



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0435/13)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Quentin Byrne-Sutton

in the arbitration proceedings between

Mr. Mindaugas Katelynas,

Bill A. Duffy International Inc.
BDA Sports Management, 507 N. Gertruda Ave.,
Redondo Beach, CA 90277, USA

both represented by Mr. Billy J. Kuenzinger,
BDA Sports Management

vs.

BC Lietuvos Rytas,
Ozo g. 14A, 08200 Vilnius, Lithuania

represented by Ms. Laura Martinkute Vainauskiene

- Claimant 1 -

- Claimant 2 -

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. Mindaugas Katelynas is a professional basketball player (hereinafter referred to as “the Player” or “Claimant 1”).
2. Bill A. Duffy International Inc. is the Player’s agent (hereinafter “the Agent” or “Claimant 2”).
3. Claimants 1 and 2 are referred to jointly as “the Claimants”.

1.2 The Respondent

4. BC Lietuvos Rytas (hereinafter also referred to as “the Club” or “the Respondent”) is a Lithuanian professional basketball club.

2. The Arbitrator

5. On 4 August 2013, Richard H. McLaren, the President of the Basketball Arbitral Tribunal (the “BAT”), appointed Mr. Quentin Byrne-Sutton as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). Neither of the parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

6. On 29 July 2011, the Club and the Player entered into an agreement relating to his engagement for the 2011/2012, 2012/2013 and 2013/2014 seasons (the “Agreement”).

The Agreement also regulated the Agent's fee and was signed by the Agent.

7. Article 2.1 of the Agreement provided that the Player's fully guaranteed salary, net of Lithuanian taxes, for the 2012/2013 season was EUR 300,000 (to be paid in monthly installments of EUR 30,000) and EUR 350,000 (to be paid in monthly installments of EUR 35,000) for the 2013/2014 season.

8. Article 5.3 of the Agreement stipulated that:

"Following the conclusion of the 2012/2013 season the CLUB shall have the right to terminate the agreement, by providing the PLAYER with notice (by registered letter) of such intent by no later than July 15, 2013. In order to terminate this agreement in accordance with this paragraph the CLUB must pay the PLAYER a buyout of €50,000 EUR. The buyout will be paid to the PLAYER by no later than July 30, 2013".

9. According to article 6 of the Agreement, the Club was to pay the Agent a fee, net of Lithuanian taxes, of EUR 20,000 by 15 October 2011 for the 2011/2012 season and of EUR 35,000 by 15 October 2013 for the 2012/2013 season.

10. Article 12 of the Agreement provided that the Player was entitled to avoid the Agreement if any payment referred to therein was made more than 30 days beyond its due date and that in such case "... *PLAYER will be granted his unconditional release ...*" and "*PLAYER is under no obligation to mitigate his damages and CLUB shall receive no offset*".

11. On 3 January 2013, the Club sent its Player an email saying:

"Please find attached amended internal rules and regulations of BC LIETUVOS RYTAS. In case you have difficulties opening PDF file attached – take a look below".

12. Clause 2.11 of the amended rules provided that the Club was entitled to reduce a player's salary by up to 90%

"... if during the playoffs/finals his stats average is lower than used to be during the season. Sanctions may be imposed after the coaching staff and the Management makes an analysis based on official statistics, minutes spent on court, video and other material relevant for this case. This article is not applicable for PLAYERS who might perform poorer because of objective medical reasons".

13. On 15 May 2013, a meeting took place between the team managers and the players during which the latter were informed that the Club had decided to reduce by 50% the last monthly salary of all the players as a form of sanction for the team's poor performances during the 2012/2013 season.

14. The foregoing was confirmed to the players in an email dated 15 May 2013, stating among others:

"Art. 2 of Internal Rules and Regulations of the Club allows us to sanction players for bad performance. Having in mind that the team failed to reach the goals set before the season (qualify to EL TOP 16, VTB F4, and win LKL championship), but managed to achieve some historical anti-records (46 points scored on LKL Finals, failing to qualify for VTB playoffs) we decided to sanction the players by 50% of their last salaries ..."

15. The Club alleges that during the month of May 2013, it had informed the Player verbally that the Club was intending to exercise its right stipulated under article 5.3 of the Agreement to terminate it at the end of the 2012/2013 season and pay the EUR 50,000 buyout fee provided therein. It alleges that this was also confirmed to the Player and the Agent during a conference call.

16. On 23 May 2013, the Agent sent the Club a letter of notice requesting payment of the Player's salaries of January, February, March, April and May 2013, alleging they were outstanding, and payment of the Agent's fee in an amount of EUR 20,000, contending it was also outstanding. The letter concluded:

"If the foregoing is not received by May 31, we will have no alternative but to immediately examine all legal remedies for collecting on the salary, agency fee, plus late fees, through arbitration with the FIBA BAT."

17. On 7 June 2013, the Agent sent the Club a letter of termination on behalf of the Player, invoking the fact that its letter of 23 May 2013 had not been responded to and the Player's right to terminate the Agreement pursuant to its article 12, due to the Club being more than thirty days late in paying salaries due to the Player.

18. On 13 June 2013, the Club sent an email to one of the Agent's representatives (Mr. Rade Filipovich) stating:

“... This is to confirm what you, Mindaugas and Martynas previously agreed on the phone: club will pay the debts for this season and the release amount set by the contract (50 000€) till October 1, 2013”.

19. On 20 June 2013, the Claimants’ counsel sent an email to the Club stating:

“Your email to Rade Filipovich has been forwarded to me. I am informed that no agreement was reached regarding Mr. Mindaugas [...] On this basis, we have proceeded with filing the BAT Arbitration consistent with our previous demand letters and will pursue such claims until all amounts under the contract are paid”.

20. On 21 June 2013, the Club answered:

“I know that Mindaugas, Rade Filipovich and Martynas Purlys (director of BC Lietuvos rytas) had a conference call last week and agreed that all debts should be paid till October 1, 2013. I was asked to confirm it by email. I did it ...”.

3.2 The Proceedings before the BAT

21. On 25 June 2013, the Claimants filed a Request for Arbitration dated 21 June 2013 in accordance with the BAT Rules and paid a non-reimbursable handling fee of EUR 7,000, which was received by the BAT on 26 June 2013. Since the foregoing handling fee included an overpayment of EUR 2,000, the advance on costs to be paid subsequently by the Claimants was reduced by the same amount.

22. By means of a letter of 28 August 2013, which corrected a typo contained in a previous letter of 9 August 2013, the BAT confirmed to the Parties that Mr. Quentin Byrne-Sutton had been appointed as the Arbitrator in this matter and that the advance on costs to be paid by the Parties was as follows:

<i>“Claimant 1 (Mr. Mindaugas Katelinas)</i>	<i>EUR 3,500</i>
<i>Claimant 2 (Bill A. Duffy International Inc.)</i>	<i>EUR 500</i>
<i>Respondent (BC Lietuvos Rytas)</i>	<i>EUR 5,500”</i>

23. On 28 August 2013, the Respondent paid its part of the advance on costs.

24. During the month of August 2013, the Claimants overpaid their part of the advance on costs.
25. Consequently, on 30 August 2013, the BAT informed the Claimants that: “... *there is an overpayment of the Advance on Cost of EUR 5,000 which shall be reimbursed to the Claimants at the end of the proceedings*”.
26. On 30 August 2013, the Respondent filed its Answer to the Request for Arbitration.
27. By procedural order of 10 September 2013, the Claimants were invited to file a reply brief and all the Parties were requested to reply to various questions from the Arbitrator.
28. On 14 September 2013, the Claimants filed their reply.
29. By procedural order of 20 September 2013, the proceedings were closed and the Parties invited to submit their statements of costs.
30. On 24 September 2013, the Claimants submitted their statement of costs.
31. On 27 September 2013, the Respondent filed an unsolicited submission requesting to introduce contemporaneous documents indicative of the fact that the Player had found a new club for the 2013/2014 season.
32. By procedural order of 30 September 2013, the Parties were informed that the Respondent’s submission and new documents were being accepted on record and the Claimants were requested to indicate whether or not the Player had found a new club and, if so, to file a copy of his contract.
33. The same day the Respondent filed its statement of costs.
34. On 1 October 2013, the Claimants confirmed the Player had found a new club and filed his corresponding contract.

35. By procedural order of 2 October 2013, the Claimants were invited to indicate whether they intended to amend their prayers for relief and, if so, to file amended prayers.
36. On 4 October 2013, the Claimants filed amended prayers for relief together with a brief explanation.
37. On 7 October 2013, the Claimants filed a corrected version of their amended prayers for relief, which had contained an arithmetical error.
38. By procedural order of 15 October 2013, the Claimants were requested to clarify an apparent contradiction between two versions of their prayers for relief.
39. The same day, the Claimants duly provided the requested clarification.

4. The Positions of the Parties

4.1 The Claimants' Position

40. The Claimants submit the following in substance:
 - The Club was very late in paying a number of the Player's monthly salaries and also late in paying the Agent's fee under the terms of the Agreement and was thereby in breach of its contractual obligations.
 - Furthermore, contractually, the Club was not entitled to sanction the Player for the team's unsatisfactory results and alleged lack of performance, by deciding to reduce one of his monthly salaries by 50%, and he never accepted the purported sanction.
 - Since the Club's payments were more than 30 days late, they were entitled to put the Club on notice that the Agreement would be terminated and to subsequently terminate it because the Club failed to respond or make the due payments within

the fixed notice period.

- It is incorrect that they were ever told before the date of termination of the Agreement that the Club intended to invoke the contractual buy-out clause or that any final agreement was reached whereby the Club would be entitled to pay its dues and the buy-out sum of EUR 50,000 by 1 October 2013.
- Consequently, and because the Agreement was fully guaranteed, they are entitled to claim all the Player's unpaid salaries due under the Agreement and the Agent's unpaid fees relating to the 2012/2013 season as well as the salaries and fees that were to become due for the entire 2013/2014 season.
- Because they validly terminated the Agreement for cause before the Club indicated its intent to terminate it on the basis of the buy-out clause (article 5.3 of the Agreement) and because in any event, the buy-clause is inapplicable since the Club was unwilling to pay the buy-out sum (EUR 50,000) within the contractual deadline (15 July 2013), the entire amounts due under the Agreement for the 2013/2014 remain due.
- Contractually speaking, the Player had no duty to mitigate his damages since under article 12.2 of the Agreement: "... *Player is under no obligation to mitigate his damages and CLUB shall receive no offset.*" However, given that the Player has found a new club for the 2013/2014 season, the Claimants accept that his entire salary and the Agent's fees that are guaranteed under the contract with the new club be deducted from the sums guaranteed for the 2013/2014 season under the Agreement.
- The Club is also liable to pay all the costs of the arbitration, including the Claimants' legal fees.

41. In their reply brief of 13 September 2013, the Claimants requested the following relief:

“Respondent currently owes Claimant Katelinas:

- 1. 15,000 € for the 2012/2013 season*
- 2. 350,000 € for the 2013/2014 season*

Respondent currently owes Claimant Bill A. Duffy International, Inc.:

- 1. 35,000 € for the agent fee pertaining to the 2013/2014 season*

For both Claimants, costs of this action plus attorney's fees”

42. In their amended prayers for relief dated 7 October 2013, the Claimants requested the following relief:

“1. 15,000€ Claim for 2012/2013 season remains unchanged as previously due and owing and unpaid.

2. 147,625.10€ Claim for unpaid for 2013/2014 season. [sic]

3. 14,984.90€ Claim for unpaid agent fee for 2013/2014 season.”

4.2 Respondent's Position

43. The Club submits the following in substance:

- It was entitled to sanction the Player (and the rest of the team) by means of a 50% reduction of one of his monthly salaries due to the team's unsatisfactory performance because it had adopted amended internal rules in January 2013, which were notified to the players at the time, allowing a sanction of such type.
- Furthermore, during a meeting on 15 May 2013, it had duly informed the Player (together with the rest of the team) of its decision and had confirmed it by email without any objection being raised by the Player.
- Therefore, the Club legitimately retained EUR 15,000 from the Player's salary

and such amount cannot be claimed by him.

- In May 2013, well before the deadline provided in the Agreement for it to invoke the buy-out clause, the Club had communicated to the Player its intention not to keep him under contract/on the team for the forthcoming season (2013/2014).
- Furthermore, during the month of May 2013, the Player, the Agent and the Club had agreed during a conference call that it would be entitled to pay the buy-out sum of EUR 50,000 by 1 October 2013.
- Given that the Club was entitled to withhold 50% of one of the Player's monthly salaries as a sanction, the Club has now paid all of his salaries and the Agent's fee that were due for the 2012/2013 season.
- Because the Club was contractually entitled to terminate the Agreement without cause by 15 July 2013 and communicated its intention to do so, the Player could not validly prevent the Club from exercising that option by terminating the Agreement at an earlier date in June. Also, because the Club was willing and is still willing to pay the sum of EUR 50,000 upon which the buyout was conditioned, the Claimants are not entitled to claim any higher amount of compensation.
- Principles of fairness and good faith required that the Player mitigate his damages and seek a new club.
- The Club did not attempt to prevent the Player from obtaining a Letter of Clearance and the Player has now found a new club for the 2013/2014 season.

44. The Club's answer of 30 August 2013 contains the following prayers for relief:

- “1. Reject claims of Claimant 1 against the Defendant as unfounded.
2. Reject claims of Claimant 2 against the Defendant as unfounded.
3. Order Claimant 1 and Claimant 2 to pay all litigation costs.”

5. The Jurisdiction of the BAT

45. 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).
46. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
47. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.¹
48. The jurisdiction of the BAT is referred to under article 11.3 of the 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 the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties’ domicile. The language of the arbitration shall be English. The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono.”

49. The foregoing arbitration agreement is in written form and thus fulfils the formal requirements of Article 178(1) PILA.
50. With respect to substantive validity, the Arbitrator considers there is no indication in the

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

file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). Furthermore, its scope covers the matters in dispute and none of the parties have contested the Arbitrator's jurisdiction.

51. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claims against the Club.

6. Discussion

6.1 Applicable Law – ex aequo et bono

52. 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”.

53. 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.”

54. Article 11.3 of the Agreement provides that if and when any dispute is submitted to the BAT:

“The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono”.

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

56. 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'arbitrage² (Concordat)³, under which Swiss courts have held that arbitration “en équité” is fundamentally different from arbitration “en droit”:

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

57. 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.*”

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

6.2 Findings

59. With respect to the sums originally being claimed in relation to the **2012/2013** season, only one amount is still being invoked in the Claimants’ amended prayers for relief.
60. It constitutes an amount of EUR 15,000 which the Club withheld from the Player’s salary as part of a team sanction taken on the basis of its amended internal rules.
61. The Arbitrator finds that the foregoing sanction decided by the Club was contractually unfounded and was unfair for the following reasons:

- Given that the Agreement fully guaranteed the Player’s salary for the 2012/2013 season with reference to the Club’s internal rules, the Player was entitled to

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

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

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

believe in good faith that he was bound by the rules in force at the time of signature, meaning that the Club could not unilaterally amend those rules after the signature of the Agreement and apply them in a manner which *de facto* reduced his guarantee.

- Although it is established that a copy of the Club's amended internal rules was sent to all the team members including the Player by means of a group mail dated 3 January 2013, no evidence has been adduced that the Club drew the players' attention to the nature of the amendments or that the Player agreed to the changes contained therein.
- In addition, the basis of the Club's decision to sanction all the players simultaneously by withholding 50% of their last monthly salaries – which was communicated to the players during a meeting on 15 May 2013 and in a confirmation email of the same date – does not fit with the nature or conditions of the sanction stipulated in the amended rule 2.11 invoked by the Club. Indeed, whereas at the time of the facts the Club justified its decision on the grounds that the team, as an entity, “... *failed to reach the goals set before the season ... but managed to reach some historical anti-records ...*”, according to its terms, the amended rule 2.11 invoked by the Club would only have entitled the Club to adopt a sanction against an individual player “... *if during the playoffs/finals his stats average is lower than used to be during the season ...*”.
- Finally, although it is established that the Club notified the players of its decision to sanction them, no evidence has been adduced that the Player accepted the decision.

62. For the foregoing reasons, and because it is uncontested that the Club withheld the amount of EUR 15,000 from the Player's salary and never subsequently paid it, his claim to be paid such amount is upheld and he shall be awarded EUR 15,000 as outstanding compensation relating to the 2012/2013 season.

63. With respect to the amounts being claimed in relation to the **2013/2014** season, the Claimants have reduced their claim to sums representing the difference between what they will be earning for the 2013/2014 season under the contract signed by the Player with his new club and the monies which would have become due to them under the Agreement during that season.
64. On the basis of the evidence adduced, the Claimants are invoking a difference (shortfall) of EUR 147,625.10 with respect to the Player's salary and a difference (shortfall) of EUR 14,984.90 with respect to the Agent's fee.
65. In that connection, the question which arises is whether part or all of the foregoing amounts are owed as lost earnings or whether, as the Club argues, it should not be required to pay the Claimants more than the buyout sum of EUR 50,000 which was stipulated under article 5.3 of the Agreement.
66. The Arbitrator notes as a preliminary point that the Player's salaries and the Agent's fee for the **2013/2014** season were not absolutely guaranteed under the Agreement, since article 5 thereof stipulated that both the Club and the Player were entitled to terminate it without cause before the third season (2013/2014) provided they gave advance notice of their intention to do so and paid a buy-out fee within a given deadline.
67. According to article 5.3 of the Agreement, the Club could terminate the Agreement by fulfilling the following three cumulative conditions: (i) inform the Player by registered letter by 15 July 2013 of its intention to invoke the buyout clause; (ii) pay a buyout sum of EUR 50,000; and (iii) do so by 30 July 2013.
68. The Arbitrator finds that although the documents on indicate that the parties did enter a discussion in May or early June 2013 regarding the Club's wish to terminate the Agreement under the buyout clause, it is not established when exactly and in what form the Player and Agent were first informed thereof and, therefore, whether or not this occurred before or after the Player terminated the Agreement for cause on 7 June

2013. The Arbitrator also notes in that relation that the Club has not alleged that it ever informed the Player by means of a registered letter.

69. Furthermore, the Arbitrator finds that the evidence adduced proves that the Club was asking for a more favourable deadline (1 October 2013) to pay the buy-out sum and to pay its outstanding debts (Player's salaries and Agent's fee), while at the same time, the documents on record do not establish that the Player accepted such request.
70. For the above reasons, the Arbitrator finds that, contractually speaking, the conditions of article 5.3 of the Agreement, enabling the Club to validly avoid the Agreement for the 2013/2014 season without cause, were not fulfilled.
71. That said, the Arbitrator finds *ex aequo et bono* for the following reasons that – in the particular circumstances surrounding the termination of the Agreement and considering what has happened since then – it is nevertheless fair that the compensation to be paid to the Claimants in relation to the 2013/2014 season be limited to an amount equivalent to the buyout sum EUR 50,000 + EUR 10,000 (i.e. a total of EUR 60,000) for the Player and to an amount of EUR 5,000 for the Agent:
- The rationale of article 5 of the Agreement was to allow either party to avoid the contract for the 2013/2014 season without cause within a deadline which would enable the Club to find a replacement player (if the Player terminated) and the Player to find a new club (if the Club terminated), such date being fixed as 15 July 2013.
 - The “price” (consideration) to pay for such freedom to terminate the Agreement without cause was determined to be EUR 50,000 for the Club (article 5.3) and EUR 75,000 for the Player (article 5.2).
 - Although the Club did not provide the Player with notice in the required form (registered letter), he knew by early June 2013 that the Club wished to opt for a buyout but was incapable of paying the required buy-out amount and its debts

within the contractual deadlines and was thus requesting an extension of time.

- No evidence has been adduced that the Club was obstructive in any manner with regard to the Player's clearance to play with a new club.
- Thus and because in any event, the Player terminated the Agreement for cause on 7 June 2013, he was, *de facto*, in a position to start looking for a new Club about one month earlier than would have been the case if the Club had met the conditions for validly avoiding the Agreement on 15 July 2013.
- Furthermore, the Club made an effort to pay its debts relating to the 2012/2013 season earlier than initially proposed (1 October) and has now entirely paid them (except for the EUR 15,000 relating to the collective sanction, which is being awarded herein) and declared that it "... was and still is ready..." (emphasis added) to pay the buy-out sum of EUR 50,000, while at the same time the Player has found a new club for the next season with a salary representing an amount of EUR 202,374.90.
- Although it is theoretically possible that if the Club had validly given notice of its intent by 15 July 2013 to buy out the Agreement under its article 5.3 and had paid the corresponding amount of EUR 50,000 within the required deadline of 30 July 2013, the Player would today be in a better financial position, there is no logical reason why that would have been the case in practice given that (i) the time available and freedom to seek a new club would have been the same (there being no evidence of any obstruction by the Club); and (ii) he has found a new club during that period. That said, it is fair to award the Player EUR 60,000 because he was not paid the amount of EUR 50,000 spontaneously by the Club even at a later date and has had to file a claim to collect it.
- Similarly, the Agent would not have been in a better situation today if the Club had validly bought out the Agreement for the 2013/2014 season, since, according

to the terms of the Agreement (article 6.1 provides that the Agent's fee is only due if the contract is "*in effect*"), if the Club had thus validly terminated the Agreement, the Agent would not have been entitled to any form of fee for the 2013/2014 season.

72. For the above reasons, the Player will be awarded, *ex aequo et bono*, an amount of EUR 60,000 as compensation instead of the amount EUR 147,625.10 being claimed by him in relation to the 2013/14 season, and the Agent will be awarded, *ex aequo et bono*, an amount of EUR 5,000 as compensation instead of the amount EUR 14,984.90 being claimed by it in relation to the 2013/14 season

7. Costs

73. 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.
74. On 19 November 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 11,000.
75. Considering that the Claimants prevailed to quite a large extent in their main claims, it is fair that the fees and costs of the arbitration be borne by the Club and that it be

required to cover its own legal fees and expenses as well as make a contribution to those of the Claimants.

76. Given that the Claimants paid a total advances on costs of EUR 10,500 (EUR 5,000 of which was an overpayment) as well as a non-reimbursable handling fee of EUR 2,000 (which will be taken into account when determining the Claimant's expenses), and the Club paid an advance on costs in an amount of EUR 5,500, the Arbitrator decides that in application of article 17.3 of the BAT Rules:

- (i) BAT shall reimburse EUR 5,000 to Claimants, as indicated in the procedural order of 30 August 2013;
- (ii) The Club shall pay EUR 5,500 to the Claimants, being the amount of the costs advanced by the Claimants;
- (iii) The Club shall pay to the Claimants EUR 3,575 (2,000 for the non-reimbursable fee + 1,575 for legal fees) representing the amount of their legal fees and other expenses.

8. AWARD

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

- 1. BC Lietuvos Rytas shall pay Mr. Mindaugas Katelynas an amount of EUR 15,000, as compensation for unpaid remuneration relating to the 2012/2013 season.**
- 2. BC Lietuvos Rytas shall pay Mr. Mindaugas Katelynas an amount of EUR 60,000, as compensation relating to the 2013/2014 season.**
- 3. BC Lietuvos Rytas shall pay Bill A. Duffy International Inc. an amount of EUR 5,000, as damages.**
- 4. BC Lietuvos Rytas shall pay Mr. Mindaugas Katelynas and Bill A. Duffy International Inc. an amount of EUR 5,500 as reimbursement for their arbitration costs.**
- 5. BC Lietuvos Rytas shall pay Mr. Mindaugas Katelynas and Bill A. Duffy International Inc. an amount of EUR 3,575 as a contribution to their legal fees and expenses.**
- 6. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 2 December 2013

Quentin Byrne-Sutton
(Arbitrator)