



**BASKETBALL**  
ARBITRAL TRIBUNAL

## **ARBITRAL AWARD**

**(BAT 0174/11)**

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr Quentin Byrne-Sutton**

in the arbitration proceedings between

**Mr. Vladimir Golubovic**

**- Claimant -**

Represented by Mr. Branko Pavlovic,  
Brace Radovanovica 16 Street, Belgrade, Serbia

vs.

**Basketball Club Union Olimpija Ljubljana,**  
Celovska Cesta 25, 1000 Ljubljana, Slovenia

**- Respondent -**

Represented by Mr. Janez Rajgelj, General Manager

## **1. The Parties**

### **1.1. The Claimant**

1. Mr. Vladimir Golubovic (hereinafter referred to as “the Player”) is a professional basketball player.

### **1.2. The Respondent**

2. The Basketball Club Olimpija Ljubljana (hereinafter referred to as “the Club”) is a professional basketball club in Ljubljana, Slovenia.

## **2. The Arbitrator**

3. On 12 April 2011, the President of the Basketball Arbitral Tribunal (hereinafter “BAT”), appointed Mr. Quentin Byrne-Sutton as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). None of the parties have 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 3 August 2008, the Player and the Club entered into an agreement whereby the latter engaged the Player for the seasons 2008-2009 and 2009-2010 (the “Main Agreement”), providing among others under article 2 that:

*“... the Player Contract shall be fully guaranteed for the entire term, including if the Player suffers an injury or if the Club deems a lack of skill on behalf of the Player.”*

5. Under article 3, the Main Agreement provides, among others, that:

*“The Player shall be paid the following net amounts (free of SLOVENIAN taxes) in EURO (unless another currency is mutually agreed upon):*

**2008/2009 SEASON – 300,000 EUR**

**2009/2010 SEASON – 400,000 EUR**

*The Player shall receive his payments from the Club in 10 (ten) equal installments that shall commence on 15 August and will continue on the 15 of each month until the 15 of May. No payments shall be made in the months of June or July to the Player. This schedule shall remain for the duration of this contract. If the Club is 30 day late in any monthly payment, then the Player shall have the option to terminate this Player Contract and be free to play for any other Club.”*

6. According to article 8 of the Main Agreement, the Player “... *shall allow the Club to use the Player’s image for the promotion and benefit of the Club...*”.
7. The Club alleges that the Player assigned his image rights to a third party - Pinnacle Management Corporation (hereinafter “Pinnacle”) - prior to signing the Main Agreement and without informing the Club. In that respect, it contends that “*When signing the player contract the respondent wasn’t informed by the claimant, that the owner of claimant’s right of sport activity is a third person – Pinnacle Management Corporation*”. The Player denies having entered into any assignment agreement with Pinnacle.
8. In any event, the Club entered into a so-called “Image Contract” with Pinnacle (the “Image Contract”), which it alleges was signed on 24 August 2008 and began being performed in October 2008, wherein it is stated that Pinnacle owns the “Sports Right” of the Player for Europe and assigns such right to the Club for the 2008/2009 and 2009/2010 seasons in order that the latter may “... *use Players name, likeness and image and the personal services of Player to advertise, market and promote Basketball club Olimpija Ljubljana, for any promotional or commercial purpose as Club may deem suitable*”.
9. As consideration for the assignment of the Player’s “Sport Right”, the Image Contract provides that the Club will pay Pinnacle a total amount of EUR 270,000 for the 2008/2009 season and EUR 370,000 for the 2009/2010 season, in 10 equal installments running from 15 August to 15 May of the following year; such amounts to be appropriately invoiced by Pinnacle.

10. Although the Player did not countersign the Image Contract, which is made exclusively between the Club and Pinnacle, he does not dispute its existence. The Player contends however, that *“The Club suggested [the] “image contract” because it served tax driven purpose only. That was the only purpose for such a contract, and it was irrelevant for the player, because his remunerations were settled in net amount (tax free)”*.
11. It is undisputed that during the 2008-2009 season, the Player was paid the entire remuneration (EUR 300,000) which was due under the Main Agreement. It is also undisputed that he received a portion of that amount (EUR 30,000) from the Club and the rest from Pinnacle (EUR 270,000). According to the Player he only invoiced the Club.
12. Consequently, the dispute between the Player and the Club only concerns the payment of the amount of EUR 292,000 that was due to the Player under article 3 of the Main Agreement from the 2009-2010 season until 25 February 2010.
13. The Player contends that during the 2009-2010 season, he received no payments from Pinnacle and only received a total amount of EUR 17,222.78 from the Club (corresponding to bank transfers in an amount of EUR 18,722.78 minus bank charges totaling 1,500 EUR), leaving an outstanding amount in his favour of EUR 274,777.22 for contractual payments due until 25 February 2010 (when the Player terminated the Main Agreement and subsequently began playing for a new club). In his submission of 9 August 2011, the Player admitted that the Club had made an additional payment of EUR 1,387.15 on 27 July 2011.
14. With respect to notices of late payment, the Player alleges the following: *“... we never sent a written notice to the Club ... oral notice was communicated with directors of the Club, Igor Dolenc and later his successor Janez Rajger. We cannot recollect exact dates, because there were more than 40 of these occasions in several months. That means every several days. From our side communication was made by player, manager Dragan Delic and a player’s cousin Slobodan Lovran”*. The Club contests it

was ever put on notice.

15. The Player contends that as a result of the alleged late payments, he terminated the Main Agreement by means of a letter received by the Club on 25 February 2010, which stipulated the following: *“In accordance with the content of the clause n°3 of the contract of date 3 of august of 2008 signed between Vladimir Golubovic and The Club that you represents. I report to you in legal time and form that, doing use of the rights that the clause grants me, I exercise the option to finish the player contract. Remaining fully free to play and initiate another professional relation with any other club of any National federation or other countries”* (sic).
16. The Club contends that as a result of the assignment by the Player of his “Sports right” to Pinnacle and the ensuing Image Contract entered into between the Club and Pinnacle, *“... he was entitled only in surplus in the amounts agreed in the player contract and the Image contract”*, i.e. to the payment from the Club of the difference between the total amount of salary stipulated for each season in the Main Agreement (respectively EUR 300,000 and EUR 400,000 for the 2008/2009 and 2009/2010 seasons) and the amounts stipulated in the Image Contract for the same seasons (EUR 270,000 and EUR 370,000), amounting to total payments of EUR 30,000 per season directly from the Club.
17. The Club alleges that it fulfilled its own foregoing financial obligations to the Player and that it owes him no further amounts as a result of having paid Pinnacle the amounts stipulated in the Image Contract and having paid the Player the difference between those amounts and the total amounts stipulated in the Main Agreement.
18. As evidence of the amounts paid by the Club respectively to Pinnacle and to the Player, the Club submitted bank statements alleging payments of a total amount of EUR 50,326.82 (between January 2009 and February 2010) to the Player and EUR 270,000 (between October 2008 and the end of 2009) to Pinnacle.

### 3.2. The Proceedings before the BAT

19. On 14 March 2011, the Player filed a Request for Arbitration in accordance with the BAT Rules; the non-reimbursable handling fee of EUR 4,000 having previously been received by the BAT.

20. On 13 April 2011, the BAT informed the Parties that Mr. Quentin Byrne-Sutton had been appointed as the Arbitrator in this matter and fixed the advance on costs to be paid by the Parties as follows:

<i>“Claimant (Mr. Vladimir Golubovic)</i>	<i>€ 4,500</i>
<i>Respondent (Basketball Club Olimpija Ljubljana)</i>	<i>€ 4,500”</i>

21. In the same letter, the Parties were advised that

*“... the FIBA Arbitral Tribunal has been renamed into Basketball Arbitral Tribunal (BAT) as a result of a change in the FIBA Statutes and the FIBA Internal Regulations. The new name and logo of the Tribunal are implemented as of 1 April 2011. There was no substantial change in the BAT Rules except for two transitory provisions in Articles 1 and 18, which you can find attached. Unless one of the parties opposes by no later than Monday, 18 April 2011, the new name will be applied also to the present proceedings.”*

No party filed any objections within the above time-limit.

22. On 27 April 2011, the Player paid his advance on costs in an amount of EUR 4,500.

23. On 4 May 2011, the Club submitted its Answer to the Request for Arbitration.

24. By procedural order of 12 May 2011, the BAT informed the Player that the Club had failed to pay its advance on costs within the new deadline and that, as a result, under Article 9.3 of the BAT Rules the Player was required to substitute for the Club if he wished the proceedings to continue.

25. On 17 May 2011, the Player made the substitute payment in an amount of EUR 4,500.

26. By procedural order of 19 May 2011, the BAT informed the Parties that they were requested by the Arbitrator to answer various questions and submit any related

evidence.

27. On 26 May 2011, the Player submitted his answers to the Arbitrator's questions.
28. On 9 June, after obtaining an initial extension of time, the Club submitted its answers to the Arbitrator's questions.
29. By procedural order of 20 June 2011, the Parties were requested to answer additional questions by the Arbitrator and to submit related evidence.
30. On 30 June 2011, the Player submitted his answers to the additional questions together with related documentary evidence.
31. On 12 July 2011, after being provided an extension, the Club submitted its answers to the additional questions together with related documentary evidence.
32. On 11 July 2011, the proceedings were closed and the Parties were invited to submit their accounts of costs.
33. On 14 July 2011, the Player submitted his account of costs as follows:

<i>"1. None reimbursable handling fee (13.03.2011.)</i>	<i>4.000Eur</i>
<i>2. Advance of costs (27.04.2011.)</i>	<i>4.500Eur</i>
<i>3. Advance of costs instead of Respondent (17.05.2011.)</i>	<i>4.488Eur</i>
<i>4. Legal fee</i>	<i>2.760Eur</i>
<i>Specification of legal fee:</i>	
<i>a) Preparations for Request and submitting Request</i>	
<i>13 working hours x 120Eur</i>	<i>1.560Eur</i>
<i>b) Preparations for the submission and the submission</i>	
<i>Dated 26.05.2011. 6 working hours x 120Eur</i>	<i>720Eur</i>

*c) Preparations for the submission and the submission*

*Dated 30.06.2011. 3 working hours x 120Eur 360Eur*

*d) All other correspondence with BAT,*

*1 working hour x 120Eur 120Eur*

*5. Total Claimant's costs 15.748Eur" (sic)*

34. The Club did not submit its account of costs nor any comments on the Player's account of costs, despite having been invited to do so by the BAT on 18 July 2011.
35. On 3 August 2011, the Arbitrator informed the Parties that he wished to receive further clarifications with respect to the payments made by the Club to the Player and Pinnacle.
36. On 9 August 2011, the Player submitted his answer to the additional questions.
37. On 18 August 2011, the Club repeated its position as stated in its previous submissions.
38. Upon the Arbitrator's request, on 27 August 2011, the Player supplemented his statement of costs, amounting totally to EUR 16,108. The Club did not file any further submissions on costs nor any comments on the Player's final account of costs, despite having been invited by the BAT to do so.

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

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

39. The Player submits the following in substance:
  - By not paying him the entire contractually-agreed salary for the 2009/2010 season stipulated in the Main Agreement, the Club was in breach of contract.



- In that relation, the Club cannot invoke the Image Contract because it was entered into at its initiative and for its sole benefit, i.e. for tax reasons which do not concern the Player since under the Main Agreement he was entitled to his remuneration net of taxes.
- Consequently, in accordance with article 3 of the Main Agreement, he was entitled to terminate it and to claim the outstanding amount due thereunder.
- On the date of 25 February 2011 when he terminated the Main Agreement, the outstanding amount owed to him by the Club amounted to EUR 274,777.22.

40. In his Request for arbitration, the Player made the following prayers for relief:

*“The Claimant requests:*

*Claimant request from Respondent: 264.000,00 Euro for salaries at once, with interests rates of 5% per year as followed:*

*on 36.000,00 Euro from 15. August 2009, till payment,*

*on 36.000,00 Euro from 15. September 2009, till payment,*

*on 36.000,00 Euro from 15. October 2009, till payment and*

*on 36.000,00 Euro from 15. November 2009, till payment,*

*on 36.000,00 Euro from 15. December 2009, till payment,*

*on 36.000,00 Euro from 15. January 2010, till payment,*

*on 36.000,00 Euro from 15. February 2010, till payment,*

*on 12.000,00 Euro from 15. March 2010, till payment.*

*costs of the arbitration, as it will be, legal fee of 1540,00 Euro.”*

41. In his reply to the Arbitrator's additional questions, the Player modified his foregoing prayer for relief by slightly increasing the total amount being requested; and is now claiming a total of EUR 273,430.07.

#### 4.2. Respondent's Position

42. The Club submits the following in substance:

- Contrary to the Player's allegations, he did assign his rights to Pinnacle and he did so initially without informing the Club.
- As a result of that assignment and of the Image Contract, the Club only had the contractual duty to pay the Player the difference between the salary stipulated in the Main Agreement and the amounts stipulated in the Image Contract, given that the latter were to be paid by Pinnacle to the Player. The foregoing was agreed between the Club and the Player, and the latter's behaviour – including him accepting the main monthly payments directly from Pinnacle and only the difference from the Club throughout the 2008/2009 season – confirms his acceptance of the arrangement.
- Therefore the Player cannot now turn to the Club for any payments not received from Pinnacle.
- Furthermore, in addition to making payments to Pinnacle as foreseen by the Image Contract, the Club directly paid the Player the difference between the amounts stipulated in the Main Agreement and those provided in the Image Contract, i.e. the amounts he was not receiving from Pinnacle.
- Consequently, "*There were no outstanding payments due to the Player by the Club on February 25<sup>th</sup> 2010*", when the Player terminated the Main Agreement.
- In addition, the Player never put the Club on notice for late payment before giving the notice of termination of February 25<sup>th</sup> 2010 and the Player's termination was unlawful.

43. In its Answer, the Club submits the following prayer for relief: *“The respondent requests that claimant’s request for relief is denied.”*

## 5. The Jurisdiction of the BAT

44. 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). The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
45. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA<sup>1</sup>.
46. The dispute between the Parties arises out of the Main Agreement of 3 August 2008, which under article 9 contains the following arbitration clause in favour of the BAT (then FAT):

*“Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitely in accordance with the FAT Arbitration Rules. The seat of the arbitration shall be Geneva, Switzerland. The language of the arbitration shall be English. The arbitrator appointed by the FAT President shall decide the dispute ex aequo et bono. 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 Sports (CAS) upon appeal, as provided in Article 192 of the Swiss Act of Private International Law. The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono.”*

47. The Main Agreement is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PILA.
48. With respect to substantive validity, the Arbitrator considers that there is no evidence on record that casts any doubt on the validity of the arbitration agreement under Swiss

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

law (referred to by Article 178(2) PILA).

49. There is no doubt that materially the claim falls within the scope of the foregoing arbitration clause since it is based on article 3 of the Main Agreement and the amount being claimed by the Player constitutes part of the total salary provided under the terms of the Main Agreement for the 2009/2010 season.
50. Furthermore, the Club has not contested the Arbitrator's jurisdiction to adjudicate the Player's claim for payment.
51. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Player's claim.

## **6. Discussion**

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

52. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the Arbitrators to decide "*en équité*" instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

*"the parties may authorize the arbitral tribunal to decide ex aequo et bono".*

53. Under the heading "Applicable Law", Article 15.1 of the BAT Rules reads as follows:

*"Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law."*

54. Article 9 of the Main Agreement stipulates that: "*The arbitrator shall decide the dispute ex aequo et bono*".
55. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him

in this proceeding.

56. The concept of “*équité*” (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l’arbitrage<sup>2</sup> (Concordat)<sup>3</sup>, 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.”<sup>4</sup>*

57. This is confirmed by Article 15.1 of the BAT Rules *in fine*, according to which the Arbitrator applies “*general considerations of justice and fairness without reference to any particular national or international law*”.
58. In light of the foregoing considerations, the Arbitrator makes the findings below.

## 6.2. Findings

59. The first question to be addressed is whether the Player is entitled to make salary claims against the Club under the terms of the Main Agreement despite the fact that he accepted that the main part of his salary payments was made by Pinnacle rather than the Club throughout the 2008-2009 season.
60. In that connection, the Arbitrator finds that it is unclear from the evidence on record whether the Player formally assigned any image rights to Pinnacle – since neither party has submitted a copy of any assignment or other form of agreement between the Player and Pinnacle – and, furthermore, although the Image Contract (between the

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

<sup>3</sup> P.A. KARRER, Basler Kommentar, No. 289 ad Art. 187 PILA.

<sup>4</sup> JdT 1981 III, p. 93 (free translation).

Club and Pinnacle) refers to an assignment by the Player, there is no proof that the latter countersigned the Image Contract and/or agreed to give up his rights against the Club under the Main Agreement. It is therefore the Club's word against the Player's.

61. In any event, the Arbitrator finds that it would be contrary to general considerations of justice and fairness to consider that the Player, by his conduct, implicitly renounced the guarantees offered to him by the Club under the Main Agreement for the 2009/2010 season simply because he accepted payments directly from Pinnacle in 2008/2009.
62. Indeed, given that the Main Agreement guaranteed the Player a tax-free salary he had no incentive to set up a tax-driven structure, whereas the Club did; and if the Image Contract was set up for the sole benefit of the Club – which the Arbitrator finds most likely – and the Player accepted to operate under it for the Club's convenience, it would be unfair that the Club could take advantage of the tax-driven structure adopted for its benefit to no longer guarantee principal amounts contractually due to the Player, i.e. that the Player should suffer the consequences of Pinnacle failing to pay amounts guaranteed by the Club. No evidence has been adduced that the Player was willing to accept such consequences, and he had no reason to do so.
63. In other words, despite the Player having accepted to be paid in part by Pinnacle, he cannot be deemed in good faith, to have simultaneously given up his salary rights against the Club under the Main Agreement.
64. Furthermore, in the present case, any other solution would lead to a particularly unfair result because the Club has not established that it paid Pinnacle the amounts due under the Image Contract for the 2009/2010 season.
65. Having considered for the foregoing reasons that the Player remains entitled to make a claim against the Club under the Main Agreement for amounts contractually due for the 2009/2010 season, it remains to be examined whether the Player's termination of the Main Agreement on 25 February 2010 was lawful and valid and, if so, whether the amount being claimed is proven to be outstanding and is effectively due under the

terms of the Main Agreement.

66. Despite the Club having a contractual relationship with Pinnacle and it having established that it paid the Player and Pinnacle – respectively under the terms of the Main Agreement and of the Image Contract – for amounts due thereunder for the 2008/2009 season, the Club has adduced no evidence that by 25 February 2010 (when the Player gave his notice of termination) the Player had received from it and Pinnacle the amounts corresponding to the total remuneration contractually due until such date. Indeed, the Club has only alleged total payments to the Player and Pinnacle combined of EUR 401,328.82 up until the date of 25 February 2010, when a much larger amount (EUR 592,000) should already have been received by the Player out of the total sum of EUR 700,000 guaranteed under the Main Agreement, since less than four monthly instalments would have to be paid after the termination of the Main Agreement on 25 February 2010.
67. Consequently, the Arbitrator finds that it is established that a large portion of the principal payments guaranteed by the Club under the Main Agreement for the period running from 15 August 2009 to 25 February 2010 remained unpaid by the Club or Pinnacle on the date the Player gave his notice of termination (25 February 2010).
68. In view of the long period (six months) during which the Player did not receive the main salary payments contractually owed to him, the Arbitrator finds it credible, as the Player asserts, that during such period the Player at least tried to obtain payment by orally demanding payment on a number of occasions.
69. Furthermore, the Main Agreement does not require that termination be preceded by notices in any particular form, but simply states under article 3 that: *“If the Club is 30 day[s] late in any monthly payment, then the Player shall have the option to terminate this Player Contract and be free to play for any other Club”*.
70. In light of the foregoing, the Arbitrator finds that it was both in keeping with the principle *pacta sunt servanda* and with considerations of fairness and justice that the Player

terminated the Main Agreement on 25 February 2010 after having unsuccessfully requested the payment of large amounts of salary that had been outstanding for well over 30 days.

71. Concerning the amount being claimed by the Player, i.e. EUR 273.430,07, the Arbitrator finds that the Player's calculation is correct and that the bank statements filed by the Club do not establish that it or Pinnacle paid the Player any part of such amount owed under the Main Agreement. In that relation and because the Player subsequently began playing for another Club, he is correctly only claiming amounts due under the Main Agreement up to the date of termination.
72. The Club will therefore be ordered to pay the foregoing principal amount to the Player.
73. Finally, although the Main Agreement does not regulate interest for late payments, it is a generally recognized principle embodied in most legal systems, which is underpinned by motives of equity, that late payments give rise to interest – in order that the creditor be placed in the financial position she/he would have been in had payments been made on time.
74. Therefore and despite the Main Agreement not specifying an interest rate, it is normal and fair that interest is due on the late payments. In the circumstances of this case, the Arbitrator finds it fair and reasonable to award interest at a rate of 5% per annum.
75. It is an established principle that interest usually runs from the day after the date on which the principal amounts are due.
76. However, in the circumstances of this case, in which it is unclear when exactly and in what manner the Player began invoking late payments and what discussions took place between the parties in that connection, the Arbitrator finds it fair that interest at 5% per annum be applied on the entire outstanding amount from the day after the date of termination, i.e. from 26 February 2010 onwards.



77. Accordingly, the Club shall be requested to pay the Player the principal amount of EUR 273.430,07 with interest at 5% per annum from 26 February 2010 onwards.

## 7. Costs

78. 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.

79. On 7 September 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 to be EUR 8,750.00

80. Considering the Player entirely prevailed in his claim, the Arbitrators considers it fair that the fees and costs of the arbitration be borne by the Club and that it be required to cover its own legal fees and expenses as well as to contribute to those of the Player.

81. Given that the Player paid advances on costs of EUR 8,991.00 as well as a non-reimbursable handling fee of EUR 4,000.00 (which will be taken into account when calculating the amount of the Player's legal fees and expenses), while the Club paid none, the Arbitrator decides that in application of article 17.3 of the BAT Rules:

- (i) BAT shall reimburse EUR 241.00 to the Player, being the difference between the costs advanced by the Parties and the arbitration costs fixed by the BAT



**BASKETBALL**  
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President;

- (ii) The Club shall pay EUR 8,750.00 to the Player, being the difference between the costs advanced by him and the amount he is going to receive in reimbursement from the BAT.
- (iii) The Club shall pay to the Player EUR 7,120.00 (4,000 + 3,120) representing a contribution to his legal fees and other expenses.

## **8. AWARD**

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

- 1. Basketball Club Union Olimpija Ljubljana shall pay Mr. Vladimir Golubovic an amount of EUR 273.430,07 net of taxes for unpaid salaries, plus interest at 5% per annum from 26 February 2011 onwards until final payment.**
- 2. Basketball Club Union Olimpija Ljubljana shall pay Mr. Vladimir Golubovic an amount of EUR 8,750.00 as reimbursement for his arbitration costs.**
- 3. Basketball Club Union Olimpija Ljubljana shall pay Mr. Vladimir Golubovic an amount of EUR 7,120.00 as a contribution to his legal fees and expenses.**
- 4. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 12 September 2011

Quentin Byrne-Sutton  
(Arbitrator)