



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0429/13)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Salvatore Coppa

- Claimant -

represented by Mr. Mario Vigna and Mr. Stefano Brustia, attorneys at law,
Piazza Adriana, 15, I-00193 Roma, Italy

vs.

Basketball Sport Association of Thailand
Room no. 286, Ramkhamhaeng Rd, Huamak Bangkapi,
10240 Bangkok, Thailand

- Respondent -

1. The Parties

1.1. The Claimant

1. Mr. Salvatore Coppa (hereinafter the “Coach”) is a professional basketball coach of Italian nationality and licensed by FIBA under the License Number 2007018954. The Coach is represented by Mr. Mario Vigna and Mr. Stefano Brustia, attorneys at law of the law firm Coccia De Angelis Pardo Associati in Rome, Italy.

1.2. The Respondent

2. The Basketball Sport Association of Thailand (hereinafter the “Association” or “BSAT”) is the national basketball association of Thailand with its headquarters in Bangkok, Thailand. The BSAT is a member federation of FIBA.

2. The Arbitrator

3. On 1 August 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. In December 2012, the Coach entered into an employment agreement with the Association as head coach of the Thailand Women’s National Team and the Under 18/16 Thailand National Teams from 15 February 2013 until 31 December 2013 (hereinafter the “Coaching Agreement”). The Association was represented by its (then) President, Mr. Surasak Chinawongwatana. According to Clause 6 and Exhibit 1 of the

Coaching Agreement, the Association agreed to pay the Coach “a guaranteed base salary” in the total amount of USD 88,000.00 to be paid in instalments as scheduled in Exhibit 1 of the Coaching Agreement.

5. By email of 19 December 2012, the Association’s International Coordination Officer, Ms. Suhainee Pula (“Ms. Pula”) forwarded a signed copy of the Coaching Agreement to the Coach and informed him that he could start working as head coach on 15 February 2013. By email of 20 December 2012, the Coach returned a signed copy of the Coaching Agreement.
6. From 23 January until 9 March 2013, the Coach and Ms. Pula exchanged several emails concerning the airline ticket for the Coach’s flight to Thailand and his visa. The Coach finally picked up his visa on 24 February 2013 and arrived in Thailand on 12 March 2013.
7. On 13 March 2013, the Coach sent three invoices to the Association and requested payment of USD 10,000.00 due upon his arrival (first invoice), the monthly instalment of USD 8,000.00 due on 1 March 2013 (second invoice) and the reimbursement of expenses for his business visa of USD 283.00 (third invoice). A payment of USD 10,000.00 was made by the Association in late March 2013.
8. By email of 13 March 2013, Ms. Pula asked the Coach to run a “basketball clinic” in southern Thailand. In accordance with the Club’s request, the Coach ran the clinic on 16 and 17 March 2013. By email of 21 March 2013, Ms. Pula provided the Coach with a calendar entitled “Events of the year 2013”. However, the Coach was not invited by the Association to coach any team.
9. On 30 March 2013, the Association elected a new President (Mr. Pipat Lapprattana) and the board members for the term 2013 to 2015, *inter alia*, Mr. Thongchai Vatanasakdakul as the Association’s Secretary General.
10. On 2 April 2013, the Coach sent an invoice for the monthly instalment of USD 8,000.00 due on 1 April 2013 to the Association.

11. On 12 April 2013, the Coach sent an email to the new BSAT President in which he expressed his desire and availability to work as agreed in the Coaching Agreement. The Coach also reminded the Association to pay the outstanding salary instalments due on 1 March and 1 April 2013.
12. According to the Coach's submission, he met the Association's new President and the Secretary General by chance on 17 April 2013. On this occasion, the Coach asked when he could start practising with the teams and reminded the Association's representatives of the outstanding salary payments. However, he was told that the Coaching Agreement would not be honoured by the Association and that he should apply to the former BSAT President.
13. By letter of 22 April 2013, the Coach's counsel reminded the Association that the salary instalments for March and April 2013 in the total amount of USD 16,000.00 were still outstanding. In addition, the Coach's counsel stated as follows:

"[...] In accordance with Exhibit 1 letter B. Bonuses of the Employment Agreement your failure to pay Mr. Coppa has gone beyond the grace period of 15 days and, therefore, he has the right to unilaterally terminate the agreement and obtain the full amount of the base salary agreed therein.

However, without prejudice to what stated above, Mr. Coppa hereby expresses his availability to solve the dispute amicably. To this end, we respectfully invite the representatives of your Association to contact this law firm at their earliest convenience, but in any event no later than 26 April 2013, in order to examining together the possibility of a friendly settlement.

If we do not hear from you within the above time limit, we will have no other choice than to take any legal steps necessary to enforce the (sic) all the payments due under the Employment Agreement and take swift legal action before the Basket Arbitration Tribunal of FIBA. [...]"

14. Since the Coach had not received any response, his counsel informed the Association by letter of 29 April 2013 that the Coach had terminated the Coaching Agreement on 26 April 2013. The Coach's counsel wrote, inter alia, the following:

"[...] Therefore, Mr. Coppa have no other choice than unilaterally terminate the Employment Agreement with cause and reserve the right to take swift legal action before the Basketball Arbitral Tribunal of FIBA to obtain the full amount of the base salary agreed therein." (sic)

15. Sometime thereafter, the Coach left Thailand and returned to the USA.
16. On 8 July 2013, the Coach signed a new coaching agreement with the Montana State University as assistant coach for the women's basketball team. The term of this contract covers a term from 1 July 2013 to 30 June 2014. The Coach is entitled to a monthly salary of USD 2,676.67.

3.2. The Proceedings before the BAT

17. On 18 June 2013, the Coach's counsels filed a Request for Arbitration which was received by the BAT Secretariat on the same date. The non-reimbursable handling fee of EUR 2,000.00 was received in the BAT bank account on 19 June 2013.
18. By letter of 7 August 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 Association to file its answer to the Request for Arbitration in accordance with Article 11.2 of the BAT Rules by no later than 28 August 2013. The BAT Secretariat also requested that the Parties pay the following amounts as an Advance on Costs by no later than 19 August 2013:

<i>"Claimant (Mr. Salvatore Coppa)</i>	<i>EUR 4,500</i>
<i>Respondent (Basketball Sport Association of Thailand)</i>	<i>EUR 4,500"</i>

19. By letter of 2 September 2013, the BAT Secretariat confirmed receipt of the Coach's share of the Advance on Costs and informed the Parties about the Association's failure to submit the Answer as well as to pay its share of the Advance on Costs. The BAT Secretariat informed the Parties that the arbitration would not proceed until receipt of the full amount of the Advance on Costs and invited the Coach to substitute the Association's share of the Advance of Costs by 10 September 2013. Furthermore, the Club was granted a final opportunity to file the Answer by 10 September 2013.
20. By letter of 3 September 2013, the Coach's counsel requested the BAT proceed without further costs to be paid by the Coach or to lower the total Advance on Costs

and proceed without further delay, considering that the Association failed to file its Answer on time.

21. By letter of 6 September 2013, the BAT Secretariat informed the Parties about the Arbitrator's decision to proceed according to the procedural order of 2 September 2013 but to extend the time limit for the Coach to substitute for the Association's share of the Advance on Costs until 17 September 2013.
22. By letter of 10 September 2013, the Coach's counsel requested another extension of the time limit to substitute for the Association's share of the Advance on Costs and informed the Arbitrator about his new employment in the USA. On 12 September 2013, in view of the circumstances, the Arbitrator granted the requested extension until 24 September 2013.
23. By email of 20 September 2013, the Coach's counsel, inter alia, requested the Arbitrator proceed in an expedited manner and, if appropriate, to issue the operative part of the decision as soon as possible.
24. On 24 September 2013, the Secretary General of the Association, Mr. Thongchai Vatanasakdakul, sent a letter titled "Clarification of Mr. Salvatore Coppa's claim" and several exhibits to the BAT Secretariat. In that letter, Mr. Vatanasakdakul explicitly declared that he was writing "*on behalf of myself, neither represent Board Members (BMs) nor BSAT*" (sic). On 26 September 2013, Mr. Vatanasakdakul submitted further exhibits.
25. By letter of 4 October 2013, the BAT Secretariat acknowledged receipt of the Coach's request and Mr. Vatanasakdakul's submissions. Moreover, the BAT Secretariat acknowledged receipt of the full Advance on Costs and informed the Parties that the proceedings would now continue. It also informed the Parties about the Arbitrator's decisions that the documents filed by Mr. Vatanasakdakul would not be taken on record and therefore not be considered in the present arbitration proceedings and that the exchange of documents was declared completed. The Parties were therefore invited to submit a detailed account of their costs by 11 October 2013.

26. By letter of 11 October 2013, the Coach's counsel filed a submission on costs and listed the amounts of EUR 6,760.00 as a lump sum for the Coach's legal fees and expenses including social security charge, EUR 2,000.00 as non-reimbursable handling fee and EUR 9,000.00 as advance on costs. Attached was an outline of the services provided. Finally, the Coach's counsel requested that *"the costs of the arbitration should be totally borne by Respondent, and order BSAT to reimburse Claimant for all legal costs incurred for this arbitration to the maximum contribution (i.e. EUR 7,500.00)"*. The Association did not provide any account of costs.
27. By letter of 14 October 2013, the BAT Secretariat acknowledged receipt of the Coach's account of costs and invited the Association to submit its comments, if any, on the Coach's account of costs by no later than 18 October 2013.
28. On 15 October 2013, Mr. Vatanasakdakul sent an email and informed the BAT that the Association *"is not in a position to submit any amount of money to you"*.
29. The Parties did not request the BAT 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

30. The Coach submits the following in substance:
 - The principle of "pacta sunt servanda" obliges the Association to adhere to its obligations agreed in the Coaching Agreement. The Coaching Agreement is a "no-cut fully guaranteed contract" and the Association expressly agreed that "guaranteed compensations and bonuses are net and fully guaranteed, due and payable".
 - The Coach has always complied with the Coaching Agreement. He was available

to start working on 15 February 2013 as agreed and informed the Association about several options for his flight tickets. His delayed arrival in Thailand on 12 March 2013 was caused by the Association's confusing approach regarding the flight tickets and the business visa. Furthermore, he had followed the Association's instruction to run a "basketball clinic" on 16 and 17 March 2013.

- According to Clause 6 and Exhibit 1 of the Coaching Agreement, the Coach is entitled to a net salary of USD 88,000.00 in total. However, only the amount of USD 10,000.00 was paid despite the Coach's invoices and reminders to the Association. In addition, by letter of the Coach's counsel dated 22 April 2013, the Association was given a final chance to resolve the dispute amicably.
- When the Association failed to pay the salary instalments which were due on 1 March and 1 April 2013 according to Exhibit 1 of the Coaching Agreement, the Coach was entitled to unilaterally terminate the Coaching Agreement. He did so by letter of 29 April 2013 but that did not release the Association from its payment obligations. In addition, the Coach is entitled to default interest at the rate of 5% p.a. which is fair and reasonable according to BAT jurisprudence.
- According to Clause 7 lit. a of the Coaching Agreement, the Coach was entitled for two round-trip business class tickets. However, the Association provided him only with a one-way ticket for his travel from the USA to Thailand in March 2013. After his termination, the Coach had to purchase a return ticket and the amount of USD 332.00 which has to be reimbursed by the Association.

4.2. The Claimants' Request for Relief

31. In his Request for Arbitration, the Coach requests the following relief:

"1. Adjudge and declare that the Basketball Sport Association of Thailand has unlawfully breached the Contract with Mr. Coppa for its refusal to pay his salary within the time limit prescribed therein;

2. Order the Basketball Sport Association of Thailand to pay Mr. Coppa 78,000 USD (Seventy Eight Thousand US Dollars) corresponding to the unpaid

installments of the Contract from 1 March to 1 December 2013 with interest at 5% on that sum;

3. *Order the Basketball Sport Association of Thailand to reimburse Mr. Coppa the amount of 332.00 USD (Three Hundred and Thirty-two US dollars) for the return ticket which Mr. Coppa had to purchase as a result of the Respondents failure to provide one as stipulated in the Contract;*
4. *Order the Basketball Sport Association of Thailand to pay the costs of this arbitration and Mr. Coppa's legal and other costs, the latter which will be quantified in a precise manner at a later stage in the proceedings, or any other amount that the BAT considers equitable."*

4.3. The Respondent's Position

32. The Association did not submit an answer within the various time limits set by the BAT Secretariat. Mr. Vatanasakdakul's letter of 24 September 2013 titled "Clarification of Mr. Salvatore Coppa's claim" has not been taken on record (see para. 38 below).

5. Jurisdiction

33. 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).
34. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
35. 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.
36. The jurisdiction of the BAT over the dispute results from the arbitration clause contained in Clause 9 of the Coaching Agreement which reads as follows:

"Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with 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 (PIL), irrespective of the parties' domicile. The language of the Arbitration shall be English. The Arbitrator shall decide the dispute ex aequo et bono."

37. The Coaching Agreement 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 Clause 9 of the Coaching Agreement covers the present dispute.

6. Other Procedural Issues

6.1. Mr. Vatanasakdakul's submissions

38. On 24 and 26 September 2013, Mr. Thongchai Vatanasakdakul (Secretary General of the Association) submitted a letter titled "Clarification of Mr. Salvatore Coppa's claim" and several exhibits. By procedural order of 4 October 2013, the Arbitrator decided, however, that these submissions will not be taken on record:

"The documents filed by Mr. Thongchai V. will not be taken on record and therefore not be considered in the present arbitration proceedings. According to the Procedural Order of 2 September 2013, the final opportunity for the Respondent to file an Answer was by 10 September 2013. The submissions of Mr. Thongchai V. were received only two weeks later. In addition, in the first paragraph of the submission dated 24 September 2013, Mr. Thongchai V. states that he was "writing this message to you just on behalf of myself, neither represent Board Members (BMs) nor BSAT". Mr. Thongchai V. is not a party to the present arbitration proceedings and the Respondent has neither filed any Answer nor referred to Mr. Thongchai V.'s submission."

39. On 15 October 2013, Mr. Vatanasakdakul's, sent another letter, now on behalf of the Association, which reads as follows:

"Dear Sirs,

Please be informed that BSAT is not in position to submit any amount of money to you due to BSAT has spent every "cent" for welled preparation of The coming event of 25th FIBA Asia Championship for Women in Thailand and The SEA Games in December 2013 in Myanmar.

I have already explained to you that Mr Coppa does not keep his words when he discussed with me at The Nine Shopping Mall as per my letter and information submitted. I (for BSAT) still keep my verbal agreement. He should be fairly treated to BSAT, he has earned USD 10,000.00 just for one Basketball Clinic in Thailand.

Sincerely Yours,

Thongchai Vatanasakdakul"

40. That letter was the Respondent's reply to the BAT's invitation to comment on the Claimant's statement of costs. Actually, the Respondent did not reply to the Claimant's statement of costs but used the opportunity to express its disapproval with the Coach's claim. While one could indeed understand the Respondent's letter of 15 October 2013 as the Club's subsequent recognition of Mr. Vatanasakdakul's previous letters, that later letter can still not be accepted as the Respondent's answer on the merits because all these communications have been manifestly late.

6.2. Respondent's failure to submit an Answer

41. 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.¹ However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.
42. This requirement is met in the present case. The Association 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 Coach's Request for Arbitration, to his claim on costs and the accuracy of the figures provided by him. The Association, however, failed to submit an Answer in accordance with the relevant rules (see paras 38-40 above).

¹ See, *ex multis*, the following BAT awards: 0001/07, *Ostojic and Raznatovic vs. PAOK KAE*; 0018/08, *Nicevic vs. Beşiktaş*; 0093/09, *A.S.D. Pallacanestro Femminile Schio vs. Braxton*; 0170/11, *Haritopoulos and Kallergis vs. Panionios BC K.A.E. and Gallis*; 0391/13, *Infante vs. Basket Veroli s.r.l.*

6.3. Claimant's request for expedited procedure

43. By letter of 20 September 2013, the Coach's counsel requested the Arbitrator to proceed in an expedited manner and, if appropriate, to issue the operative part of the decision as soon as possible.
44. The Coach refers to the legal nature of the Association ("*National Federation member of FIBA [...] hosting the 2013 FIBA Asia Championship for Women in Bangkok from October 27 to November 3, 2013*") to support his request for an expedited procedure. However, considering all of the Coach's submissions, the Arbitrator does not find any urgency calling for proceeding in an expedited manner. Therefore, the Arbitrator follows the procedure stipulated in the BAT Rules and issues a reasoned award according to Article 16 of the BAT Rules.
45. The BAT Rules provide for an award without reasons only in cases in which the value in dispute does not exceed EUR 30,000.00 (Article 16.2 of the BAT Rules). In the present case, the value in dispute exceeds this limit. The Arbitrator shall therefore give a written, dated and signed award with summary reasons (Article 16.1 of the BAT Rules). The Parties did not agree on issuing the operative part of the award instead or prior to the reasoned award or on any kind of expedited procedure, nor is such a procedure required under the circumstances of this financial dispute between the Parties.

7. Applicable Law – ex aequo et bono

46. 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".

47. 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."

48. In the arbitration agreement in Clause 9 of the Coaching Agreement, 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* and not consider any national law.

49. 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 1969² (Concordat),³ under which Swiss courts have held that "arbitrage en *équité*" is fundamentally different from "arbitrage en droit":

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

50. 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".⁵

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

² That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

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

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

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

8. Findings

52. The Coach requests payment of USD 78,000.00 for outstanding salaries with default interest of 5% p.a. on this amount and reimbursement of USD 332.00 for his return airline ticket.
53. While the Club failed to provide an Answer in accordance with the relevant rules, the Arbitrator is still obliged to review the factual and legal basis of the Coach's claims.

8.1. Was the Coach entitled to terminate the Coaching Agreement?

54. As a preliminary issue, the Arbitrator finds that the Coaching Agreement was validly concluded. It bears the seal of the Association and was signed by its then president. The Association also complied with its first contractual payment obligation of USD 10,000.00 upon the Coach's arrival in Thailand. There is nothing which would cast doubts on the validity of the Coaching Agreement.
55. According to the Coach, it was the newly elected president of the Association and Mr. Vatanasakdakul as the new Secretary General who told the Coach on 17 April 2013 that the Coaching Agreement would not be honoured and that the Coach should refer to the former president who signed that agreement. It may well be that the new leadership disagreed with the human resource management of its predecessors. However, the Coaching Agreement was validly signed in the name and on behalf of the Association and a change of leadership is not a valid ground to terminate or disregard contracts signed at an earlier date which continue to bind the Association.
56. Furthermore, the Association did not have any other legitimate reason to terminate the Coaching Agreement. To the contrary, Clause 12 of the Coaching Agreement states:

"the agreement is unconditionally guaranteed contractual Agreement and (...) the coach's guaranteed compensations and bonuses are net and fully guaranteed, due and payable, including but not limited to in the event of Coach's injury, illness, death and/or lack of skill. Thailand Basketball agrees that this agreement is a no-

cut guaranteed agreement, and that Thailand Basketball shall not have the right to suspend or release the Coach in the event that the Coach does not exhibit sufficient skill or competitive ability, or in the event that an injury, illness or death, occurred during the terms of this contract, shall befall the Coach.”

57. That means that the Association was bound to the Agreement and, in particular, to the payment obligations irrespective of the Coach’s performance – all the more as the Association did not even give the Coach the chance to *“exhibit his skill or competitive ability.”*

58. According to Exhibit 1 of the Coaching Agreement (last paragraph on p. 6), the Coach was entitled to terminate the Coaching Agreement if the Association was late in paying the salaries by 15 days or more:

“In case of failure of payments mentioned above after fifteen (15) days the Coach will have the right to terminate this agreement, but Thailand Basketball will still be obligated to pay the full amount of the base salary.”

59. The Coach submits that he repeatedly reminded the Association of its payment obligation according to the schedule in Exhibit 1 of the Coaching Agreement. After the arrival payment of USD 10,000.00, the Association did not make any further payments. By letter of 22 April 2013, the Coach set a final deadline until 26 April 2013 for the payment of the amount of USD 16,000.00 (monthly salaries for March and April 2013). That date passed without any reaction from the Association. On 29 April 2013, the Coach therefore invoked his right to terminate the Coaching Agreement since the Association was late by more than 15 days for the last (and the second-last) payment and also missed the deadline of 26 April 2013.

60. The Arbitrator concludes that the Coach rightfully terminated the Coaching Agreement effective on 26 April 2013.

8.2. Is the Coach entitled to compensation of USD 78,000.00?

61. According to Exhibit 1 of the Coaching Agreement, the Coach is entitled to the *“full amount of the base salary”* if he terminates that contract because of the Association’s payment delay. Accordingly, the Coach requests the payment of the salary for the remaining term of the Coaching Agreement.
62. The wording of the Coaching Agreement is clear and does not require further interpretation. The Coach’s claim could however be challenged if he was himself in material breach of the Coaching Agreement because of reasons other than those listed in Clause 12 of the Coaching Agreement. Considering the admitted submissions on file, the Arbitrator does not see any reasons that would speak against the Coach: although it is true that the Coach arrived late in Thailand, it would appear that delay was not caused by him and the Association did not complain about it. The Coach readily offered his services which were initially accepted by the Association when he was asked by an Association representative (Ms. Pula) to run a “basketball clinic”. It was the Association under its new leadership that no longer wanted to engage the Coach as provided for by the Coaching Agreement. The Arbitrator finds therefore that the Coach did not contribute in any way to the rejection of his services and that he was not himself in breach when he terminated the Coaching Agreement.
63. Clause 6 lit. a of the Coaching Agreement and its Exhibit 1, lit. A provide for a guaranteed base salary of 88,000.00 (eighty eight thousand) US Dollars net according to the following schedule:

“Upon Arrival 10.000 (ten thousand) US Dollars net

March 1st 2013 – December 1st 2013 ten monthly instalments to be paid as follows:

March 1st 2013 - 8.000 (eight thousand) US Dollars net

April 1st 2013 - 8.000 (eight thousand) US Dollars net

May 1st 2013 - 8.000 (eight thousand) US Dollars net

June 1st 2013 - 8.000 (eight thousand) US Dollars net

July 1st 2013 - 8.000 (eight thousand) US Dollars net

August 1st 2013 - 8.000 (eight thousand) US Dollars net

September 1st 2013 - 8.000 (eight thousand) US Dollars net

October 1st 2013 - 8.000 (eight thousand) US Dollars net

November 1st 2013 - 8.000 (eight thousand) US Dollars net

December 1st 2013 - 6.000 (six thousand) US Dollars net"

64. Undisputedly, the Coach has received one single payment of USD 10,000.00 (corresponding to the first instalment "Upon Arrival"). Also undisputed is the fact that no further payments have been made by the Association. The Coach is therefore, in principle, entitled to the remaining compensation of USD 78,000.00. That compensation is however subject to the Coach's duty to mitigate the damage.
65. According to consistent BAT jurisprudence, a claimant must accept that after the termination of the agreement, any alternative earnings during the initial term of the agreement must be deducted from the otherwise due compensation. The Coach signed a contract with Montana State University as Assistant Women's Basketball Coach from 1 July 2013 until 30 June 2014. The monthly salary amounts to USD 2,676.67 (gross) or USD 1,808.10 (net). The Coaching Contract provides for a net salary to be paid by the Association and the Coach was entitled to certain fringe benefits, such as housing and phone, which are not included in the salary which he now earns at Montana State University and which costs USD 600.00 as submitted by the Coach. The Arbitrator finds these costs reasonable. Deciding *ex aequo et bono*, the Arbitrator will deduct only USD 1,200.00 per month (instead of USD 1,808.10) from the compensation due by the Association. Since the Coach joined Montana State University on 1 July 2013, there is an 'overlap' of six months which leads to a deduction of USD 7,200.00 from the compensation of USD 78,000.00.
66. Thus, the compensation to be paid by the Association to the Coach amounts to USD 70,800.00.

8.3. Is the Coach entitled to USD 332.00 for a flight ticket?

67. The Coach also claims that he had to purchase a new return ticket to the USA after termination of his Coaching Agreement which led to additional costs of USD 332.00.
68. Art. 7 lit. a of the Coaching Agreement obliges the Association to provide to the Coach with “two (2) round-trip Business Class tickets USA-Thailand-USA.” However, the Coach was only provided with a one-way ticket USA-Thailand. Thus, the Coach is generally entitled to reimbursement of costs for his return flight.
69. The burden of proof for those costs lies with the Coach. He generally argued that purchasing a return flight ticket caused damage to him but failed to provide detailed information (inter alia, how he calculated the amount of USD 332.00) and only referred to his Exhibit 23. This document states several amounts in relation to flights on 3 May 2013, however, the Arbitrator has not been informed on which date the Coach left Thailand and can therefore not double-check whether the submitted document actually refers to the Coach’s return flight to the USA. Furthermore, the claimed amount of USD 332.00 – according to the Claimant “the price of the ticket” – and the sparse information on his Exhibit 23 raise doubts whether this document actually concerns the costs for the Coach’s flight from Thailand to the USA or something else.
70. The Coach has not sufficiently proven the costs for his return flight. Thus, the Arbitrator rejects the Coach’s claim for reimbursement of flight costs.

8.4. Is the Coach entitled to interest of 5% p.a. on the outstanding compensation?

71. In no. 2 of his Request for Relief, the Coach also asks for interest in the rate of 5% p.a. on the amount of USD 78,000.00. As the outstanding compensation awarded by the Arbitrator is USD 70,800.00, the Coach can be awarded default interest on this amount only.

72. According to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest.⁶ Although the Coaching Agreement and Exhibit 1 do not provide for the payment of default interest, this is a generally accepted principle which is embodied in most legal systems.
73. The Arbitrator agrees that the interest rate of 5% p.a. is acceptable and in line with the interest rate usually awarded by default if no other interest rate has been agreed by the parties.
74. According to para 49 of the Coach's Request for Arbitration, the interest shall start *"from the day after the day on which the principal amount was due, [t]herefore, with respect to the monthly installments, the amounts owed to the Mr. Coppa should bear interest from the day after their due date stipulated under the Contract."* Considering this request, it can be left open whether the compensation became due as a one-time payment on the termination date or whether the Association remained obliged to pay monthly instalments according to the schedule in Exhibit 1 of the Coaching Agreement.
75. According to the Coach's request, the interest has to be calculated for each instalment scheduled in Exhibit 1 of the Coaching Agreement and the Coach's income from Montana State University to be deducted as from July 2013 must also be considered. As the instalments became due on the first day of each month, the interest commences on the day thereafter. This results in interest as follows:
- 5% p.a. interest on USD 8,000.00 since 2 March 2013
 - 5% p.a. interest on USD 8,000.00 since 2 April 2013
 - 5% p.a. interest on USD 8,000.00 since 2 May 2013
 - 5% p.a. interest on USD 8,000.00 since 2 June 2013
 - 5% p.a. interest on USD 6,800.00 since 2 July 2013

⁶ See, *ex multis*, the following BAT awards: 0092/10, *Ronci, Coelho vs. WBC Mizo Pecs 2010*; 0069/09, *Ivezic, Draskicevic vs. Basketball Club Pecs Noi Kosariabda Kft*; 0056/09, *Branzova vs. Basketball Club Nadezhda*.

- 5% p.a. interest on USD 6,800.00 since 2 August 2013
- 5% p.a. interest on USD 6,800.00 since 2 September 2013
- 5% p.a. interest on USD 6,800.00 since 2 October 2013
- 5% p.a. interest on USD 6,800.00 since 2 November 2013
- 5% p.a. interest on USD 4,800.00 since 2 December 2013

9. Costs

76. 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.
77. On 18 December 2013 – considering that pursuant to Article 17.2 of the BAT Rules “the BAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator”, and that “the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the BAT President from time to time”, taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised – the BAT President determined the arbitration costs in the present matter to be EUR 9,000.00.
78. Considering the request for relief and the outcome and circumstances of the present case, the Arbitrator finds it fair that 90% of the fees and costs of the arbitration shall be borne by the Association, i.e. EUR 8,100.00, and 10% by the Coach, i.e. EUR 900.00.
79. Given that the Advance on Costs of EUR 9,000.00 was entirely paid by the Coach, in application of Article 17.3 of the BAT Rules the Arbitrator decides that the Association shall pay EUR 8,100.00 to the Coach, being the amount the Association is ordered to pay.



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80. Furthermore, the Arbitrator considers it adequate that the Coach is entitled to the payment of a contribution towards his legal fees and other expenses (Article 17.3. of the BAT Rules). The Arbitrator holds it adequate to take into account the Coach's request for reimbursement of legal fees and expenses in the maximum amount of EUR 7,500.00 (including the non-reimbursable handling fee of EUR 2,000.00) while the Association does not request reimbursement of any legal costs. After having reviewed and assessed all the circumstances of the case at hand, the Arbitrator fixes the contribution towards the Coach's legal fees and expenses at EUR 6,750.00.

10. AWARD

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

- 1. The Basketball Sport Association of Thailand is ordered to pay to Mr. Salvatore Coppa the amount of USD 70,800.00.**
- 2. The Basketball Sport Association of Thailand is ordered to pay to Mr. Salvatore Coppa interest of 5% p.a. as follows:**
 - on the amount of USD 8,000.00 since 2 March 2013**
 - on the amount of USD 8,000.00 since 2 April 2013**
 - on the amount of USD 8,000.00 since 2 May 2013**
 - on the amount of USD 8,000.00 since 2 June 2013**
 - on the amount of USD 6,800.00 since 2 July 2013**
 - on the amount of USD 6,800.00 since 2 August 2013**
 - on the amount of USD 6,800.00 since 2 September 2013**
 - on the amount of USD 6,800.00 since 2 October 2013**
 - on the amount of USD 6,800.00 since 2 November 2013**
 - on the amount of USD 4,800.00 since 2 December 2013**
- 3. The Basketball Sport Association of Thailand is ordered to pay to Mr. Salvatore Coppa the amount of EUR 8,100.00 as a reimbursement of the advance on arbitration costs.**
- 4. The Basketball Sport Association of Thailand is ordered to pay to Mr. Salvatore Coppa the amount of EUR 6,750.00 as a contribution towards his legal fees and expenses. The Basketball Sport Association of Thailand shall bear its own legal fees and expenses.**
- 5. Any other or further-reaching requests for relief are dismissed.**



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Geneva, seat of the arbitration, 23 December 2013

Dr. Stephan Netze
(Arbitrator)