



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0383/13)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Mr. George Dikeoulakos

Tube Sports and Media Ltd.
Iasonos 11, 4191, Limassol, Cyprus

C.G. Dimitropoulos & Sia EE
85 Vouliagmenis Avenue, 16674 Glyfada, Greece

all represented by Mr. Sofoklis Pilavios,
29 Irodotou Street, 10673 Athens, Greece

vs.

CSM Targoviste
Revolutei No 8B, 130011 Targoviste, Romania

represented by Mr. Ersü Oktay Huduti, Büyükdere Cad. Maya
Akar Center, 100-102 C Blok D.4/13 Esentepe, Sisli, Istanbul, Turkey

- Claimant 1 -

- Claimant 2 -

- Claimant 3 -

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. George Dikeoulakos (the “Coach” or “Claimant 1”) is a professional basketball coach of Greek nationality, who was retained by the Respondent, CSM Targoviste, for the basketball seasons 2012-2013 and 2013-2014.
2. Tube Sports and Media Ltd. (“Claimant 2”) and C.G. Dimitropoulos & Sia EE (“Claimant 3”) are basketball agencies which represented Claimant 1 leading into his retainer by the Respondent.

1.2 The Respondent

3. CSM Targoviste (the “Club” or “Respondent”) is a professional basketball club with its seat in Targoviste, Romania.

2. The Arbitrator

4. On 18 April 2013, 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”). None of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

5. The current dispute revolves around the central question of whether Claimants validly terminated the Coach Contract for “just cause” in January 2013, entitling them to the immediate payment of the entire contractual remuneration (including salary, bonuses and agent fees). The undisputed facts leading to Claimants’ termination notice in early January 2013 can be summarized as follows:

6. On 5 June 2012, the Parties entered into an employment contract (the “Coach Contract”), pursuant to which Respondent engaged the Coach as a basketball coach for the 2012-2013 and 2013-2014 seasons.

7. In Clause 1 of the Coach Contract, the coach’s job profile is described in the following manner:

“Club hereby employs the Coach as a skilled basketball coach to perform his exclusive playing services for Club during the term of this Contract. The coach agree [sic] to participate in Club’s practice sessions and to coach on Club’s exhibition regular season and playoff games, cup games and any European competition games, under the direction of the Club.”

8. In Clause 3 of the Coach Contract, the Club agrees that the agreement is a fully guaranteed, no-cut contract, meaning that the Club cannot terminate the contract “*should any injury, illness or death befall Coach or in the event Coach does fail to exhibit skill or competitive ability*”. The Parties explicitly clarified that the Coach Contract could only be terminated prematurely by exercising the termination rights set forth in Clause 14, which reads as follows:



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“a) The Club has the right to terminate/void this Agreement without any compensation to the Coach in the event Coach commits serious crime according to the laws of Romania.

b) If at any time a scheduled payment mandated by this Contract (salaries, bonuses and/or any and all agent fee payments as agreed herein) is 30 (thirty) or more full days late, Coach, in addition to his other rights and remedies set forth herein or as provided by law, will not have to perform any of his obligations under this Agreement until such time as all scheduled payments have been paid, and such nonperformance will not be considered a breach by Coach, as granted herein by Club. Club is hereby prohibited from suspending, fining or otherwise punishing Coach for exercising this right.

c) The Coach has the right to terminate/void this Contract in the event that any payment mandated by this Contract (salaries, bonuses and/or any and all agent fee payments as agreed herein) is past due more than 30 (thirty) full days. In such case, Coach may present a written notice to the Club either by fax or email; upon presentation of this notice Club agrees herein that Club has no right to pay the Coach and/or his Agencies part of or the whole of Club's debts towards them and agrees to grant to Coach his unconditional release. 72 (seventy two) hours after notice has been given, all monies due to Coach during the entire term of this Contract shall become immediately due and payable by way of acceleration, as agreed in this Contract.

d) [...]”

9. As per the terms of the Coach Contract, the Coach was entitled to a net salary of EUR 80,000 (to be paid in ten equal instalments on the last day of each month from 30 September 2012 until 30 June 2013) for the 2012-2013 season and a net salary of EUR 130,000 (also payable in 10 equal instalments on the last day of each month from 30 September 2013 until 30 June 2014) for the 2013-2014 season.
10. Whether or not the Coach is contractually entitled to the payment of certain bonuses claimed in this arbitration is in dispute between the Parties, because they rely on different versions of the Coach Contract. The Arbitrator notes that the bonus provision is the only part in which Claimants' contract version differs from the version relied on by Respondent. The contract version proffered by Claimants contains, in relevant part, the following bonus provision:

“VI. BONUSES

a) *The Club agrees to pay the Coach the following NET target bonuses:*

Season 2012-2013

[...]

- *For qualification in first 16 teams of the FIBA Euroleague, the Coach will receive €2.000 (Euro two thousand)”*

11. Respondent's version of the Coach Contract does not include any bonus promise which would relate to the FIBA Euroleague Women (in which Respondent's team participated during the 2012/2013 season) but rather makes reference to bonuses in relation to the FIBA Eurocup Women.
12. The agent fees to be received by Claimant 2 and Claimant 3 are set out in Clause 13 of the Coach Contract:

“Season 2012-13

- **€3,200** *(Euro three thousand two hundred) wired to G.DIMITROPOULOS AND SIA E.E' bank account, paid on 10/09/2012*

- **€2,400** *(Euro two thousand four hundred) wired to TUBE Sports and Media Ltd's bank account, paid on 10/09/2012 [...]*

Season 2013-14

- **€5,200** *(Euro five thousand two hundred) wired to G.DIMITROPOULOS AND SIA E.E' bank account, paid on 10/09/2013*

- **€3,900** *(Euro three thousand nine hundred) wired to TUBE Sports and Media Ltd's bank account, paid on 10/09/2013”*



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13. The Coach began working with the team in September 2012. Up until the end of 2012, the Club had 13 wins and one loss in the Romanian Basketball Championship. It also won three games in the FIBA Euroleague Women until December 2012 and qualified for the round of sixteen on 6 February 2013.

14. On 4 December 2012, the President of the Club announced that he was unhappy with the team's performance and communicated the following decision:

"In an extraordinary meeting, Administration Council of Club, decide to penalty with half of salaries of ALL players and staff for one month. [sic]"

15. In the middle of December, a dispute between the Coach and the Club arose, which eventually resulted in the immediate termination of the Coach Contract by Claimants in early January.

16. On 16 December 2012, the Club's President sent an e-mail to the Coach, announcing that the Coach needed to accept a 50% reduction of his salary as of January 2013 due to certain economic constraints from which the Club was allegedly suffering. In relevant part, that e-mail states:

"We hereby regret to inform you that our Club, CSM Targoviste is in financial collaps. Economical crises and last political elections let CSM Targoviste without financial founds for next year, 2013.

In facts, Local Council, because of deficit of local finances, cut all budgets for all departments of Mayor House in 2013 with 50%. Because of that, we inform you that all your players and coaches must suffer a 50% cut from their salaries starting with January, 1st, 2013.

So, therefore if you and your client will agree to stay knowing the circumstances please inform us by December 19th, 2012, through an Aditonal Act at our Contract. If cannot accept this situation, Club, by National Lows Budget is in IMPOSSIBILITY to assign salaries 100% for Jan-May 2013 [...]



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P.S. Please give me an answer for every player and part of staff, who will accept to stay with 50% less salary or wannabe free, no late than December 19th 2012 to can arrange flights ...” (sic)

17. The Coach, through one of his agents, replied on 17 December 2012, informing the Club that he would not accept a 50% reduction of his salary. In addition thereto, the Coach’s agent reminded the Club that the agent commission and half of the Coach’s October salary were still outstanding and, in fact, overdue by more than 30 days. The Club was asked to make all outstanding payments by 18 December 2012.
18. On 18 December 2012, Claimant 2 and Claimant 3 sent a final warning to the Club with respect to the allegedly outstanding agent fees:

“Based on our contract signed on 05/06/2012 between your club, coach George Dikeoulakos and his representing agencies and assistant coach Theodosios Paralikas, you should have paid the agent fees for the season 2012-13 on 10/09/2012. Despite the numerous emails, sms and phone calls you still have not made the said payment. [...] Also we remind you that coaches George Dikeoulakos and Theodosios Paralikas have the right to refrain from their duties if the contract payments towards them or the agencies are not made on time and they can also proceed to BAT arbitration, claiming full compensation if they are 30 or more days late. All pending payments must be made by this Friday 21/12/2012. Consider this email a final warning before we proceed to BAT arbitration.”

19. In response to the Agents’ e-mail, the Club’s President, by e-mail of 18 December 2012 presented three options to the Coach on how to resolve the situation and requested an official answer by the next day, 10 pm:

“1. If your clients understand Club situation and are ready to accept, because of tragical economic crises, a reducing of salary with 50% from 1st of January, they are wellcome to stay here and to work with team. To do them job !

2. If they will NOT accept the 50% cut starting January 2013 and money is all they want out of this job then from January you will be more than welcome to come back WITH FULL SALARY, like is in contract. Difference will come from my pocket but with one condition: your clients will be at Club disposal here and will do whatever the Club will need you to do. Coach Nini will be the coach in charge and

you will follow his order, because you will be paid with all money what you have in contract

3. If they dont wanna come back from January, Club will pay salary for December and rest from October and they are wellcome to find new oportunityes. But in this moment Club don't have any obligation to them both!" (sic)

20. On 20 December 2012, the Club's president re-emphasized his proposal ("*1. [...] quit, 2. [...] Stay with 50% less money [...] or 3. [...] stay with all money [...] but at disposal of Club.*").
21. By reply e-mail of the same day, Claimant 3 once again requested payment of the outstanding salaries and agent fees and informed the Club that he would meet with Claimant 1 in Athens to discuss how to handle the Club's proposal.
22. On 28 December 2012, while Claimant 1 was still in Greece for Christmas vacation, the Club's General Manager wrote to Claimant 3 and asked for the Coach's decision by 2 pm on the same day. Claimant 3 immediately wrote back that he could not accept such short deadlines and reminded the Club that it was in default with half of the Coach's October salary and with the agent fees ("*Consider this as one more warning, that you are in breach of contract by not having paid the fees and by owing to the coach half October salary.*").
23. In her next e-mails of 28, 29 and 30 December 2012, the Club's General Manager accused the Coach of engaging in unprofessional behaviour and declared that the Club could no longer accept him as the team's head coach. More specifically, she made the following accusations:
 - that the Coach discussed private e-mails shared with the President in public;
 - that the Coach called certain people "gypsies" in the locker room and vis-à-vis newspapers;
 - that the Coach tried to instigate players to strike before an important game on 19 December 2012.

24. With respect to the Coach's future role in the team, the General Manager announced that *"George don't deserve to be a Coach of CS Municipal Targoviste team ... and will not be until our President and Owner will ... change them mind."* (sic)
25. Claimant 3 rejected the Club's allegations with respect to the Coach's behaviour and recommended a settlement agreement under which the Coach Contract would be terminated and the Coach would receive the remainder of the agreed salary minus any remuneration he were to receive under any new contract concluded with a different team. Such settlement proposal was denied by the Club's General Manager by e-mail of 30 December 2012. She counter-proposed to pay the Coach his full December salary and the outstanding portion of the October salary against termination of the Coach Contract as of January 2013.
26. By e-mail of 2 January 2013, Claimant 3 rejected the Club's counter-proposal and informed the Club that the Coach was scheduled to fly back to Romania the next day as originally planned in order to report to his position and join the Club.
27. On the same day, the Club's General Manager informed the Coach and his agents that the Club had decided to remove him from his position as the team's head coach:
- "By the Club decision, from tomorrow Florin Nini will be our team head coach, Sakis will assist him and coach George [Claimant 1] will help Club with his experience when staff or team will need it."*
28. Claimant 3, on behalf of the Coach, immediately replied:
- "Meantime i do not see how coach Dikeoulakos can help you. He is either your head coach or he is not any more so he is fired."*
29. On 3 January 2013, after the Coach had returned to Targoviste and had tried to attend a practice session, he sent an e-mail to the General Manager stating, *inter alia*, the following:



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“However today as i returned to Targoviste all my stuff from home were gone and sent in the club's dirty storage area. My Romanian phone which club provided to me according to our contract is totally absente as my training clothes (jacket etc) that club provided to me for the practices and the games. Even worst, the car which club provided me according to our contract is not here, and even I asked in the club about it noone knows anything, no information about it at all, and I don't know how to reach to the practice. I have also no information about practice time, and the worst is that my assistant coach Florin Nini already announced to the rest of the coaches that from now on he is the head coach of the team according to the club's will, and he wants to have a meeting with them. So as I understand practically club wants me out of my apartment and out of my duties without official firing me.” [sic]

30. On the next day, the Club's General Manager sent an e-mail to Claimant 3 and confirmed that the Coach would be assigned the role of a *“technical coach, in charge of all the game strategies and scouting and video sessions”*, that *“his salary will remain the same”*, and that the Club *“did not fire George and he is still very much part of the team”*.
31. On 5 January 2013, Claimants sent an e-mail to the Club terminating the Coach Contract for breach of the latter, based on the following reasons:
 - Non-payment of half of the Coach's October salary in the amount of EUR 4,000 and the full December salary in the amount of EUR 8,000;
 - Non-payment of the agent fee for Claimant 2 in the amount of EUR 2,400;
 - Coach's degradation from head coach to technical coach.
32. After the termination notice, the Club paid the Coach EUR 12,000 in outstanding salaries for October and December 2012, and also paid the outstanding agent fees on behalf of Claimant 2.
33. For the months of May and June 2013, the Coach was employed by the Hellenic Basketball Federation as the Women National Team's head coach, receiving a total compensation of EUR 9,000.

34. On 18 November 2013, the Coach signed a “Contract of Athletic Services” with the Russian club Nadezhda Orenburg (the “Orenburg Contract”), under which he is entitled to receive EUR 82,500 as from December 2013 until April 2014 (Clause 5a of the Orenburg Contract.)

3.2 The Proceedings before the BAT

35. On 27 February 2013, Claimants filed a Request for Arbitration (with several exhibits), which was received by the BAT Secretariat on the same day. The non-reimbursable handling fee of EUR 3,000 was received in the BAT bank account also on 27 February 2013.
36. On 25 April 2013, 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 16 May 2013 (the “Answer”), and fixed the amount of the Advance on Costs to be paid by the Parties by no later than 6 May 2013 as follows:

<i>“Claimant 1 (Mr. George Dikeoulakos)</i>	<i>EUR 3,000</i>
<i>Claimant 2 (Tube Sports & Media Ltd)</i>	<i>EUR 1,000</i>
<i>Claimant 3 (C.G. Dimitropoulos & Sia EE)</i>	<i>EUR 1,000</i>
<i>Respondent (CMS Targoviste)</i>	<i>EUR 5,000”</i>

37. Claimants paid their respective shares of the Advance on Costs on 3 May 2013, 8 May 2013 and 9 May 2013. Claimant 1 eventually substituted for Respondent’s share on 27 May 2013.
38. On 30 May 2013, after the Arbitrator had extended the deadline for filing the Answer upon Respondent’s request, Respondent submitted its Answer.

39. In her letter dated 12 June 2013, the Arbitrator noted that the Parties apparently relied on different versions of the Coach Contract and invited them to provide a fully signed copy of the Coach Contract or, in the alternative, to explain which version of the Coach Contract was finally agreed upon between them.
40. On 21 June 2013, Claimants provided their comments on the governing version of the Coach Contract. Respondent did not file any comments.
41. On 28 June 2013, Claimants submitted a reply brief (the “Reply”) to Respondent’s Answer.
42. On 5 August 2013, Respondent filed comments on Claimants’ Reply (the “Rejoinder”).
43. By Procedural Order of 14 August 2013, the Arbitrator declared the exchange of documents completed and invited the Parties to submit a detailed account of their costs by no later than 22 August 2013.
44. On 22 August 2013, Claimant submitted the following account of costs:

“a. Costs and fees paid by Claimant 1 Mr. Georgios Dikeoulakos

- Handling Fee to the FIBA BAT:	3.000,00 Euros
- Advance on costs (Claimants’ share)	3.000,00 Euros
- Advance on costs (Respondent’s share – paid by Claimant 1)	5.000,00 Euros
- Attorney’s fees and administrative expenses: [drafting Request for Arbitration and additional submissions, preparing exhibits, correspondence]	6.150,00 Euros
- Total costs paid by Claimant 1:	17.150,00 Euros

b. Costs and fees paid by Claimant 2 Tube Sports and Media Ltd

- Advance on costs (Claimants’ share)	1.000,00 Euros
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c. Costs and fees paid by Claimant 3 G.Dimitropoulos & SIA E.E.

- Advance on costs (Claimants' share) **1.000,00 Euros**

TOTAL OF COSTS: **19.150,00 Euros"**

45. Respondent, by letter of the same date, submitted the following cost account:

*"Attorney's fees (32 hours at an hourly rate of € 325,-): € 10.400,-
Other expenses (communications, : [sic] € 100,-
Total : € 10.500,-"*

46. On 23 August 2013, the BAT Secretariat forwarded the cost accounts to the Parties and requested their comments on the other side's account of costs by no later than 30 August 2013. Neither party filed any comments.

47. On 11 November 2013, the Arbitrator requested clarification from Claimant 1 regarding his current employment situation and invited him to inform BAT whether he is (or will be) under a contract with another team during the 2013-2014 season.

48. On 18 November 2013, Claimant 1 submitted his comments along with several exhibits and informed BAT that he *"is currently negotiating with another team and at this point there is a high probability that the parties may reach an agreement for the conclusion of an Employment Contract for Season 2013-2014 within the next few days. In such case Claimant 1 shall notify the BAT Arbitrator accordingly."*

49. On 25 November 2013, Respondent filed comments on Claimant 1's submission.

50. On 26 November 2013, Claimant 1 submitted the Orenburg Contract.

51. On 3 December 2013, upon invitation by BAT, Respondent submitted comments on the Orenburg Contract.
52. 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 and to render the award solely based on the written record before her.

4. The Positions of the Parties

53. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

4.1 Claimants' Position and Request for Relief

54. Claimants submit the following in substance:

With respect to the termination of the Coach Contract:

- Claimants were entitled to terminate the Coach Contract for three different reasons, each of which alone justified the termination: (i) non-payment of half of the Coach's October salary; (ii) non-payment of certain agent fees; and (iii) the Coach's removal from his position as the team's head coach.
- As per the terms of the Coach Contract, any payment default on the Coach's salary or the agent fees justifies the termination of that agreement.
- Claimant 1 was hired as the team's head coach and could not be downgraded to a different position without his consent. The Club's unilateral decision to

assign him to a different spot effectively resulted in an unfair dismissal, which constitutes “just cause” to terminate the Coach Contract.

- After Claimant 1 rejected the proposed 50% salary cut as of January 2013, the Club followed a “hidden agenda” with the aim to make him leave the Club. The Coach’s alleged misbehaviours never occurred and, in fact, were fabricated by the Club to “justify” his downgrade to a technical coach. Former players and staff confirm that the Coach never tried to instigate any player not to participate in the 19 December 2012 game.

With respect to the outstanding portion of the October 2012 salary:

- The decision to cut the October 2012 salaries was made by the management of the Club, not by the Coach. The witness statement proffered by Respondent stands in plain contradiction to the Club President’s e-mail dated 4 December 2012 and is therefore false. Other players and staff confirm that the Coach never proposed any salary cut.

With respect to bonuses:

- The version of the Coach Contract submitted by Respondent is an outdated version of the agreement. It was superseded by the contract version submitted by Claimants, which includes the bonus provision on which Claimants rely.
- The Amendment of Respondent’s old contract version became necessary in the late summer, when the Club learnt that it would participate in the FIBA Euroleague instead of the FIBA Eurocup (the latter being contemplated at the time the Coach Contract was signed in early June 2012).

- In early September 2012, the parties exchanged correspondence with a view to amend the relevant bonus provisions.¹ The provision relied upon by Claimants was finally incorporated into a new version of the Coach Contract, which bore the same date as the original version of the contract.
- The revised version with the new bonus provision was sent by e-mail to the Club's president on 1 October 2012.²

With respect to the quantum of Claimant 1's claim:

- Between March and October 2013, Claimant 1 made extensive efforts to find a new Club.
- Specifically, as evidenced by copies of different communication trails, Claimant 1 and his agents were in contact with five different clubs, but eventually no contract could be finalized with any of these clubs.
- It was, therefore, not before mid-November that the Coach was able to secure a new employment (by signing the Orenburg Contract).

55. Pursuant to the Request for Arbitration, Claimants submit the following request for relief:

***“Claimant 1** requests the following Relief:*

*1. Payment of the total amount of **180.000 €** (one hundred and eighty thousand Euros), **net of all taxes**, analyzed as follows:*

*a. Payment of all remaining salaries due to Claimant for season 2012-2013 to the total amount of **48.000 €**, namely all salary installments as of January 2013 until June 2013*

¹ E-Mail dated 1 September 2012 from the Club's president to Coach's agent.

² E-Mail dated 1 October 2012 from the Club to the Coach and the Club's president.

b. *Payment of all salaries due to Claimant I for season 2013-2014 to the total amount of **130.000 €** (one hundred and thirty thousand Euros)*

c. *Payment of the target bonus for season 2012-2013 for qualification in the first sixteen teams of the FIBA Euroleague to the amount of **2.000€** (two thousand Euros).*

2. *Payment of interest of a rate of 5% on all requested amounts as of Termination Date on 5.01.20 13.*

3. *Payment of attorneys' fees and legal expenses to the amount that will be determined at the conclusion of the proceedings.*

4. *Payment of all costs of the Arbitration, including the non-reimbursable handling fee and the advance on costs which will be determined by the Arbitrator.*

Claimant 2 requests the following Relief:

1. *Payment of remaining agent fees for season 2013-2014 to the amount of **€ 3.900** (three thousand nine hundred Euros), given that the Contract was fully guaranteed*

2. *Payment of attorney's fees and legal expenses*

3. *Payment of all costs of the Arbitration including the non-reimbursable handling fee and the advance on costs which will be determined by the Arbitrator.*

Claimant 3 requests the following Relief:

1. *Payment of remaining agent fees for season 2013-2014 to the amount of **€ 5.200** (five thousand two hundred Euros).*

2. *Payment of attorney's fees and legal expenses.*

3. *Payment of all costs of the Arbitration including the non-reimbursable handling fee and the advance on costs which will be determined by the Arbitrator."*

4.2 Respondent's Position and Request for Relief

56. Respondent submits the following in substance:

With respect to the termination of the Coach Contract:

- The Coach had no right to terminate the Coach Contract. Respondent was not in default with any salary payment. Even if it were in default with half of the October salary (as claimed by the Coach), this amount would be so insubstantial that it would not trigger any right for the Coach to terminate his employment contract.
- The alleged non-payment of Claimant 2's agent fees is no grounds for terminating the Coach Contract. As per the FIBA regulations, agents are not permitted to terminate a player's or coach's contract based on a club's default on the agent fee.
- The Coach's degradation from head coach to a technical coach is no grounds for terminating the Coach Contract. The Club could no longer accept the Coach being the team's head coach due to the Coach's disloyal behaviour as of the middle of December. In particular, as evidenced by a witness statement signed by 9 players, the Coach tried to incite his team not to play in an important game due to the announced future salary cuts. Such breach of the Coach Contract would have entitled the Club to terminate the agreement for just cause. Because a contract termination for just cause would have been legal under the circumstances, the Club's decision to assign the Coach to a different position (i.e. technical coach) without any salary cut was all the more justified.
- The Coach Contract does not guarantee Claimant 1 a head coach position.

With respect to the outstanding portion of the October 2012 salary:

- The Coach himself requested that October salaries be cut by 50% after a lost game. The Club submits a witness statement signed by four players currently employed by Respondent in support of its allegation.

- The witness statement submitted by Claimants in support of their view lacks credibility because all signatories are in different respects affiliated to the Coach.

With respect to bonuses and agent fees:

- The version of the Coach Contract proffered by Claimants does not bear Respondent's signature. Accordingly, it cannot be authoritative with respect to the Coach's bonus entitlement.
- The agents are not entitled to any fee, because they did not fulfil their duties and acted in bad faith.

With respect to the quantum of Claimant 1's claim:

- Claimant 1 failed to inform the Arbitrator about the Orenburg Contract, showing his general bad faith attitude during this proceeding.
- Claimant 1 breached his obligation to mitigate loss by not joining a new club for the remainder of the 2012-2013 season despite an allegedly reasonable offer by a Turkish club (as evidenced by the communications submitted by Claimant).
- The Orenburg Contract, by providing almost the double amount in salaries for the 2014-2015 season (EUR 160,000) compared to the 2013-2014 season (EUR 82,500), has been negotiated to the detriment of Respondent so that Claimant 1 could receive extra amounts in damage compensation from Respondent for the 2013-2014 season.

57. According to the Answer to the Request for Arbitration, Respondent submits the following request for relief:

"The Respondent seeks an award In the hereby arbitration;

(a) declaring that CSM Targoviste was not in breach of the Agreement

- (b) *rejecting all claims submitted by the Claimants'*
- (c) *ordering the Claimants to pay all costs and legal fees related to the hereby arbitration."*

5. The Jurisdiction of the BAT

58. 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”).
59. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
60. 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.
61. The jurisdiction of the BAT with respect to all Parties of this dispute follows from Clause 17 of the Coach Contract,³ which reads as follows:

“Any dispute arising from or related to the present Contract shall be submitted to the FIBA 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 (PILA), irrespective of the parties’ domicile. The language of the arbitration of FIBA shall be English. The arbitrator shall decide the dispute ex aequo et bono.”

³ Because the jurisdictional clause is identical in the different contract versions relied upon by Claimants and Respondent, it can be left undecided which version is indeed governing this dispute for the purpose of determining jurisdiction.

62. The agreement is in written form and thus the arbitration clause fulfils the formal requirements of Article 178(1) PILA.
63. 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 17 of the Coach Contract clearly covers the present dispute. Furthermore, Respondent did not contest the jurisdiction of the BAT.
64. In view of all the above, the Arbitrator, therefore, holds that she has jurisdiction to decide the claims submitted to her in the present matter.

6. Applicable Law – *ex aequo et bono*

65. 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”.

66. 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.”

67. In Clause 17 of the Coach Contract, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to

any other law. Consequently, the Arbitrator will decide the issues submitted to her in this proceeding *ex aequo et bono*.

68. 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*⁴ (Concordat),⁵ 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.”*⁶

69. 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”.⁷
70. 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*”.
71. In light of the foregoing considerations, the Arbitrator makes the findings below.

⁴ 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).

⁵ P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

⁶ JdT 1981 III, p. 93 (free translation).

⁷ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

7. Findings

72. The central issue that must be resolved in deciding the present dispute is whether Claimants validly terminated the Coach Contract on 5 January 2013 (see below 7.1) and which, if any, consequences the findings on the contract termination issue trigger with respect to the quantum of the claims presented here (see below 7.2).

7.1 Did Claimants validly terminate the Coach Contract?

73. Claimants' case rests on the premise that they validly terminated the Coach Contract on 5 January 2013 and that based on such termination, they are entitled to the outstanding remuneration and agent fees for the 2012-2013 and 2013-2014 seasons. Claimants invoke three reasons which allegedly entitled them (each of them alone and taken all together) to terminate the agreement pursuant to the terms of the Coach Contract and pursuant to general principles of a "just cause" contract termination:

- (1) Respondent's failure to pay the Coach half of the October 2012 salary (EUR 4,000) in time;
- (2) Respondent's failure to pay Claimant 2 his agent fees for the 2012-2013 season (EUR 2,400) in time;
- (3) Respondent's decision to shift Claimant 1 from the head coach to a technical coach's position.

74. The Arbitrator will address each of these reasons in turn below.

a) *Respondent's failure to pay the Coach half of the October 2012 salary in time*

75. As an initial matter, the Arbitrator notes that the Club's obligation to pay the Coach the claimed part of the October 2012 salary is in dispute between the Parties. Respondent alleges that the Coach voluntarily waived half of his October 2012 salary after his team

had played a series of unsatisfactory matches. Claimants argue that it was a unilateral and improper decision taken by the Club's president to cut all players and coaches salaries by 50% as a result of poor sporting performance. The Arbitrator also notes that the Club eventually paid the Coach the disputed amount after having received Claimants' termination notice in January 2013.

76. Irrespective of this fact-driven dispute between the Parties, the primary legal question to be resolved is whether payment default on half a monthly salary can justify, as a matter of principle, the immediate termination of the employment contract, specifically in light of the fact that the salary payments relating to the months before October 2012 have apparently been made properly.
77. The primary source of law to answer this question is the Coach Contract. Clause 14 c) of the Coach Contract stipulates as follows:

"The Coach has the right to terminate/void this Contract in the event that any payment mandated by this Contract (salaries, bonuses and/or any and all agent fee payments as agreed herein) is past due more than 30 (thirty) full days. In such case, Coach may present a written notice to the Club either by fax or email; upon presentation of this notice Club agrees herein that Club has no right to pay the Coach and/or his Agencies part of or the whole of Club's debts towards them and agrees to grant to Coach his unconditional release. 72 (seventy two) hours after notice has been given, all monies due to Coach during the entire term of this Contract shall become immediately due and payable by way of acceleration, as agreed in this Contract." (emphasis added)

78. According to the plain language of the Coach Contract, the Coach would be entitled to terminate the contract in the event that *any* payment was late by more than 30 days, no matter how substantial or insubstantial the outstanding amount. The Coach Contract does not provide for any threshold amount, meaning that it would literally allow for an early termination of the contract even where the outstanding amount is completely insubstantial or entirely secondary.

79. The Arbitrator is not convinced that the Parties indeed intended to allow for an early and immediate termination of the Coach Contract in case of payment default on the most negligible amount, as the wording of Clause 14 c) might suggest. Such understanding would run directly counter to the core premises of immediate contract termination for “just cause”, against the background of which the termination options for a late or non-payment must be considered.
80. Early termination of an employment contract can principally not be based on every breach of obligation by one of the parties. Rather, because early termination of a contract is the last resort if the relationship between the parties becomes distressed, the breach of contract must amount to a certain degree of seriousness in order to justify “just cause” for the termination.⁸ Because the employer’s duty to pay the employee the agreed salary is an important, if not the most important, obligation of the employer under the employment contract, the non-payment or late payment by the employer principally constitutes “just cause” for the termination of the contract, unless the payment default is so insubstantial or secondary that the breach appears disproportionate in comparison to the consequences of immediate contract termination.⁹
81. The Arbitrator is of the opinion that, despite the broad language of Clause 14 c), the Parties did not intend to deviate from these general principles. Specifically, Clause 14 a) of the Coach Contract, which equips the Club with the right to immediately terminate the agreement only in the event the Coach “*commits a serious crime*”, evidences that the Parties obviously intended the immediate termination options to be triggered only in case of a serious breach of the contract.

⁸ See CAS 2006/A/1180 (Galatasaray SK vs. Frank Ribéry & Olympique de Marseille), para 21.

⁹ See CAS 2006/A/1180 (Galatasaray SK v. Frank Ribéry & Olympique de Marseille), para 26.

82. Under the described legal principles, the Arbitrator, deciding *ex aequo et bono*, finds that the non-payment of half a monthly salary does not justify the immediate termination of the Coach Contract in the case at hand, given that the total amount of EUR 4,000, which the Club did not pay in time, is entirely secondary in itself and compared with the maximum amount of EUR 178,000 in accelerated payments the Coach is now claiming.¹⁰ It would be disproportionate and unfair to allow for an early termination of the Coach Contract under these circumstances, also in light of the fact that the Club apparently effected all other payments becoming due prior to the October 2012 salary in time.

83. Because payment default on half a monthly salary does not justify the termination of the Coach Contract already for legal reasons, the factual question of whether or not the Coach had voluntarily waived this portion of his salary can be left undecided.

b) Respondent's failure to pay Claimant 2's agent fees

84. Claimants further submit that the immediate termination of the Coach Contract on 5 January 2013 was justified because of Respondent's (undisputed) failure to pay Claimant 2's agent fee in the amount of EUR 2,400, an obligation which became due on 10 September 2012.¹¹ In this regard, they again rely on Clause 14 c) of the Coach Contract, providing that the agreement may be terminated "*in the event that any payment mandated by this contract (salaries, bonuses and/or any and all agent fee payments as agreed herein) is past due more than 30 (thirty) full days.*" (emphasis added)

¹⁰ EUR 48,000 for the remainder of the 2012-2013 season (January to June) and EUR 130,000 for the 2013-2014 season.

¹¹ See Clause 13 of the Coach Contract.

85. Respondent submits that the non-payment of certain agent fees cannot justify the termination of the Coach Contract with respect to the Coach. In this respect, Respondent points to the FIBA Internal Regulations, stipulating, in Book 3, Chapter 4, para. 158, as follows:

“A Licensed Agent shall have the following duties:

[...]

u. Never to terminate, encourage or be involved in the termination of a player’s contract on the basis of non-payment of the agent fee.”

86. The Arbitrator notes that the FIBA regulations are not directly applicable in BAT proceedings. Whether or not, however, they should or even must guide the interpretation of the Coach Contract for the purpose of preventing a direct contradiction between the parties’ contractual relationship (allowing for termination of the Coach’s employment based on the non-payment of agent fees) and the FIBA regulations (prohibiting the same) needs not be decided in the case at hand.¹² In accordance with the Arbitrator’s reasoning above at para. 79-81, the amount of EUR 2,400 in outstanding agent fees is, in any event, too small to justify immediate termination of the contractual relationship between the Coach and the Club.

c) Respondent’s downgrading the Coach from head coach to a technical coach

87. The question remains whether the Club’s decision to assign to the Coach the new role of a *“technical coach, in charge of all the game strategies and scouting and video sessions”* justified Claimants’ immediate termination of the Coach Contract.

¹² With respect to this legal issue see BAT 0396/13, permitting the termination of a player’s contract for non-payment of the agent fees based on very specific language in the player contract and the specific facts of the case.

88. The relevant factual background decisive for answering this question largely consists of written e-mail correspondence exchanged between the Parties from mid-December 2012 until early January 2013.
89. In mid-December, the Club, through its president, approached the Coach and asked him to accept a salary reduction of 50% as of January 2013 due to certain economic difficulties the Club was allegedly facing. The Coach declined the proposed salary cut. In response to that, the Club presented three options to the Coach, namely: (1) to keep his job as head coach and stay with the team, but with a salary reduced by 50% as of January 2013; (2) to leave the Club at the end of 2012 against payment of the full December and the remainder of the October 2012 salary; or (3) to stay with the team at full salary at a different position under the orders of a new head coach. Claimants did not accept any of these proposals, but insisted that the Coach would continue to be the team's head coach pursuant to the terms of the Coach Contract. On 2 January 2013, the Club officially informed the Coach that it had appointed a new head coach and expected the Coach to *"help Club with his experience when staff or team will need it"*, later adding that the Coach would have the role of a *"technical coach, in charge of all the game strategies and scouting and video sessions"*.
90. The Club submits that it was permitted to unilaterally alter the Coach's position, because the Coach Contract did not provide him with a guaranteed head coach position. The Coach disagrees with the Club's contract interpretation and argues that he was hired as the team's head coach and enjoyed a right to keep that position through the entire term of the Coach Contract.
91. As an initial matter, the Arbitrator notes that the position of "technical coach" the Coach was supposed to carry out as of January 2013 is entirely different from the "head coach" position the Coach held before. On Respondent's own account, a head coach has an exceptional position within a basketball team with wide-reaching powers and responsibilities both internally and in public. In this respect, Respondent submits that

“Coaches position in the Club was different than other employees. He acted as the Club’s agent and had discretionary power to decide on the team format, players and rosters and was the public face of the team as he has been on the press after every match. Therefore he is an agent acting on behalf of the Club and he used employers power over other employees.”¹³ (sic)

92. In contrast, a technical coach “*in charge of all the game strategies and scouting and video sessions*” typically provides background and preparatory work for upcoming games. He has by no means the same decision-making authority or public exposure as a head coach and usually receives a significantly lower salary. In other words, “head coach” and “technical coach” are, from a legal perspective, two different employments.
93. Based on the written record before her, the Arbitrator finds that the Club was not legally justified in divesting the Coach of his head coach powers and responsibilities.
94. First, it is undisputed that the Coach did not consent to his downgrading. His removal was unilaterally decided by the Club, and Claimants, at all times, vigorously objected to the Coach’s degradation.
95. Second, the Coach Contract does not permit the Club to unilaterally remove the Coach from the position he was hired for.¹⁴ The Coach was hired by the Club as a “*skilled basketball coach*” and agreed “*to participate in Club’s practice sessions and to coach Club’s exhibition regular season and playoff games, cup games and any European competition games under the direction of the Club*” (Clause 1 of the Coach Contract – emphasis added). The Coach was further obligated “*to conduct the pre-season training camp of the Club, to train the team throughout the year, to coach in all friendly and official matches, to follow the regulations of the Club and to endorse Club’s official equipment while practicing and during all official obligations of the Club and in general*

¹³ Respondent’s Rejoinder dated 5 August 2013, ¶ 16.

¹⁴ See also BAT 0291/12 (finding that a Coach’s suspension from his duties related to the Club’s first team does not permit the Club to request that the coach performs other services for the Club).

to fulfil all duties reasonably expected by a professional basketball coach” (Clause 11 of the Coach Contract – emphasis added). It is clear that the duties arising from a “technical coach” job are entirely different from the ones quoted above, since the Coach would no longer be in a position to “coach games” of the Club. This prerogative had been assigned to the new head coach of the team. Also, the Coach was to receive a rather high salary plus considerable amenities and bonus amounts in case of his team achieving certain sporting goals. Additionally, at the time of the Coach’s hiring by the Club, he had already been a highly respected and reputable coach in the European basketball world, and any notion that he would have signed a contract for anything but a head coach position would be disconnected from reality.

96. It is evident from these facts that the Coach was hired specifically as the Club’s head coach and not as some coach that could be shifted within the team’s hierarchy at the free disposal of the Club. Under these circumstances, the Club’s right to unilaterally move the coach to a different position would have required express permission under the Coach Contract. No such permission is provided for in the agreement. Respondent’s simple reliance on the fact that the Coach Contract does not literally mention the term “head coach” can, therefore, not be credited.
97. In addition, although the Club promised to continue paying the salaries agreed under the Coach Contract, upon the Coach’s return to Romania, he realized that his belongings had been removed from his apartment and the car and cell phone provided by the Club were no longer at his disposal. The Arbitrator considers that these amenities were also substantial obligations of the Club under the Coach Contract and the fact that the Club suddenly and without notice stopped providing them to the Coach shows that the Club had no real intention to continue its collaboration with the Coach.
98. The facts described above distinguish this case from BAT 0291/12. In that case, the Arbitrator found that a temporary suspension of the coach’s obligations did not amount to a contract termination in the absence of any (other) indication for the Club’s intention

to terminate the relationship. In the present case, the Club's decision to replace the Coach as the team's head coach and to assign him to an entirely different position was final and definite (*"By the Club decision, from tomorrow Florin Nini will be our team head coach ... and coach George will help Club with experience when staff or team will need it"*¹⁵).¹⁶ The unannounced removal of the Coach's amenities provides further evidence for the Club's intention to permanently remove him from the contractually agreed head coach position.

99. Finally, because the Coach's removal from the head coach position legally constitutes a termination of his employment, and because the Coach Contract itself does not equip the Club with any right to unilaterally shift the Coach from one position to another, the Club's actions could only be justified if the requirements for a "just cause" termination were met under the circumstances at hand. In this respect, the Club asserts certain misbehaviour by the Coach that allegedly happened in December 2012. Specifically, the Coach allegedly tried to incite his team not to play in an important Euroleague match and generally showed a negative attitude towards the Club.
100. The Arbitrator finds that these allegations are not sufficiently substantiated and in any event cannot justify an early termination of the Coach Contract for "just cause" by Respondent, for at least two reasons.
101. First, pursuant to Clause 14 of the Coach Contract, the Club's right to immediately terminate the Coach Contract without any compensation is triggered only *"in the event the Coach commits a serious crime according to the laws of Romania."* No such

¹⁵ E-Mail from the Club's general manager to Claimant 3 dated 2 January 2013.

¹⁶ For the legal differences between a suspension of the employee's obligations and a contract termination see also BAT 0317/12. In that case, the arbitrator held that an oral declaration of contract termination expressed by a club's representative is binding for the club even when the club subsequently decides that it wants to keep the coach as the team's head coach.

“serious crime” by the Coach has been established. The alleged misbehaviour does certainly not qualify as such.

102. Second, with respect to the Coach’s alleged negative attitude, the Club’s submissions are vague and contested. Respondent asserts that the Coach allegedly disclosed contents from private e-mails by the President to the press, and that he insulted certain people in the locker room, without explaining or corroborating any specific circumstances that would detail its accusations.
103. In addition, the Arbitrator finds that the allegation of a negative attitude is certainly an issue which requires a clear warning before it may justify an early termination of the Coach Contract. Because the sanction of terminating the contract is a very significant one, the target of the termination (here: the Coach) needs to be provided with fair warning so that he knows that his contract will be terminated if he continues to fail on his contractual obligations. Respondent failed to show that it indeed warned the Coach in the described manner.
104. The same holds true with respect to the “strike incitement” allegation. Irrespective of whether the Coach really tried to convince his players not to play in the Euroleague match (because of the Club’s decision to cut all salaries) – which is in dispute between the Parties – an early termination of the contract would have required a clear warning to the Coach, which is not on the record.
105. In summary, the Arbitrator finds that the Coach’s removal from his position was not justified by “just cause” and therefore occurred illegally. The Club had no right to degrade the Coach to the position of a “technical coach”, and the Coach was fully entitled to insist on keeping his employment as the team’s head coach. Because the Club produced a *fait accompli* when it appointed a new head coach, at the same time effectively depriving the Coach of any opportunity to act as the team’s head coach from thereon, the Coach was entitled to immediately terminate his contract for “just cause”.

His illegal degradation (effectively constituting a dismissal) to a different position under the circumstances of this case amounted to a serious breach of the Coach Contract justifying its early and immediate termination. In this context, it should also be noted that the Coach, prior to his termination notice, warned the Club several times that he would not accept his removal.

106. Hence, Claimants' early termination of the Coach Contract is valid and justified. The next question the Arbitrator needs to address is the issue of quantum, i.e. to what compensatory amounts Claimants are entitled as a result of the termination of the agreement.

7.2 To which amounts are Claimants entitled on the quantum side of their case?

107. Respondent's breach justified the termination of the Coach Contract on 5 January 2013. As a result, Claimants are entitled to damages for the losses caused by the early termination of the Coach's employment, which Respondent's actions made necessary. Claimants would have received the promised remuneration under the Coach Contract for the remainder of the 2012-2013 season and the entire 2013-2014 season but for Respondent's breach and the termination of the agreement. Therefore, Claimants are principally entitled to recover the agreed contractual compensation, subject to certain limitations addressed further below.¹⁷

108. The quantum side of Claimants' case consists of four positions: (i) lost salary payments on behalf of Claimant 1 for the remainder of the 2012-2013 season and the 2013-2014

¹⁷ The Coach Contract supports this concept of damage calculation, providing (in Clause 14 c) that in the event that the Coach validly terminates the agreement on grounds of a payment default (which was not the reason that justified the contract termination in this case), "*all monies due to Coach during the entire term of this Contract shall become immediately due and payable by way of acceleration*". There is no reason why a different damage calculation model should apply in cases where the justification for the termination does not stem from a payment default, but from another reason constituting "just cause".

season; (ii) bonus payment on behalf of Claimant 1 due to the Club's advancing to the round of sixteen in the FIBA Euroleague; (iii) lost agent fee payments on behalf of Claimant 2 and Claimant 3 for the 2013-2014 season; and (iv) interest on the amounts Respondent owes Claimant 1.¹⁸

i. Lost salary payments on behalf of the Coach

109. In accordance with the principles explained above, the Arbitrator must calculate the compensation which is due by the Club for the period between the actual termination date and – following Claimants' request for relief – the end of the 2013-2014 season. According to generally accepted principles of the law of damages and also of labor law, any amounts which the Coach earned or might earn by exercising reasonable care during the remaining term of the Coach Contract must be deducted.
110. In this respect, the Arbitrator accepts Claimants' argument that damage mitigation is much more difficult for a coach than a player.¹⁹ A team needs many players, but only one head coach. Thus, Claimant 1 would certainly not find it easy to readily secure alternative employment in the middle of the 2012-2013 season. Given that Claimant 1 made some efforts to find new employment, as evidenced by the various communications submitted to the record, the arbitrator, deciding *ex aequo et bono*, finds that Claimant 1 exercised reasonable care in mitigating the damages caused by Respondents for the 2012-2013 season.
111. Therefore, the Arbitrator considers that it is just and equitable to grant Claimant 1 the entire salary outstanding for the remainder of the 2012-2013 (EUR 48,000) minus an amount of EUR 9,000 he received from the Hellenic Basketball Federation for coaching

¹⁸ Claimant 2 and Claimant 3 have not requested payment of any interest in this proceeding.

¹⁹ See also BAT 0256/12.

the women's Greek national team in May and June 2013. The total amount Claimant 1 is entitled to for the 2012-2013 season is, accordingly, EUR 39,000.

112. With respect to the 2013-2014 season, the Arbitrator considers that it is just and equitable to discount the salary of EUR 130,000 by the amount of EUR 82,500 he is to receive under the Orenburg Contract, plus an amount of EUR 13,000, constituting 50% of the salary he would have received under the Coach Contract with Respondent for the two months of September and October 2013. The Arbitrator finds that the 50% discount for September and October 2013 is justified because Claimant 1 did not perform any work during these months, despite having had the whole summer break to find a new job that would start with the beginning of the new season. In this respect, the Arbitrator notes that the negotiations between the Coach and different Clubs, as per the correspondence on file, occurred in spring 2013 and in October 2013, but apparently not during the summer break (the more intense negotiation period). The total amount Claimant 1 is entitled to for the 2013-2014 season is, accordingly, EUR 34,500.

113. The Arbitrator rejects Respondent's proposition that the Orenburg Contract is a bogus deal with respect to the salary agreed for the 2013-2014 season. There is no indication that the salary of EUR 82,500 for a term of less than six months (18 November 2013 until 30 April 2014, see Clause 2 of the Orenburg Contract) is artificially low in itself (it is indeed higher than what the Coach was promised for his first season with Respondent). There is also no indication that this amount is artificially low in comparison to the amount of EUR 160,000 the Coach might earn for the 2014-2015 season. It is not uncommon that basketball contracts provide for (substantially) increased salaries for subsequent seasons, particularly when the Club has a unilateral option to buy out of such deal, as in the case of the Orenburg Contract.

114. The total compensation for the rest of the 2012-2013 season and the 2013-2014 season is EUR 73,500 (EUR 39,000 plus EUR 34,500).

ii. Bonus payment on behalf of the Coach for the Club's advancing to the round of sixteen in the FIBA Women Euroleague

115. Claimant 1 requests a bonus payment in the amount of EUR 2,000 for the Club's qualification for the round of sixteen in the FIBA Women Euroleague, which occurred on 6 February 2013. According to publicly available sources, at the time the Claimants terminated the Coach Contract, the team ranked 5th place in its group with a 3:5-record. The Club finally advanced to the round of sixteen at 5th place with a 4:8-record. The Arbitrator, deciding *ex aequo et bono*, finds that the Coach is entitled to the full bonus payment (i.e. EUR 2,000) despite the early termination of his contract, because the three victories he achieved with the team before Christmas break surely established the basis for the team's later qualification.

116. The Arbitrator also accepts Claimant's submission that the Parties indeed agreed on the claimed bonus as per the amended Clause 6 a) of the Coach Contract (see also *supra* at para. 10).

117. While it is true that this provision was not included in the contract version initially signed on 5 June 2012 (the one on which Respondent relies), Claimant, upon the Arbitrator's invitation to both Parties to explain which version of the contract was to prevail, proffered a plausible explanation why the Parties amended the initial version by the above-bonus provision:

"In short, the Respondent's version refers to FIBA Eurocup whereas the Claimants' version refers to FIBA Euroleague. Indeed, by the time of the conclusion of the Employment Contract on 5.06.2012 the Club was scheduled to play for season 2012-2013 in the FIBA Eurocup. However, later in the summer it became known that the Club would ultimately participate in the

FIBA Euroleague. This change called for an amendment of the original Agreement of the parties in connection to the Target Bonus amounts.²⁰

118. Claimant, along with an offer of detailed explanations and evidence addressing the negotiation history with respect to the amendment, submitted a copy of the amended agreement, which bears Claimants' signatures, the Club's seal and a signature from a Club representative.
119. Respondent did not provide any comments upon the Arbitrator's invitation, and failed to rebut Claimants' submission in any meaningful way, simply alleging that Claimant's contract version was not signed by the Club. However, the contract on which Claimants rely clearly includes a signature from a Club's representative, which means that Respondent's argument must be rejected.
120. Therefore, the Arbitrator finds that the Coach is entitled to the requested bonus payment in the amount of EUR 2,000.

iii. Lost agent fee payments on behalf of Claimant 2 and Claimant 3

121. Claimant 2 and Claimant 3 request payment of agent fees for the 2013-2014 season based on Clause 13 a) of the Coach Contract, which provides:

"XIII. AGENCY FEES

a) The Club agrees to pay as agency fees to the Coach's Agency G. Dimitropoulos and SIA E.E., TUBE Sports and Media Ltd and LBM, the following amounts, as described below (payments will be transferred to the Agencies' designated bank accounts):

[...]

Season 2013-14

²⁰ Claimants' submission dated 21 June 2013, para 3.

- **€5,200** (Euro five thousand two hundred) wired to G.DIMITROPOULOS AND SIA E.E' bank account, paid on 10/09/2013

- **€3,900** (Euro three thousand nine hundred) wired to TUBE Sports and Media Ltd's bank account, paid on 10/09/2013"

122. The Arbitrator finds that the agencies are entitled to the entire agent fee compensation despite the early termination of the Coach Contract. Claimant 2 and Claimant 3 have fully provided the contractually owed services, and the agent fees for 2013-2014 have by now become due and payable.
123. Respondents' argument that the agents have shown bad faith behaviour, depriving them of their right to request the stipulated agent fees, is entirely vague and unfounded and must, therefore, be rejected.

iv. Interest

124. Claimant 1 requests the payment of interest on the amounts owed to him from 5 January 2013 (the termination date) at a rate of 5%. Claimant 2 and Claimant 3, as per their request for relief, do not seek any interest payments.
125. 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 Claimants' main claims, i.e. must be decided in accordance with the principles of *ex aequo et bono*.
126. The Coach 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 jurisprudence²¹ 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

²¹ See, *ex multis*, FAT 0056/09; FAT 0069/09; FAT 0092/10; BAT 0237/11.

constant BAT jurisprudence, considers an interest rate of 5% per annum to be fair and just to avoid that the Club derives any profit from the non-fulfillment of its obligations.

127. With respect to the starting date, the Arbitrator notes, as an initial matter, that she follows settled BAT jurisprudence, which (in accordance with general labor law principles) determines that in case of a lawful contract termination, all outstanding amounts become due immediately on the day following the contract termination, i.e. on 6 January 2013. However, in their termination letter, Claimants did not detail or quantify any payment claims triggered by the termination, but merely noted that they “*preserve [their] right to ask for full compensation of the signed agreement*”. The Arbitrator finds that such general reservation of rights does not constitute a sufficient warning or warning equivalent justifying any interest to begin running. Hence, the Arbitrator believes that it is fair and equitable to start the interest calculation on the day when the Request for Arbitration was filed with the BAT, which happened on 27 February 2013.
128. In summary, Claimant 1 is entitled to the payment of interest on all outstanding salary and bonus amounts at a rate of 5% as of 27 February 2013.

7.3 Summary

129. Claimant 1 is entitled to an amount of EUR 75,500 – consisting of lost salary compensation for the rest of the 2012-2013 season and the 2013-2014 season in the amount of EUR 73,500 and a bonus in the amount of EUR 2,000 – plus interest of 5% p.a. from 27 February 2013.
130. Claimant 2 is entitled to a lost agency fee payment for the 2013-2014 season in the amount of EUR 3,900.
131. Claimant 3 is entitled to a lost agency fee payment for the 2013-2014 season in the amount of EUR 5,200.

132. All amounts are to be understood net of all deductions for social insurance and/or taxes.

8. Costs

133. 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.

134. On 10 January 2014 – 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 10,000.

135. Considering the outcome and the circumstances of the present case and given that the Claimants were justified in terminating the Coach Contract due to Respondent’s breach, the Arbitrator deems it appropriate that all of the costs related to this arbitration be borne by Respondent and that Respondent be required to cover its own legal fees and expenses as well as all of Claimants’ legal fees and expenses (i.e. EUR 6,150), which, in the Arbitrator’s view, are reasonable in light of the complexity of this case. The deductions on the quantum side of Claimants’ case do not warrant a discount on any of the costs to be reimbursed to them, because they are caused by Claimants’ efforts to mitigate the damage Respondent caused and occurred after the initiation of

the arbitration. Claimants cannot be punished for their efforts to mitigate the damage on behalf of Respondent by reducing the cost amounts to which they would otherwise be entitled.

136. Additionally, pursuant to Articles 17.1 and 17.3 of the BAT Rules, Claimants are entitled to the handling fee, which qualifies as “other expenses” incurred in connection with the present arbitration.

137. In light of the foregoing and given that Claimants paid all shares of the advance on costs in the amount of 3,000 (Claimant 1), 2x 1,000 (Claimant 2 and Claimant 3) and EUR 5,000 (Respondent – paid by Claimant 1), the Arbitrator decides, in application of Article 17.3 of the BAT Rules:

- (i) Respondent shall pay EUR 8,000 to Claimant 1 as a reimbursement for the arbitration costs advanced by him;
- (ii) Respondent shall pay EUR 1,000 to Claimant 2 and EUR 1,000 to Claimant 3 as a reimbursement for the respective arbitration costs advanced by them;
- (iii) Furthermore, as stated above, the Arbitrator considers it adequate to take into account the non-reimbursable handling fee of EUR 3,000 when assessing the expenses incurred by Claimants in connection with these proceedings. Hence, because the further amount of EUR 6,150 EUR for Claimants’ legal fees and expenses is reasonable, the Arbitrator fixes the contribution towards Claimants’ legal fees and expenses at EUR 9,150.

9. AWARD

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

- 1. CSM Targoviste is ordered to pay to Mr. George Dikeoulakos EUR 75,500.00 net together with interest of 5% p.a. on this amount from 27 February 2013.**
- 2. CSM Targoviste is ordered to pay to Tube Sports and Media Ltd. EUR 3,900.00 net.**
- 3. CSM Targoviste is ordered to pay to C.G. Dimitropoulos & Sia EE EUR 5,200.00 net.**
- 4. CSM Targoviste is ordered to pay to Mr. George Dikeoulakos EUR 8,000.00 as a reimbursement of the arbitration costs advanced by him.**
- 5. CSM Targoviste is ordered to pay to Tube Sports and Media Ltd. EUR 1,000.00 and to C.G. Dimitropoulos & Sia EE EUR 1,000.00 as a reimbursement of the arbitration costs advanced by them, respectively.**
- 6. CSM Targoviste is ordered to pay to Mr. George Dikeoulakos, Tube Sports and Media Ltd. and C.G. Dimitropoulos & Sia EE, jointly and severally, EUR 9,150.00 as a contribution towards their legal fees and expenses.**
- 7. Any other or further-reaching requests for relief are dismissed.**



BASKETBALL
ARBITRAL TRIBUNAL

Geneva, seat of the arbitration, 22 January 2014

A handwritten signature in blue ink, appearing to read 'Annett Rombach'.

Annett Rombach
(Arbitrator)