



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0134/10)

rendered by

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings

Mr. Jared Homan

- Claimant -

vs.

Maroussi B.C.

Kleisto Gumnasthrio Agiou Thoma, Dionisou & Pournara Street,
15124 Maroussi, Greece.

- Respondent -

1. The Parties

1.1 The Claimant

1. Jared Homan (hereinafter the "Claimant") is a professional basketball player and citizen of the USA. He is represented in these proceedings by Messrs. Guillermo López Arana and Mikel Abete Vecino of U1st Sports.

1.2 The Respondent

2. Maroussi B.C. (hereinafter the "Respondent") is a Greek basketball club based in Maroussi. The Respondent is represented by Mr. Socrates Lambropoulos, Attorney-at-Law in Athens, Greece.

2. The Arbitrator

3. On 8 November 2010, 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").
4. By email dated 8 November 2010, the Arbitrator accepted his appointment. None of the Parties have raised objections to the appointment of the Arbitrator or to the declaration of independence issued by him.

3. Facts and Proceedings

3.1 Background Facts

5. The Claimant and the Respondent entered into an employment contract dated 29 July 2009 (hereinafter the "First Contract"). The First Contract contains, among others, the following provisions:

"THIRD- 2009-10 Season: The Club will pay the Player for his services the amount of \$170,000 USD (hereinafter USD) net of all Greek taxes for the 2009-2010 season as follows:

\$17,000 USD upon arrival and after passing the physical examination (no later than the 30th of September, 2009)

\$17,000 USD on October 30, 2009

\$17,000 USD on November 30, 2009

\$17,000 USD on December 30, 2009

\$17,000 USD on January 30, 2010

\$17,000 USD on February 28, 2010

\$17,000 USD on March 30, 2010

\$17,000 USD on April 30, 2010

\$17,000 USD on May 30, 2010

\$17,000 USD on June 30, 2010

[...]

BONUS

In addition to the bonuses paid to all the Players of the Club, the Player shall receive the following non-cumulative bonuses applicable for the 2009-10 seasons.

CLUB BONUSES

Greek League Bonuses

[...]

3. *If the Club reaches the 3rd position regular season \$10,000 USD*

[...]

EuroLeague and EuroCup Bonuses



BASKETBALL
ARBITRAL TRIBUNAL

[...]

2. If the Club reaches the EuroLeague top 16 \$15,000 USD

[...]

Club Bonuses won by the Player shall be paid by the Club within thirty (30) days of being gained. All Bonus amounts listed above are the net amounts to be paid, after Greek taxes to the Player.

FOURTH- The Club will provide the Player, free of charge with three (3) airplane roundtrip tickets (coach class) from the USA to his residence in Greece. The Club will also provide the Player with a house big enough for the Player in good conditions, acceptable to the Player, whilst the contract is in force. The housing shall be fully furnished and equipped with all the necessary conveniences (color TV, Multi-system VCR, DVD player, microwave, clothes washer, clothes dryer, satellite dish and decoder). [...]"

6. On 20 September 2009, the Claimant and the Respondent entered into a second employment contract (hereinafter the "Second Contract"). The Addendum to the Second Contract contains, among others, the following provisions:

"2. Regular Monthly Salary:

It is agreed that the regular monthly salary of the Basketball Player for the period between 0/09/2009 [sic] and 30/06/2010 is fixed to the sum of Seven Hundred and Eighty five Euros net (785.00) and shall be paid to him at the end of each month corresponding to the above-mentioned period of time.

[...]

4. TERGET [sic] BONUSES

As Target Bonuses, for all the duration of contract, it is agreed that the player shall receive, within thirty (30) days upon target accomplished, the following amounts, net of taxes:

- *If the Club wins the 3^d position in the Greek League, the player shall get the amount of 7.000 Euro.*

[...]

- *If the Club reaches the Euro league Top 16, the player shall get the amount of 10.500 EURO.*

[...]

THE BONUSES ARE NON CUMULATIVE

7. On 25 July 2010, Mr. Isidoros Kounoupas entered into a settlement agreement with the Respondent (hereinafter the "Settlement Agreement"). The Settlement Agreement contains, amongst others, the following provisions:

"A. *MAROUSSI had entered into contracts for the provision of athletic services with the aforementioned players. Upon the conclusion of the 2009-2010 season, MAROUSSI owed to such players, as balance of their fees, signature bonus and goals achievement bonus arising out of the above contracts, the following amounts.*

[...]

- *[Jared] William Homan the amount of 67,800 euros*

[...]

4. *The parties fully, explicitly and unreservedly mutually waive all rights relating to the contest, retraction or annulment for any reason, material or real, hereof and the agreement included herein."*

3.2 The Proceedings before the BAT

8. On 2 November 2010, the Claimant filed a Request for Arbitration in accordance with the BAT Rules.
9. By letter dated 9 November 2010, the BAT Secretariat fixed a time limit for the Respondent to file the Answer to the Request for Arbitration, being 1 December 2010. By the same letter, and with a time limit for payment until 24 November 2010, the

following amounts were fixed as the Advance on Costs:

“Claimant (Mr. Jared William Homan) EUR 4,000

Respondent (BC Maroussi) EUR 4,000”

10. The Claimant paid his share of the Advance on Costs on 22 November 2010. The Respondent failed to pay its share of the Advance on Costs. On 21 December 2010 the Claimant paid the Respondent’s share of the Advance on Costs in accordance with Article 9.3 of the BAT Arbitration Rules.
11. On 2 December 2010, the Respondent submitted its Answer to the Request for Arbitration.
12. On 10 January 2011, the Arbitrator issued a Procedural Order, requesting information from the Parties (hereinafter the “First Procedural Order”). On 20 January 2011, the Claimant submitted his response to the First Procedural Order. The Respondent did not submit a response to the First Procedural Order.
13. On 27 January 2011, the Arbitrator issued a second Procedural Order, requesting further information from the Parties (hereinafter the “Second Procedural Order”). On 10 February 2011, the Claimant submitted his response to the Second Procedural Order. On 11 February 2011, the Respondent submitted its response to the Second Procedural Order.
14. On 22 February 2011, the Arbitrator issued a third Procedural Order, requesting further information from the Parties (hereinafter the “Third Procedural Order”).¹ On 28

¹ Due to a clerical error, the Third Procedural Order was not sent to the Respondent until 1 March 2011. The Respondent was accordingly given an extended deadline until 7 March 2011 to respond.

February 2011, the Claimant submitted his response to the Third Procedural Order. The Respondent did not submit a response to the Third Procedural Order.

15. Since none of the Parties filed an application for a hearing, the Arbitrator 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 of the Parties.
16. By Procedural Order dated 9 March 2011 the Arbitrator closed the proceedings, subject to the Parties submitting their accounts of costs by 14 March 2011.
17. On 11 March 2011, the Claimant submitted an account of legal costs as follows:

<u>"Concept:</u>	<u>Amount (€)</u>
- <i>Arbitral fees:</i>	
• <i>Handling fee:</i>	2,000.00 €
• <i>Advance on costs (Claimant)</i>	4,000.00 €
• <i>Advance on costs (Respondent)</i>	4,000.00 €
- <i>Legal report</i>	3,250.00 €
- <i>Legal advising during the procedure</i>	500,00 €
- <i>Translations</i>	110,00 €
- <i>Copies of documents</i>	25,00 €
- <i>Other expenses</i>	15,00 €
TOTAL: 13,900.00 EUROS"	

18. The Respondent did not submit an account of legal costs.
19. On 22 March 2011, the BAT Secretariat sent a copy of the Claimant's account of legal costs to the Respondent and invited the Respondent to submit its comments on the Claimant's account of legal costs by no later than 25 March 2011. The Respondent did not submit any comments.
20. By letter dated 4 April 2011, the BAT Secretariat informed the Parties that the FIBA

Arbitral Tribunal (FAT) had been renamed into Basketball Arbitral Tribunal (BAT) and that, absent any objections by the Parties on or before 11 April 2011, the new name would be applied also to the present proceedings. None of the Parties raised any objections within the said time limit.

4. The Parties' Submissions

4.1 The Claimant's Submissions

21. The Claimant submits that the Respondent has only paid USD 95,247.00 of the total salary of USD 170,000.00 which was due to him under the terms of the First Contract. The Claimant claims the balance of USD 74,753.00 in unpaid salary.
22. The Claimant submits that he was entitled to receive under the First Contract: (i) a bonus payment of USD 10,000.00 because the Respondent's team reached third position in the regular season; and (ii) a bonus payment of USD 15,000.00 because the Respondent's team reached the top 16 of the Euroleague. The Claimant submits that the Respondent has not paid either of these bonuses to him and so the Claimant claims USD 25,000.00 in unpaid bonus payments.
23. The Claimant claims that he was entitled under the First Contract to housing furnished with satellite television. The Claimant submits that when he arrived at the housing which the Respondent provided for him, there was no satellite television installed. The Claimant claims that, as a result, the Claimant paid for the installation of satellite television himself and the Respondent promised to reimburse him. In his Request for Arbitration, the Claimant submitted that the Respondent did not reimburse him and the Claimant claimed USD 500.00 from the Respondent by way of reimbursement. In his

response to the Second Procedural Order, the Claimant submitted that the amount owed by the Respondent for the installation of satellite television was in fact USD 372.86.

24. The Claimant claims interest on the amounts claimed above at the Swiss statutory rate, starting from 30 October 2009.

25. The Claimant's request for relief states:

"a) To award the Claimant with amount of 100,253 USD net plus interest at the applicable Swiss statutory rate, starting from the 30th of October 2009.

[...]

b) To award the claimant with the full covered the costs of the arbitration. [sic]"

4.2 The Respondent's Submissions

26. The Respondent did not submit a formal Answer to the Request for Arbitration. Instead, the Respondent submitted a copy of the Settlement Agreement.

27. Together with its response to the Second Procedural Order, the Respondent submitted a copy of the Second Contract. The Respondent submits that BAT does not have jurisdiction to determine the present dispute between the Parties. In its response to the Second Procedural Order, the Respondent submitted that, pursuant to the Second Contract, the relevant HEBA (Greek basketball league) committees for the resolution of financial disputes have jurisdiction to determine the dispute.

5. Jurisdiction

5.1 The jurisdiction of the BAT

28. 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 Federal Statute on Private International Law (PILA).
29. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
30. As stated above, the Respondent submits that, pursuant to the Second Contract, the relevant HEBA committees for the resolution of financial disputes, and not the BAT, have exclusive jurisdiction to determine this dispute.
31. The eighth covenant of the First Contract states:

“Any dispute arising from or related to the present Contract shall be submitted to the FIFA Arbitration Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT President. The seat of the arbitration shall be Geneva, Switzerland. This 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. The present contract shall be considered as the main one and has priority above any other signed between parties.”

32. Article 6.4 of the Second Contract states:

“Exclusively and only for the financial disputes that may arise out of the terms hereof

between the Company Club and the Basketball Player, the following bodies shall be exclusively competent for their resolution: the relevant committees for the resolution of financial disputes.”

33. The Addendum to the Second Contract states:

“Any dispute arising from or related to the present contract, shall be submitted to the relevant committee for the resolution of financial disputes of HEBA.”

34. In order to ascertain whether or not the BAT has jurisdiction, it must first be determined which out of the First Contract and the Second Contract is the relevant contract for the purposes of the present dispute between the Parties.

35. The Claimant submits that the Second Contract is a Greek League standard contract, which has to be signed so that a player can be registered with a Greek club. The Claimant claims that the Second Contract does not replace the First Contract and is secondary to it. The Respondent has not made any submissions as to why it considers that the Second Contract replaces the First Contract.

36. The Arbitrator notes that the eighth covenant of the First Contract states that “the present contract shall be considered as the main one and has priority above any other signed between parties.” The Arbitrator notes that the Second Contract post-dates the First Contract.

37. In determining which contract is the relevant one for the purposes of the present dispute, the Arbitrator has had regard to which contract the Parties appear to have performed their obligations under. The First Contract provides that the Respondent shall pay the Claimant a salary of USD 170,000.00 for the 2009/2010 season, paid in 10 monthly instalments of USD 17,000.00. The Second Contract provides that the Respondent shall pay the Claimant a total of EUR 63,450.00 for the 2009/2010 season, comprising: (i) ten monthly salary payments of EUR 785.00; and (ii) a signing bonus of EUR 55,600.00, paid in 10 monthly installments of EUR 5,560.00. The Claimant has

produced bank statements to show the payments that the Respondent has made to him for the 2009/2010 season. The first payment made to the Claimant was by way of cheque for USD 17,000.00. This payment clearly corresponds to the First Contract.

38. The remaining payments that have been made by the Respondent to the Claimant correspond more closely to the payment provisions in the First Contract than to those in the Second Contract, however they do not correspond exactly (in either payment date or amount) with the payment provisions in the First Contract.
39. The Second Contract provides that the Respondent shall pay the Claimant a total of EUR 63,450.00, however the payments actually made by the Respondent for the 2009/2010 season total EUR 58,050.00 plus USD 17,000.00. In spite of these payments (which are clearly greater than those provided for under the Second Contract), the Respondent still agreed in the Settlement Agreement that it had underpaid the Claimant by EUR 67,800.00. Accordingly, the Arbitrator finds that, in relation to payment obligations, the First Contract governed the Parties' relations for the 2009/2010 season.
40. Article 6.4 of the Second Contract provides that the relevant HEBA committees have jurisdiction "only for the financial disputes that may arise out of the terms hereof" (emphasis added by the arbitrator). It follows from paragraphs 37 to 39 above that the present dispute is a financial dispute that arises out of the First Contract (and not the Second Contract) because the present dispute is one over payment obligations and, as explained in paragraphs 37 to 39, the payment obligations between the parties are governed by the First Contract. Given that the Second Contract is stated only to grant jurisdiction to the relevant HEBA committees for financial disputes arising out of the terms of the Second Contract, the Arbitrator finds that the BAT does have jurisdiction to determine the present dispute.

5.2 Arbitrability

41. 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.²

5.3 Formal and substantive validity of the arbitration agreement

42. 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."

43. The First Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
44. With respect to substantive validity, the Arbitrator considers that there are no indications which could cast doubt on the validity of the arbitration agreement under Swiss law (cf. Article 178(2) PILA).

² Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

6. Discussion

6.1 Applicable Law – *ex aequo et bono*

45. 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”.

46. As set out in paragraph 31 above, the First Contract stipulates that any disputes arising out of the First Contract shall be resolved by the BAT “in accordance with the FAT Arbitration Rules”. 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.”

47. Covenant 8 of the First Contract stipulates that “[t]he arbitrator and CAS upon appeal shall decide the dispute *ex aequo et bono*.” Consequently, the Arbitrator shall adjudicate the claim *ex aequo et bono*.

48. 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*³ (Concordat),⁴ 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."*⁵

49. 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".⁶
50. 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".
51. In light of the foregoing matters, the Arbitrator makes the following findings:

6.2 Findings

6.2.1 The Claimant's unpaid wages and bonus payments

52. As explained in paragraphs 37 to 39 above, the Arbitrator finds that the Respondent's

³ 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).

⁴ P.A. KARRER, *Basler Kommentar*, No. 289 *ad* Art. 187 PILA.

⁵ JdT 1981 III, p. 93 (free translation).

⁶ POUURET/BESSON, *Comparative Law of International Arbitration*, London 2007, No. 717, pp. 625-626.

payment obligations to the Claimant for the 2009/2010 season are governed by the First Contract.

53. Under the First Contract, the Claimant was entitled to USD 170,000.00 in salary payments. The Claimant was also entitled under the First Contract to a bonus of USD 10,000.00 if the Respondent club finished third in the regular season and a bonus of USD 15,000.00 if the Respondent reached the Euroleague top 16. Based on publicly available information, the Arbitrator is satisfied that both of these bonuses fell due.⁷ The Claimant was therefore entitled to USD 195,000.00 in respect of salary and bonus payments.
54. The Claimant has made submissions and provided evidence to show that it received only USD 95,247.00 from the Respondent in respect of salary and bonus payments. This leaves a shortfall of USD 99,753.00 of unpaid salary and bonus payments. In the Settlement Agreement, which the Respondent has submitted and on which it relies, the Respondent acknowledges that it owes the Claimant EUR 67,800.00 in respect of salary and bonus payments for the 2009/2010 season.
55. In the First Procedural Order, the Arbitrator asked both Parties to explain why the Claimant was claiming USD 99,753.00 of unpaid salary and bonus payments, yet the Settlement Agreement stated that the amount of unpaid salary and bonus payments for the 2009/2010 season totaled EUR 67,800.00. The Claimant responded that it did not sign the Settlement Agreement, nor was he aware of its existence; he therefore did not know why it stated that he was owed only EUR 67,800.00. The Respondent did not respond to the First Procedural Order. Furthermore, the Respondent has not submitted that the amount owed to the Claimant by the end of the 2009/2010 season was EUR 67,800.00, and not in fact USD 99,753.00. Accordingly, the Arbitrator finds that the

⁷ This information can be found on the website www.eurobasket.com as at the date of this Award.

Respondent owed USD 99,753.00 to the Claimant in respect of unpaid salary and bonus payments by the end of the 2009/2010 season.

6.2.2 The Settlement Agreement

56. The next question for the Arbitrator to determine is whether or not the Settlement Agreement is valid and binding on the Parties. If it is not valid and binding on the Parties, the outstanding salary and bonus payments will be due and payable in full. If the Settlement Agreement is valid and binding on the Parties, the Claimant's claim for the outstanding salary and bonus payments will fail because the Settlement Agreement provides for the Respondent to make scheduled repayments of the outstanding sums in consideration for the Claimant waiving all legal remedies to recover the outstanding sums.
57. The Claimant has not signed the Settlement Agreement. The Settlement Agreement is stated to be signed by Mr. Isidoros Kounoupas on behalf of the Claimant. The Respondent submits that Mr. Kounoupas is the Claimant's agent and had authority to enter into the Settlement Agreement on behalf of the Claimant. Article 11.6 of the Second Contract states that "for the drawing up hereof Mr. Kounoupas Isidoros holder of the FIBA licence No 2007018181 and register number --- acted as agent on behalf of the Basketball Player, who states that he has signed a written agreement with the Basketball Player."
58. The Respondent further submits that it made payments totaling EUR 15,000.00 to Mr. Kounoupas and that he accepted the payments on behalf of the Claimant.
59. The Claimant submits that Mr. Kounoupas acted as the Claimant's agent for the sole purpose of placing him with the Respondent's team. The Claimant denies having any knowledge of the Settlement Agreement until the Respondent submitted a copy of it to the BAT with its Answer. The Claimant claims that Mr. Kounoupas has never had the

Claimant's authority to settle matters between the Claimant and the Respondent. The Claimant submitted a copy of an email from Mr. Kounoupas in which Mr. Kounoupas confirms this. The Claimant submits that he has not entered into any agency agreement with Mr. Kounoupas.

60. The Claimant submits that he accepted money from Mr. Kounoupas because, due to financial difficulties, the Respondent was unable to pay the Claimant's wages directly to the Claimant.
61. The Arbitrator finds that the Claimant bore the burden of proof in establishing that the Respondent owes him certain unpaid salary and bonus payments. The Arbitrator has found that the Claimant has discharged this burden of proof and shown that the Respondent owes him such amounts (see 52 to 55 above). The Arbitrator considers that if the Respondent wishes to assert that these amounts are not now due and are in fact payable in installments, pursuant to a settlement agreement, then the Respondent bears the burden of proof in establishing the existence of a valid settlement agreement between the Parties.
62. The Claimant has not signed the Settlement Agreement and submits that Mr. Kounoupas did not have authority to enter into the Settlement Agreement on his behalf. In the Second Procedural Order, the Arbitrator asked the Respondent to produce supporting evidence for why it believed that Mr. Kounoupas had authority to enter into the Settlement Agreement on behalf of the Claimant. The Respondent has not produced any evidence which proves that it was reasonable to believe (or that the Respondent did in fact believe) that Mr. Kounoupas had authority to enter into the Settlement Agreement on the Claimant's behalf (for example a power of attorney or an agency agreement). Accordingly, the Arbitrator finds that the Claimant is not bound by the Settlement Agreement and so the sum of USD 99,753.00 (net of all Greek taxes) in respect of unpaid salary and bonus payments by the end of the 2009/2010 season is payable by the Respondent to the Claimant.

6.2.3 The Satellite Dish

63. The Claimant submits that when he arrived at the housing which the Respondent provided for him, there was no satellite television installed. The Claimant claims that, as a result, the Claimant paid for the installation of satellite television himself and the Respondent promised to reimburse him.
64. The fourth covenant of the First Contract provides that the Respondent shall provide the Claimant with housing “equipped with all the necessary conveniences (color TV, Multi-system VCR, DVD player, microwave, clothes washer, clothes dryer, satellite dish and decoder)”.
65. The Claimant has submitted a bank statement showing that he paid USD 372.86 for the installation of a satellite dish and decoder.
66. The Respondent has not made any submissions in relation to the satellite dish. In light of the above, the Arbitrator finds that the Claimant is entitled to USD 372.86 in relation to the satellite dish.

7. Interest

67. The Claimant claims interest on all due sums at the applicable Swiss statutory rate, starting from 30 October 2009. Payment of interest is a customary and necessary compensation for late payment and there is no reason why the Claimant should not be awarded interest. The Arbitrator considers, in line with the jurisprudence of the BAT, that 5% per annum is a reasonable rate of interest that should be applied to the outstanding payments. The Arbitrator considers that interest on the Claimant’s unpaid salary should run from the date on which the amounts were due, and not from 30

October 2009. The salary and bonus payments that were made by the Respondent to the Claimant were irregular and did not follow the payment schedule set out in the First Contract. As a result, for the purposes of calculating interest, the amounts that the Respondent did pay to the Claimant will be apportioned to the earliest unpaid contractual payment obligation.

68. Pursuant to the third covenant of the First Contract, the Respondent was obliged to make bonus payments within 30 days of the bonus being earned. The Respondent reached the Top-16 of the Euroleague on 14 January 2010 and finished third in the regular season of the Greek League on 8 June 2010⁸. The Arbitrator considers that interest on the Claimant's unpaid bonuses should start to run 30 days after the date on which each bonus fell due. Thus, interest on the USD 15,000 bonus for reaching the Top-16 of the Euroleague is awarded from 13 February 2010 and interest on the USD 10,000 bonus for reaching 3rd position of the Greek League in the regular season is awarded from 8 July 2010.
69. Accordingly, interest for unpaid wages and bonuses is payable at 5% per annum as follows:
- (a) on USD 17,000.00⁹ from 30 October 2009 to 30 November 2009;
 - (b) on USD 34,000.00¹⁰ from 1 December 2009 to 14 December 2009;
 - (c) on USD 17,470.00¹¹ from 15 December 2009 to 30 December 2009;

⁸ As stated on the <http://www.euroleague.net> website.

⁹ The amount of USD 17,000.00 consists of one missed salary payment.

¹⁰ The amount of USD 34,000.00 consists of two missed salary payments.

- (d) on USD 34,470.00¹² from 31 December 2009 to 13 January 2010;
- (e) on USD 25,175.00¹³ from 14 January 2010 to 30 January 2010;
- (f) on USD 42,175.00¹⁴ from 31 January 2010 to 10 February 2010;
- (g) on USD 25,773.00¹⁵ from 11 February 2010 to 12 February 2010;
- (h) on USD 40,773.00¹⁶ from 13 February 2010 to 27 February 2010;
- (i) on USD 57,773.00¹⁷ from 28 February 2010 to 4 March 2010;
- (j) on USD 48,998.00¹⁸ from 5 March 2010 to 25 March 2010;
- (k) on USD 40,353.00¹⁹ from 26 March 2010 to 29 March 2010;

¹¹ The amount of USD 17,470.00 consists of two missed salary payments less one payment of USD 16,530.00.

¹² The amount of USD 34,470.00 consists of three missed salary payments less one payment of USD 16,530.00.

¹³ The amount of USD 25,175.00 consists of three missed salary payments less payments of USD 16,530.00 and USD 9,295.00.

¹⁴ The amount of USD 42,175.00 consists of four missed salary payments less payments of USD 16,530.00 and USD 9,295.00.

¹⁵ The amount of USD 25,773.00 consists of four missed salary payments less payments of USD 16,530.00, USD 9,295.00 and USD 16,402.00.

¹⁶ The amount of USD 40,773.00 consists of four missed salary payments and one missed bonus payment of USD 15,000.00 less payments of USD 16,530.00, USD 9,295.00 and USD 16,402.00.

¹⁷ The amount of USD 57,773.00 consists of five missed salary payments and one missed bonus payment of USD 15,000.00 less payments of USD 16,530.00, USD 9,295.00 and USD 16,402.00.

¹⁸ The amount of USD 48,998.00 consists of five missed salary payments and one missed bonus payment of USD 15,000.00 less payments of USD 16,530.00, USD 9,295.00, USD 16,402.00 and USD 8,775.00.

- (l) on USD 57,353.00²⁰ from 30 March 2010 to 29 April 2010;
- (m) on USD 74,353.00²¹ from 30 April 2010 to 24 May 2010;
- (n) on USD 62,153.00²² from 25 May 2010 to 29 May 2010;
- (o) on USD 79,153.00²³ from 30 May 2010 to 29 June 2010;
- (p) on USD 96,153.00²⁴ from 30 June 2010 to 7 July 2010;
- (q) on USD 106,153.00²⁵ from 8 July 2010 to 15 August 2010; and
- (r) on USD 99,753.00²⁶ from 16 August 2010.

¹⁹ The amount of USD 40,353.00 consists of five missed salary payments and one missed bonus payment of USD 15,000.00 less payments of USD 16,530.00, USD 9,295.00, USD 16,402.00, USD 8,775.00 and USD 8,645.00.

²⁰ The amount of USD 57,353.00 consists of six missed salary payments and one missed bonus payment of USD 15,000.00 less payments of USD 16,530.00, USD 9,295.00, USD 16,402.00, USD 8,775.00 and USD 8,645.00.

²¹ The amount of USD 74,353.00 consists of seven missed salary payments and one missed bonus payment of USD 15,000.00 less payments of USD 16,530.00, USD 9,295.00, USD 16,402.00, USD 8,775.00 and USD 8,645.00.

²² The amount of USD 62,153.00 consists of seven missed salary payments and one missed bonus payment of USD 15,000.00 less payments of USD 16,530.00, USD 9,295.00, USD 16,402.00, USD 8,775.00, USD 8,645.00 and USD 12,200.00.

²³ The amount of USD 79,153.00 consists of eight missed salary payments and one missed bonus payment of USD 15,000.00 less payments of USD 16,530.00, USD 9,295.00, USD 16,402.00, USD 8,775.00, USD 8,645.00 and USD 12,200.00.

²⁴ The amount of USD 96,153.00 consists of nine missed salary payments and one missed bonus payment of USD 15,000.00 less payments of USD 16,530.00, USD 9,295.00, USD 16,402.00, USD 8,775.00, USD 8,645.00 and USD 12,200.00.

²⁵ The amount of USD 106,153.00 consists of nine missed salary payments, one missed bonus payment of USD 15,000.00 and one missed bonus payment of USD 10,000.00 less payments of USD 16,530.00, USD 9,295.00, USD 16,402.00, USD 8,775.00, USD 8,645.00 and USD 12,200.00.

70. Interest on the satellite dish connection fee shall accrue from the day after the date of payment, being 22 September 2009, at a rate of 5% per annum.

8. Costs

71. 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, as a general rule, the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.
72. On 6 May 2011, 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 7,800.00.
73. The Arbitrator notes that the Respondent did not pay its share of the Advance on Costs. The Arbitrator notes that the Claimant was successful in establishing his claim in relation to unpaid salary and bonus payments and in relation to the satellite dish costs.

²⁶ The amount of USD 99,753.00 consists of nine missed salary payments, one missed bonus payment of USD 15,000.00 and one missed bonus payment of USD 10,000.00 less payments of USD 16,530.00, USD 9,295.00, USD 16,402.00, USD 8,775.00, USD 8,645.00, USD 12,200.00 and USD 6,400.00.

74. Having reviewed and assessed the circumstances of the case at hand and taking into account the non-reimbursable fee, the Arbitrator deems it appropriate for the Claimant to be awarded a contribution towards his legal fees and other expenses. The Arbitrator decides that in application of Article 17.3 of the BAT Rules:

- a) BAT shall reimburse EUR 200.00 to the Claimant, being the difference between the costs advanced by him and the arbitration costs fixed by the BAT President;
- b) The Respondent shall pay to the Claimant EUR 7,800.00, being the difference between the costs advanced by the Claimant and the amount that the Claimant is going to receive in reimbursement from the BAT;
- c) The Respondent shall pay to the Claimant the amount of EUR 4,500.00 as a contribution towards his legal fees and expenses.

9. AWARD

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

- 1. Maroussi B.C. is ordered to pay to Mr. Jared Homan USD 99,753.00, net of all Greek taxes, as compensation for unpaid wages and bonuses, together with interest at a rate of 5% per annum as follows:**
 - i. on USD 17,000.00 from 30 October 2009 to 30 November 2009;**
 - ii. on USD 34,000.00 from 1 December 2009 to 14 December 2009;**
 - iii. on USD 17,470.00 from 15 December 2009 to 30 December 2009;**
 - iv. on USD 34,470.00 from 31 December 2009 to 13 January 2010;**
 - v. on USD 25,175.00 from 14 January 2010 to 30 January 2010;**
 - vi. on USD 42,175.00 from 31 January 2010 to 10 February 2010;**
 - vii. on USD 25,773.00 from 11 February 2010 to 12 February 2010;**
 - viii. on USD 40,773.00 from 13 February 2010 to 27 February 2010;**
 - ix. on USD 57,773.00 from 28 February 2010 to 4 March 2010;**
 - x. on USD 48,998.00 from 5 March 2010 to 25 March 2010;**
 - xi. on USD 40,353.00 from 26 March 2010 to 29 March 2010;**
 - xii. on USD 57,353.00 from 30 March 2010 to 29 April 2010;**
 - xiii. on USD 74,353.00 from 30 April 2010 to 24 May 2010;**
 - xiv. on USD 62,153.00 from 25 May 2010 to 29 May 2010;**
 - xv. on USD 79,153.00 from 30 May 2010 to 29 June 2010;**
 - xvi. on USD 96,153.00 from 30 June 2010 to 7 July 2010;**
 - xvii. on USD 106,153.00 from 8 July 2010 to 15 August 2010; and**
 - xviii. on USD 99,753.00 from 16 August 2010.**

- 2. Maroussi B.C. is ordered to pay to Mr. Jared Homan USD 372.86 as compensation for the unpaid satellite dish connection fee, together with**



BASKETBALL
ARBITRAL TRIBUNAL

interest at a rate of 5% per annum from 23 September 2009.

- 3. Maroussi B.C. is ordered to pay Mr. Jared Homan EUR 4,500.00 as contribution towards his legal fees and expenses.**
- 4. Maroussi B.C. is ordered to pay Mr. Jared Homan EUR 7,800.00 as a reimbursement of the advance of BAT costs.**
- 5. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 9 May 2011.

Raj Parker
(Arbitrator)