



**BASKETBALL**  
ARBITRAL TRIBUNAL

**ARBITRAL AWARD**

**(BAT 0419/13)**

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Stephan Netzle**

in the arbitration proceedings between

**Mr. Laron Dendy**

represented by Mr. David Lee, attorney at law,  
2017 East 74 St, Brooklyn, NY 11234, USA

vs.

**K.A.E. Kolossos Rhodes**  
Plateia Vrouhou 1, 85100 Rhodes Island, Greece

**- Claimant -**

**- Respondent -**

## **1. The Parties**

### **1.1. The Claimant**

1. Mr. Laron Dendy (hereinafter the "Player") is a professional basketball player of US nationality. The Player is represented by Mr. David Lee, attorney-at-law in Brooklyn, USA.

### **1.2. The Respondent**

2. K.A.E. Kolossos Rhodes (hereinafter the "Club") is a professional basketball club located in Rhodes, Greece. It is organised as a stock corporation.

## **2. The Arbitrator**

3. On 30 July 2013, the President of the Basketball Arbitral Tribunal (hereinafter the "BAT"), Prof. Richard H. McLaren, appointed Dr. Stephan Netzle as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules"). 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**

4. On 13 September 2012, the Player and the Club signed an employment agreement for the 2012/2013 season (hereinafter the "Player Contract"). The Player Contract provides for a fully guaranteed net salary of USD 57,000.00 payable in eight equal monthly instalments of USD 7,000.00, starting on 30 September 2012 until end of April 2013, plus an amount of USD 1,000.00 upon arrival and passing the medical and physical exams. In addition, the Club undertook to pay certain bonuses if the team reached the respective results.

5. On 26 February 2013, the Player notified the Club that the monthly salary due by 30 January 2013 was late for more than 20 days and that, therefore, he would immediately stop performing in the team's practices and games.
6. By letter of 6 March 2013, the Club replied to the Player with an "extra judicial protest and summons to appear". In that document, the Club alleged the Player of an "unconventional and unprofessional attitude" which he had not abandoned despite the warnings of the Club's general director. In addition, the Club asserted that the Player had refused to participate in a game against PAOK on 2 March 2013 and missed the following team training sessions. The Player was then called to appear at the offices of the Club on 7 March 2013 to present his view on these allegations.
7. By letter of 7 March 2013, the Player responded to the Club's letter and rejected the Club's allegations. He again reminded the Club of the outstanding salary payments which had meanwhile increased to two unpaid monthly salaries.
8. To date, the Club has not made any further payments.

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

9. On 21 May 2013, the Player and his Greek agent Mr. Panos Kapazoglou filed a Request for Arbitration. The non-reimbursable handling fee of EUR 2,000.00 was received in the BAT bank account on 22 May 2013 (EUR 1,500.00) and 19 September 2013 (EUR 500.00).
10. By letter of 20 September 2013, the BAT Secretariat confirmed receipt of the Request for Arbitration and informed the Parties about the appointment of the Arbitrator. Furthermore, a time limit was fixed for the Club to file its Answer in accordance with Article 11.2 of the BAT Rules by no later than 11 October 2013. The BAT Secretariat also requested that the Parties pay the following amounts as an Advance on Costs by no later than 4 October 2013:

*"Claimant 1 (Mr Laron Dendy)*

*EUR 3,000*

*Claimant 2 (Mr Panos Kapazoglou) EUR 1,000*  
*Respondent (K.A.E. Kolossos Rhodes) EUR 4,000”*

11. The Club did not submit an Answer. In addition, none of the parties paid its share of the Advance on Costs within the said time limit. The BAT Secretariat informed the parties that the arbitration would not proceed until receipt of the full amount of the Advance on Costs and requested the parties to effect payment by no later than 24 October 2013. Furthermore, the Club was granted a final chance to file an Answer by 21 October 2013.
12. By email of 28 October 2013, the Player’s counsel informed the BAT Secretariat that Mr. Panos Kapazoglou had withdrawn his claim against the Club. The BAT Secretariat therefore decided to adjust the Advance on Costs as follows:

*“Claimant (Mr Laron Dendy) EUR 3,000*  
*Respondent (K.A.E. Kolossos Rhodes) EUR 3,000”*

Subsequently, the Player paid both shares of the Advance on Costs in order to allow the arbitration to continue.

13. Upon request of the Arbitrator, the Player submitted two further player contracts with other clubs, signed for the period of the remaining term of the Player Contract. The Club did not submit any comments on these contracts.
14. By letter of 17 December 2013, the BAT Secretariat informed the Parties that the Arbitrator had declared the exchange of documents complete.
15. Upon request of the BAT Secretariat to both Parties, only the Player submitted his account of costs, which was not commented by the Club.
16. 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 deliver the award on the basis of the written submissions available.

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

##### **4.1. The Claimants' Position**

17. The Player submits the following in substance:

- According to Article 5 of the Player Contract, if there is a delay of payment of more than 20 days, the Player can stop performing practising and playing and may terminate the Player Contract by notice to “any Club Official”. The Player will then be granted unconditional release and free agency. 72 hours after such notice, all payments due to the Player for the entire term of the Player Contract will become immediately due and payable.
- On 26 February 2013, the Player notified the Club that the monthly salary due on 30 January 2013 had been delayed for more than 20 days and that he would therefore immediately stop practising and playing. In addition, “all subsequent actions [would] become of immediate effect”.
- The Player disputes the allegations the Club raised in its letter of 6 March 2013.
- To date, the four monthly salaries for January until April 2013, amounting to a total of USD 28,000.00, have not been paid. The instalments for September, October, November and December 2012 had been paid late which triggered late payment penalties as determined by Article 5, first sentence, of the Player Contract.
- Finally, the Player also claims reimbursement of a penalty imposed by the Greek government in the amount of USD 2,400.00 which he paid when travelling to Turkey without a visa, stating that the Club had failed to procure the required visa for him.

##### **4.2. The Claimant's Request for Relief**

18. In his Request for Arbitration, the Player requested the following relief:

*"1 \$28000 REPRESENTING 4 PAYMENTS NOT RECEIVED*

*JAN 30 2013 PAYMENT FEB 28 2013 BOTH OF WHICH WERE DUE WHEN  
PLAYER DECLARED BREACH BOTH OF WHICH PLAYER WAS ON ROSTER  
AND / OR PLAYED IN GAMES*

*2 PENALTY FOR LATE PAYMENTS*

*SEPTEMBER PAYMENT \$500*

*OCTOBER PAYMENT \$2800*

*NOVEMBER PAYMENT \$1800*

*DECEMBER PAYMENT \$2100*

*JANUARY PAYMENT AS OF ~~MARCH~~ 4 FEB 26 2013 TERMINATION \$2200*

*BALANCE OF PENALTIES FOR LATE PAYMENT WE LLEAVE(sic) TO THE  
ARBITRATORS DISCRETION*

*3 FINE PAID BY PLAYER ISSUE BY GREEK GOVERNMENT DUE TO TEAMS  
FAILURE TO OBTAIN VISA \$2400*

*[...]*

*IN THE EVENT TEAM WITHHOLD THE LETTER OF CLEARANCE AND PLAYER  
LOSES OTHER INCOME AS A RESULT THEREOF PLAYER WILL AMEND  
CLAIMED DAMAGES"*

*(deletions and corrections in the original)*

#### **4.3. The Respondent's Position and Request for Relief**

19. Despite several invitations by the BAT, the Club did not engage in the Arbitration proceedings at hand. It also did not make any submissions within the time limit set by the Arbitrator in accordance with the BAT Rules.

#### **5. Jurisdiction**

20. 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).

21. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
22. 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.
23. The jurisdiction of the BAT over the dispute results from the arbitration clause contained in Article 6 of the Player Contract which reads as follows:

*“Any dispute arising from or related to the present contract, shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitely in accordance with the FAT Arbitration Rules. The arbitrator shall decide the dispute ex aequo et bono.*

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

24. In accordance with Article 1.1 of the BAT Rules, these Rules “shall apply whenever the Parties to a dispute have agreed in writing to submit the same to the BAT – including by reference to its former name “FIBA Arbitral Tribunal (FAT)” (emphasis in the original). Article 18.2 of the BAT Rules says: “Any reference to BAT’s former name “FIBA” Arbitral Tribunal (FAT)” shall be understood as referring to the BAT.” The Parties’ reference to the “FAT” in Article 6 of the Player Contract is therefore understood as a reference to the BAT.
25. The Player Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA. The Arbitrator also considers that there is no indication in the file which could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording “[a]ny dispute arising from or related to the present Agreement” in Article 6 of the Player Contract covers the present dispute.
26. For the above reasons, the Arbitrator finds that he has jurisdiction to adjudicate the Player’s claim.

## **6. Other procedural issues**

### **6.1. Respondent's failure to submit an Answer**

27. Article 14.2 of the BAT Rules specifies that "*the Arbitrator may [...] proceed with the arbitration and deliver an award*" if "*the Respondent fails to submit an Answer.*" The Arbitrator's authority to proceed with the arbitration in case of default by one of the parties is in accordance with Swiss arbitration law and the practice of the BAT.<sup>1</sup> However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.

28. This requirement is met in the present case. The Club was informed of the initiation of the proceedings and of the appointment of the Arbitrator in accordance with the relevant rules. It was also given sufficient opportunity to respond to the Player's Request for Arbitration, to his claim on costs and the accuracy of the figures provided by him. The Club, however, chose not to participate in this Arbitration.

### **6.2. Monetary value of the dispute**

29. According to Article 16.2 of the BAT Rules, the Parties are deemed having agreed to an award without reasons if the value of the dispute does not exceed EUR 30,000.00. The Player has claimed an amount of USD 39,800.00. The relevant conversion date is the date of submission of the Request of Arbitration, i.e. 21 May 2013. At that date, the USD / EUR conversion rate was 1 USD = 0.778 EUR resulting in an amount in dispute of EUR 30,961.90 which exceeds the threshold above which the Parties are entitled to a reasoned award. The Arbitrator will therefore provide the full reasons for his decision.

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<sup>1</sup> See, *ex multis*, the following BAT awards: 0001/07; 0018/08; 0093/09; 0170/11; 0391/13.

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

30. 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”.*

31. 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.”*

32. In the arbitration agreement in Article 6 Clause 9 of the Player Contract, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to any other law. Consequently, the Arbitrator will decide the issues submitted to him *ex aequo et bono*.

33. 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 of 1969<sup>2</sup> (Concordat),<sup>3</sup> under which Swiss courts have held that “arbitrage en *équité*” is fundamentally different from “arbitrage en droit”:

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<sup>2</sup> 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).

<sup>3</sup> KARRER, in: Basel commentary to the PILA, 2<sup>nd</sup> ed., Basel 2007, Art. 187 PILA N 289.

*“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.”<sup>4</sup>*

34. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives

*“the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand”<sup>5</sup>.*

35. In light of the foregoing matters, the Arbitrator makes the following findings.

## 8. Findings

36. The Player requests payment of USD 28,000.00 for outstanding salaries, late payment penalties of USD 9,400.00 and the reimbursement of a fine paid by him to the Greek government because of the Club’s failure to obtain a visa for Turkey.
37. Initially, the Request for Arbitration also included Mr. Panos Kapazoglou’s claim for agent fees and late payment penalties but this claim was withdrawn and need not be adjudicated in this Arbitration.
38. In addition, the Player also reserved claiming damages if the Club withheld the Letter of Clearance and made it impossible for the Player to earn any alternative income. However, the Player did not insist on that damage claim and his employment contract with Darussafaka Spor Kulübü (hereinafter “Darussafaka”) (submitted by the Player upon request of the Arbitrator) shows that the Player was able to earn alternative income during the period of the remaining term of the Player Contract.

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<sup>4</sup> JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

<sup>5</sup> POUURET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

### 8.1. Outstanding salaries

39. According to Article 2 of the Player Contract, the Player was entitled to monthly salary payments of USD 7,000.00. As submitted by the Player, these payments have been made for the months of September 2012, October 2012, November 2012 and December 2012 but the monthly salaries for January 2013, February 2013, March 2013 and April 2013 have not been paid.

40. The Player's salary claim is based on Article 5 of the Player Contract, which reads as follows:

***“5. BREACH OF CONTRACT:** Club agrees that if there is a delay of more than 10 days in any of the above mentioned payments, they are obliged to pay 100USD/day as a delay penalty. If there is a delay of over 20 days, Player can stop performing in practices and games. In such cases, as soon as the Player or the agent makes a notice to void this Contract in writing to any Club Official, Player will be granted unconditional release and free agency. 72 hours after notice has been given all monies due to Player during the entire term of this Contract shall become immediately due” upon.”*

41. The notice for the outstanding January 2013 salary was given by the Player to the Club by email of 26 February 2013, 17:15 hours. In its letter of 6 March 2013, the Club did not contest having received that notice. This means that all “monies due to the Player during the entire term of this contract” became due 72 hours later, namely on 1 March 2013, 17:15 hours. The remaining “monies due during the entire term of this contract” consist of the unpaid salaries, the late payment penalties due until the maturity date and any other payments such as unpaid bonuses and allowances (Transportation, Automobile and Housing).

42. Article 5 of the Player Contract does not require a formal termination of the Player Contract before the “monies due under the contract” become due. It is therefore not necessary for the Arbitrator to determine whether or not the Player's notice also terminated the Player Contract.

43. The question, however, remains whether the Club had any reason to refuse payment of the remaining payments due under the Player Contract. As mentioned *supra*, it was the Player who submitted the Club's reply of 6 March 2013 to his payment notice of 26 February 2013. The Club responded that it had fulfilled all its obligations under the Player Contract. It then went on accusing the Player of unprofessional attitude, lack of discipline and defiance towards the instructions and orders of the coach and the Club's management. According to the Club, the Player was therefore in breach of the Player Contract. However, the Club's allegations were not supported by any submissions before BAT, let alone any evidence. Actually, the Club ignored any opportunity to provide further information on these allegations in this proceeding. The Arbitrator finds it therefore impossible to take the accusations in the Club's letter of 6 March 2013 into consideration when deciding the present case.
44. Furthermore, when the Player reminded the Club on 7 March 2013 that also the February 2013 salary had not been paid, the Club remained silent.
45. Under the circumstances, the Arbitrator has no indication whatsoever which would cause any doubts on the Player's salary claim and therefore finds that the Player is entitled to the outstanding salaries for January until April 2013, which amount to USD 28,000.00.
46. From this amount, any income the Player earned during the remaining season covered by the Player Contract must be deducted. Upon request of the Arbitrator, the Player submitted two contracts with other clubs but also explained that only the employment contract with Darussafaka was actually signed and executed. This contract provided a salary of USD 10,000.00 for the 2012/2013 season. The Player played the rest of the 2012/2013 season with the team of Darussafaka.
47. The player contract with Darussafaka also provides for a bonus of USD 500.00 for every game won by the team. According to publicly available sources<sup>6</sup>, the team won

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<sup>6</sup> See [www.eurobasket.com](http://www.eurobasket.com).

five games in which the Player participated. He was therefore entitled to a bonus of USD 2,500.00.

48. The amount of USD 12,500.00, which the Player earned with Darussafaka must therefore be deducted from the compensation due by the Club. This results in compensation due by the Club of USD 15,500.00.

## 8.2. Late payment penalties

49. The Player also claims late payment penalties for the monthly salaries of September 2012 until December 2012. In addition, the Player claims late payment penalties for the January 2013 salary and “BALANCE OF PENALTIES FOR LATE PAYMENT [...] TO THE ARBITRATORS DISCRETION”.
50. According to Article 5 of the Player Contract, the late payment penalty of USD 100.00 per day applies after ten days of delay. In accordance with standing BAT jurisprudence, the period for which late payment penalties can be claimed may not extend beyond the date of the Request for Arbitration, which is 21 May 2013 in the present case. This would result, for the January 2013 salary, in a higher late payment penalty than requested by the Player. The Arbitrator is however limited by the Player’s request and is not entitled to adjust it at his discretion as requested. The late payment penalty for the January 2013 salary is therefore capped at USD 2,200.00. In application of Article 5 of the Player Contract, the Arbitrator calculates the late payment penalties as follows:

Salary	Received by Player	Delay	Late Payment Penalty
September 2012	15 October 2012	15 days	USD 500.00
October 2012	7 December 2012	38 days	USD 2,800.00
November 2012	28 December 2012	28 days	USD 1,800.00
December 2012	31 January 2012	31 days	USD 2,100.00
January 2013	Date of Request for Arbitration: 21 May 2013	> 22 days	USD 2,200.00*
<b>Total</b>			<b>USD 9,400.00</b>

51. The Arbitrator considers that this amount is not excessive, when compared to the entire amount owed by the Club to the Player, and therefore the Club shall be ordered to pay the total amount of late payment penalties of USD 9,400.00 to the Player.

### **8.3. Reimbursement of fine**

52. The Player also requests reimbursement of a fine which he had to pay to the Greek government because of the “team’s failure to obtain visa” to travel to Turkey. However, the Arbitrator finds that this claim is not sufficiently substantiated and not supported by any evidence. The claim for reimbursement for that alleged fine is therefore dismissed.

### **8.4. Summary**

53. The Club is obliged to pay to the Player compensation in the amount of USD 15,500.00 (outstanding salaries of USD 28,000.00 deducted by USD 12,500.00 which the Player earned with Darussafaka). The Club is also obliged to pay late payment penalties in the total amount of USD 9,400.00.

54. To sum up, the Player is entitled to the sum of USD 24,900.00.

## **9. Costs**

55. 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.

56. On 23 February 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”, 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 5,904.19.

57. Considering the circumstances of the present case (Article 17.3. of the BAT Rules), the Arbitrator deems it appropriate that 30 % of the costs of the arbitration shall be borne by the Player (EUR 1,771.26) and 70 % by the Club (EUR 4,132.93).
58. Given that the Advance on Costs of EUR 5,904.19 were entirely paid by the Player, in application of Article 17.3 of the BAT Rules the Arbitrator decides that the Club shall pay EUR 4,132.93 to the Player, being the difference between the amount advanced by him (EUR 5,904.19) and the amount he is ordered to pay (30% of EUR 5,904.19 = EUR 1,771.26).
59. Furthermore, the Arbitrator considers it adequate that the Player is entitled to the payment of a contribution towards his legal fees and other expenses (Article 17.3. of the BAT Rules). The account of costs submitted by the Player’s counsel states legal fees and expenses in the total amount of EUR 3,500.00 (including the non-reimbursable handling fee). The Arbitrator holds it adequate to take into account this amount when assessing the Player’s reasonable legal expenses, noting also that the amount received by BAT for the non-reimbursable handling fee was EUR 2,000.00 and not EUR 1,500.00 as stated in the Player’s account of costs. The Club did not submit any account of costs. After having reviewed and assessed all the circumstances of the case at hand, the Arbitrator fixes the contribution towards the Player’s legal fees and expenses at EUR 3,000.00.

## **10. AWARD**

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

- 1. K.A.E. Kolossos Rhodes is ordered to pay to Mr. Laron Dendy the amount of USD 24,900.00.**
- 2. K.A.E. Kolossos Rhodes is ordered to pay to Mr. Laron Dendy the amount of EUR 4,132.93 as a reimbursement of the advance on arbitration costs.**
- 3. K.A.E. Kolossos Rhodes is ordered to pay to Mr. Laron Dendy the amount of EUR 3,000.00 as a contribution towards his legal fees and expenses. K.A.E. Kolossos Rhodes shall bear its own legal costs.**
- 4. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 4 March 2014

**Dr. Stephan Netzle**  
**(Arbitrator)**