

ARBITRAL AWARD

(BAT 0455/13)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Mr. Adrien Moerman

Mr. Guy Zucker

Zucker International, PO Box 2919, El Cerrito, CA 94530, USA

Mr. Hirant Manakian

- Claimants -

all represented by Mr. Sebastien Ledure, attorney at law,
Lorenz International Lawyers, Boulevard du Regent 37-40, 1000 Brussels, Belgium

vs.

Bilbao Basket Berri SAD

Calle Heros, 28 1° Izquierda, 48009 Bilbao, Spain

- Respondent -

represented by Mr. Pedrg Savovic Jovanovic and Mrs. Olatz Begona Arrinda, Alameda
Recalde street n° 27 - 3° Dpto 6, Bilbao, Spain

1. The Parties

1.1 The Claimant

1. Mr. Adrien Moerman (hereinafter the “First Claimant”) is a professional basketball player from France.
2. Mr. Guy Zucker (hereinafter the “Second Claimant”) is a professional basketball players’ agent from the USA.
3. Mr. Hirant Manakian (hereinafter the “Third Claimant”) is a professional basketball players’ agent from France.
4. The First Claimant, the Second Claimant and the Third Claimant are hereinafter referred to collectively as the “Claimants”.

1.2 The Respondent

5. Bilbao Basket Berri SAD (hereinafter the “Respondent”) is a professional basketball club based in Spain.

2. The Arbitrator

6. On 24 December 2013, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (hereinafter the “BAT”), appointed Mr. Raj Parker as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”).

7. None of the Parties has raised objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Background Facts

8. On 1 June 2012, the First Claimant signed an employment contract with the Respondent (hereinafter the “Bilbao Contract”). The Second Claimant and the Third Claimant co-signed the Bilbao Contract as the First Claimant’s representative agents.

9. Key provisions of the Bilbao Contract include:

- (i) it was a guaranteed “no cut” contract (article IV);
- (ii) the First Claimant’s salary was to be EUR 300,000.00 for 2012/2013, EUR 325,000.00 for 2013/2014, and EUR 375,000.00 for 2014/2015 (all net figures), to be paid in ten monthly and equal instalments in each year of the contract (article VI);
- (iii) the First Claimant was entitled to receive EUR 17,000.00 in each year of the contract for housing and transport (article IX(c));
- (iv) the Second Claimant and the Third Claimant were jointly entitled to receive payments from the Respondent of EUR 30,000.00 for 2012/2013, EUR 32,500.00 for 2013/2014, and EUR 37,500.00 for 2014/2015, which amounts were to be split equally between the Second Claimant and the Third Claimant, and were to be paid in two equal instalments each season on 5

December and 5 March (article X). With regard to the 2013/2014 season, the Bilbao Contract provides:

“For the 2013/2014 Season: €32,500 (Thirty Two Thousand Five Hundred Euros), paid €16,125 Euros to Guy Zucker and €16,125 Euros to Hrant Manakian, in two equal payments by December 5th , 2.013 and March 5th 2.014.”

The Arbitrator notes that the sum of the individual amounts stated to be payable to the Second Claimant and the Third Claimant (which is EUR 16,250.00) for the 2013/2014 season is less than the total agency fee stated to be payable for that season (which is EUR 32,500.000);

- (v) if a payment was delayed by 15 days then the First Claimant was entitled to stop practising and playing. If a payment was delayed by 30 days then the First Claimant was entitled to terminate the Bilbao Contract by written notice. If the First Claimant exercised that right then all amounts owed by the Respondent under the Bilbao Contract became due immediately (article VIII);
- (vi) there was a provision that any disputes arising from or related to the Bilbao Contract shall be submitted to the BAT for determination in accordance with the BAT Rules (article X);
- (vii) there was an “entire agreement” clause (article XI), which provided that:

“[w]hile the parties to this contract may sign at a later date, an ACB league contract to facilitate the player’s registration by the league, this contract contains the entire agreement between the Club and the Player with respect to the subject matter hereof and supersedes all previous and future oral or written agreements, communications and understandings with respect to such matters, and shall be the only enforceable contract in the event of litigation or arbitration”.

10. Also on 1 June 2012, the First Claimant signed another contract with the Respondent

(hereinafter the “League Contract”). The Third Claimant also signed the League Contract. The League Contract contained the same obligations as the Bilbao Contract in most respects, including in particular as to the term of the contract, its no-cut nature and the amounts payable to each of the Claimants. However, the League contract was expressed to be governed by the laws of Spain and it provided that “any disputes arising from or related to this agreement shall be submitted to the Laboral Tribunal of Bilbao”.

11. On 11 June 2013, the Second Claimant sent an email to the Respondent in the following terms:

“Due to your continuing breach of your employment agreement with Adrien Moerman, and in Accordance with Section VIII of that Agreement, I hereby notify you of his decision to terminate the Agreement.

Please understand that our next step will be to refer this matter to my attorney, in order to prepare a BAT complaint against you.”

12. On 13 June 2013 the First Claimant entered a contract with Limoges CSP, a French basketball club, for the 2013/2014 and 2014/2015 seasons (the “Limoges Agreement”). Under the Limoges Agreement, the First Claimant is entitled to receive a total net salary of EUR 351,984.00, being EUR 175,992.00 for each of the two seasons.

3.2 The Proceedings before the BAT

13. On 17 September 2013, the Claimants filed a Request for Arbitration in accordance with the BAT Rules. The BAT received the non-reimbursable handling fee of EUR 5,000.00 from the Claimants on 25 September and 4 December 2013.
14. By letter dated 2 January 2014, the BAT Secretariat fixed a time limit until 23 January 2014 for the Respondent to file its Answer to the Request for Arbitration. By the same letter, and with a deadline for payment of 16 January 2014, the following amounts were

fixed as the Advance on Costs:

- (i) First Claimant EUR 4,500.00;
- (ii) Second Claimant EUR 1,000.00;
- (iii) Third Claimant EUR 1,000.00; and
- (iv) Respondent EUR 6,500.00.

15. The Respondent filed its Answer to the Request for Arbitration on 13 January 2014.
16. The BAT received the First Claimant's share of the Advance on Costs on 13 January 2014, the Second Claimant's share on 15 January 2014, the Third Claimants' share on 13 January 2014 and the Respondent's share, in two installments, on 3 and 4 February 2014. The Respondent failed to pay its share and so the Respondent's share was paid by the Claimants, in accordance with Article 9.3 of the BAT Rules and in compliance with a deadline for doing so which had been set by the BAT.
17. The Respondent sent the BAT an unsolicited further submission (hereinafter the "Respondent's Unsolicited Submission") on 18 February 2014.
18. Also on 18 February 2014, and in response to the Respondent's Unsolicited Submission, an unsolicited submission was made on behalf of the Claimants (hereinafter the "Claimants' Unsolicited Submission").
19. On 21 February 2014, the BAT issued a procedural order on behalf of the Arbitrator (hereinafter the "Procedural Order") in which the Arbitrator asked the Second Claimant and the Third Claimant to state whether or not they had received, or anticipated receiving in the future, any payments under or in connection with the Limoges Contract,

and also, if they have received or do anticipate receiving such payments, the amount of such payments.

20. The Second Claimant and the Third Claimant responded to the Procedural Order on 4 March 2014.
21. By a further procedural order dated 15 April 2014, the Arbitrator declared the exchange of documents complete, and requested that the Parties submit detailed accounts of their costs by 23 April 2014.
22. On 23 April 2014, the Claimants submitted an account of their costs. The Respondent did not submit an account of its costs. The Respondent was given the opportunity to make any comments it might have on the Claimants' account of costs by 2 May 2014, but it did not do so.

4. The Parties' Submissions

4.1 The Claimants' Submissions

23. The Claimants in the Request for Arbitration submit that:
 - (i) the Bilbao Contract was validly terminated on 11 June 2013;
 - (ii) as at 11 June 2013, an amount of EUR 111,000.00 was owed to the First Claimant in respect of salary;
 - (iii) as at the same date, amounts of EUR 7,500.00 and EUR 7,500.00 had been owed to the Second Claimant by the Respondent since 5 December 2012 and

5 March 2013 respectively, and amounts of EUR 7,500.00 and EUR 7,500.00 had been owed to the Third Claimant by the Respondent since 5 December 2012 and 5 March 2013 respectively;

- (iv) the amounts referred to at (ii) and (iii) above must be paid to the First Claimant, the Second Claimant and the Third Claimant, as appropriate, as amounts due and owing;
- (v) in accordance with article VIII of the Bilbao Contract, the payments which as at 11 June 2013 were yet to become due for payment must be paid to the First Claimant, the Second Claimant and the Third Claimant, as appropriate. The payments which at that date were yet to become due for payment were as follows:
 - (A) to the First Claimant, EUR 745,000.00;
 - (B) to the Second Claimant, EUR 35,000.00; and
 - (C) to the Third Claimant, EUR 35,000.00;
- (vi) the First Claimant acknowledges that the amount he should be able to claim for breach of contract should be reduced by an amount equal to the amount he stands to be paid under the Limoges Agreement. Accordingly, the first claimant acknowledges that his claim for breach of contract should be reduced from EUR 745,000.00 by EUR 351,984.00 to EUR 393,016.00;
- (vii) the First Claimant acknowledges that the Respondent incurred EUR 36,523.49 of expenses on his behalf, and that he should have to account for that in making his claim against the Respondent. He submits however that the amount he must account for should be reduced by EUR 17,000.00 to reflect

the fact that the expenses incurred include EUR 23,000.00 for renting an apartment and, under article IX of the Bilbao Contract, the First Claimant was entitled to EUR 17,000.00 for housing expenses which he had not received;

(viii) the Claimants each should be paid interest on the principal amounts owed to them, at 5% per year, as follows:

(A) the First Claimant requests that interest be payable on all amounts owed to him as at 11 June 2013 and also on the amount which became due and payable on that date because he exercised his right to terminate the Bilbao Agreement, with such interest to begin to accumulate on 12 June 2013;

(B) the Second Claimant requests that interest be payable from 6 December 2012 on the amount of EUR 7,500.00 which was due for payment on 5 December 2013, and from 6 March 2013 on the amount of EUR 7,500.00 which was due for payment on 5 March 2013; and

(C) the Third Claimant requests that interest be payable from 6 December 2012 on the amount of EUR 7,500.00 which was due for payment on 5 December 2013, and from 6 March 2013 on the amount of EUR 7,500.00 which was due for payment on 5 March 2013; and

(ix) the Claimants should be compensated for their legal expenses, including the non-reimbursable handling fee, the costs of the arbitration and their attorneys' fees.

24. In their response to the Procedural Order, the Second Claimant and the Third Claimant stated that:

- (i) they are not parties to the Limoges Agreement;
- (ii) the Limoges Agreement was entered into by the mediation of a basketball agent called Mr. Pascal Levy; and
- (iii) neither the Second Claimant nor the Third Claimant have received or anticipate receiving any payment under or in connection with the Limoges Agreement.

4.2 The Respondent's Submissions

25. The Respondent in the Answer submitted that:

- (i) the League Contract is the only valid contract between the parties, and it does not contain a provision for arbitration under the BAT Rules. The only forum with jurisdiction to hear disputes in relation to it is the Bilbao Labour Court;
- (ii) under rules of the Spanish league, a player cannot compete if his contract with his club contains a provision for arbitration under the BAT Rules (*"[s]hould note that the Spanish competition does not transacted federal tab if the contract includes BAT submission, which would prevent the player could compete in Spain with our team" [sic]*);
- (iii) the BAT does not have jurisdiction to hear this dispute because the Respondent has not voluntarily submitted to BAT's jurisdiction; and
- (iv) these proceedings should therefore be dismissed and terminated.

26. The Respondent's Unsolicited Submission did not add any substantive arguments.

However, the Respondent sought to supplement its answer by providing a certificate given by a Ms. Esther Queralto Tolsau, on behalf of and representing the Asociación de Clubs de Baloncesto, the organiser of men's professional basketball competition in Spain (hereinafter the "Certificate"). The Certificate contained statements to the effect that:

- (i) under the rules of the Spanish league, for a player's licence to be issued the player's contracts must be registered with the league; and
- (ii) the First Claimant's contract (i.e., the League Contract) was registered with the Spanish league on 1 July 2012, and it does not contain a submission to the jurisdiction of the BAT. The certificate continues:

"furthermore, there is no other contract deposited in ACB, therefore [the League contract] is the only valid and binding document regarding the competition."

27. The Certificate quotes a section of the rules of the Spanish league, which includes the following text:

*"4.3. The EU players inscription proceeding and those who is applicable the Collective Agreement shall adapt as provided thereof, that is incorporated to the present rules as Annex 3. **It is not accepted player contracts that being applicable the II ACB- ABP Collective Agreement, incorporate in their contracts submissions to BAT. It will not be issued any license when said proceeding is not fulfilled.**"* (Emphasis in the Certificate)

28. The Claimants' Unsolicited Submission was a short email which stated, so far as is relevant:

"Further to Respondent's enclosed e-mail d.d. February 18, 2014, we revert back to you in the case at hand.

According to the BAT's Procedural Order d.d. January 2, 2014, Respondent's deadline for filing an Answer was January 23, 2014.

As Respondent's submission d.d. February 18, 2014 is indisputably late and therefore unauthorized, we hereby formally request the Arbitrator to reject it and to disregard its content.

We assume that Respondent's submission will not delay the further proceedings."

5. Jurisdiction

29. 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).
30. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.

5.1 Arbitrability

31. The Arbitrator notes that the dispute referred to him is clearly of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.¹

5.2 Formal and substantive validity of the arbitration agreement

32. The existence of a valid arbitration agreement is to be examined in light of Article 178 PILA, which reads as follows:

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

“1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.

2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law.

3 The validity of an arbitration agreement may not be contested on the grounds that the principal contract is invalid or that the arbitration agreement concerns a dispute which has not yet arisen.”

33. The Bilbao Contract is in written form and thus the arbitration clause fulfils the formal requirements of Article 178(1) PILA. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) of the PILA).
34. As mentioned in para. 9(vi) above, Article X of the Bilbao Contract contains an arbitration clause which grants jurisdiction to the BAT, the full text of that clause is:

“This contract shall be construed, interpreted and enforced in accordance with the laws of Switzerland and in accordance with the International Basketball Federation (FIBA).

Any Disputes arising from or related to this agreement 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 (PIL), irrespective of the parties’ domicile. The language of the arbitration shall be English. The arbitrator upon appeal shall decide the dispute ex aequo et bono.

The parties expressly waive recourse to the Swiss Federal Tribunal and any other legal bodies in any country against awards of the BAT, and agree that the BAT decision will be final.”

35. The Arbitrator finds that the Bilbao Contract is on its face a valid contract which would have been binding on its parties at the time that they signed it. The Arbitrator also finds that the provision quoted in paragraph 34 above would confer, on any arbitrator appointed in accordance with the BAT Rules, jurisdiction to hear and determine any

disputes arising from or related to the Bilbao Contract.

5.3 The Respondent's assertions that the arbitration agreement is not valid and binding

36. In light of the Respondent's submissions that the Bilbao Contract is not a valid contract and that, therefore, the Arbitrator does not have jurisdiction to hear this dispute, the Arbitrator has considered whether the League Contract or anything else referred to in the Respondent's submissions would change the Arbitrator's view as to the validity and effect of the Bilbao Contract.

37. The Arbitrator notes that the League Contract is identical to the Bilbao Contract in almost every substantive provision except for the provision dealing with the governing law of the contract and jurisdiction for the resolution of disputes (article X in both contracts) and the provision headed "ENTIRE AGREEMENT" (article XI in both contracts).

38. The governing law and jurisdiction provision (article X) in the League Contract (which is the corresponding provision to the provision quoted from the Bilbao Contract at paragraph 34 above) provides as follows:

"This contract shall be construed, interpreted and enforced in accordance with the laws of Spain.

Any disputes arising from or related to this agreement shall be submitted to the Laboral Tribunal of Bilbao."

39. The entire agreement provision in the Bilbao Contract is set out at paragraph 9(vii) above. The corresponding provision in the League Contract provides as follows:

"This contract represents the entire agreement between the parties, and cannot be changed or extended without prior written approval by both the

Club and the Player and without written authorization by Mr. Guy Zucker and Mr. Hirant Manakian.”

40. The Arbitrator notes that, on page 2 of the Answer to the Request for Arbitration, the Respondent refers to the League Contract as the “*final contract between the parties last June 1, 2012 [sic]*”. The Arbitrator has considered whether it can be argued that the League Contract was signed later in time than the Bilbao Contract and, for that reason, should supersede it. The Arbitrator finds that there is nothing in the League Contract which, assuming it is valid and binding, would have the effect of altering or overriding the provisions of the Bilbao Contract. Accordingly, the Arbitrator finds that it makes no difference to the analysis of the Bilbao Contract if the League Contract was signed after the Bilbao Contract. The Parties’ submissions indicate that the Bilbao Contract and the League Contract were both signed on the same day and, as discussed at paragraph 44 below, it appears that the Parties expected and agreed that both contracts would be signed. Accordingly, the Arbitrator finds that if in fact the League Contract was signed after the Bilbao Contract then it should not be understood to supersede the Bilbao Contract on that basis alone, and it does not do so.
41. The Arbitrator further finds that the provision quoted at paragraph 39 above does not vary, terminate or annul the Bilbao Contract, even though the Bilbao Contract clearly also represents an agreement between the same parties; neither does any other provision of the League Contract. The provision quoted at paragraph 39 above might mean that if the Claimant sought to enforce, in the Bilbao Labour Court, any rights he may have under Spanish law then the contractual provisions on which he could rely would be limited to the contractual provisions in the League Contract. However, the Arbitrator does not need to, and does not, decide that point. The Arbitrator finds that, if the League Contract is valid and binding on its parties, there is nothing in it which would vary, terminate, or affect in any way, the provisions of the Bilbao Contract.
42. The Arbitrator has considered the evidence submitted on behalf of the Respondent to the effect that, under the rules of the Spanish league, contracts between clubs and

players which provide for the resolution of disputes by arbitration under the BAT Rules, are not valid. In particular, the Arbitrator has considered representations made by Ms. Queralto Tolsau in the Certificate.

43. The Arbitrator is not persuaded that the Certificate supports the Respondent's argument. The Certificate suggests that under the rules of the Spanish league a player will not be issued with a license unless a contract which is compliant with the league's rules is filed with the league, and it also suggests that the league will not for these purposes recognise a contract which provides for arbitration under the BAT Rules. However, neither the Certificate nor any of the argument or evidence submitted by the Respondent persuades the Arbitrator of the Respondent's assertion that the Bilbao Contract is not valid and binding on its parties. It may be that the Spanish league would not recognise the Bilbao Contract for the purposes of issuing a player with a license but, if that is the case, that does not mean that the Bilbao contract is not valid and binding.
44. Finally, the Arbitrator has had regard to the wording of article X of the Bilbao Contract, quoted at paragraph 9(vii) above, and in particular its contemplation that "*[w]hile the parties to this contract may sign at a later date, an ACB league contract to facilitate the player's registration by the league, this contract contains the entire agreement between the Club and the Player with respect to the subject matter hereof and supersedes all previous and future oral or written agreements... .*" This indicates, and the Arbitrator Finds, that the intention and agreement of the Parties on the day that the two contracts were signed was that:
- (i) the Bilbao Contract represented the full agreement between the parties (and consequently any disputes under it could be resolved in accordance with its terms); and
 - (ii) it was contemplated that a second contract would be signed to enable the First

Claimant to be registered with the Spanish league; but

- (iii) the signing of that agreement would not affect the terms or the binding nature of the Bilbao Contract.

In light of his finding as to the Parties' intention and agreement in this regard, the Arbitrator does not consider that the words "... *at a later date*..." should be interpreted as limiting the effect of article X of the Bilbao Contract to league contracts which may have been signed at later dates.

- 45. For the above reasons, the Arbitrator finds that the Bilbao Contract remains valid and binding on its parties, and therefore that he has jurisdiction to adjudicate the Claimant's claim.

6. Discussion

6.1 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*", as opposed to a decision according to the rule of law referred to in Article 187(1). 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. As quoted at paragraph 34 above, article X of the Bilbao Contract contains the words “[t]his contract shall be construed, interpreted and enforced in accordance with the laws of Switzerland and in accordance with the International Basketball Federation (FIBA)” and goes on to say “[t]he arbitrator upon appeal shall decide the dispute ex aequo et bono”. The Arbitrator finds that, reading article X in its entirety and in its context, the agreement between the parties to the Bilbao Contract was that disputes submitted for arbitration before BAT would be decided *ex aequo et bono*. Accordingly, the Arbitrator will decide the issues submitted to him in these proceedings *ex aequo et bono*.

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*² (Concordat),³ under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

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

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

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).

circumstances of the case".⁵

51. 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*".
52. In light of the foregoing matters, the Arbitrator makes the following findings.

6.2 Findings

6.2.1 The Bilbao Contract

53. The Arbitrator finds that under the Bilbao Contract the Respondent was required to pay the First Claimant EUR 300,000.00 salary, net of Spanish taxes, for the 2012/2013 season, EUR 325,000.00 salary, net of Spanish taxes, for the 2013/2014 season, and EUR 375,000.00 salary, net of Spanish taxes, for the 2014/2015 season.
54. The Arbitrator finds that under the Bilbao Contract the Respondent was required to pay the Second Claimant:
- (i) EUR 15,000.00 agency fees, net of Spanish taxes, for the 2012/2013 season in two equal instalments on 5 December 2012 and 5 March 2013;
 - (ii) EUR 16,250.00 agency fees, net of Spanish taxes, for the 2013/2014 season in two equal instalments on 5 December 2013 and 5 March 2014; and

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

- (iii) EUR 18,750.00 agency fees, net of Spanish taxes, for the 2014/2015 season in two equal instalments on 5 December 2014 and 5 March 2015.

In relation to the 2013/2014 season, the Arbitrator notes the inconsistency in the drafting of the Bilbao Contract identified at paragraph 9(iv) above. The Arbitrator finds that the total agency fee for that season was, as is stated in the contract, EUR 32,500.00. The Arbitrator finds that the reference to the Second Claimant and the Third Claimant being paid EUR 16,125.00 must have been a drafting error. Accordingly, as indicated above, the Arbitrator finds that the Respondent was required to pay the Second Claimant EUR 16,250.00 in agency fees for the 2013/2014 season.

55. The Arbitrator finds that under the Bilbao Contract the Respondent was required to pay the Third Claimant:

- (i) EUR 15,000.00 agency fees, net of Spanish taxes, for the 2012/2013 season in two equal instalments on 5 December 2012 and 5 March 2013;
- (ii) EUR 16,250.00 agency fees, net of Spanish taxes, for the 2013/2014 season in two equal instalments on 5 December 2013 and 5 March 2014; and
- (iii) EUR 18,750.00 agency fees, net of Spanish taxes, for the 2014/2015 season in two equal instalments on 5 December 2014 and 5 March 2015.

For the same reason as is explained at paragraph **Fehler! Verweisquelle konnte nicht gefunden werden.** above, the Arbitrator finds that the Respondent was required to pay the Third Claimant EUR 16,250.00, rather than EUR 16,125.00, in agency fees for the 2013/2014 season.

56. The Arbitrator finds that, as at 11 June 2013:

- (i) the Respondent had not paid the First Claimant an amount in respect of salary totalling EUR 111,000.00, which amount was due and owing at that date and which included payments which were more than thirty days overdue;
- (ii) the Respondent had not paid the First Claimant an amount in respect of accommodation expenses totalling EUR 17,000.00, which amount had been due to be paid in ten equal monthly instalments between 5 September 2013 and 5 June 2013;
- (iii) the Respondent had not paid the Second Claimant the amounts which were due for payment on 5 December 2012 and 5 March 2013;
- (iv) the Respondent had not paid the Third Claimant the amounts which were due for payment on 5 December 2012 and 5 March 2013;
- (v) the First Claimant was entitled to terminate the Bilbao Contract in accordance with article VIII thereof. The Arbitrator also finds that the First Claimant did terminate the Bilbao Contract validly and effectively by the email sent by the Second Claimant to the Respondent on 11 June 2013.

6.2.2 Findings in relation to the Respondent's alleged breaches of the Bilbao Contract

57. The Arbitrator finds that, pursuant to article VIII of the Bilbao Contract, the Respondent is in principle required to pay the First Claimant compensation for breach of contract in an amount equal to all amounts in respect of salary and bonuses which had yet to fall due on the date that the Bilbao Contract was terminated. The Arbitrator finds that that amount, subject to what is said below at paragraph 59, is EUR 745,000.00, and that that amount became due on 11 June 2013.

58. The Arbitrator finds that the Respondent is in principle required to pay the Second

Claimant and the Third Claimant compensation for breach of contract in an amount equal to all agent fees which had yet to fall due on the date that the Bilbao Contract was terminated. The Arbitrator finds that each of the Second Claimant and the Third Claimant should receive such compensation in the amount of EUR 35,000.00, representing the aggregate amount of payments which would have been due to each of them in respect of the 2013/2014 season and the 2014/2015 season, and that that amount became due on 11 June 2013.

59. The Arbitrator agrees with the First Claimant's acknowledgement that he should have to bring the amounts he expects to receive under the Limoges Agreement, and also the expenses which the Respondent incurred on his behalf, into account for the purposes of calculating the total amount the Respondent must pay to him as compensation for breach of contract. Accordingly, the amount of EUR 745,000.00 referred to at paragraph 57 above shall be reduced by:

- (i) EUR 351,984.00, representing amounts expected to be received under the Limoges Contract; and
- (ii) 19,523.49, representing the expenses incurred by the Respondent on the First Claimant's behalf minus EUR 17,000.00, which is an amount that the Respondent was required to pay to the First Claimant in respect of accommodation costs under the Bilbao Contract but the Arbitrator has found it has not paid,

and so the total amount the Respondent must pay the First Claimant as compensation for the salary and bonuses which had yet to fall due on the date that the Bilbao Contract was terminated is EUR 373,492.51.

6.2.4 Interest

60. The Claimants have requested interest at 5% per annum be payable on the amounts awarded to them, as follows:

- (i) the First Claimant has requested that interest be paid on the amounts which were due and owing to him as at 11 June 2013 (i.e., EUR 111,000.00) from 12 June 2013, being the day after the Bilbao Agreement was terminated in accordance with its terms, and also that interest be paid on the amounts which became due and owing to him on that date as a result of the termination of the Bilbao Agreement in accordance with its article VIII (i.e. EUR 373,492.51) from the same date; and
- (ii) the Second Claimant and the Third Claimant each separately request that:
 - (A) interest on the EUR 7,500.00 which was due on 5 December 2012 be paid from 6 December 2012;
 - (B) interest on the EUR 7,500.00 which was due on 5 March 2013 be paid from 6 March 2013; and
 - (C) interest on the EUR 35,000.00 which became due on 11 June 2013 be paid from 12 June 2013.

61. Although the Bilbao Contract does not provide for the payment of default interest, this is a generally accepted principle embodied in most legal systems. Indeed, payment of interest is a customary and necessary compensation for late payment, and the Arbitrator considers that there is no reason why the Claimant should not be awarded interest in this case. Also, according to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation

to pay interest. The Arbitrator further considers, in line with the jurisprudence of the BAT, that 5% per annum is a reasonable rate of interest. The Arbitrator considers that the Claimants' requests with respect to interest, as set out at paragraph 60 above, are reasonable and he awards interest in those terms.

7. Costs

62. Article 17.2 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and may either be included in the award or communicated to the Parties separately. Furthermore, Article 17.3 of the BAT Rules provides that the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.
63. On 7 August 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 jurisdictional questions raised, the BAT President determined the arbitration costs in the present matter at EUR 10,860.00.
64. The Arbitrator notes that the Claimants have been successful in every aspect of their claim.
65. The Arbitrator also notes that the Respondent failed to pay its share of the Advance on Costs.

66. The Arbitrator decides that, in application of Article 17.3 of the BAT Rules and in light of the circumstances of the case, the Respondent shall bear the costs of the arbitration. Therefore, the Arbitrator decides that the Respondent shall pay to the Claimants EUR 10,860.00 as reimbursement of arbitration costs advanced by the Claimants. The BAT shall reimburse EUR 2,233.17 to the Claimants, being the difference between the costs advanced by them and the arbitration costs fixed by the BAT President.
67. The Parties were requested to submit a detailed account of their costs by 23 April 2014. The Respondent did not submit any account of its costs. The Claimants did not submit a detailed account of their costs. The Claimants did however submit a letter from their legal representatives which stated that the Claimants' legal costs were EUR 15,500.00, which is less than the maximum contribution to a party's legal fees and expenses in a case of this value under Article 17.4 of the BAT Rules.
68. The Arbitrator has not had the benefit of a detailed account of the Claimants' costs, upon which to base a decision about whether the costs claimed are reasonable. The Arbitrator notes that the Respondent has been invited to comment on the Claimants' account of costs and has not done so. In the circumstances, the Arbitrator considers that in a case of this nature it is reasonable for the Claimants to have incurred legal costs, including the non-reimbursable handling fee, of EUR 15,500.00, and finds that the Respondent must pay the Claimants EUR 15,500.00 in respect of their legal costs.

8. AWARD

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

- 1. Bilbao Basket Berri SAD is ordered to pay to Mr. Adrien Moerman EUR 484,492.51 as compensation for unpaid salaries and for breach of contract, together with interest of 5% per annum on such amount from 12 June 2013.**
- 2. Bilbao Basket Berri SAD is ordered to pay to Mr. Guy Zucker EUR 7,500.00 as compensation for unpaid agents' fees due on 5 December 2012, together with interest of 5% per annum on such amount from 6 December 2012.**
- 3. Bilbao Basket Berri SAD is ordered to pay to Mr. Guy Zucker EUR 7,500.00 as compensation for unpaid agents' fees due on 5 March 2013, together with interest of 5% per annum on such amount from 6 March 2013.**
- 4. Bilbao Basket Berri SAD is ordered to pay to Mr. Guy Zucker EUR 35,000.00 as compensation for breach of contract, together with interest of 5% per annum on such amount from 12 June 2013.**
- 5. Bilbao Basket Berri SAD is ordered to pay to Mr. Hirant Manakian EUR 7,500.00 as compensation for unpaid agents' fees due on 5 December 2012, together with interest of 5% per annum on such amount from 6 December 2012.**
- 6. Bilbao Basket Berri SAD is ordered to pay to Mr. Hirant Manakian EUR 7,500.00 as compensation for unpaid agents' fees due on 5 March 2013, together with interest of 5% per annum on such amount from 6 March 2013.**
- 7. Bilbao Basket Berri SAD is ordered to pay to Mr. Hirant Manakian EUR 35,000.00 as compensation for breach of contract, together with interest of 5% per annum on such amount from 12 June 2013.**



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- 8. Bilbao Basket Berri SAD is ordered to pay jointly to Mr. Adrien Moerman, Mr. Guy Zucker and Mr. Hirant Manakian EUR 10,860.00 as reimbursement of the advance on BAT costs.**
- 9. Bilbao Basket Berri SAD is ordered to pay jointly to Mr. Adrien Moerman, Mr. Guy Zucker and Mr. Hirant Manakian EUR 15,500.00 as a contribution towards their legal fees and expenses.**
- 10. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 14 August 2014

Raj Parker
(Arbitrator)