CORRECTED ARBITRAL AWARD

(BAT 1706/21)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Benny Lo

in the arbitration proceedings between

Mr. Stefan Jankovic

- Claimant -

represented by Mr. Charles Misuraca, Esq, attorney at law,

vs.

KK Partizan NIS Beograd
Humska 1, 11000 Belgrade, Serbia

- Respondent -

represented by Mr. Ilija Dražić, attorney at law,

1. The Parties

1.1. The Claimant

1. Mr. Stefan Jankovic ("Player" or "Claimant") is a Serbian professional basketball player.

1.2. The Respondent

2. KK Partizan NIS Beograd ("Club" or "Respondent") is a Serbian professional basketball club.

2. The Arbitrator

3. On 27 July 2021, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal ("BAT") appointed Mr. Benny Lo as arbitrator ("Arbitrator") pursuant to Articles 0.4 and 8.1 of the Arbitration Rules of the BAT in force as from 1 December 2019 ("BAT Rules"). None 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 23 August 2019, the Claimant and the Respondent (collectively, the "Parties") entered into a written agreement providing for the Respondent's employment of the Claimant as a basketball player for, *inter alia*, the 2020/2021 and 2021/2022 basketball seasons ("Agreement").

5. The Agreement provides relevantly as follows:

> "*2.1 Upon signing and successfully passing the physical exam the CLUB agrees to pay the PLAYER the following:*
>
> […]
>
> ***2020/2021 Season*** ***€200,000 EUR net of any Serbian taxes***

After passing physical	*€10,000 EUR net of any Serbian taxes*
September 20, 2020	*€10,000 EUR net of any Serbian taxes*
October 20, 2020	*€20,000 EUR net of any Serbian taxes*
November 20, 2020	*€20,000 EUR net of any Serbian taxes*
December 20, 2020	*€20,000 EUR net of any Serbian taxes*
January 20, 2021	*€20,000 EUR net of any Serbian taxes*
February 20, 2021	*€20,000 EUR net of any Serbian taxes*
March 20, 2021	*€20,000 EUR net of any Serbian taxes*
April 20, 2021	*€20,000 EUR net of any Serbian taxes*
May 20, 2021	*€20,000 EUR net of any Serbian taxes*
June 20,2021	*€20,000 EUR net of any Serbian taxes*
Total for Season 2020/2021	***€200,000 EUR net of any Serbian taxes***
2021/2022 Season	***€250,000 EUR net of any Serbian taxes***
September 20, 2021	*€25,000 EUR net of any Serbian taxes*
October 20, 2021	*€25,000 EUR net of any Serbian taxes*
November 20, 2021	*€25,000 EUR net of any Serbian taxes*
December 20, 2021	*€25,000 EUR net of any Serbian taxes*
January 20, 2022	*€25,000 EUR net of any Serbian taxes*
February 20, 2022	*€25,000 EUR net of any Serbian taxes*
March 20, 2022	*€25,000 EUR net of any Serbian taxes*
April 20, 2022	*€25,000 EUR net of any Serbian taxes*
May 20, 2022	*€25,000 EUR net of any Serbian taxes*
June 20,2022	*€25,000 EUR net of any Serbian taxes*
Total for Season 2021/2022	***€250,000 EUR net of any Serbian taxes***

[…]

4. CONTRACT GUARANTEE

4.1 The CLUB agrees that this agreement and all of the payments required to be made to the PLAYER are fully and unconditionally guaranteed. Therefore, such payments shall be made even in the event of death, injury (whether permanent or non-permanent and regardless of whether the injury is basketball related), mental disability or lack of skill. Accordingly, all payments required within are not contingent on anything other than the PLAYER providing the services in accordance with this agreement.

10. BREACH

10.1 The CLUB agrees that the PLAYER may void this agreement in the event that:

10.1.1 Any payment mentioned by this contract is past due more than thirty (30) days.

10.1.2 Any non-economical clause is not performed by the CLUB for thirty (30) days or longer.

10.1.3 In such either case 10.1.1) and 10.1.2), as soon as PLAYER and or the REPRESENTATIVE makes such a request in writing to the CLUB officials, PLAYER will be granted his unconditional release and free agency and CLUB shall take all necessary steps to issue a Letter of Clearance immediately. Seventy-two (72) hours after notice has been given, all monies due PLAYER and or the REPRESENTATIVE during the entire term of his agreement shall become immediately due and payable. PLAYER is under no obligation to mitigate his damages and CLUB shall receive no offset."

6. There is a further "Annex II" to the Agreement entered into by the Parties, which provides relevantly as follows:

"The following clauses shall be replaced and inserted as part of the original Agreement:

1) Clause 1 TERM

A new Clause 1.8 shall be inserted as follows:

"a) Subject to Clause 1.8(b) below, for the remainder of the season 2020/2021, the CLUB acknowledges that the PLAYER is going to sign a new contract with BC Bahcesehir Koleji Istanbul until the end of the 2020/2021 season, and the salary the CLUB owes for the 2020/2021 will be modified.

b) This Annex is valid once the PLAYER officially signs the new contract with BC Bahcesehir Koleji Istanbul and passes the physical exam in order to make such new contract valid. In case the new contract with BC Bahcesehir Koleji Istanbul is not signed, or the PLAYER does not pass the physical exam, this ANNEX II will be void and the original Agreement and Annex I will remain in place.

c) Upon the PLAYER completing the agreement for the remainder of the season 2020/2021, with BC Bahcesehir Koleji Istanbul, the PLAYER shall return to the CLUB and all terms of the original Agreement and Annex I for the 2021/2022 will remain in place."

2) Clause 2 SALARY COMPENSATION

The following paragraph in the Clause 2.1 of Annex I for the 2020/2021 season shall be replaced:

"Upon signing and successfully passing the physical exam the CLUB agrees to pay the PLAYER the following:

[Table with respect to the 2020/2021 season]"

The following paragraph shall be inserted in place of Clause 2.1 in Annex 1:

'January 20, 2021 *22,500 EUR net of any Serbian taxes*

February 20, 2021 *22,500 EUR net of any Serbian taxes minus the equivalent of $20,000 USD to be paid by BC Bahcesehir Koleji Istanbul (according to the EUR to USD exchange rate on the date of the payment)*

March 20, 2021 *22,500 EUR net of any Serbian taxes minus the equivalent of $20,000 USD to be paid by BC Bahcesehir Koleji Istanbul (according to the EUR to USD exchange rate on the date of the payment)*

April 20, 2021 *22,500 EUR net of any Serbian taxes minus the equivalent of $20,000 USD paid by BC Bahcesehir Koleji Istanbul (according to the EUR to USD exchange rate on the date of the payment)*

May 20, 2021 *22,500 EUR net of any Serbian taxes*

June 20, 2021 *22,500 EUR net of any Serbian taxes*

**In case that BC Bahcesehir Koleji Istanbul reaches the playoffs of the BSL (Turkish Basketball Super League), the CLUB's scheduled payment for May 20, 2021 shall be 22,500 EUR net of any Serbian taxes minus the equivalent of $20,000 USD paid by BC Bahcesehir Koleji Istanbul (according to the EUR to USD exchange rate on the date of payment).*

3) <u>Clause 12 – LOC</u>

Upon the completion of the signing of this Annex II and the PLAYER's new contract to become effective with BC Bahcesehir Koleji Istanbul, the CLUB shall issue the Letter of Clearance immediately. The new contract with shall provide that upon the conclusion of the 2020/2021, BC Bahcesehir Koleji Istanbul shall issue a LOC for PLAYER to return to the CLUB for the 2021/2022 season.

All other provisions from the AGREEMENT and ANNEX I shall remain unchanged."

7. It is the Claimant's case that he was entitled to and did terminate the Agreement as a result of the Respondent's default in making the last four salary payments in the 2020-2021 season. The Claimant claims that he is therefore entitled to (1) these outstanding salary payments in the 2020-2021 season, and (2) all salary payments for the entire 2021-2022 season (on the basis that the Agreement is a "*fully-guaranteed deal*"). The Claimant further submits that effect should be given to Clause 10.1.3 of the Agreement

such that no deductions should be made from these payments even though, after the termination of the Agreement, he has secured alternative employment by another club.

8. On the other hand, the Respondent's case is that it is not obliged to make any salary payments to the Claimant for the last four months of the 2020-2021 season because the Claimant was "*on loan*" to another club during that period. On this basis, the Respondent submits that the Claimant had no valid ground to terminate the Agreement and claim any salary payments for the 2021-2022 season. The Respondent further submits that, applying the BAT jurisprudence on "no mitigation clause", any earnings received by the Claimant as a result his alternative employment after the termination of the Agreement should be deducted from any amount for which the Respondent is liable.

3.2. The Proceedings before the BAT

9. On 16 July 2021, the Claimant filed his Request of Arbitration ("RfA") in accordance with the BAT Rules.

10. On 22 July 2021, the Claimant duly paid the non-reimbursable handling fee of EUR 5,000.00.

11. On 28 July 2021, the BAT informed the Parties that Mr. Benny Lo had been appointed as the Arbitrator in this case and fixed the advance on costs to be paid by the Parties as follows:

"*Claimant (Mr. Stefan Jankovic)*	*EUR 6,000.00*
Respondent (KK Partizan)	*EUR 6,000.00*"

12. On 13 August 2021, the BAT received an advance on costs paid by the Claimant in the amount of EUR 6,000.00.

13. On 17 August 2021, the Respondent filed its Answer to the RfA ("Answer").

14. On the same day, the BAT informed the Parties that the Respondent had failed to pay

its share of the advance on costs, and invited the Claimant to substitute for the Respondent's share by 31 August 2021.

15. On 24 August 2021, the BAT received an advance on costs in the amount of EUR 5,988.00 as the Respondent's share of the advance on costs substituted by the Claimant.

16. On 9 September 2021, the Arbitrator invited the Parties to reply to a list of questions directed to each of them respectively ("Arbitrator's 1st Questions").

17. On 15 September 2021, the Respondent filed its reply to the Arbitrator's Questions.

18. On 21 September 2021, the Claimant filed his response to the Respondent's Answer and his reply to the Arbitrator's 1st Questions ("Claimant's Response").

19. On 4 October 2021, the Arbitrator invited the Respondent to provide its comments on certain parts of the Claimant's Response. He also invited the Parties to file submissions on how the approach to "no offset / mitigation clauses" in the BAT jurisprudence should be applied to the facts of the present case ("Arbitrator's 2nd Question").

20. On 8 October 2021, the Claimant filed his reply to the Arbitrator's 2nd Question.

21. On 19 October 2021, the Respondent filed its comments on the relevant parts of the Claimant's Response and its reply to the Arbitrator's 2nd Question.

22. On 21 October 2021, the BAT informed the Parties that the exchange of submissions was completed in accordance with Article 12.1 of the BAT Rules. The Parties were invited to file submissions on how much of the applicable maximum contribution to costs should be awarded to them and why, and to include a detailed account of their costs, including any supporting documentation in relation thereto, by 28 October 2021.

23. On 22 October 2021, the Claimant filed his costs submissions.

24. On 27 October 2021, the Respondent filed its costs submissions.

4. The Positions of the Parties

4.1. The Claimant's Position

25. The Claimant's case is that the Respondent failed to pay the outstanding salary payments for March to June 2021 of the 2020-2021 season totalling EUR 57,000. The Claimant therefore invoked Clause 10 of the Agreement to terminate the Agreement on 8 July 2021 by a written notice to the Respondent entitled "*Official Termination Letter*".

26. The Claimant submits that the Respondent is accordingly liable to pay him (as "*fully-guaranteed salary*") the aforesaid sum plus the salary payments for the entire 2021-2022 season totalling EUR 250,000.

27. The Claimant further submits that despite the Claimant's alternative employment by another club, BC Tsmoki, since about July / August 2021, the Claimant should still be awarded full salary for the entire 2021-2022 season for two main reasons:

    (a) Clause 10.1.3 of the Agreement should be honoured and upheld since its "*contractual language is clear*"; and

    (b) Alternatively, even if the contractual language is not held to be clear, it is "*equitable and just*" in the circumstances to not to deduct any sum therefrom.

28. Accordingly, in the RfA, the Claimant seeks the following relief:

> "*A. The Respondent to pay the Claimant 57,000.00 Euro in past outstanding salary per Exhibit B, plus 5% per annum beginning as of March 20, 2021.*
>
> *B. The Respondent to pay the Claimant 250,000.00 Euro for the 2021-2022 salary per Exhibit A, plus 5% per annum beginning as of July 8, 2021.*
>
> *C. The Respondent to bear the entirety of the costs of this arbitration.*
>
> *D. The Respondent to pay the Claimant 15,000 Euro in compensation for his legal fees.*
>
> *E. Total Amount in Dispute:* ***322,000.00 Euro*** *(excluding arbitration costs)*".

4.2 The Respondent's Position

29. Although the Respondent has not expressly disputed that Annex II was entered into by it, the Respondent appears to take a preliminary issue with the Claimant's reliance on Annex II by submitting, in the Answer, that there was "*no date on it*".

30. More substantially, the Respondent's case is that it owed the Claimant no obligation to pay any salary payments for March to June 2021 of the 2020-2021 season totalling EUR 57,000 in the first place:-

    (a) Relying on the fact that the Claimant was on loan to, and actually played for, another club (BC Bahcesehir) during that season, the Respondent argues that its obligation under the Agreement to pay the Claimant (for such period when he was on loan) was "*null and void*", given that it was "*legally impossible*" for the Claimant "*to be under contract in two professional basketball clubs at the same time*" by reason of the FIBA Internal Regulations.

    (b) The Respondent further submits that it would not be compatible with *ex aequo et bono* for it to be liable to pay the Claimant to play "*for unrelated basketball club from* [another] *country*" when he was on loan to BC Bahcesehir during the 2020-2021 season.

31. In light of the foregoing, the Respondent submits that the Claimant "*had no legal ground*" to terminate the Agreement. As such, the Claimant was not entitled to any salary payments for both the remainder of 2020-2021 season and the entire 2021-2022 season and any interest thereon.

32. On quantum, the Respondent submits that:

    (a) As a matter of "*minor importance*", the amount of salary payments for March and April 2021, according to the prevailing exchange rate (as at 15 August 2021), would be EUR 5,540.70 (instead of EUR 6,000 as claimed).

(b) The Claimant was under a duty to take all reasonable steps to mitigate. At best, the "no mitigation" provisions under Clause 10.1.3 of the Agreement only means that the Claimant can "*seat* [sic] *doing nothing and playing nowhere without just complaints of a Club that he does not want to do anything to find engagement*". However, when the Claimant did secure alternative employment, the amount should be offset to prevent unjust enrichment since damages are compensatory in nature.

(c) As such, the Claimant's earnings received from his new club, BC Tsmoki, should be deducted from any compensation payable by the Respondent.

5. The Jurisdiction of the BAT

33. 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, the BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

34. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

35. 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.[1]

36. In order to establish the jurisdiction of the BAT, the Claimant relies on the arbitration clause contained under Clause 11 of the Agreement.

37. Clause 11 of the Agreement 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*

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

parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."

38. The Agreement is in writing and thus the arbitration agreement therein fulfils the formal requirements of Article 178(1) PILA.

39. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the foregoing arbitration agreement under Swiss Law (referred to by Article 178(2) PILA).

40. The predicate wording in the said Clause 11, i.e. "[a]*ny dispute arising from or related to the present contract* […]", clearly covers the present dispute. In particular, the Arbitrator is satisfied that Clause 11 of the Agreement would still cover the Claimant's claim for salary payments for the 2020-2021 season (whose contractual basis is, in part, Clause 2 of Annex II) given that Annex II expressly provides that the said Clause 2 shall be "*inserted as part of the original Agreement*".

41. In any event, Clause 3 of Annex II contains an arbitration clause identical to Clause 11 of the Agreement. The Arbitrator is satisfied that the conclusions in paragraph 38-39 above apply equally to the said Clause 3.

42. Furthermore, in its Answer, the Respondent has expressly accepted that the Arbitrator (and the BAT) "*has jurisdiction to adjudicate the Claimant's claim*" and it "*does not contest*" such jurisdiction.

43. For the above reasons, the Arbitrator rules and finds, pursuant to Article 1.3 of the BAT Rules, that he has jurisdiction to finally decide and rule upon the Claimant's claims as set out in the RfA.

6. Other Procedural Issues

44. Neither of the Parties requested a hearing. In accordance with Article 13.1 of the BAT Rules, the Arbitrator will decide the Claimant's claim based on the written submissions

and the evidence on record.

7. Discussion

7.1 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*" 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*".

46. Under the heading "Law Applicable to the Merits", Article 15 of the BAT Rules reads as follows:

> *"15.1 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.*
>
> *15.2 If, according to an express and specific agreement of the parties, the Arbitrator is not authorised to decide ex aequo et bono, he/she shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to such rules of law he/she deems appropriate. In both cases, the parties shall establish the contents of such rules of law. If the contents of the applicable rules of law have not been established, Swiss law shall apply instead."*

47. Clause 11 of the Agreement does not expressly provide for the law governing the merits of the dispute. Consequently, applying Article 15 of the BAT Rules, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in these proceedings.

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

> "*When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.*"[4]

49. 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*".

50. In light of the foregoing considerations, the Arbitrator makes the findings below *ex aequo et bono* in accordance with Article 15.1 of the BAT Rules.

7.2 Analysis and Findings

51. As the Claimant's claim is one to enforce contractual payment obligations, the doctrine of *pacta sunt servanda* (i.e. parties who make a bargain are expected to stick to that bargain, being the prevailing doctrine when deciding a BAT case *ex aequo et bono*) is the principle by which the Arbitrator will examine its merits.

52. In the Arbitrator's view, the Parties' positions summarised in section 4 above give rise to 4 broad issues for determination:

    (a) Are the Agreement and Annex II *prima facie* valid and binding? ("Issue 1")

    (b) Did the Claimant have any basis to terminate the Agreement (such that he would be *prima facie* entitled to the outstanding salaries for both the remainder of the

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

[3] P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

[4] JdT 1981 III, p. 93 (free translation).

2020/2021 season and the entire 2021/2022 season)? ("Issue 2")

(c) If the Claimant is entitled to salaries for both the remainder of the 2020/2021 season and the entire 2021/2022 season, what is the quantum thereof? ("Issue 3")

(d) What are the relief, if any, to which the Claimant is entitled? ("Issue 4")

7.2.1. Issue 1: Are the Agreement and Annex II *prima facie* valid and binding?

53. The basis of the Claimant's claim is the subject Agreement. It is common ground that the Parties concluded the Agreement in August 2019, under which the Claimant's term of engagement would be extended until the end of 2021-2022 season.

54. The Claimant further relies on Annex II. It is indisputable that Annex II purportedly bears the signature of Mr. Dejan Kijanoovic (the Respondent's General Manager) on behalf of the Respondent.

55. Despite its assertion that there was "*no date*" on Annex II, the Respondent has not challenged the authenticity of this signature, or that it was *prime facie* bound by Annex II. In the Arbitrator's view, the mere fact that Annex II has "*no date on it*" is irrelevant, and in no way prevents it from becoming binding. The signature of the Respondent's General Manager (with clear indication of the Respondent's name "KK Partizan" immediately below) makes it crystal clear that Annex II was intended to be binding.

56. Furthermore, Annex II was clearly intended by the Parties to form a *part* of the Agreement, given its unequivocal wording that "*The following clauses shall be replaced and inserted as part of the original Agreement*" (emphasis added). The Respondent has not relied on the absence of the Claimant's signature on the copy of the Annex II produced to suggest that its contents do not form part of a binding agreement between the Parties either.

57. Accordingly, the Arbitrator finds the Agreement (of which Annex II forms part) to be *prima facie* valid and binding on the Parties.

7.2.2. Issue 2: Was the Claimant entitled to terminate the Agreement (such that he would be *prima facie* entitled to salaries for both the remainder of the 2020/2021 season and the entire 2021/2022 season)?

58. It is undisputed that the Respondents made no salary payments to the Claimant for March to June 2021 of the 2020-2021 season.

59. That was the factual basis relied upon by the Claimant to purportedly terminate the Agreement by an "*Official Termination Letter*" on 8 July 2021 ("Termination Notice"), in which Clause 10 of the Agreement was referred to as the contractual basis of termination.

60. Pursuant to Clause 10, the Claimant would be entitled to "*void this agreement*" if "[a]*ny payment mentioned by this contract is past due more than thirty (30) days*".

61. The Arbitrator however notes that, by the time the Termination Notice was issued (8 July 2021), the 30-day period had not yet expired with respect to the salary payment for June 2021 (i.e. the 30-day period only runs from the due date, i.e. 20 June 2021). However, this would not have affected the validity of the Termination Notice, given that the 30-day periods have indisputably expired for the preceding three salary payments for March to May 2021 by then.

62. Furthermore, there is no dispute at all by the Respondent with respect to the validity and/or service of the Termination Notice (save as to whether there was any basis for the Claimant to terminate the Agreement).

63. It should follow that the issue of whether the Claimant was entitled to terminate the Agreement pursuant to Clause 10 boils down to whether the Claimant was entitled to receive salary payments by the Respondent for March to June 2021 in the first place.

64. As stated above, the Agreement (of which Annex II forms part) is *prime facie* valid and binding. Unless the Respondent satisfies the Arbitrator that there was no obligation under the Agreement on its part to pay the Claimant's agreed salaries for March to June 2021,

the Claimant should be entitled to those payments pursuant to the express terms.

65. In this regard, the Respondent submits that it "*owes nothing to the Claimant*" for the second half of 2020-2021 season when he played for another club, BC Bahcesehir.

66. In particular, the Respondent submits that Clause 2.1 (as set out in Annex II) with respect to 2020-2021 season was "*null and void*" since it was "*legally impossible*" for the Claimant to be "*under contract with two professional basketball clubs at the same time*".

67. Before dealing with the arguments raised by the Respondent in support of its above position, the Arbitrator takes note of the following facts which are undisputed or not seriously in dispute by the Parties:

    (a) The Claimant played for the Respondent in 2018-2019 season.

    (b) On 23 August 2019, the Parties entered into the Agreement for three years from 2019/2020 to 2021/2022 basketball seasons.

    (c) During 2019-2020 season, the Claimant was "*on loan*" to BC AEK Athens, for which a tripartite agreement was entered into on 23 August 2019 ("AEK Athens Agreement").

    (d) Similarly, the Claimant was "*on loan*" to, and played for BC Bahcesehir during March to June 2021 of 2020-2021 season. This "*on loan*" arrangement was agreed to by the Claimant and the Respondent, which was "*happy with such outcome*".

    (e) Under such arrangement, the Claimant signed a "*loan agreement*" with BC Bahcesehir on 2 February 2021 ("Bahcesehir Agreement"). A letter of clearance was issued by the Serbian Basketball Federation upon the Claimant's transfer to BC Bahcesehir.

68. In support of its submission that it is "*legally impossible*" for the Claimant to be "*under contract in two professional basketball clubs at the same time*", the Respondent argues:

(a) FIBA Internal Regulation Book 3 (in force as of 26 March 2021) "*excludes the possibility of being registered/being a player of the other club at the same time*". The core rule is that "*a player can be transferred to the other club out of his country exclusively on the [basis] of the Letter of Clearance (the "**LoC**"), where any transfer without the LoC is **illegal**.*" (emphasis original)

(b) By reason of the letter of clearance "*duly issued*" by the Serbian Basketball Federation for the Claimant's transfer to BC Bahcesehir, the Claimant "*was not under contractual obligation toward [the Respondent]*". Therefore, "*no financial or any other obligation at the same time lays on the Respondent*".

69. In response, the Claimant submits that there was a "*common practice*" for a basketball club to "*temporarily loa*[n] *a player out to another club to decrease their financial responsibilities*". The Claimant relies on the fact that, in 2019-2020 season, the Respondent had "*decided to loan the Claimant to AEK Athens and had AEK Athens pay 75% of the Claimant's salary*" while the Respondent "*covered the rest*".

70. The Claimant further submits that the Respondent's position that "*loan out agreements are legally impossible*" would "*contradict*" (1) the previous loan of the Claimant to AEK Athens, and (2) the Respondent's own argument in BAT 1496/20 (*Aranitovic v BC Partizan Belgrade*) that the player in that case declined "*multiple loan opportunities*".

71. For the reasons hereinbelow, the Arbitratior rejects the Respondent's submission that Book 3 of the FIBA Internal Regulations makes it "*legally impossible*" for the Claimant to be entitled to payments under the Agreement for such period he was "*on loan*" pursuant to the Bahcesehir Agreement.

72. First, in the Arbitrator's view, in the absence of sufficiently clear language, the provisions in FIBA Internal Regulations Book 3 would not affect the private contractual relationship between a player and a club *inter se*. The Respondent has not identified any such clear language from those Regulations which could have such an effect.

73. Secondly, Articles 3-1, 3-57 and 3-59 of the FIBA Internal Regulations (as specifically relied upon by the Respondent) provide:-

> *"1. To be eligible to participate in Competitions of FIBA (see article 2-3), a player must observe the General Statutes and Internal Regulations of FIBA and any decisions issued on the basis thereof."*
>
> *"57. The letter of clearance is a certificate issued by FIBA that confirms that a player is free to transfer internationally and that a new National Member Federation is allowed to issue a license to that player."*
>
> *"59. The letter of clearance may not be limiting or conditional."*

74. The Arbitrator considers these provisions to be merely (parts of) the FIBA regulatory framework which requires a letter of clearance to be issued prior to any transfer of players, with a view to facilitating the proper and orderly registration of players.

75. In particular, nothing in the language of Articles 3-1, 3-57 and 3-59 touches upon the question of validity (or subsistence) of any contractual obligations, in particular after the issuing of a letter of clearance, which the Arbitrator considers to be a separate and distinct question.

76. On the contrary, in the Arbitrator's view, the regulatory requirements (with which players and clubs should comply) contained in the FIBA Internal Regulations are (absent clear language) not intended to supersede any contractual agreements as between the parties in respect of who pays which portion of a player's salary.

77. In fact, it is plain and obvious from some provisions of the FIBA Internal Regulations that the question of compliance with those Regulations is independent of the question of validity of any contractual obligations. *Inter alia*, article 33 provides:

> "*Any club that signs a contract with a player is obliged to release that player when the player is summoned by a National Member Federation to play for its national team in any age category in a FIBA National Team Competition that is included in the FIBA Calendar. Any agreement between a player and club to the contrary constitutes a violation of these Internal Regulations.*" (emphasis added)

Under the foregoing article, any agreements between a player and a club "*to the contrary*" would *only* constitute a regulatory "*violation*", and nothing therein purports to deprive such agreements of their contractual force or declare such agreements "void".

78. Therefore, contrary to the Respondent's case, the Arbitrator considers that FIBA Internal Regulations Book 3 does not render it "*legally impossible*" for the Claimant to enjoy the benefit of the Agreement despite having entered into the Bahcesehir Agreement.

79. Further and in any event, the Arbitrator considers that the issuing of a letter of clearance to Claimant has no bearing whatsoever on the validity or subsistence of the Agreement. Such letter only confirms the fact that the Respondent agreed to the change of the Claimant to another club as a matter of FIBA registration. As relevantly observed in BAT 0254/12 (with which the Arbitrator agrees):-

> "*69.* […] *The Letter of Clearance became necessary because the Player was loaned to a foreign club belonging to another national basketball federation. A Letter of Clearance is also required if the respective player is assigned on loan to a foreign club. The mere fact that the Club did not refuse the issuance of a Letter of Clearance from Turkey to Croatia by invoking the Player Contract, does not necessarily mean that the Player Contract had been (or was at that moment) terminated. It simply confirms that the Club agreed to the change of the Player to another club*." (emphasis added)

80. For all these reasons, the Arbitrator rejects the Respondent's argument that it "*owes nothing*" to the Claimant under the Agreement by reason of having "*duly issued*" a letter of clearance to confirm his transfer to BC Bahcesehir.

81. Further or alternatively, the Respondent submits that it would not be compatible with *ex aequo et bono* for the Respondent to pay the Claimant to "*play for unrelated basketball club*".

82. On this question, the Arbitrators considers the Claimant's submissions as set out in paragraphs 69-70 above to be directly relevant.

83. Given the Respondent's unequivocal agreement in Annex II to pay during such period when the Claimant was on loan in 2020-2021 season (taking into account even the

salaries to be paid by BC Bahcesehir by way of deductions), the Respondent clearly contemplated and intended that it would be obliged to pay the Claimant even when he was "*play*[ing] *for unrelated basketball club*".

84. As mentioned above, *pacta sunt servanda* is the prevailing doctrine when deciding a BAT case *ex aequo et bono*. In the circumstances, the Arbitrator sees no reason why the Respondent should not be expected to stick to the bargain that it had made.

85. For completeness, the Arbitrator will proceed to analyse the various factual matters raised by the Parties to see if there is any reason which would, as a matter of *ex aequo et bono*, justify a departure from the foregoing conclusion.

86. In this regard, the Respondent invites the Arbitrator to consider the alleged poor performance of the Claimant while playing for the Respondent.

87. The Respondent alleges that it was a "*poor season*" for the Claimant in 2018-2019 season; at the Claimant's insistence, the Respondent thereafter agreed to extend the Claimant's term to 2021-2022 season as provided for under the Agreement (with one-year loan to BC AEK Athens in 2019-2020 season).

88. The Respondent further alleges that, given the poor relationship between the Respondent's new coach and the Claimant after the latter "*rejoined*" the Respondent in 2020-2021 season, the Parties agreed to loan the Claimant to BC Bahcesehir. The Respondent asserts that, in that season, the Respondent had "*paid*" salary payments to the Claimant "*without any benefit in return*". The Respondent further submits that "*judging by effects of performance* of *his play/job he was* [one] *of the most expensive players of the Club during the last decade,* [and] *that* [he] *literally returned* ***nothing*** *to the Club*" (emphasis original).

89. On the other hand, the Claimant asserts that 2018-2019 season (being his first season with the Respondent) was a "*very successful season*". He alleges that it was the Respondent who "*insisted on extending the Claimant*" by entering into the Agreement.

90. The quality of the Claimant's performance in both of 2018-2019 and 2019-2020 seasons is therefore a contentious issue on the Parties' cases.

91. Despite the foregoing, at the same time, the Respondent unequivocally concedes (repeatedly in three rounds of submissions) that (1) the Agreement was a "*no cut guaranteed contract*", and (2) the quality of the Claimant's performance "*is neither reason for reduction of salary nor for termination*" and has "*no impact to the Agreement*".

92. Given the Respondent's concession (which is clearly the correct one to make), it follows that these factual issues on the quality of Claimant's performance would simply be irrelevant. It would not be necessary for the Arbitrator to make any findings thereon.

93. Furthermore, in the Arbitrator's view, whether it was the Claimant or the Respondent who "*insisted*" upon the 3-year extension by the Agreement is also immaterial. After all, the Agreement was a bargain signed up to by, and binding upon both Parties.

94. On the other hand, the Claimant invites the Arbitrator to consider that it is *contradictory* for the Respondent to argue that it is "*legally impossible*" for the Agreement (and the obligation to pay) to subsist when the Claimant was "*on loan*" to another club.

95. The Claimant asserts that in 2019/20 season (when he was "on loan" to AEK Athens), "*AEK Athens pay 75% of the Claimant's salary*", while the Respondent "*covered the rest*". This assertion was not disputed by the Respondent.

96. The Respondent must have appreciated the fact that a temporary "*loan*" arrangement is not recognised as a valid basis under FIBA Internal Regulations for transfer of players (and a letter of clearance would be required to give effect thereto), given the express provision in the AEK Athens Agreement under which it was (1) acknowledged that a letter of clearance is necessary for such "*loan*" arrangement, and (2) provided that the Respondent would "*issue letter of clearance (LOC) for the Player in favor of SEK Athens*".

97. If the Respondent had taken the position that it is "*legally impossible*" for the Claimant to

be paid salary "*parallelly*" by two clubs after it issued a letter of clearance, it would not have paid the Claimant in 2019/20 season at all. On the materials before the Arbitrator, at no point were such arguments raised any time before this arbitration.

98. The Arbitrator therefore considers that it is in this sense that the Respondent can be said to have taken contradictory positions.

99. The above analysis would, in fact, tend to reinforce the Arbitrator's conclusion that the Respondent ought to be held to its bargain as a matter of *ex aequo et bono*.

100. In summary, despite all its submissions as mentioned above, the Respondent has failed to satisfy the Arbitrator that it was under no obligation to pay the Claimant's salaries for March to June 2021 under the Agreement, either as a matter of contract or as a matter of *ex aequo de bono* considerations.

101. Accordingly, the Arbitrator finds that the Claimant was entitled to receive his salaries for March to June 2021 pursuant to the Agreement. It follows that the Arbitrator further finds that the Claimant was entitled to and did terminate the Agreement by issuing the Termination Notice pursuant to Clause 10 of the Agreement.

102. In the premises, the Arbitrator finds that the Claimant is *prime facie* entitled to salary payments for (1) March to June 2021 in 2020/2021 season and (2) the entirety of 2021/2022 season given that the Agreement is a fully guaranteed contract.

7.2.3. Issue 3: If the Claimant is entitled to salaries for both the remainder of the 2020/2021 season and the entire 2021/2022 season, what is the quantum thereof?

103. Given the Arbitrator's above finding that the Claimant is entitled to salary payments for March to June 2021 of the 2020/2021 season and the entire 2021/2022 season pursuant to the Agreement, it is now necessary to consider the questions of quantum.

i. What is the quantum of the salary payments for March to June of the 2020/2021 season? Specifically, what is the exchange rate applicable to the

payments for March and April 2021?

104. For March to June 2021 of the 2020/2021 season, the Claimant claims the sum of EUR 57,000, the breakdown of which is as follows:

Due Date	**Amount of Salary Payment**
20 March 2021	EUR 22,500 – USD 20,000 ("**Difference**") = EUR 6,000
20 April 2021	EUR 22,500 – USD 20,000 ("**Difference**") = EUR 6,000
20 May 2021	EUR 22,500
20 June 2021	EUR 22,500

105. The Claimant submits that the exchange rate "*at the time payment was due*" should be applied, and therefore, the correct figure for the Difference should be EUR 6,000. He, however, adduced no evidence to prove the exchange rate on each of the two due dates.

106. The Respondent submits that, applying the exchange rate as at 15 August 2021 (adducing as evidence a screenshot of an unidentified currency convertor), the Difference should be EUR 5,540.70 instead of EUR 6,000.

107. Despite being directed by the Arbitrator to respond to the Respondent's Answer (which contains the above assertion as regards the applicable exchange rate), the Claimant has not responded to it or offered evidence in support of his own proposed exchange rate.

108. This leaves the Respondent's proposed rate as at 15 August 2021 uncontroverted, being the only exchange rate supported by evidential basis on the Parties' evidence.

109. In these circumstances, the Arbitrator would adopt the Respondent's proposed exchange rate for assessing the exact figure of the Difference. The Arbitrator therefore accepts the Respondent's submission that the sum of the Difference is EUR 5,540.70, that being the sum of each of the payments for March and April 2021.

110. Accordingly, the Arbitrator finds the total amount to which the Claimant is entitled for March to June 2021 of 2020/2021 season to be **EUR 56,081.40** (i.e. the sums of EUR

5,540.70, EUR 5,540.70, EUR 22,500, and EUR 22,500 for March, April, May and June 2021 respectively).

ii. What is the quantum of the salary payments for the entire 2020/2021 season? Specifically, what effect, if any, should be given to Clause 10.1.3 of the Agreement which purports to exclude the duty to mitigate and prohibit offset?

111. Turning to the quantum of the 2021/2022 season, the amount in full is EUR 250,000 for the entire season.

112. The Claimant submits that the Respondent should receive no "*offset*" and the sums payable under the Agreement are "*protected from any reduction or mitigation*".

113. In support of the above contention, the Claimant relies on Clause 10.1.3 of the Agreement, which he submits is a "*highly specific contractual agreement*". It relevantly reads:

> "*10.1.3. […] Seventy-two (72) hours after [the Termination Notice] has been given, all monies due PLAYER and or the REPRESENTATIVE during the entire term of his agreement shall become immediately due and payable. PLAYER is under no obligation to mitigate his damages and CLUB shall receive no offset*." (emphasis added)

114. Before coming to deal with the Parties' submissions on the effect of this Clause, the Arbitrator considers it appropriate to first discuss the BAT jurisprudence with respect to "no offset" and "no mitigation" clauses.

115. It is trite in BAT jurisprudence that there is a duty of mitigation. As observed by the arbitrator in BAT 0155/11[5] at para. 63:

> "*[…] according to the consistent jurisprudence of the BAT, a player is under the duty to take all reasonable steps to mitigate the damage. Therefore, any other payments a player received (or might have – acting with due care – received) during the contractual period for*

[5] See also BAT 0644/15, paras. 33-34; BAT 0257/12, para. 71.

which compensation is sought must be deducted from the amount claimed as damages."

116. The issues about the duty of mitigation typically arise when a Player sues a Club for unpaid salaries for the remainder of a season (or a new season) under a guaranteed contract after termination.[6]

117. The Arbitrator notes that a distinction should be drawn between a "no mitigation" clause and a "no offset" clause in terms of their effect.[7] Essentially:

(a) A "no mitigation" clause is a contractual clause under which the duty of mitigate is purportedly excluded. However, it has no application where a player had actually and properly mitigated his/her loss by securing alternative employment with another club after termination of contract.

(b) A "no offset" clause prohibits a club from receiving any offset in the event that a player has actually mitigated his loss, and thereby protects the compensation payable to him/her from deduction or reduction.

118. A review of the earlier BAT jurisprudence would reveal two diametrically opposed views on the validity of these "no mitigation / no offset" clauses:

(a) One view suggests that such clauses should be upheld given that they represent "*highly specific contractual arrangements*". The parties have "*expressly and unambiguously lifted the burden from Player requiring him to mitigate his damages*": and "*expressly prohibited*" the club from receiving an offset. The arbitrators should give effect to the parties' clear intention that "*the guaranteed sums payable under the Agreement were protected from any reduction or mitigation*".[8]

(b) The other view suggests that it is unfair for there to be "*an advance, complete and*

[6] See, e.g. BAT 1457/19, para. 121.

[7] See also BAT 0421/13, paras. 65-66; BAT 0535/14, para. 52.

[8] BAT 0421/13, paras. 66-67.

unconditional exclusion of the duty to mitigate and of the right for a club to request the offset of any amounts earned by a player under a new contract with another club for the exact same period of time".[9] It follows that a stringent test should apply: for such clauses to be upheld "*as expressing the clear common intent of the parties*", "*strong evidence*" must be adduced to demonstrate that the parties "*discuss, understood and accepted all the consequences*" of such clauses.[10]

119. More recent BAT decisions (e.g. BAT 1457/19, BAT 1455/19 and BAT 1697/21) have now leaned toward the middle ground. The approach laid down in these decisions (which is the approach that the Arbitrator considers appropriate and decides to adopt herein) can be summarised as follows:

(a) At the outset, it should be recognised that "*clear and unambiguous contractual provision should not be easily dismissed or departed from*".[11] As such, these "no-mitigation / no-offset" clauses are *per se* valid.

(b) That said, BAT arbitrators would still subject such clauses to an *ex aqeuo et bono* assessment in order to "*prevent a manifestly unfair and unjust result*" by looking at "*the specific circumstances of the case*".[12]

120. The reference to "*specific circumstances of the case*" means that the assessment is invariably fact-sensitive. In the Arbitrator's view, the factors that may be relevant to the arbitrator's assessment could include (but not limited to) the following:

(a) Conduct of the player:

[9] BAT 0535/14, para. 52 (emphasis original).

[10] BAT 0535/14, paras. 54-56.

[11] BAT 1455/19, para. 124, referring to BAT 0421/13.

[12] BAT 1457/19, para. 130; BAT 1455/19, para. 124; BAT 1697/21, para. 78.

(i) Whether the player managed to procure a new contract with a new club with respect to a season for which he/she claims compensation.[13] The player may be treated as taking a "*windfall*" if he/she claims against the respondent club for payments for a season in which he/she actually plays for and receives salaries from another club.[14] In the Arbitrator's view, the "*windfall*" which an *ex aqeuo assessment* seeks to prevent should refer to the salaries which a player would receive under his new employment contract.

(ii) Whether the player performed his side of the agreement.

(iii) Whether the player has warned the club of his intention to exercise his right to terminate the agreement.[15]

(b) Conduct of the club:-

(i) Whether the club had done anything to jeopardise the player to find a replacement club (e.g. wrongfully obstructing the issue of a letter of clearance);[16]

(ii) Whether the club failed to pay for a significant period.[17]

(iii) Whether the club demonstrated an intention not to be bound by the terms it already agreed (e.g. by attempting to renegotiate the terms)?[18]

(c) Context, surrounding circumstances and other relevant matters:

[13] BAT 1457/19, para. 131; BAT 1455/19, para. 130; BAT 1697/21, para. 79.
[14] BAT 1457/19, paras. 131-132.
[15] BAT 1455/19, para. 128.
[16] BAT 1457/19, para. 135.
[17] BAT 1457/19, para. 135.
[18] BAT 1457/19, para. 135.

(iv) The (adverse) effect of the Covid-19 pandemic on the market conditions (and any reduction in the amount offered by any new club which the player would likely accept in that context).[19]

(v) The timing of the relevant conduct. Whether the relevant act was done or the event occurred before or after the commencement of a new season may be particularly relevant, given that this may affect the player's ability to find or successfully transfer to a replacement club to mitigate his loss of salaries.

121. The weight that should be given to each of the relevant factors is apparently a matter for the arbitrator in his/her holistic assessment of the "*specific circumstances of the case*".

122. In the event that the arbitrator finds that the relevant "no mitigation / no offset" clause would produce "*a manifestly unfair and unjust result*", he/she will proceed to consider to what extent the sum payable should be reduced.

123. On this quantum issue, the arbitrator may adopt the amount which a player will receive under the new contract as the multiplicand (i.e. the base amount), given that this amount is precisely "*windfall*" which the *ex aequo* review seeks to prevent. He/she then proceeds to fix, in light of the circumstances as found by him/her, a percentage multiplier (i.e. the percentage by which the base amount is to be multiplied).[20]

124. In determining what percentage would be fair and just, the arbitrator can have regard to the final amount (arrived at by a particular percentage) and compare this against: (1) the difference between the amounts of the old and new salaries; (2) any settlement offer made by the respondent club.[21]

125. The Arbitrator now turns to consider the Parties' submissions on the facts of the present

[19] BAT 1455/19, para. 132.

[20] BAT 1457/19, para. 136.

[21] BAT 1455/19, para. 132.

case by applying the above principles.[22]

126. The Claimant submits that given that Clause 10.1.3 is a "*highly specific contractual arrangement*", the Arbitrator should give full effect to it.

127. While the Arbitrator accepts that Clause 10.1.3 is clear in its language, applying the approach discussed above, he still has to undertake an *ex aequo* assessment by considering all relevant circumstances of to see if the operation of Clause 10.1.3 would produce a "*manifestly unfair and unjust result*".

128. The Claimant, in his submissions in reply to Procedural Order of 4 October 2021, apparently accepts this to be the "*recent*" and correct approach.

129. The Claimant further submits that Clause 10.1.3 represents a negotiated bargain and the Parties' intention at the time of its conclusion.

130. The Arbitrator does not consider it appropriate to inquire into the precontractual negotiations to identify the Parties' intent with respect to Clause 10.1.3 given its clear language. It is also unnecessary to do so because all that is required at this stage is an *ex aequo* assessment of the Parties' conduct and other circumstances.

131. Insofar as relevant, the Claimant relies on the following matters:

    (a) Relying on BAT 1592/20, para. 86, "*no deduction shall be made on the basis of mitigation in this case*", since, *inter alia*, "*Covid-19 pandemic made it more difficult for basketball players to find new employment*".

    (b) The Respondent has been "*non-responsive*" to the Claimant after default in payments for 2020-2021 season while signing "*several multi-million dollar contracts*" with other players.

[22] By Procedural Order of 4 October 2021, the Arbitrator invited the Parties to address him specifically on "*how the 'ex aequo assessment' (see BAT 1455 para. 124) should be applied on the facts of the present case*".

(c) The Claimant has attempted to actively find alternative employment after termination of the Agreement. The Claimant has adduced several screenshots of instant messages to prove such attempts.

(d) The Claimant has secured alternative employment with BC Tsmoki, Minsk, Belarus ("Minsk Contract") in the total amount of USD 70,000. (This amount is uncontroverted by the Respondent.)

(e) The Claimant now suffers "*severe financial hardship*" given the legal costs incurred for the BAT proceedings against, *inter alios*, the Respondent. The Claimant's new club, BC Tsmoki, was also "*behind on salary payments*".

(f) The amount of payments payable to the Claimant under the Minsk Contract (USD 70,000) was less than 25% of what would be due to the Claimant under the Agreement (even after deducting that amount from the outstanding salary payments for the two seasons as claimed, i.e. EUR 57,000 + EUR 250,000 - USD 70,000 = EUR 247,000).

(g) As such, Clause 10.1.3 cannot be viewed as "*an unjust or unfair penalty*" when examining the "*proportionality of the overall circumstances*".

132. The Respondent submits that the Arbitrator should dismiss the Claimant's claim for EUR 250,000 (the amount of the salaries of 2021/2022 season under the old Agreement).

133. In its Answer, however, it expressly relies on various BAT authorities which suggest that, when the duty of mitigation applies, the earnings agreed between a player and his "*new club*" should be deducted from any amount due to the player.

134. The Arbitrator therefore treats this as the Respondent's submission that Clause 10.1.3 should be given no effect, i.e. the reduction imposed should be 100% of the amount payable under Minsk Contract (which it expressly refrains from disputing).

135. Despite being invited by the Arbitrator to make submissions on the *ex aequo* assessment

of Clause 10.1.3, the Respondent has provided no additional facts and referred to no factual matters in its submissions (apart from that "*the Club did nothing against the Player*") in support of its position on the effect, if any, of Clause 10.1.3.

136. For the reasons below, the Arbitrator finds, on balance, that Clause 10.1.3 would not produce "*manifestly unfair and unjust result*" (emphasis added) if it is to be given full effect, having regard to the "*specific circumstances of the case*", including, *inter alia*:

(a) The Claimant had, on the evidence, shown his efforts in actively pursuing alternative employment which eventually led to the conclusion of the Minsk Contract. Such efforts were made against the backdrop of Covid-19 Pandemic which makes it difficult for players to secure employment generally.

(b) There was objective, undisputed evidence that the Claimant did clearly forewarn the Respondent (by drawing its attention to specifically Clause 10.1.1-10.1.3 of the Agreement) about 1 month before actually exercising his right of termination.

(c) Despite the Respondent's assertions about the Claimant's performance, at no point has it asserted that the Claimant failed to perform his side of the Agreement.

(d) The fact that the Respondent has been "*non-responsive*" to the Claimant after default in payments for 2020-2021 season was uncontroverted by the Respondent.

(e) Some credit should be given to the Respondent since "*the Club did nothing against the Player*". However, this factor alone does not, in the Arbitrator's view, outweigh all of the above matters.

(f) The alleged "*windfall*" (i.e. the payments the Claimant would receive under the Minsk Contract") only accounts for less than 25% of the salary payments that would be payable to the Claimant under the Agreement for the same 2021/2022 season.

137. For all the reasons above, the Arbitrator finds the amount to which the Claimant is entitled for 2021/2022 season to be **EUR 250,000.00** in full.

7.2.4. Issue 4: What are the relief, if any, to which the Claimant is entitled?

138. Given the above conclusions on Issues 1 to 3, deciding *ex aequo et bono*, the Arbitrator thus holds that the Respondent is liable to pay the Claimant the sum of **EUR 56,081.40** for the 2020/2021 season and the sum of **EUR 250,000.00** for the 2021/2022 season.

139. The Claimant claims interest for salaries for 2020/2021 at the rate of 5% per annum "*beginning as of March 20, 2021*". He further claims interest for salaries for 2020/2021 at the rate of 5% per annum "*beginning as of July 8, 2021*".

140. The Respondent has made no submissions on from when interest, if any, should run.

141. With respect to the interest for salaries for 2020/2021 season, the Arbitrator notes that the due dates for the monthly payments from March to June 2021 are clearly different.

142. In the Arbitrator's view, it is fair and reasonable to award interest at the rate of 5% per annum (only) as from the day after their respective due dates. Accordingly:-

Salary payment for	**Interest at the rate of 5% per annum from**
March 2021 (EUR 5,540.70)	21 March 2021
April 2021 (EUR 5,540.70)	21 April 2021
May 2021 (EUR 22,500)	21 May 2021
June 2021 (EUR 22,500)	21 June 2021

143. With respect to the interest for salary payments for 2021/2022 season, pursuant to Clause 10.1.3 of the Agreement, all monies due during the entire term of the Agreement "*shall become immediately due and payable*" 72 hours (equivalent to 3 days) after notice of termination has been given.

144. In the present case, the Termination Notice was given by the Claimant on 8 July 2021. Therefore, the due date of all salary payments for the entirety of 2021/2022 season would fall on 11 July 2021 (i.e. 3 days thereafter).

145. Therefore, interest on the sum of EUR 250,000 (being salary payments for 2021/2022

season) shall run from 12 July 2021.

146. Accordingly, deciding *ex aequo et bono*, the Arbitrator holds that the Claimant is entitled to award interest at the rate of 5% per annum on such sums as from the dates as stated in paragraphs 142 and 145 above until the date of full payment.

8. Costs

147. In determining the arbitration costs, Article 17.2 of the BAT Rules provides:

> "*At the end of the proceedings, the BAT President shall determine the final amount of the arbitration costs, which shall include the administrative and other costs of the BAT, the contribution to the BAT Fund (see Article 18), the fees and costs of the BAT President and the Arbitrator, and any abeyance fee paid by the parties (see Article 12.4).* […]"

148. On 16 November 2021, the BAT Vice President determined the arbitration costs in the present matter to be EUR 11,988.00.

149. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 of the BAT Rules provides:

> "*The award shall determine which party shall bear the arbitration costs and in which proportion.* […] *When deciding on the arbitration costs* […]*, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.*"

150. Considering that the Claimant is wholly successful in this arbitration, it is consistent with the said provisions that costs of the arbitration be borne by the Respondent alone. Given that the Claimant paid the entire advance on costs in the amount of EUR 11,988.00, the Respondent shall reimburse EUR 11,988.00 to the Claimant.

151. As to the Parties' legal fees and expenses, Article 17.3 of the BAT Rules provides:

> "[…] *as a general rule, the award shall grant the prevailing party a contribution towards any reasonable legal fees and other expenses incurred in connection with the proceedings (including any reasonable costs of witnesses and interpreters). When deciding* […] *on the amount of any contribution to the parties' reasonable legal fees and expenses, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s)*

sought and, secondarily, the conduct and the financial resources of the parties."

152. Article 17.4 of the BAT Rules provides for the maximum amounts a party can receive as a contribution towards its reasonable legal fees and other expenses (excluding the non-reimbursable handling fee). In this case, the maximum amount is EUR 15,000.00.

153. The Claimant claims contribution to his legal fees in the total amount of EUR 15,000.00 despite the total costs incurred being USD 25,500.00 as stated in his counsel's statement of costs. The non-reimbursable handling fee for this arbitration is in the total amount of EUR 5,000.00.

154. Taking into account all the circumstances of this case, including the fact that the Claimant has been wholly successful in his claim and the complexity of the legal issues arising out of this claim, the Arbitrator determines that it is fair and reasonable to award the Claimant the sum of EUR 12,000.00 as contribution towards his legal fees, as well as the payment of the non-reimbursable handling fee in the amount of EUR 5,000.00.

155. In summary, therefore, the Arbitrator decides that in application of Articles 17.3 and 17.4 of the BAT Rules:

(a) The Respondent shall bear and pay the costs of this arbitration in the sum of **EUR 11,988.00**; and

(b) The Respondent shall pay the Claimant the total sum of **EUR 17,000.00**, comprising a contribution towards the Claimant's legal fees in the amount of EUR 12,000.00 and the non-reimbursable handling fee of EUR 5,000.00 previously paid by the Claimant.

9. AWARD

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

1. **KK Partizan NIS Beograd shall pay Mr. Stefan Jankovic the sum of EUR 56,081.40 net, plus:**

   (a) **interest on the sum of 5,540.70 at 5% per annum from 21 March 2021 until full payment;**

   (b) **interest on the sum of EUR 5,540.70 at 5% per annum from 21 April 2021 until full payment;**

   (c) **interest on the sum of EUR 22,500.00 at 5% per annum from 21 May 2021 until full payment; and**

   (d) **interest on the sum of EUR 22,500.00 at 5% per annum from 21 June 2021 until full payment.**

2. **KK Partizan NIS Beograd shall pay Mr. Stefan Jankovic the sum of EUR 250,000.00 net, plus interest thereon at 5% per annum from 12 July 2021 until full payment.**

3. **KK Partizan NIS Beograd shall pay Mr. Stefan Jankovic the sum of EUR 11,988.00 as reimbursement for his arbitration costs.**

4. **KK Partizan NIS Beograd shall pay Mr. Stefan Jankovic the sum of EUR 17,000.00 as a contribution towards his legal fees and expenses.**

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

Geneva, seat of the arbitration, 22 November 2021

Benny Lo
(Arbitrator)