



**BASKETBALL**  
ARBITRAL TRIBUNAL

## **ARBITRAL AWARD**

**(BAT 0518/14)**

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Stephan Netzle**

in the arbitration proceedings between

**Mr. Akinlolu Akingbala**

**- Claimant -**

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

vs.

**New Basket Brindisi S.p.A.**

Co PalaPentassuglia, C. Da Masseriola, 7210 Brindisi, Italy

**- Respondent -**

represented by Mr. Florenzo Storelli, attorney at law,  
Studio legale Avv. Florenzo Storelli, Viale Cadorna 50,  
55100 Lucca, Italy

## **1. The Parties**

### **1.1. The Claimant**

1. Mr. Akinlolu Akingbala (hereinafter the “Player”) is a professional basketball player of Nigerian nationality.

### **1.2. The Respondent**

2. New Basket Brindisi S.p.A. (hereinafter the “Club”) is a professional basketball club located in Brindisi, Italy.

## **2. The Arbitrator**

3. On 24 February 2014, the President of the Basketball Arbitral Tribunal (hereinafter the “BAT”), Prof. Richard H. McLaren, appointed Dr. Stephan Netzle as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). Neither of the parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

## **3. Facts and Proceedings**

### **3.1. Summary of the Dispute**

4. On or before 30 July 2013, the Player and the Club signed an employment agreement (“Player Contract”) for the basketball season 2013/2014. The Player Contract provided for a salary of the Player of USD 200,000.00 net for the season 2013/2014 to be paid in monthly instalments, a late payment fee of USD 50 per day and certain bonuses.
5. The Player arrived in Brindisi on 25 August 2013. On 26 August 2013, the Player underwent a medical examination as addressed by Article III of the Player Contract.

6. On 7 September 2013 and 8 September 2013, the Player played two matches with the Club's team.
7. By letter dated 20 September 2013, the Club informed the Player that he had not passed the medical examination, and invited him to a further medical examination for a "second opinion". The Club added that the Player Contract would be considered terminated if the Player rejected the invitation to obtain a "second opinion" or if he did not pass that second examination.
8. By letter dated 23 September 2013 to the Club, the Player's agent rejected the Club's invitation and referred to Article III of the Player Contract which states: *"If the player plays or practices with the team then Player's medical examination will be deemed to be passed."* Further, the Club was reminded of the payment of USD 30,000.00 which was due since 15 September 2013.
9. By letter dated 25 September 2013 and sent to the Player the following day ("Termination Letter"), the Club took note of the Player's refusal to obtain a "second opinion", terminated the Player Contract with immediate effect and requested the Player to leave the apartment and return the car provided to him by the Club.
10. On 27 November 2013, the Player signed a new employment agreement with S.A. Pro BC Verviers-Pepinster ("New Agreement"), a Belgian basketball club, for the rest of the season 2013-2014.

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

11. On 30 January 2014, the Player filed a Request for Arbitration. The non-reimbursable handling fee of EUR 3,000.00 was received in the BAT bank account on 10 January 2014.
12. By letter dated 25 February 2014, the BAT Secretariat confirmed receipt of the Request for Arbitration and informed the parties about the appointment of the Arbitrator. Furthermore, a time limit of 18 March 2014 was fixed for the Club to file its Answer in

accordance with Article 11.2 of the BAT Rules. The BAT Secretariat also requested the parties to pay the following amounts as an Advance on Costs by no later than 7 March 2014:

|  |                   |
|--|-------------------|
| <i>“Player (Mr. Akinlolu Akingbala)</i>  | <i>EUR 5,500</i>  |
| <i>Club (New Basket Brindisi S.p.A.)</i> | <i>EUR 5,500”</i> |

13. By email dated 17 March 2014 to the BAT Secretariat, the Club submitted its answer to the Request for Arbitration (“Answer”).
14. By letter dated 15 April 2014 to the parties, the BAT Secretariat confirmed receipt of the full Advance on Costs and invited the Player to file a reply to the Club’s Answer by no later than 30 April 2014.
15. By email dated 30 April 2014 to the BAT Secretariat, the Player submitted his reply to the Club’s Answer (“Reply”).
16. By email dated 26 May 2014, the Club filed its comments on the Player’s Reply (“Rejoinder”).
17. By letter of the BAT Secretariat to the Parties dated 2 June 2014, the exchange of documents was declared complete, and the Parties were invited to submit their detailed account of costs by 9 June 2014 at the latest which they did in time. On 10 June 2014, the Player filed comments on the Club’s account of costs. The Club did not file any comments.
18. The Parties did not request the BAT hold a hearing. The Arbitrator therefore decided in accordance with Article 13.1 of the BAT Rules not to hold a hearing and to deliver the award on the basis of the written submissions available.

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

##### **4.1. The Claimant's Position**

19. In his Request for Arbitration dated 30 January 2014, the Player submits the following in substance:
- a) The passing of a medical examination is a prerequisite for the commencement of the Player Contract. After the medical examination of the Player on 26 August 2013, the Club did not give the Player notice of a negative or unclear result nor made any reservation of rights. Subsequently, the Player participated in practises and, on 7 and 8 September 2013, also in matches with the Club's team, which implies that he passed the medical examination. Therefore, the Player Contract became a binding, "no-cut" and fully guaranteed agreement which could not be unilaterally be terminated by the Club any more.
  - b) The Club ended the Player Contract by the Termination Letter. Such termination implies that the Player Contract had already commenced since an agreement which has not commenced cannot be terminated. Hence, by terminating the Player Contract, the Club has rendered any possible argumentation on the non-commencement of that agreement moot.
  - c) When the Club wrongfully terminated the Player Contract, all future amounts owed under this agreement became due and payable on 27 September 2013, i.e. one day after the date of receipt of the notice of termination of the Player Contract. These amounts add up to USD 170,000.00 to which the unpaid salary instalment of USD 30,000.00 which was due since 15 September 2013 must be added. On the other hand, the Player accepts that the alternative income from Pro BC Verviers-Pepinster (USD 27,000.00) may be deducted. The overall amount due to which the Player shall be entitled therefore amounts to USD 173,000.00, plus interest of 5 % p.a. on USD 30,000.00 net since 16 September 2013, and on USD 143,000.00 since 27 September 2013, plus legal costs.

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

20. In his Request for Arbitration dated 30 January 2014, the Player requested the following relief:

*"Player requests an award to be rendered against Club, according to which:*

- *Player has passed the medical examination and the Brindisi Agreement has properly commenced;*
- *Club has wrongfully terminated the Brindisi Agreement;*
- *Club is liable to pay Player an amount of one hundred and seventy-three thousand US dollars (173.000 \$) net in principal;*
- *Club is liable to pay Player interest on late payments of 5% per annum on an amount of thirty thousand US dollars (30.000 \$) net from September 16, 2013 until the day of complete payment;*
- *Club is liable to pay Player interest on late payments of 5% per annum on an amount of one hundred and forty-three thousand US dollars (143.000 \$) net from September 27, 2013 until the day of complete payment;*
- *Club is liable to provide Player with a tax certificate indicating the net nature of the all payments made under the Brindisi Agreement;*
- *Club is liable to reimburse Player all BAT expenses and procedure costs; and*
- *Club shall indemnify Player for incurred legal expenses (including attorney's fees) up to an amount to be determined in the course of the BAT proceedings."*

#### **4.3. The Respondent's Position**

21. In its Answer dated 17 March 2014, the Club submitted the following in substance:

- a) The Player did not pass the medical examination arranged by the Club. The medical examination conducted by the Club showed a critical condition of the Player's [injured body part], whereupon the Parties decided to do further testing.
- b) The treatments and activities after 26 August 2013 and the Player's participation in the Club's games of 7 and 8 September 2013 were carried out in order to test the reaction of the Player's [injured body part] to the stress of basketball activities.
- c) The Player refused obtaining a "second opinion" because he feared that he would be found incapable of playing professional basketball. The condition of the Player

was the result of previous trauma and lesions prior to the signing of the Player Contract which were concealed by the Player in bad faith. The Player Contract was lawfully terminated by the Club's Termination Letter, after the Player refused to obtain a "second opinion".

- d) The Player did not act consistently: On the one hand, by stating that the Player Contract was unlawfully terminated, he implied that the Player Contract was still effective. At the same time, he entered into a new agreement with another club, by which he implicitly confirmed that the Player Contract was terminated.

#### **4.4. The Respondent's Request for Relief**

22. In its Answer and correspondingly also in its Rejoinder, the Club requests the following relief:

*"(...) the Club, New Basket Brindisi S.p.A., requests that the BASKETBALL ARBITRAL TRIBUNAL, rejects in toto the Request for Arbitration submitted by Mr. Akinlolu Akingbala against the Club.*

*The Club also requests that the BASKETBALL ARBITRAL TRIBUNAL orders the Player to refund to the Club all costs and legal fees."*

#### **5. Jurisdiction**

23. 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; Article 2.2 of the BAT Rules).
24. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
25. The Arbitrator finds that the dispute referred to him is of financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.
26. The jurisdiction of the BAT regarding this dispute results from the arbitration clause contained in Article IX of the Player Contract 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 shall decide ex aequo et bono.”*

27. The Player Contract is in written form. Thereby, the arbitration agreement fulfils the formal requirements of Article 178(1) PILA. The Arbitrator also considers that there is no indication in the file which could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording *“any dispute arising from or related to the present Contract”* in Article IX of the Player Contract covers the present dispute. In addition, the Club did not object to the jurisdiction of the BAT.
28. For the above reasons, the Arbitrator finds that he has jurisdiction to adjudicate the dispute at hand.

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

29. 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”.*

30. 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.”*

31. In the arbitration agreement in Article IX of the Player Contract the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et*



*bono* without any reference to any other law. Therefore, the Arbitrator will decide the issues submitted to him *ex aequo et bono*.

32. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l'arbitrage of 1969<sup>1</sup> (Concordat),<sup>2</sup> under which Swiss courts have held that “arbitrage en *équité*” is fundamentally different from “arbitrage en droit”:

*“When deciding ex aequo et bono, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”*<sup>3</sup>

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

*“the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand”*.<sup>4</sup>

34. In light of the foregoing considerations, the Arbitrator makes the following findings:

## 7. Findings

35. There seems to be common ground that the Player underwent the medical entry examination on 26 August 2013, i.e. the following day after his arrival at the Club; that he then participated in two matches of the Club's team on 7 and 8 September 2013; that he was invited to a second medical opinion on 20 September 2013 which he refused on 23 September 2013; and that the Club then terminated the Player Contract on 26 September 2013. Also undisputed is the fact that the Player did not receive any

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<sup>1</sup> That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and the Swiss Code of Civil Procedure (governing domestic arbitration).

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

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

<sup>4</sup> POUURET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

salary payments from the Club: In particular, the instalment of USD 30,000.00 scheduled for 15 September 2013 was never paid.

36. The crucial issues in this dispute are whether the medical examination of 26 August 2013 was final and conclusive and whether the medical examination yielded a “negative result” and, if so, what are the consequences on the contractual relationship of the Parties.

**7.1. Did the medical entry examination yield a “negative result”?**

37. To answer this question, reference is made to Article II of the Player Contract:

*„(...) The Club has the right to do a medical exam on the Player within 2 days after his arrival in Italy. (...) In case of a negative result for the Player, the Player will have the right to get a “second opinion” by another certified, independent doctor. (...) In case of another negative result for the Player, this agreement can be breached by the Club without paying any indemnification. The Club will notify the Player and his representative in writing about the final result of the medical examination if the test is not passed. If the medical examination is not passed the Club will immediately provide the Player with an airline ticket to Charlotte, NC. If this medical examination has not taken place within 2 days of the Player’s arrival to the Club, the medical examination will be deemed as having been successfully passed by the Player. If the Player plays or practices with the team then the Player’s medical examination will be deemed to be passed.”*

38. The Player argues that he was not informed about the negative result of the medical examination of 26 August 2013. To the contrary: since he participated in the teams practices and matches of 7 and 8 September, the medical examination must be deemed to be passed which led to the expiration of the Club’s right to terminate the Player Contract.
39. The Club submits a medical certificate of 26 August 2013 issued by Dr. Giuseppe Palaia who conducted the medical examination and which speaks of a [Player’s injury] which prevented the Player “from any sporting activity”. The examining doctor recommended to carry out an additional MRI-examination. Allegedly, that MRI-examination took place on 4 September 2013 and confirmed the bad condition of the Player’s [injured body part]. The radiologist wrote:

[Quote from Radiologist Report]

40. Also on 4 September 2013, Dr. Pietro Gioia, surgeon and specialist in orthopedics and traumatology, examined the MRI results and held in his report:

[Quote about Player's condition]

*"Physiotherapy and therapeutic activities are prescribed , including evaluating the outcomes at the visit scheduled for the next September 11th 2013."*

41. According to the Club, the Player was then examined by Dr. Gioia on 11 September 2013. His medical certificate says:

*"The [Player's injury] is still in a state of suffering.*

*The outcomes of physiotherapy treatment did not produce any improvement, highlighting, on the contrary, [Player's condition].*

*At present, the clinical condition of the [Player's injury], temporarily, is incompatible with professional sporting activity."*

42. On 12 September 2013, Dr. Palaia summarized the results of the various medical examinations on the Player as follows:

*"(...) At the medical examination on August 26th 2013, the [Player's injured body part] appeared, at first glance, swollen and sore, with functional limitations due to the presence of hydrate; therefore, the athlete was immediately suspended from any sports activity and subjected to resonance magnetic.*

*The MRI, examined by Dr. Francavilla, has detected the presence of altered [description of Player's injury], reserving a reassessment at the next visit.*

*At the new examination conducted by Doc. Gioia on September 11th 2013, the [description of additional results of examination of Player's injury], therefore, unfit to practice sport.*

*Therefore, with the present, it is hereby certified that the athlete Akinlolu Akingbala, born in Kaduna (Nigeria) on March 25th 1983, was found, on the basis of the medical findings arranged by the club, not suitable for sport."*

43. The Player does not mention the medical examinations of 4 and 11 September 2013 in his Request for Arbitration at all. In his Reply he then confines himself to a general contestation of the medical certificates and opinions provided by the Club. According to the Player, these reports are irrelevant because they had been "provided unilaterally, *in tempore suspecto* and *pour les besoins de la cause*."

44. The burden is up to the Club to demonstrate that the medical examination revealed a “negative result”. The Arbitrator finds that the medical certificates and attestations may serve at least as *prima facie* evidence of the fact that not only the examination of 26 August 2013 took place but that further examinations (especially the MRI examination) were carried out and that they revealed a severe medical condition of the Player’s [injured body part] which deprived him from playing with the Club’s team.
45. It is then up to the Player to provide convincing counter-evidence and to demonstrate that these medical reports and attestations had been fake and produced as a favour to the Club, which is a serious allegation because it implies a criminal behaviour of the Club and the attesting medical doctors. However, no such evidence (or production requests relating to supporting documents) has been submitted by the Player, nor has he requested a hearing with the opportunity to cross-examine the examiners.
46. The Player rather relies on a text on the website of a local TV station which stated that he had “*successfully (100%) passed the medical test. He also underwent medical examination of his [Player’s injured body part] which has caused him so many problems in the past year.*” The source of information of the TV station is however unknown. The text on the website does therefore not provide convincing evidence of the Player’s passing of the medical examination.
47. The Arbitrator prefers the Club’s representation and finds the confirmations of the examining doctors more credible, according to which the Player was subject to a series of medical tests between 26 August and 11 September 2013, which revealed and confirmed a serious condition of his [injured body part]. This finding is supported by the undisputed fact that the Player had had medical problems with his [injured body part] before and that it was only natural that this vulnerable body part was examined in more detail when the Player joined the Club.
48. The Player then submits that he was never given “notice of a negative or unclear result” of the medical examination. The fact that “he participated in practices and

matches with Respondent's team" rather implied the passing of the medical examination, which precluded the Club from terminating the Player Contract.

49. There is no evidence of a formal notification of the Player of a negative or unclear result of the medical examination before 20 September 2013. However, the Arbitrator finds it difficult to imagine that an MRI exam was performed on the Player without any information of the reason for this measure and without his participation. The Arbitrator therefore concludes that the Player must have been aware that the initial medical examination of 26 August 2013 had not led to a "positive result" but that further exams had to be carried out. Hence, the medical examination as set out in Article III of the Player Contract was not completed after the Player's visit of Dr. Palaia on 26 August 2013, but was to be continued. A final medical report, which addressed the "negative result" of the medical examination was produced only on 12 September 2013. The Player was then informed about the results of the medical examination by letter of 20 September 2013. Whether Dr. Palaia's report was attached to this letter, which is disputed by the Player, is not relevant. More important is that based on the "negative result", the Club invited the Player to collect a second opinion as required by Article III of the Player Contract. That second opinion was explicitly refused by the Player. Thus, the "negative result" of the medical examination became final and allowed the Club to terminate the Player Contract.

**7.2. Did the fact that the Player participated in two matches cancel the Club's right to terminate the Player Contract?**

50. Undisputedly, the Player participated in two of the matches of the Club's team of 7 and 8 September 2013. He submits now that this must be considered as evidence that he passed the medical examination as provided by Article III of the Player Contract. The Arbitrator disagrees. The sentence "If the player plays or practices with the team then Player's medical examination will be deemed to be passed", does, in the Arbitrator's understanding, not contain a conclusive and irrefutable presumption, especially if the Player played in a match while the examination was still ongoing and when his participation was intended to test his physical condition.

51. The two games in question were preparatory matches played one month before the start of the regular season. According to the coach of the Club's team, the Player played only a few minutes, a fact that the Player does not contest. The Club's submission is therefore credible that the Player's fielding was considered to be a test of his [Player's injured body part] under playing conditions. Under these circumstances, the Player's participation in the two preparatory matches cannot be considered as a confirmation that he had passed the medical examination because it must have been clear to all involved that these matches were part of the Player's fitness test instead of evidence of the absence of any medical condition.
52. The same applies to the team's practice. While the Player claims, without any evidence, that he participated in the team's practice, the Club's coach testifies the opposite. He submits that the Player rather carried out therapeutic exercises and physiotherapy. While this may indeed constitute a "practice with the team", the Arbitrator finds that it does not trigger an irrefutable presumption that he had passed the medical examination. The practice with the team was carried out while the medical examination was not yet completed and served the improvement of the Player's physical condition.
53. The Arbitrator therefore finds that the medical examination was not completed on 26 August 2013 but continued with further tests, including an MRI exam and a "stress test" when the Player played a few minutes in the friendly matches of 7 and 8 September. Neither the Player's short fielding on 7 and 8 September nor the exercises which he carried out can be considered as irrefutable assumption that the Player had passed the medical examination since they were part of the testing and rehabilitation programme of the Player. On 20 September 2013, the Player was informed about the "negative results" of the medical examinations and invited to a "second opinion" which he refused. The Club was then entitled to terminate the Player Agreement as provided by Article III.

### **7.3. Is the Player still entitled to any compensation?**

54. The Arbitrator concludes and holds that both parties were released from fulfilling their contractual obligations from the date of receipt of the Club's termination letter.
55. The passing of the medical examination does not constitute a condition precedent of the validity of the Player Contract. According to Article II, the Player Contract became binding and enforceable upon mutual signing. The next sentence of the same Article II ("This contract will be fully guaranteed by both parties after the medical check") does not refer to the validity of the contract itself but to Article III ("Guaranteed no-cut Agreement & Medical Examination") which stipulates among others that once the medical check has been passed, the Player Contract cannot be terminated "should any injury befall the Player".
56. Since the medical examination was not passed, the Club was entitled to terminate the Player Contract. The Player Contract was ended only by the Club's Termination Letter. As a consequence, the Player is entitled to the contractual payments due until the termination of the Player Contract but he is not entitled to any future salaries. On 26 September 2015, the amount of USD 30,000.00 net was payable to the Player. That is the amount which the Club must still pay to the Player.
57. According to Article VII of the Player Contract, all payments to the Player shall be net and free of all Italian taxes. To enable the Player to document that the Italian taxes on his income have been paid, the Club shall provide to the Player the tax receipts for tax deposits for each fiscal year concerned by the Club's payments.

### **7.4. Interest and late payment penalty**

58. The outstanding salary payment of USD 30,000.00 was due on 15 September 2013. By letter of 26 September 2013, the Player requested payment of USD 30,000.00 within the next 5 days. The Club was therefore in default 5 five days after the receipt of the letter of 26 September 2013, i.e. since 2 October 2013. Thus, the Arbitrator finds that

the Club owes default interest of 5 % on the amount of USD 30,000.00 since 2 October 2013.

59. In his Request for Arbitration, the Player did not request payment of late payment fees.

## **8. Costs**

60. 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.

61. On 25 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 procedural questions raised, the BAT President determined the arbitration costs in the present matter to be EUR 11,000.00.

62. Considering the circumstances of the present case (Article 17.3. of the BAT Rules), the Arbitrator deems it appropriate that 80 % of the costs of the arbitration shall be borne by the Player (EUR 8,800.00) and 20 % by the Club (EUR 2,200.00).
63. Given that each party paid its share of the Advance on Costs of EUR 5,500.00, in application of Article 17.3 of the BAT Rules, the Arbitrator decides that the Player shall pay EUR 3,300.00 to the Club, being the difference between the amount advanced by



the Club (EUR 5,500.00) and the amount the Club is ordered to pay (20 % of EUR 11,000.00 = EUR 2,200.00).

64. Both Parties have submitted an account of costs. After having reviewed and assessed all the circumstances of the case at hand, and especially taking account of the fact that the Club continually refused the payment of the first instalment of the contractually agreed without any justification, the Arbitrator finds that the Club shall not be entitled to a contribution to its legal fees and expenses but that each party shall bear its own legal costs.

## **9. AWARD**

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

- 1. New Basket Brindisi S.p.A. is ordered to pay to Mr. Akinlolu Akingbala the amount of USD 30,000.00 net, plus interest of 5% p.a. since 2 October 2013.**
- 2. New Basket Brindisi S.p.A. is ordered to provide Mr. Akinlolu Akingbala with the tax receipts for tax deposits for each fiscal year concerned by the Club's payments.**
- 3. Mr. Akinlolu Akingbala is ordered to pay to New Basket Brindisi S.p.A. the amount of EUR 3,300.00 as a reimbursement of the advance on arbitration costs.**
- 4. Each party shall bear its own legal costs.**
- 5. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 27 August 2014

Stephan Netzle  
(Arbitrator)