ARBITRAL AWARD

(BAT 0494/13)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Mr. Obrad Fimic

- Claimant -

represented by Mr. Ivan v. Calovic, attorney at law
Bate Jankovica 37, 32000 Cacak, Serbia

vs.

Basketball Club Enisey Krasnoyarsk
Island of the Rest, Ivan Yarygin Palace of Sports, 4th Floor, 660093 Krasnoyarsk, Russia

- First Respondent –

represented by Ms. Ntimi Papadopolou, attorney at law
7 Agiou Demetriou Str, Limassol 3090, Cyprus

Mr. Stevan Karadzic
Indire Gandi Str. No. 19, 11000 Belgrade, Serbia

- Second Respondent -

represented by Dr. Spelca Meznar, attorney at law,
Taborska 13, 1290 Grosuplje, Slovenia

1. The Parties

1.1 The Claimant

1. The Claimant is a FIBA certified agent, having license number 2007019222, from Poland.

1.2 The Respondents

2. The First Respondent is a professional basketball club based in Russia. The Second Respondent is a professional basketball coach from Serbia.

2. The Arbitrator

3. On 14 April 2014, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (the "BAT"), appointed Mr. Raj Parker as arbitrator (the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (the "BAT Rules"). None of the Parties has objected to the Arbitrator's appointment or to his declaration of independence.

3. Facts and Proceedings

3.1 Background Facts

4. On 9 February 2010 the Claimant and the Second Respondent signed a contract for the Claimant to represent the Second Respondent as his agent (the "Agency

Agreement"). The Agency Agreement contains, among others, the following provisions:

(i) the Claimant was to be "the exclusive and only representative" for the Second Respondent (clause 1.1);

(ii) the Agency Agreement incorporated "the FIBA Internal Regulations governing Coach's Agents" (clause 2);

(iii) for any contract the Claimant procured for the Second Respondent, "the [Second Respondent] agrees to pay the [Claimant] an agent fee of 10% (ten percent) of the Coach's base net salary for every season spent in the Club". That agent fee is to be paid directly by the club, although the Second Respondent is liable for it should the club in question default (clause 3);

(iv) the provision as to term and termination was as follows:

> *"[t]his Agreement shall begin on the day of signature hereof by both parties and shall be automatically extended after two year period, unless cancelled by written agreement between the parties."*

(clause 4); and

(v) there was a dispute resolution clause which provided as follows:

> *"[a]ny dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in 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. Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law. The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono"*

(emphasis in original) (clause 8).

5. The First Respondent was not a party to the Agency Agreement.

3.2 The Proceedings before the BAT

6. The Claimant paid the non-reimbursable handling fee of EUR 2,000.00 on 16 December 2013, and the Basketball Arbitral Tribunal (the "BAT") received the Request for Arbitration on 9 April 2014.

7. The Advance on Costs was fixed at EUR 10,000.00 payable by the Claimant (EUR 5,000.00), the First Respondent (EUR 2,500.00) and the Second Respondent (EUR 2,500.00). The Parties each paid their own share of the advance on costs. The Claimant made an additional payment of EUR 2,500.00 on 16 May 2014, and this was subsequently refunded to him.

8. The Parties entered into settlement discussions, and emails concerning those discussions were forwarded to the BAT, including an email sent by the Claimant's representative to the Second Respondent's representative on 8 May 2014. These settlement attempts were, obviously, not successful. The Arbitrator has treated them as having been entered into on a "without prejudice" basis and has not considered them at all in reaching his decision in this Award.

9. The Second Respondent filed his Answer to the Request for Arbitration, in compliance with a deadline extended at his request, on 13 May 2014. The First Respondent filed its Answer to the Request for Arbitration on the same date.

10. On 14 May 2014 the Claimant submitted an amendment to the request for relief set out in the Request for Arbitration.

11. In a procedural order dated 2 June 2014 the Arbitrator informed the Parties that he had concluded that he has no jurisdiction to make an award against the First Respondent. The Arbitrator's reasons for that conclusion are explained at paragraph 31 below. In the same procedural order, the Arbitrator asked the Claimant and the Second Respondent questions about matters raised in the Request for Arbitration and in the Second Respondent's Answer. The Second Respondent provided his response, in compliance with the set deadline, on 8 June 2014. The Claimant provided his response, five days after a deadline which had been extended at his request, on 23 June 2014.

12. The Claimant made an unsolicited submission, by email to the BAT, on 26 June 2014.

13. On 7 July 2014 the BAT Secretariat informed the parties that the exchange of documents was complete, and requested that they submit detailed accounts of their costs.

14. On 10 July 2014 the Claimant made a further unsolicited submission, by an email sent to the BAT.

15. The Claimant submitted an account of his costs on 17 July, and the Second Respondent submitted an account of his costs on 14 July; in each case the account of costs was provided in compliance with the set deadline. The Claimant and the Second Respondent were each given the opportunity to comment on the other's account of costs, and the Claimant did so, albeit after the set deadline.

4. The Positions of the Parties

4.1 The Claimant's Position

16. The Claimant submits that in February 2013 the First Respondent and the Second Respondent entered into a contract under which the Second Respondent was to act as coach for the First Respondent for the remainder of the 2012/2013 season (the "2012/2013 Agreement"), and that in the summer of 2013 the Respondents entered into a further such contract for the 2013/2014 season (the "2013/2014 Agreement"). The Claimant submits, among other things, that each of these coaching contracts were entered into in breach of the exclusivity provision in the Agency Agreement, and the Claimant is entitled to receive 10% of the value of the Second Claimant's salary under the coaching contracts. The most important aspects of those submissions are:

    (i) On 19 March 2010, following negotiation conducted by the Claimant on behalf of the Second Respondent, the Second Respondent and the First Respondent entered into a contract under which the Second Respondent would work as coach for the First Respondent for the remainder of the 2009/2010 season.

    (ii) By June 2010, the Claimant had negotiated the extension of that engagement so that the Second Respondent coached for the First Respondent for the 2010/2011 season (this second contract was signed on 27 July 2010).

    (iii) In the summer of 2011 the Claimant negotiated a further extension for the 2011/2012 season.

    (iv) In the 2011/2012 season, the First Respondent gave the Second Respondent a "free rein" on bringing and signing players; this was contrary to previous practice. The season was a failure for the First Respondent; the First

Respondent dismissed the Second Respondent in February 2012 and hired a replacement.

(v) In the latter part of 2012 the Claimant offered alternative coaches to the First Respondent. The Claimant also spoke to the Second Respondent about possible engagements on one occasion.

(vi) On 15 February 2013 the Second Respondent sent a letter to the Claimant purporting to terminate the Agency Agreement. The Claimant, acting through his associate, expressly did not accept the purported termination, on the basis that the Agency Agreement had automatically renewed in accordance with its terms and had not subsequently been terminated by agreement.

(vii) On 15 or 16 February 2013 the Claimant's associate heard that the First Respondent was planning to hire the Second Respondent again.

(viii) The Second Respondent subsequently attended one of the First Respondent's away games and was seen travelling with the team.

(ix) The Claimant's associate sent messages via email, text message and Skype, and then a letter (to the First Respondent), saying that the Claimant must be paid his agent's fee. These messages were all sent between 15 and 23 February 2013.

(x) On 23 February 2013 the Claimant spoke by telephone to a representative of the First Respondent, and that representative agreed with the Claimant's position and promised to pay the Claimant an agent fee for every season the Second Respondent signed to coach for the First Respondent.

(xi) On 1 March 2013, the Second Respondent emailed the Claimant insisting that

he had terminated the Agency Agreement and was insulted by the Claimant's actions. The Second Respondent said he would not pay the Claimant his fee but would pay USD 2,000.00 in return for an acknowledgment that the Second Respondent owed no further debt.

(xii) In the summer of 2013, the First Respondent and the Second Respondent extended their engagement for a further one or two seasons.

(xiii) Relations with the First Respondent and the Claimant thawed somewhat during the summer of 2013, and the Claimant discussed possible player hires with the First Respondent.

(xiv) In December 2013 the Claimant spoke to the Second Respondent (or it may have been a representative of the First Respondent – the text of the Request for Arbitration is somewhat ambiguous in this regard) to discuss the agent's fee.

(xv) On 12 December 2013, the Claimant's associate sent the Agency Agreement to the First Respondent with a letter demanding payment. The First Respondent refused to pay.

(xvi) The Claimant concludes that:

> *"[s]ummarizing the above events and facts, Claimant was prevented to negotiate and participate in engagement process on behalf of his client Respondent 2 the same as he was deprived by joint actions of both Respondents together to make profit. Therefore, Claimant was left no other legal option to solve this dispute with Respondent 1 and Respondent 2 but to seek for justice at arbitration of Basketball Arbitral Tribunal".*

17. In its Request for Relief, as amended on 14 May 2014, the Claimant requested an Award ordering that the Second Respondent pay the Claimant:

(i) USD 5,000.00 in respect of the 2012/2013 season, plus interest at ten per cent per year;

(ii) USD 20,000.00 in respect of the 2013/2014 season;

(iii) reimbursement of the non-reimbursable handling fee and the amount of the Advance on Costs paid by the Claimant; and

(iv) the agent's fee, being ten per cent of the Second Respondent's salary, for each subsequent season that the Second Respondent remains with the First Respondent.

18. In addition, the Claimant asks that:

(i) the Arbitrator ("by FIBA authority…") fine the First Respondent for deliberately inducing the Second Respondent's breach of contract; and

(ii) sanctions be applied "according to the Provisions 166-168 Book 3 for the [First Respondent] and other entities and private persons".

4.2 The Respondents' Positions

19. The First Respondent submitted in its Answer to the Request for Arbitration that:

(i) the BAT has no jurisdiction over it in these proceedings because the First Respondent is not a party to the Agency Agreement, which is the agreement which includes the submission to the BAT's jurisdiction for the purposes of these proceedings; and

(ii) in addition, it is not correct to say that the First Respondent owes any obligation to the Claimant just because under previous contracts between the Claimant and the Second Respondent payment of agent's fees had been collected from the First Respondent.

20. The Second Respondent submits that his purported termination of the Agency Agreement was valid and effective, and no further amounts are owed to the Claimant under the Agency Agreement. These submissions are based on the following asserted facts and matters:

(i) The Respondents did enter into agreements with one another for the remainder of the 2012/2013 and the 2013/2014 seasons. The 2012/2013 Agreement was worth USD 50,000.00, and the 2013/2014 Agreement was worth USD 200,000.00.

(ii) The Agency Agreement was validly terminated on 15 February 2013 and the Claimant is not entitled to any payment in relation to the 2012/2013 Agreement or the 2013/2014 Agreement.

(iii) The Agency Agreement was unfair. Under BAT case law, the Second Respondent is the weaker party and is entitled to a right to terminate a contract. It would be contrary to the *ex aequo et bono* principle to deny the Second Respondent, as the weaker party, a unilateral right of termination especially where the relevant contract is for an indefinite term. Upon its automatic extension, the Agency Agreement was in force for an indefinite period, during which, according to its terms, it could only be terminated by agreement. This was unfair and an abuse of the Claimant's dominant position.

(iv) Accordingly, the termination provision in the Agency Agreement is void, and the Second Respondent was entitled to terminate the Agency Agreement

unilaterally, which he did validly on 15 February 2013. Alternatively, the termination became effective on 15 March 2013, i.e. after a reasonable period of notice to the Claimant.

(v) The Claimant had not offered the Second Respondent's services to the First Respondent in the period between 13 February 2012 and 15 February 2013, during which period the Second Respondent was looking for employment and the First Respondent was looking for a coach. The Claimant made no efforts to find the Second Respondent employment, and contacted him only twice in 2012 about potential jobs.

(vi) The Claimant accepted the termination of the Agency Agreement. In the Claimant's response to the termination letter he said "if this is not about the team I offered you to, it is all right". The Second Respondent submits that that means the Claimant accepts the second Respondent's termination provided that the Second Respondent does not sign a contract with any of the clubs the Claimant offered the Respondent to.

4.3 The Parties' Further Submissions

21. The procedural order issued on 2 June 2014 asked:

(i) the Claimant to provide any response he considered necessary to the Second Respondent's submission that the Agency Agreement's termination provision was not fair and not enforceable; and

(ii) the Second Respondent to state what "BAT case law" it sought to rely on (see paragraph 20(iii) above).

22. The Claimant submitted a broader response than had been requested, in which he answered that:

(i) He doubted that there really were no negotiations between the Respondents before the Second Respondent's purported termination of the Agency Agreement on 15 February 2013.

(ii) He maintained that he made considerable efforts to find the Second Respondent another club.

(iii) He said he, and not the Second Respondent, was the weaker party in this case, since the Respondents had the opportunity to talk to each other and freeze him out.

(iv) The term of the Agency Agreement is not indefinite; rather, it rolls over for consecutive two-year periods.

(v) Even if one concedes that one month's notice for termination might be appropriate, that is not so if the Second Respondent already has begun negotiations with a third party at the time he gives notice.

(vi) It is understandable that the Claimant did not offer the Second Respondent to the First Respondent when he had been dismissed from the First Respondent for poor performance and neither the First Respondent nor the Second Respondent said anything to the Claimant to indicate that the club might see the coach as a potential candidate again.

(vii) The Claimant's associate did say "it is all right if this is not about the team I offered you to…" but in the circumstances this should not be seen as acceptance of termination.

23. The Second Respondent, acting through his representative, answered as follows:

> *"in reply to the procedural order dated 2 June 2014 we inform the honorable arbitrator that the BAT case law reference is for example BAT 0272/12 and BAT 0253/12. Neither case is of course identical to the case at hand, but they both discuss the issue of validity of a unilateral termination of an agency agreement. In both cases the arbitrator seems to have made "a reasonable interpretation" of the termination clauses, included in both contracts. The arbitrator expressly admitted that the termination clause in the case BAT 0253/12 was far from being an example of clarity, which called for a reasonable understanding of its wording. It is in light if this view that we believe the arbitrator shall also examine the termination clause in the case at hand, where, although the clause by itself is not that unclear, it is manifestly unfair to the weaker party (the coach), who had no influence on its drafting."*

5. Jurisdiction

24. 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).

25. 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

26. 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]

---

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

5.2 Formal and substantive validity of the arbitration agreement

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

> *"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."*

28. Clause 8 of the Agency Agreement is an arbitration clause in favour of the BAT.

29. The Agency Agreement 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). In particular, the wording "[a]ny dispute arising from or related to the present contract" in clause 8 of the Agency Agreement clearly covers the present dispute. In addition, the Second Respondent did not object to the jurisdiction of BAT.

30. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimant's claim as against the Second Respondent.

5.3 No jurisdiction to make an award against the First Respondent

31. The Arbitrator finds that the First Respondent was not a party to the Agency Agreement. As explained above, the Arbitrator's jurisdiction to conduct these

proceedings and, if appropriate, to make an award is based on the submission to the BAT's jurisdiction in clause 8 of the Agency Agreement, which submission is made by the parties to that contract. In the circumstances, the Arbitrator has concluded that he does not have jurisdiction to make any award against the First Respondent.

32. The Arbitrator notes that these proceedings were nevertheless started against the First Respondent as well as the Second Respondent and that the First Respondent took steps to respond to them and incurred costs in doing so. In those circumstances, the Arbitrator finds that while he does not have jurisdiction to make an award against the First Respondent, he does have jurisdiction to make an award requiring the Claimant to make a payment to the First Respondent in respect of costs incurred by the First Respondent (see paragraph 59 below).

5.4 Other requests by the Claimant

33. Furthermore, the Arbitrator finds that he has no jurisdiction to take any disciplinary measures against any of the parties based on the FIBA Internal Regulations governing agents, such prerogative falling within FIBA's exclusive competence. Therefore, Claimant's requests for relief mentioned in paragraph 18 above are dismissed.

6. Discussion

6.1 Applicable Law – ex aequo et bono

34. 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".*

35. 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."*

36. Clause 8 of the Agency Agreement states "[t]*he arbitrator… shall decide the dispute ex aequo et bono*".

37. In light of the above, the Arbitrator will decide the issues submitted to him in this proceeding *ex aequo et bono*.

38. 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]

---

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).

39. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives "*a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case*".[5]

40. 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*".

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

6.2 Findings

6.2.1 The Agency Agreement's termination provision

42. The Agency Agreement's provision as to its term and the circumstances in which it may be terminated (clause 4) is set out at paragraph 4(iv) above. The meaning of that provision is not absolutely clear and it permits more than one interpretation. Nevertheless, having considered the provision itself and also the Parties' submissions, the Arbitrator finds that a logical interpretation of clause 4 of the Agency Agreement is that:

(i) the Agency Agreement entered into force on the day it was signed by the Claimant and the Second Respondent (that is 9 February 2010);

(ii) two years after that, the Agency Agreement would be extended automatically

---

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

for a further two year period unless, before that date, the Parties agreed to the Agency Agreement being terminated; and

(iii) the Agency Agreement could not, at any stage, be terminated by either the Claimant or the Second Respondent simply giving notice of its termination; rather, it could only be terminated by agreement between the Claimant and the Second Respondent.

43. While the Arbitrator considers the interpretation of clause 4 at paragraph 42 above to be a logical interpretation of that clause's meaning, the Arbitrator notes that it means that the Agency Agreement cannot ever be terminated by either party acting unilaterally. That would effectively mean that each party was unable to end his contractual relationship with the other of his own accord, even if he gave notice of his intention to do so. From the Second Respondent's perspective, that would mean that he could not ever end his relationship with the Claimant without the Claimant's consent, and therefore could not ever negotiate contracts on his own behalf or use another agent without incurring liability to the Claimant.

44. The Arbitrator considers that a situation where an agent has such a degree of control over the affairs of his client is inherently unfair because it would prevent the client from leaving the agent, even if he gave reasonable notice. The Arbitrator considers that he cannot, acting *ex aequo et bono*, interpret the Agency Agreement so that it requires the Second Respondent to remain bound to the Claimant until the Claimant is willing to release him. Rather, interpreting the Agency Agreement *ex aequo et bono*, the Arbitrator finds that at least after its initial two-year term the Second Respondent was able to terminate the Agency Agreement upon giving reasonable notice to the Claimant of his intention to do so.

45. Both the Claimant and the Second Respondent contemplate in their submissions that one month might be a reasonable period of notice in these circumstances (see

paragraphs 20(iv) and 22(v) above). In the absence of an express agreement between the parties as to how much notice must be given, the Arbitrator finds that one calendar month is a reasonable period of notice, and that that is how much notice the Second Respondent was required to give.

46. The Arbitrator finds that the Second Respondent gave the Claimant notice of his intention to terminate the Agency Agreement on 15 February 2013 and that that notice expired, and the Agency Agreement was terminated, on 15 March 2013.

6.2.2 The 2012/2013 Agreement

47. On 25 February 2013 the Respondents signed the 2012/2013 Agreement. In light of the finding set out at paragraph 46 above, that contract was signed while the Agency Agreement remained in force.

48. The Arbitrator notes that, pursuant to clause 1.1 of the Agency Agreement (see paragraph 4(i) above), the Claimant was to be the "exclusive and only representative" of the Second Respondent. This provision does not make it explicit, but the Arbitrator finds that:

    (i) the Claimant was entitled to be allowed to conduct any negotiations for the Second Respondent's engagement by basketball clubs while the Agency Agreement was in effect; and

    (ii) if, in breach of that right, the Second Respondent or someone else on his behalf conducted negotiations for the Second Respondent's engagement with a basketball club while the Agency Agreement was in effect, then the Claimant would be entitled to receive his cut as if he had been allowed to conduct those negotiations.

49. Accordingly, the Arbitrator finds that the Claimant is entitled to receive an amount equal to ten per cent of the Second Respondent's earnings under the 2012/2013 Agreement. The Arbitrator finds that the Second Respondent's earnings under that contract were USD 50,000.00 and, therefore, that the Claimant is entitled to receive USD 5,000.00 in respect of that contract; the Arbitrator further finds that the Claimant became so entitled on 25 February 2013, when the 2012/2013 Agreement was signed.

6.2.3 The 2013/2014 Agreement

50. On a date (which the Second Respondent has not specified) in August 2013 the Respondents signed the 2013/2014 Agreement. It appears from the face of the Russian version of the contract which has been submitted in these proceedings that that contract was signed on 1 August 2013, but nothing turns on the exact date in August 2013 on which the agreement was signed.

51. The Arbitrator finds that the 2013/2014 Agreement was signed after the Agency Agreement was terminated.

52. The Claimant's request for relief seeks a payment for each subsequent season that the Second Respondent remains at the First Respondent. The Arbitrator notes that the remuneration provision in the Agency Agreement (clause 3 – see paragraph 4(iii) above) provides for the payment of an agent fee "for every season spent in the Club". The Arbitrator understands the part of the request for relief referred to above to be made in reliance on that provision. However, the Arbitrator finds that the Agency Agreement does not entitle the Claimant to an agent fee in relation to all seasons that the Second Respondent may continue to work for the First Respondent. Clause 3 (which begins "[f]or any contract procured by the [Claimant] and signed by the [Second Respondent]…") makes clear that the agent's fee is payable only in respect of salary received by the Second Respondent under coaching contracts entered into while the Agency Agreement is in force.

53. In light of the above findings, the Arbitrator finds that the Claimant is not entitled to any payment in respect of the 2013/2014 Agreement.

6.2.4 Interest

54. The Claimant has requested interest at ten per cent per year on the agent's fee due in respect of the 2012/2013 Agreement. Although the Agency Agreement 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.

55. The Arbitrator considers that ten per cent per year would be an excessive rate to compensate the Claimant for late payment in this case. However, the Arbitrator considers, in line with the jurisprudence of the BAT, that five per cent per year would be a reasonable rate of interest and that such rate should be applied from the date that the outstanding amount became due and payable. The Arbitrator therefore awards interest to the Claimant on the sum of USD 5,000.00 at five per cent per year from 26 February 2013.

7. Costs

56. 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.

57. On 3 October 2014, considering that, pursuant to Article 17.2 of the BAT Rules, "*the BAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator*", and that "*the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the BAT President from time to time*", taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised, the BAT President determined the arbitration costs in the present matter at EUR 8,930.00.

58. The Claimant has been partially successful in his claim. However, the Claimant has failed in the greater part (by value) of his claim. In the circumstances, the Arbitrator decides that, in application of Article 17.3 of the BAT Rules and in light of the circumstances of the case, the Second Respondent shall not be required to bear all of the costs of the arbitration which are attributable to the Claimant. Accordingly, the Arbitrator decides that the Second Respondent shall pay EUR 3,500.00 to the Claimant as reimbursement of the arbitration costs advanced by the Claimant.

59. The Arbitrator also notes that the First Respondent has submitted that, since the Arbitrator has concluded that he has no jurisdiction to make an award against the First Respondent, the First Respondent should be reimbursed the amount of the Advance on Costs that it paid. The Arbitrator notes that the Claimant commenced these proceedings naming the First Respondent as a respondent and seeking substantial relief against the First Respondent, which has not been granted. In the circumstances, the Arbitrator finds that the Claimant must pay the First Respondent EUR 2,500.00, being the amount of the Advance on Costs paid by the First Respondent.

60. The Claimant has claimed EUR 4,600.00 in legal fees and expenses (including the non-reimbursable fee of EUR 2,000.00). This includes an amount of EUR 250.00 being an "advance on costs paid by the Claimant when starting the BAT case". The arbitrator

does not recognise that item. The Arbitrator considers that the remaining claimed legal costs, including the non-reimbursable fee, in the amount of EUR 4,350.00, are at the top end of what would be reasonable in this case. The Arbitrator notes again that the Claimant has failed in the greater part (by value) of his claim. In the circumstances, the Arbitrator finds that the Second Respondent must pay the Claimant EUR 3,500.00 in respect of his legal fees and expenses, including the non-reimbursable fee. The balance of the Advance on Costs, in the amount of EUR 1,070.00, will be reimbursed to the Claimant by the BAT.

8. AWARD

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

1. **Mr. Stevan Karadzic is ordered to pay to Mr. Obrad Fimic USD 5,000.00 in respect of agent's fees due under the Agency Agreement, plus interest at 5% per annum from 26 February 2013.**

2. **Mr. Stevan Karadzic is ordered to pay to Mr. Obrad Fimic EUR 3,500.00 as reimbursement of the advance on BAT costs.**

3. **Mr. Stevan Karadzic is ordered to pay to Mr. Obrad Fimic EUR 3,500.00 as reimbursement of his legal fees and expenses.**

4. **Mr. Obrad Fimic is ordered to pay to Basketball Club Enisey Krasnoyarsk EUR 2,500.00 as reimbursement of the advance on BAT costs.**

5. **Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 7 October 2014

Raj Parker
(Arbitrator)