct and material breach of this Agreement, Club shall nevertheless be required to pay full amounts to Player and Representative on the dates set herein."*

10. Article 3 of the Contract stipulates that: "…*Player will receive a base monthly salary for 2012-13 CBA season of net $50,000 (Fifty thousand USD net of tax) a month and 30 days as a month, to be paid according to the following schedule with all monies due to player paid within 3 days of club's last official game* […]"

- 27 September 2012: 25,000 USD net (upon passing the physical & drug test)
- 19 October 2012: 25,000 USD net

- 3 November 2012: 25,000 USD net
- 18 November 2012: 25,000 USD net
- 3 December 2012: 25,000 USD net
- 18 December 2012: 25,000 USD net
- 2 January 2013: 25,000 USD net
- 17 January 2013: 25,000 USD net
- 1 February 2013: 25,000 USD net
- 16 February 2013: 25,000 USD net
- USD 1,667 a day after 16 February 2013, if necessary

11. Article 4 of the Contract provides that:

> *"Player acknowledges that he will come to China with no prior injuries and in great health and shape. Club agrees that Player shall pass a medical examination for basketball players upon arrival and that Club's obligations under this Agreement shall be contingent upon Player passing such examination. Both parties agree that such examination shall be conducted within 72 hours of Player's arrival and that Player will not participate in any Club activities (practice, game of any nature, training, etc. …) until such examination is conducted."*

12. The Appendix to the Contract stipulates that, as consideration for the placement of the Player in the Club for the 2012/2013 season by his Agent, the Club shall pay the Agent "*7% of the Player's base salary ($17,500)* … ", net of tax, in two equal installments of USD 8,750 each, to be paid on 15 October and 15 December 2012.

13. In an email exchange between 8-10 August 2012, the Agent and the Club agreed that a visa would be organized to enable the Player to arrive in China on the 14th or 15th of September 2012, i.e. slightly earlier than the date of 20 September indicated in the Contract.

14. However, on 28 August 2012, the Club sent an email to the Agent stating:

> *"hi! Guillermo … sorry to inform you a bad news … Our club has had a meeting with our head coach … we decide to change the foreign player … we couldn't bring Josh to come to my team … I will offer release letter to him soon … I am very sorry for that … I hope we have another opportunity to cooperate … thank you!!"*

15. The same day the Agent replied:

> *"We have been patiently waiting for your news regarding his plane ticket and VISA to go to China. We agreed on a date of departure (September 14th) and he is ready to go there. We have a signed agreement too that says he has to go to your team. In the meantime we have been turning down proposals from other teams in Europe because of this. I expect you to honor the contract and fly him there. If this is not the case, we will take the necessary legal measures to protect his interests and ours."*

16. On 29 August 2012, the Club responded:

> *"Please help him to contact another team … even if we bring him to come … it's just for short time … I will talk to our coach and then contact you!"*

17. The same day, the Agent reacted as follows:

> *"While he was signed with your team Josh has passed on other opportunities with other teams. You cant walk away from a contract just like that. I expect your Club to fulfill the obligations set forth in the agreement. I will wait for your news."*

18. On 30 August 2012, the Club wrote back:

> *"But there is one thing I need to talk to you … I worry he may just come for short time … you give me your information … I will ask my coach to talk to you … we may find out some way to deal with this problem ... thank you!! I am very sorry for that!!"*

19. The same day, the Agent replied:

> *"We acted in good faith from the time the contract was signed. We rejected different proposals because Josh was under contract with your Club. We talked about him arriving earlier. However, since the trust and good faith we had in this situation has been violated, we will stick to what the contract says, which is that Josh should arrive on September 20th to China. I expect you to fulfill this agreement and set up the plane ticket and his visa for Josh to arrive on September 20th .You can call me on my mobile number [number specified]. I will be more than glad to talk to the coach."*

20. The next day, the Club added:

> *"… we was suppose to sign a point guard for coming season … that why we sign you ... we changed a new coach for 2012-2013 season … when him got here. him changed our plan for coming season. him insist want a 2/3 as second american … we cant force coach to take the player him don't want … so .. we are sorry to tell u .. we must release you .. please looking for other job … we will try to intro ur name to other cba club which need guard… thanks so much for understanding .." (sic)*

21. On 4 September 2012, the Agent confirmed its position as follows:

> *"As we communicated before, we are waiting for your news on the airplane ticket and VISA information for Josh Fisher to join the team on September 20th as agreed on the contract that was signed by both parties. We hope that you abide by the contract and fulfill your obligations. If you fail to comply with them, we will be forced to initiated a BAT procedure to preserve Josh and the agency's rights."*

22. The Club's head coach, Mr. Tab Baldwin, also wrote directly to the Agent to clarify his personal position and view, stating, among others:

> *"My name is Tab Baldwin and I've recently been appointed as the coach of Fujian for the upcoming season. I understand that your player, Josh Fisher, has been signed on a monthly contract with the team. I also understand this took place before I was signed as the coach. I am not fully appraised of the contractual situation so I am contacting you in the coaching capacity of the team only […] I've done some background work on Josh with contacts I have in Europe, the US and Spain and have found out a few things about him. I hear that he is a very professional and a good player. However I also heard that he is a combo guard who leans much more to the shooting guard position than the PG position […] As I am sure you can appreciate, ultimately it is my job to fit the foreign players into the chemistry of the team. Since I arrived, it has become very clear to me, and I've communicated this to the management, that the team needs a pure PG, not a combo nor a shoot first PG. Simply put, although Josh may be a fine player, the roster has no need for a player of his type […] I understand that Josh has the right to come here to China and go through the fitness test, but I'm 100% certain that it will just be a huge frustration for him when he sees that he is in a role that is being shared with 4 other quality players on the roster […] I really don't wish to inconvenience Josh or you and I know that if this is done early enough, there are still opportunities for player in Europe to sign deals particularly if they have the European passport as Josh does. However, if he waits until late September then he will be without a job or income probably until Christmas time when he can hopefully be a replacement player on some team …"*

23. On 7 September 2012, the Agent repeated its position on behalf of the Player, contested the Club's right to disregard the Contract and concluded by putting the Club on notice as follows:

> *"[…] For that reason we urge the Club to fulfill its obligations according to the labor contract signed with the Player and allow the Player to join the club as the rest of the*

> *club's player for the 2012-13 season […] As a result of this, if the Club doesn't fulfill its obligations according the contract, the Club would be acting in bad faith and severely breaching the agreement with the Player and his Agent. The Player as well as the agency representing him will be forced to take the necessary legal actions initiating a BAT procedure to preserve his interests."*

24. As a result of the foregoing exchanges, the Player did finally travel to China, where he arrived on Sunday, 23 September 2012.

25. On the same date, the American basketball player Justin Dentmon announced via Internet:

> *"I just wanted to share with you that I have officially signed to play for the next five months in China with Fujian Quanzhou Bank Basketball Team …"*

26. On Monday, 24 September 2012, the day following his arrival, the Player underwent a physical examination at a public hospital in the early morning.

27. On Tuesday, 25 September 2012, the Agent wrote to the Club as follows:

> *"I have been in touch with Josh since he arrived. He is still waiting for the internet to be set up in his apartment. Nobody has told him anything. He hasn't received practice gear like Will has. Furthermore, he passed the physical and medical tests on Monday and he still hasn't received the 1st payment as stipulated in the contract. Please let me know something asap […] On another note, Josh talked to the coach to understand what your position is regarding him. Josh is an adult and understands situations but at the same time he doesn't want to lose time. If you guys are not interested in him, we need to know. He will do everything that is required to him as a great professional that he is but we don't want to be losing time there. Josh would like to meet with you tomorrow to talk to you and understand where you are. If you guys don't want him he deserves to know."*

28. The Club's representative replied:

> *"Sorry, We got report yesterday … it may some problem with his body check … I will talk to you later … I need to talk to my boss first … thank you!"*

29. The Player alleges that on the day of the medical examination and the day after he trained with the team.

30. On Wednesday, 26 September 2012, the General Manager of the Club verbally informed the Player that he had not passed the medical examination but did not

provide him with any documents in that respect. The Club also put the Player in contact with its travel agent in order to arrange for a flight back to Spain. The Player called his Agent to inform it of these events.

31. The same day, the Agent sent two emails to the Club reacting and enquiring as follows:

> *"Ricky, Josh has called me. He says you have told him he has not passed the physical test, which is impossible as he is in perfect physical condition. He has not been injured for years. Moreover, as you know, Josh has beeen (sic) practicing normally, without any sign at all of any impediment, with your team and the rest of his teammates these past days, which means that your team has already approved Josh's condition to play with you. Anyway, if you say he has not passed the physical test I would need you to send me that tests, and the reasons in which they are based on, in writing and signed by the doctors" [one email of 26 September]*
>
> *"Ricky, Josh has told me you are arranging his flight to go back to Spain. Josh and I asked you for the medical report and a written statement saying that he hasn't passed the physical and the reasons why he hasn't passed the physical. He will not leave China until you do so. I still cant believe that he didn't pass the physical, he is in perfect condition. Let me know" [other email of 26 September].*

32. According to the Player, in the morning of Thursday, 27 September 2012, the Club prepared a termination letter dated 26 September 2012, in front of him, and handed it to him with a medical report written in Chinese. The Club also booked the Player a ticket for an afternoon flight that day from Fujian to Beijing.

33. The termination letter provided the following:

> *"Dear Josh Fisher [o]ur Club is writing to inform you that based on the results of your medical test you are not in physical condition to play professional basketball for our Club. Your X-Ray shows your knees and your spine have injured which not allow you have good performance with us for coming season. Based on these findings we thus must terminate our agreement with you for the 2012-2013 basketball season effective immediately. Thank you for your attention to this matter."*

34. Furthermore, the Club replied to the Agent's email enquiries as follows:

> *"I talked to josh that ask him to stay longer, I still will pay the money … I said if you feel that is no problem for you body. you can stay to show us how good you are … But he doesn't want to do this … ask me to book ticket for him as soon as possible … Please go to the big hosptial (sic) to check again … If you have any problem you can talk to me anytime."*

35. The Agent reacted and answered as follows:

> *"You told him many times that he didnt pass the physical test. How does that make sense with the fact that he can stay longer and practice with the team? If he is not physically able to perform, how would he be able to keep practicing with the team? Furthermore, you told him you are bringing another player by the weekend to tryout with the team. This will not be the end of the story, you have acted in bad faith and have harmed his career."*

36. On Friday, 28 September 2012, the Club responded:

> *"I am really sorry for that … i didn't care about his feeling … sorry … I give him $4000 … if you have any problem with report … please let me know … thank you."*

37. By then the Player had left on a flight to Beijing (in the afternoon of Thursday, 27 September), and from there had caught a connecting flight to Madrid the next day (on 28 September 2012).

38. During this proceeding, the Club filed several medical reports as evidence (in Chinese with English translations) and notably the English translation of a report named "Certificate of Disease" dated 24 September 2012 signed by a doctor of the "Fujian Jinjiang Hospital" stating: "*He* [the Player] *came to our hospital on September 24 and was diagnosed as: 1. Retrogression of lumbar vertebra; 2. Retrogression of bilateral knee joints. Remarks: Suggested to take good rest; it is not suitable for strenuous exercise*". The English translation of an "X-Ray Examination Report" of the same date was also filed, which concluded under the heading "X-ray Impression: "*Retrogression of lumbar vertebra and bilateral knee joints, please combine with clinical follow up for further examination*"

39. According to a written statement signed on 1 March 2013 by the Sport Director of Club Estudiantes SAD in Madrid:

> *"The morning of September 28th 2012, I called Mr. Guillermo Bermejo asking for a playmaker shooting guard with Spanish passport. He told me that Fujiam Club terminated the contract with the player Mr. Josh Fisher just the day before and that Mr. Fisher was arriving to Spain on Friday 28th September 2012. Mr. Fisher is a basketball player known by all Spanish basketball clubs since he has played in Spain during the last 11 years. Furthermore, he played in the club "CB Gran Canaria" from 2008 to 2010, when I was the Sports Director of such Club. During such period, he always demonstrated a professional*

> *and exemplary behaviour, both on and off the court, showing highest commitment and involvement in team's practices and matches. For that reason, I decided, on behalf of Club Estudiantes SAD, to negotiate with Mr. Bermejo, the Player's agent, the signing of Mr. Fisher with the Club. The negotiations were soon productive and on Saturday September 29th 2012, the Player signed a labor contract with the Club."*

40. Thus, on 29 September 2012, the Player signed a two-year contract with the Club Estudiantes SAD (the "Spanish Contract") and, after passing a medical test with the club, has been playing with that club without missing any games in the 2012-2013 season according to the statistics published in mid-February 2013.

41. Article 5 of the Spanish Contract provides that the Player will receive – in monthly installments starting on 5 October 2012 and ending on 5 June 2013 – a total gross salary of EUR 60,000 for the 2012-2013 season.

42. On 8 October 2012, in a further email to the Agent after the Player's departure, the Club responded:

> *"Even if i talked to him that he didn't pass the physical exam … but I still ask him to stay … I will follow our contract … let him prove he is good enough … but he wants to go back ASAP … he did't follow our contract … I also email you about facts, I keep some evidence, if you really want to take law … that is no problem, I am waitting (sic) for you!! thank you!"*

43. Faced with the Club's foregoing position, the Claimants decided to file a Request for Arbitration to claim the amounts of salary and fees they deemed to be contractually owed by the Club.

3.2 The Proceedings before the BAT

44. On 14 November 2012, the Claimants filed a Request for Arbitration in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 2,000 on 15 November 2012.

45. On 2 January 2013, the BAT informed the Parties that Mr. Quentin Byrne-Sutton had been appointed as the Arbitrator in this matter and fixed the advance on costs to be

paid by the Parties as follows:

"Claimant 1 (Mr. Joshua Fisher)	*EUR 4,000*
Claimant 2 (U1st Sports España S.L.)	*EUR 1,000*
Respondent (Fujian SBS Xunxing Basketbal Club Co., Ltd)	*EUR 5,000"*

46. On 14 January 2013, the Claimants paid their respective shares of the advance on costs.

47. On 22 and 24 January 2013, the Respondent was requested to file a complete version of its Answer and simultaneously to reply to various questions from the Arbitrator.

48. Between 21 and 31 January 2013, the Respondent filed the submissions and documents constituting its Answer.

49. On 1 February 2013, the Claimants substituted for the Respondent's non-payment of its share of the advance on costs.

50. By Procedural Order of 5 February 2013, the Claimants were requested to answer questions addressed to them by the Arbitrator.

51. On 19 February 2013, the Claimants filed their answers to the questions.

52. By Procedural Order of 22 February 2013, the Claimants were requested to clarify certain of their answers to the Arbitrator's prior questions.

53. On 6 March 2013, the Claimants filed their submission addressing the request for clarifications.

54. On 7 March 2013, the Claimants were requested to reply to one more question.

55. The same day, the Player replied to the question.

56. On 8 March 2013, the Respondent was granted the right to file any observations on the

Claimants' answers to the Arbitrator's questions.

57. On 18 March 2013, the Respondent filed its submission relating to all of the Claimants' submissions and answers to the Arbitrator's questions.

58. Given the late appointment of Counsel by the Respondent, such Counsel solicited and was granted the opportunity to amend and complete the Respondent's submission of 18 March 2013.

59. On 3 April 2013, the Respondent's Counsel declined in the following terms to file a further submission:

> *"Acknowledging that yesterday, 2 April 2013, was the deadline for Respondent to amend its previous filing, we write to inform you and the arbitrator that Respondent declines to submit any further documents at this time. We therefore look forward to an expeditious response by Claimants prior to a closing of the proceedings".*

60. On 12 April 2013, the Claimants filed a final submission.

61. By Procedural Order of the same day, the proceedings were closed and the Parties invited to submit their statements of costs.

62. On 18 April 2013, the Claimants submitted their statement of costs. The Respondent did not file a statement of costs.

63. On 23 April 2013, the Respondent was invited to file any observations it might have on the Claimants' statement of costs.

64. On 3 June 2013, the BAT wrote to the parties that the Respondent is granted: "… *a final opportunity to submit its statement of costs and any comments it may have on the Claimants' statement on costs by no later than Wednesday, 5 June 2013. In the event that the Respondent submits a statement on costs, the Claimants will be allowed to comment thereon within a short deadline*".

65. On 6 June 2013, in addition to submitting its statement of costs and its comments on

the Claimants' statement of costs, the Respondent filed two unsolicited submissions entitled "*Respondent's Motion for Extension of Time to Obtain Evidence to Refute New Claims Made by Claimants*" (incorporating a request for production/translation of documents) and "*Supplemental Response*" (incorporating observations on the merits of the Claimants' final submission).

66. By Procedural Order of 11 June 2013, the Respondent's additional submissions were accepted on record, the request for production/translation of documents was rejected and the closing of the proceedings was confirmed subject to the Claimants being provided with the opportunity to comment on the Respondent's statement of costs.

67. On 12 June 2013, the Claimants indicated they had no observations on the Respondent's statement of costs.

4. The Positions of the Parties

4.1 The Claimants' Position

68. In a nutshell and in substance, the Player contends that:

- The Club unjustly terminated his Contract on 26 September 2012 given that he was in perfect physical/medical condition at the time, as established, among others, by the facts that (i) he had had a normal prior season (ii) after his arrival in China he trained normally with the team for several days, and (iii) soon after leaving China he was able to be engaged by and play regularly for a new team in Spain after having passed a medical examination.

- Despite his requests, he was never offered any explanations or medical reports enabling him to understand why the Club deemed him unfit to play with the team. In addition, the subsequent English translation of the medical report initially received in Chinese demonstrates that the alleged medical condition attributed to him

according to the last page of the report and invoked by the Club to terminate the Contract, in fact concerned another individual – named Li Hang and aged 25 – whose name corresponds to that of another player in the Club.

- Various events that took place after the signature of his Contract and before his arrival in China confirm that the Club merely used the medical examination as a pretext to terminate his Contract. In that relation, it is noteworthy that: (i) in August 2012, the Club announced to his Agent without warning that the Club no longer required him and that he need not turn up in China for the pre-season training; (ii) the Club's new coach wrote to the Agent indicating in substance that the Player's profile did not suit him and that he would be wasting his time if he turned up in China because the team did not need him; and (iii) during this same period another foreign (American) player announced that he was being engaged by the Club and subsequently arrived in China to play with the team, which meant that the number of import players had become three, whereas according to the applicable regulations, the Club was only entitled to field two.

- He is not claiming the entire outstanding Contract value because according to its article 1 the Club was entitled to unilaterally terminate the Contract without cause on 28 November 2012, if it wished to choose such option.

- Consequently, he is limiting his claim to the salaries that became contractually due between the date of undue termination by the Club (26 September 2012) and the date (28 November 2012) when the Club was entitled to unilaterally terminate his Contract, i.e. the equivalent of the four instalments of USD 25,000 each which became due on 27 September, 19 October, 3 November and 18 November 2012 (totalling USD 100,000).

- On the basis of the Spanish Contract (with Club Estudiantes), during the same period ending 29 November 2012, the Player was only paid a gross amount of EUR 13,988, which at an exchange rate of 1.29 applicable on 28 November 2012

corresponds to an amount of USD 18,000, meaning that he "… *has suffered an economic loss of at least 82,000 USD net during this period*".

69. As far as the Agent's claim is concerned, in a nutshell and in substance, it is claiming that it is entitled to the full amount of contractually stipulated agency fees, which were to be paid in two instalments of USD 8,750 each on 15 October and 15 December 2012, because the Contract does not provide that either amounts would not be owed if the Contract were terminated by the Club before their due dates.

70. In their Request for Arbitration dated 14 November 2012, the Claimants requested the following relief:

> *"1. To award the claimants with:*
>
> *a) Immediate payment of 108,750 USD net, corresponding to:*
>
> *- Claimant 1: 100.000 USD*
>
> *- Claimant 2: 8,750 USD*
>
> *b) Payment of the second instalment of 8,750 on December 15th 2012 in case the Club had not paid on time.*
>
> *2. To award the Claimants with the full covered the costs of this arbitration."*

4.2 Respondent's Position

71. In a nutshell and in substance, the Respondent contends that:

- The Club did not breach the contract or any of its duties because according to the medical reports issued by the hospital, the Player was not physically fit to start playing with the team, i.e. he failed the medical examination.

- The Club was therefore entitled to terminate the Contract as it did, since passing the medical examination was a condition precedent to the Club's payment

obligations arising (articles 1 and 4 of the Contract).

- The Club also conformed with its contractual obligations by supplying the Player upon request with a copy of the medical reports and even went beyond its duties by giving the Player an amount of USD 4,000 as an act of good faith upon his departure from China.

- On the other hand, by filing for arbitration in the manner he did, the Player breached his contractual duties under article 5 of the Contract, requiring him first to attempt a negotiation.

- In any event, the Player had the duty to mitigate damages since he signed a contract with Club Estudiantes SAD "… *for more guaranteed money than that which he claims was due under the Chinese Contract*".

- On the basis of the wording of article 1 of the Contract, in case of a unilateral termination by the Club before 28 November 2012, the Player was "… *only guaranteed his salary through the month played*"; meaning that since the Club terminated the Contract on 27 September "… *the only payments due Mr. Fisher would be $25,000.00 on 27 September 2012 and $ 25,000.00 on 19 October 2012 for a total of $50,000.00*".

- Thus, by signing the Spanish Contract, whereby he was guaranteed a total of EUR 70,000 for the 2012-2013 season (the equivalent of USD 91,700 at an exchange rate of 1.31 applicable on 15 March 2013), the Player was guaranteed significantly more than the amount he was guaranteed under his Contract with the Club. Indeed, under the Contract with the Club, the Player was only guaranteed USD 50,000 and in addition was given USD 4,000 by the Club, meaning that only USD 46,000 would be owed to him even if the Club were deemed contractually liable.

- In other words, the Player is guaranteed USD 41,700 more under the Spanish Contract and cannot therefore make any claim under the Contract with the Club.

- In the alternative, even if article 1 of the Contract is interpreted as meaning that the Player was guaranteed four monthly salaries of USD 25,000 (due on 27 September, 19 October, 3 November and 18 November 2012) between his start with the Club after the medical examination (24 September) and 28 November 2012 (the contractual date upon which the Club could unilaterally terminate without cause), the difference between the Player's guarantee under the Contract (USD 100,000 – USD 4,000 already paid = USD 96,000) and his guarantee under the Spanish Contract (US 91,700), only amounts to USD 4,300, which is the maximum he could claim within such scenario.

- In that relation, the Claimants' attempt to calculate damages in their Final Reply to Answer is clearly contrary to internationally accepted principles of law and the well-established practice of the BAT. According to generally accepted principles of the law of damages and also of labour law, any amounts the Player earned during the remaining term of the Contract must be deducted. The Claimants argue that their recovery should be based on comparing the amount of money the Player could have earned under the Contract during a period from 20 September 2012 through 28 November 2012 with the amount he earned under the Spanish Contract for the same time period. However, if the Arbitrator finds that the Player was guaranteed money from the Contract, which Respondent denies, the proper terms of comparison are not the monthly salary of each contract as argued by the Claimants but the amount guaranteed for the entire 2012-2013 season.

- In any event, whatever the calculation made, the "*Claimants have not produced any competent evidence (1) that the Spanish Contract is "gross," (2) that the tax rate in Spain on the money earned by Mr. Fisher under the Spanish Contract is 25%, (3) that Mr. Fisher pays taxes in Spain, (4) that Mr. Fisher does or does not pay taxes to the United States, (5) or that Mr. Fisher pays taxes anywhere*" and "*It is widely known that many American professional basketball players playing internationally do not file income tax returns properly, if at all*".

- The "*Claimants also fail to account for the EUR 10,000 guaranteed to the Player under the Spanish Contract if Club Estudiantes SAD terminates the contract within fifteen days after the end of the 2012-2013 season. Claimants further neglect to include the 1,000.00 EUR guaranteed in the Spanish Contract for travel expenses and airplane tickets*".

- Regarding the Agent's fees being claimed, they are not owed because the Player failed the medical examination with the consequence that under article 1 of the Contract it "… *will be considered null and void and considered to have expired with no obligations by Club to pay the Player any amounts*".

- In the alternative, since the Appendix to the Contract provides that the Agent's fees shall represent 7% of the Player's base salary, if the latter is only guaranteed US 50,000 or US 100,000 (depending on the interpretation of article 1 as to the guarantee period) the Agent's fees may only represent respectively US 3,500 or US 7,000 and must be limited to such amount.

- Furthermore, it is customary in professional basketball contracts in Spain for clubs to pay a 10% agency fee, meaning that the Agent would be guaranteed a fee of EUR 7,000 (USD 9,100 at the exchange rate of 1.31) under the Spanish Contract which is more than it was entitled to under the Contract, meaning that the Agent's claim should be entirely rejected.

- Throughout the arbitration proceedings, the Claimants have lacked transparency and good faith by failing to spontaneously file the Spanish Contract and any related contractual document concerning the Agent's corresponding fees, by failing to file English translations of documents in Chinese or certified translations (when a translation was provided) and by misstating certain facts and omitting to explain in a candid manner how it is possible that the Player signed a contract in Spain within two days of his departure from China and why he had to undergo a medical examination one month after signing the Spanish Contract.

- For the foregoing reasons, "*Even if the arbitrator finds Respondent owes Claimants for breach of the Chinese Contract in the maximum amount of USD 4,300.00 […] that amount should be credited against the amount Claimants should pay to Respondent for the costs, expenses, and reasonable and necessary attorney's fees incurred as a result of this harassing and unduly burdensome arbitration Claimants brought and litigated in bad faith*".

- Finally, the Club objects to the Claimants' accounting of costs. First, the Club objects to the Claimants' accounting of 2,100.00 EUR for a "Legal report" and 800 EUR for "Legal advising during the procedure." The Claimant in no way attempts to define what "Legal report" means, who provided the legal report, what purpose the "Legal report" served, or the hourly rate for the work performed. The same deficiencies apply to "Legal advising during the Procedure. This amount includes legal fees of $2,700.00 for the present submission.

- Second, the Club objects to the Claimants' accounting of 1,300.00 EUR for "Translations." BAT Rule 4.2 states, "[d]*ocuments provided to BAT in a language other than English must be accompanied by a certified translation unless the Arbitrator decides otherwise*." In the present case, the Claimants submitted several documents purportedly translated into English. None of the alleged translations were certified. Respondent should not be liable for any of these alleged translations.

- Third, the Club objects to the Claimants' accounting of 50.00 EUR for "*Copies of documents*." Were these copies made in relation to the non-certified translations submitted to the BAT in violation of Rule 4.2? What documents were copied and at what rate? 50 EUR seems excessive for even the most complex BAT case, especially taking into consideration that all documents are submitted to the BAT in electronic form via email.

72. In its Answer, the Club submitted that it "… *is not seeking any counterclaim or sought relief"* and "… *will not request a holding of a hearing for the examination of (a) witness (es)*".

73. In its Reply of 18 March 2013, the Club sought the following relief:

> *" … that this tribunal deny all of Claimants' claims, award them no relief and award Respondent fees and expenses as requested above. In the alternative, Respondent asks the arbitrator to order the requested documents produced for such other and further relief as Respondent may be justly entitled ex aequo et bono".*

74. In its "Supplemental Response" of 6 June 2013, the Club confirmed its request for relief as follows: "*Respondent respectfully prays that this tribunal deny Claimants' claims, and grant all such other and further relief to which Respondent may be justly entitled ex aequo et bono*".

5. The Jurisdiction of the BAT

75. 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).

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

77. 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.[1]

78. The jurisdiction of the BAT over the dispute results from the arbitration clause

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

contained under article 5 of the Contract, which reads as follows:

> *"[…] In the event of any dispute in relation to this Agreement, Club agrees to contact Player's Representative in an attempt to negotiate the dispute prior to any action. 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 the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."*

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

80. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).

81. Moreover, the arbitration agreement stipulates that it covers all disputes arising out of the Contract, which includes the Appendix of the same date defining the Club's duty to pay the Agent's fees. Consequently, the arbitration agreement covers all aspects of the dispute being raised in this proceeding and all the Parties to this proceeding are bound by it. In addition, none of the Parties challenged the jurisdiction of the BAT in their submissions.

82. For the above reasons, the Arbitrator has jurisdiction to adjudicate the claims submitted by the Player and the Agent against the Club.

6. Discussion

6.1 Applicable Law – ex aequo et bono

83. 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".*

84. 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."*

85. Article 5 of the Contract provides that if and when any dispute between the Parties hereto is submitted to the BAT: "*The arbitrator shall decide the dispute ex aequo et bono*".

86. Consequently, the Arbitrator shall decide *ex aequo et bono* the claims brought by the Claimants against the Club in this arbitration in front of the BAT.

87. 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[2] (Concordat)[3], under which Swiss courts have held that arbitration "en équité" is fundamentally different from arbitration "en droit":

> *"When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*[4]

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2 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).

3 P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

4 JdT 1981 III, p. 93 (free translation).

88. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives *"a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case."*[5]

89. This is confirmed by Article 15.1 of the BAT Rules in fine, according to which the Arbitrator applies "*general considerations of justice and fairness without reference to any particular national or international law*".

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

6.2 Findings on the Merits

91. The first issue that needs addressing is whether or not the contractual obligations of the Club can be deemed to have become void on the basis of articles 1 and 4 of the Contract due to the Player having failed his medical examination.

92. More precisely, the question is whether the Club's allegation that the Player failed the entry medical examination on 24 September 2012 is proven and sustainable, bearing in mind that since the Club is invoking the right to deem the Contract void on such basis, it is for the Club to prove the facts underlying that contention.

93. The Arbitrator finds for a combination of the following reasons that the Club has failed to meet that burden of proof:

- Although the Club has filed several medical reports (incorporating the results of the medical examination undergone by the Player on 24 September 2012) in these

5 Poudret/Besson, Comparative Law of International Arbitration, London 2007, No. 717. pp.625-626.

proceedings in their original Chinese versions and with a certified English translation, no proof has been adduced beyond the Club's own affirmations that any English translation of those reports were actually given/shown to the Player on 26 September 2012 or prior to his departure from China, while at the same time, the latter contends he only received a report in Chinese and no clear explanations.

- It is uncontested that prior to arriving in China in September 2012, the Player had not been suffering from an injury and had played throughout the previous professional basketball season (2011/2012) without any physical complaints.

- The Club has not contested that after the medical examination in China on 24 September 2012, the Player participated in various training sessions during the few days he spent with the team in China before leaving on 27 September and was not personally complaining of any physical ailments.

- It is uncontested that within a short time after leaving China, the Player was engaged by and began playing with Club Estudiantes SAD, and up until February 2013 (when the corresponding evidence was filed in this proceeding) was playing on a regular basis on that club's team.

- It is not altogether clear form the various medical reports adduced that the x-ray scan report from the Fujian, Puijiang hospital invoked by the Respondent actually concerned the Player rather than another person named "Li Hang", and, even if it did, it concludes under the heading "X-ray Impression": "*Retrogression of lumbar vertebra and bilateral knee joints**, please combine with clinical follow up for further examination***" (emphasis added), whereas there is no evidence that any further clinical tests were carried out by the Club before it announced to the Player that he had failed the examination.

- Furthermore, (i) the Club had attempted on several occasions to previously incite the Player to renounce coming to join the team in China and to seek engagement

by another club instead, stating e.g. in an email of 29 August 2011: "*Please help him to contact another team* ***… even if we bring him to come … it's just for short time*** *… I will talk to our coach and then contact you!*" (emphasis added), while (ii) another American player was announcing that he had been engaged by the Club.

94. In line with BAT jurisprudence,[6] the Arbitrator finds that a club must rely upon "objective and comprehensible medical reasons" in order not to engage the player it contracted. Furthermore, for reasons of fairness, the Club owed the Player a duty to provide him immediately with the detailed reasons and explanations for the failed examination – based on medical reports in the English language, i.e. which he could understand – so he would have a fair opportunity to discuss and contest them.

95. That did not happen according to the evidence on record, i.e. it is not proven that the Player received any such detailed explanations or an English version of the medical reports at the time of the facts. Furthermore, the Arbitrator finds, for the reasons listed above, that the Club has not established that the conclusion of the medical report filed by the Club during this proceeding stating "*He* [the Player] *came to our hospital on September 24 and was diagnosed as: 1. Retrogression of lumbar vertebra; 2. Retrogression of bilateral knee joints. Remarks: Suggested to take good rest; it is not suitable for strenuous exercise*" is correct or reliable, since that conclusion is directly contradicted by the uncontested facts that the Player played professional basketball and thus undertook strenuous exercise throughout the prior season as well as during the 2012/2013 season in Spain after leaving China.

96. Having considered that the Club failed to prove any justified reason to terminate the Player's Contract as a result of the medical examination of 24 September 2012, the Arbitrator finds that by invoking the results of the medical examination as the motive for

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6 See FAT 0066/09 and BAT 0107/10.

unilaterally terminating the Player's Contract on 26 September 2012, the Club acted unjustly and breached its contractual obligations.

97. That said, based on the evidence adduced, the Arbitrator agrees with the Club that it does seem somewhat odd and unconvincing that the Player would have been able to sign the Spanish Contract only two days after his departure from China, i.e. practically upon descending from the plane from Beijing, unless he had been in prior contact with Club Estudiantes SAD, and was as one might say "keeping that possibility up his sleeve" in case matters did not work out in China.

98. However, in the circumstances of this case – in which the Club had previously made it clear that it no longer wanted the Player to come to China (despite having the contractual obligation to let him turn up) it is not necessarily a sign of bad faith for the Player and his Agent to have sought to ensure a back-up position in case the relationship "soured" for any reason after his arrival in China.

99. Moreover, by doing so, the Player would in effect be mitigating, preventively, possible damages.

100. Consequently, in the particular circumstances of this case, the Arbitrator finds that even if, in advance of travelling to China, the Player negotiated a back-up solution with Club Estudiantes SAD whereby he would be engaged by it if his relationship with the Club broke down, that fact would not represent a violation of his contractual duties or an unfair action causing any damage or entitling the Club to receive any form of compensation under a counterclaim. Indeed, it likely had the opposite effect of decreasing the damages the Club might otherwise have been required to pay.

101. It is also relevant in that respect that the Player obviously preferred to retain his Contract with the Club if possible because it was far more lucrative, therefore insisting on travelling to China despite the Club's change of heart, and that the only reason he ended up leaving China on 28 September and travelling to Madrid to sign a new contract there is that the Club formally terminated his Contract on 26 September 2012

for what he believed to be unjustified reasons.

102. Finally, it is noteworthy that even if after terminating the Player's Contract on 26 September 2012 the Club did – further to his objections and the complaints of his Agent – propose that he remain in China on trial, the Player had no contractual obligation to accept any such informal alternative solution, which offered him no guarantees. In that relation, in their final amended submission, the Claimants contend that: "*Respondent offered to allow Mr. Fischer to remain with the team on a try-out basis receiving the same pay as if under the Chinese Contract. Mr. Fisher refused this offer. Respondent paid Mr. Fisher $4,000.00 as good faith compensation for his time in China and provided an airplane ticket for Mr. Fisher to leave Fujian and proceed to Madrid*".

103. The Arbitrator finds that the existence and exact content of any such offer to "try-out" is not established and that logically, even if some form of offer was made by the Club, it would not have encompassed the same guarantees, i.e. conditions equivalent to those of the original Contract, otherwise the Club would have had no reason to terminate the Contract and offer instead another contractual arrangement.

104. For all the above reasons, the Arbitrator finds that the Club is liable to pay the Player the minimum amount of salary guaranteed under article 1 of the Contract.

105. Therefore, the next question to address is how much such guarantee represented.

106. The Arbitrator disagrees with the Club's interpretation of the guarantee under article 1 of the Contract. It is very clear from its wording that the earliest date on which the Respondent was entitled to terminate the Contract unilaterally without cause is 28 November 2012, and also clear from the wording and the rationale of this provision that until that date all salaries that become due under the schedule of instalments are guaranteed. The interpretation of article 1 invoked by the Club in effect would have the consequence of enabling it to validly terminate the Contract unilaterally before the date of 28 November 2012, which would imply an internal contradiction in terms.

107. Accordingly, the Arbitrator finds that, in principle, the Claimant is owed the salaries that became contractually due between the date of undue termination by the Club (26 September 2012) and the date (28 November 2012) when the Club was entitled to unilaterally terminate his Contract, i.e. the equivalent of the four instalments of USD 25,000 each which became due on 27 September, 19 October, 3 November and 18 November 2012 (totalling USD 100,000).

108. It is however fair, and in keeping with the requirement to mitigate damages recognized by BAT jurisprudence, that the amount of salary the Player earned under the Spanish Contract during the same period he was entitled to his salary under the Contract, i.e. during the overlapping period, be deducted from the compensation he is entitled to under the Contract.

109. In that connection, the Arbitrator disagrees with the Respondent's contention that the Player actually earned more under the Spanish Contract and should therefore not receive any compensation.

110. Under a fair and proper application of the principle of mitigation, in the circumstances of this case – where the Contract was only guaranteed until 28 November 2012 and only salaries corresponding to the guaranteed period are deemed to be owed by the Club – it is only the "double" payments that the Player would otherwise benefit from that need deducting, in order to prevent a form of "unjust enrichment", i.e. the payments he received from the Club Estudiantes SAD while the Contract was still valid and in force, such payments being those received from the Spanish club up until 28 November 2012 when the Club's unilateral termination could take effect in keeping with the terms of article 1 of the Contract. Any and all payments received by the Player from the Spanish Club after that date, are not deductable because he is no longer benefiting from a salary under the Contract.

111. Under article 5 of the Spanish Contract, the Player was entitled to three gross monthly salary payments of respectively EUR 5,800 (on 5 October 2012), EUR 5,650 (on 5

November 2012) and EUR 5,400 (on 20 November 2012) from Club Estudiantes SAD before the date of 28 November 2012.

112. According to the official pay slips of Club Estudiantes filed by the Claimants, during the period up until 30 November 2012, the Player received three net salaries (after deduction of tax and social charges) from that club representing EUR 4,858.08, EUR 4,537.20 and EUR 4,593.70, i.e. a total of EUR 13,988.90, which at a EUR/USD exchange rate of 1,29 on 28 November 2012 represents USD 18,000 (rounded off).

113. For the above reasons, the Arbitrator finds it fair and just that USD 18,000 be deducted from the amount of USD 100,000 guaranteed under the Contract, meaning that the Player would be entitled to compensation in an amount of USD 82,000. The Arbitrator also points out in passing that he does not consider the Claimants to have acted in bad faith by not initially producing the Spanish Contract because in the Request for Arbitration, they were candid enough when declaring that "*After the Club terminated the Labor Agreement, the Player, after passing the corresponding physical exam, signed two years with Club Estudiantes SAD, club with which the Player is performing in a satisfactory manner*".

114. Furthermore, the Arbitrator finds it irrelevant to his determination above whether or not the Player pays or has paid taxes in the United States and finds that the text of the Spanish Contract as well as the pay slips are good and sufficient evidence of the fact that the monthly salary instalments were "gross" amounts subject to a Spanish tax deduction which was directly deducted from each monthly salary payment, meaning that in any event there would be no need for a tax declaration by the Player in Spain or at least that any such declaration would have no impact on the net salary he earned and which has been accounted for in the damage calculation above.

115. That said, the Arbitrator finds that the content of the emails exchanged between the Agent and the Club in September 2012, in which the latter indicated that upon its termination of the Contract it made a "good faith" payment of USD 4,000 to the Player,

and the absence of contestation of such affirmation at the time, constitute good proof that such payment was made. In fairness, that amount must therefore also be deducted from the compensation received from by Player, meaning that his claim will be allowed in a net total amount of USD 78,000.

116. Concerning the Agent's fees, the Arbitrator finds that under the terms of the Appendix to the Contract, it is entitled to a fee for having placed the Player with the Club irrespective of the latter's decision to terminate the Contract unilaterally without cause on 26 September 2012.

117. However, because the early termination of the Contract by the Club in effect allowed the Agent to negotiate another contract for the Player for the same season (2012/2013), the Arbitrator finds it fair in the circumstances of this case to limit the Agent's compensation to the amount of the first contractual instalment of USD 8,750 owed on 15 October 2012, meaning that the final instalment of the same amount which would have become payable on 15 December 2012 shall not be due by the Club as compensation. Thus, *ex aequo et bono*, the Agent's compensation shall be fixed in a net total amount of USD 8,750.

118. Lastly, the Arbitrator considers that the emails exchanged in September 2012 between the Club and the Agent included an attempt by the latter to negotiate a solution. Consequently, the Claimants cannot be deemed to have ignored their duty under article 5 of the Contract to first try and negotiate.

7. Costs

119. 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.

120. On 12 June 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*", 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 10,000.

121. Considering the Claimants prevailed in a large part of their claims, it is fair that the fees and costs of the arbitration be borne by the Respondent and that it be required to cover its own legal fees and expenses as well as make a contribution to those of the Claimants. In that relation, the Arbitrator agrees with the Respondent that the Claimants' translation costs of EUR 1,300 cannot be claimed but finds that the cost claimed by the Claimants for making copies (EUR 50) and the amount claimed as legal fees (EUR 2,900) are reasonable, even if their exact origin is not detailed. Consequently, *ex aequo et bono* the Arbitrator finds that the Respondent shall contribute in an amount of EUR 2,950 to the Claimants' fees and expenses

122. Given that the Claimants paid advances on costs of EUR 10,000 as well as a non-reimbursable handling fee of EUR 2,000 (which will be taken into account when determining the Claimants' legal fees and expenses), while the Club failed to pay any advance on costs, the Arbitrator decides that in application of article 17.3 of the BAT Rules:

    (i) The Club shall pay EUR 10,000 to the Claimants, being the amount of the costs advanced by the Claimants;

    (ii) The Club shall pay to the Claimants EUR 4,950 (2,000 for the non-reimbursable fee + 2,950 for legal fees) representing the amount of the Club's contribution to the Claimants' legal fees and other expenses. This amount does not exceed the

maximum amount stipulated in Article 17.4 of the BAT Rules.

8. AWARD

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

1. **Fujian SBS Xunxing Basketbal Club, Ltd. shall pay Mr. Joshua Fisher an amount of USD 78,000 net as compensation for unpaid salaries.**

2. **Fujian SBS Xunxing Basketbal Club, Ltd. shall pay U1st Sports Basket España S.L. an amount of USD 8,750 net as compensation for unpaid agency fees.**

3. **Fujian SBS Xunxing Basketbal Club, Ltd. shall pay Mr. Joshua Fisher and U1st Sports Basket España S.L. an amount of EUR 10,000 as reimbursement for their arbitration costs.**

4. **Fujian SBS Xunxing Basketbal Club, Ltd. shall pay Mr. Joshua Fisher and U1st Sports Basket España S.L. an amount of EUR 4,950 as reimbursement for their legal fees and expenses.**

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

Geneva, seat of the arbitration, 27 June 2013

Quentin Byrne-Sutton
(Arbitrator)