

ARBITRAL AWARD

(BAT 1710/21)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Mr. Gregory Keith Monroe Jr.

- Claimant and Counter Respondent -

represented by Mr. Luka Milanovic, attorney at law

vs.

BC Khimki
27 Kirov Str., Floor 3, Office 39
141400 Khimki, Moscow Region, Russia

- Respondent and Counterclaimant -

represented by Mr Pavel Astakhov, General Director

1. The Parties

1.1 The Claimant and Counter Respondent

1. Mr Gregory Keith Monroe Jr. (the “**Player**” or “**Claimant**”) is a professional basketball player of U.S. nationality.

1.2 The Respondent and Counterclaimant

2. BC Khimki (hereinafter the “**Club**” or “**Respondent**” and together with Claimant the “**Parties**”) is a professional basketball club located in Khimki, Russia.

2. The Arbitrator

3. On 25 August 2021, Mr. Raj Parker, Vice-President of the Basketball Arbitral Tribunal (the “**BAT**”), appointed Ms. Annett Rombach as arbitrator (the “**Arbitrator**”) pursuant to Articles 0.4 and 8.1 of the Rules of the Basketball Arbitral Tribunal (the “**BAT Rules**”). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

4. The relevant facts and allegations presented in the Parties’ written submissions and evidence are summarized below. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.
5. On 29 July 2020, the Player and the Club entered into an employment contract, pursuant to which the Club engaged the Player as a professional basketball player for the 2020-21 basketball season (the “**Player Contract**”).

6. As stipulated in Clause 2 of the Player Contract, the Player was to receive a total base salary of USD 1,500,000.00 (net) for the 2020-21 season, payable in ten equal monthly instalments of USD 150,000.00 (net) by no later than the 15th day of each month between September 2020 and June 2021. Clause 3.1.1.1 of the Player Contract provided for the net nature of the salary payments (*“free and clear (net) of all local, national or any other social taxes or fees levied in Russia”*) together with the Club’s obligation to provide the Player with a tax certificate which confirms that all Russian taxes have been paid by the Club on behalf of the Player.
7. The Player Contract was fully guaranteed, as explained in detail in Clauses 1.4 and 2.4 of the Player Contract as follows:

“1.4. [...]

In this regard, even if the Player is removed or released from the Club or this Agreement is terminated or suspended by the Club due to the Player’s lack of or failure to exhibit sufficient skill due to the Player’s illness, injury or other mental or physical disability (whether incurred on or off the court, with the exception of the instances specified in the Agreement) or for any other reason whatsoever other than Player’s direct and material breach of this Agreement, the Club shall still be liable to pay to the Player the full amounts set forth below on the dates set forth below.”

“2.4. The Club is obliged to pay money to the Player in accordance with the schedule agreed by the Parties, regardless of any circumstances other than the fact of the proper fulfilment of the obligations under this Agreement, including the provision of professional services by the Player as a basketball player to the Club.

In the case of the Player’s withdrawal from active game status by the Club’s decision, the paying obligations of the Club toward the Player shall persist under the terms and conditions of the Agreement.”

8. Clause 3.2 of the Player Contract further clarifies the consequences of a situation in which the Club decides not to use the Player’s services during games or practises:

“3.2.3. The Club has the right to withdraw the Player from active game status, continuing making payments under this Agreement. In this case the Player must be ready, at any moment, to resume fulfilling his duties under the Agreement. However, Player shall only be required to play or practice with, or otherwise join, the Club’s senior team (not lower division or junior teams).”

9. Clause 3.3 of the Player Contract lists the obligations of the Player towards the Club, including the Player’s duty to comply with the Club’s internal rules and regulations (the **“Internal Regulations”**), which were attached as Appendix 1 to the Player Contract, and which the Player does not dispute to have received.
10. Clauses 4 and 5 of the Player Contract address the issue of a breach of contract by the Player and resulting consequences. In relevant part, these provisions read as follows:

“4.1. Should the Player breach his duties set forth in this Agreement (including the Interna [sic] Regulations of the team of the Basketball Club ‘KHIMKI’), the Club shall have the right to withhold from the monthly amount due to the Player in a relevant month a fine in the amount specified in the Agreement, including the Internal Regulations of the team of the Basketball Club ‘KHIMKI’, unless for serious breaches. Player will receive 1 (one) written warning prior the Club imposing a fine.

“5.1. The Player agrees that the Club has the right to terminate the Agreement at any time without following financial obligations to the Player, except for the amounts already due to the Player on the date of termination of the Agreement, in the following cases:

[...]

5.1.2. The Player, having been penalized previously, commits an act forbidden by the stipulations of point 4 Article 11 of the Internal Regulations of the Basketball Club ‘Khimki’ team.

[...]”

11. As far as it is relevant for the present dispute, the Club’s Internal Regulations include the following obligations of the Player:

“Article 2. GENERAL OBLIGATIONS OF THE PLAYER

[...]

4. *The Player must treat with respect his teammates, the coaching staff, other personnel of the Club, the fans and other persons.*
5. *The Player is prohibited from expressing disrespect toward referees, opponents, teammates, coaching staff, technical personnel, spectators or any other persons, either verbally or non-verbally, in gesture, by actions or by failure to act, during practices, games and other activities during the time when the Player performs his duties under the Agreement.*

[...]

Article 6. PRACTICES GAMES AND ACTIVITIES

1. *The Player must participate, as a basketball player, in all events (commercial and non-commercial) organized by the Club, including practices, training sessions, friendly games, official games, pre-season tournaments, technical meetings and athletic sessions where the Club is a participant, Cup and tournament games, pre-season work, play-off games, exhibition games, advertising and marketing events, as well as non-commercial events, arranged by the Club and or its partners and sponsors. The Player must also participate in the basketball activities and events arranged by the Euroleague, FIBA, the VTB United League and the RBF.*

[...]

11. *The Player must practice properly and in observance of discipline and the instructions of the coaching staff.”*

Article 11. DISCIPLINARY REGULATIONS

1. *The Club reserves the right to apply the following disciplinary measures to the Player, should the latter violate the rules and stipulates contained in the Regulations and other conditions of the Agreement, depending on the severity of the committed violation:*
 - a. **Monetary fine in accordance with the conditions and specifications of the Application to the Regulations.**
 - b. **Termination of Agreement**

[...]

3. *In case of a repeated violation, and all following instances of violation of the Regulations and other conditions of the Agreement penalized with a fine, the amount of the fine shall be double the amount of the previously applied fine.*

4. *The unilateral termination of the Agreement by the Club with abolition of all further obligations of the Club toward the Player is the most radical measure that shall be used in the following instances:*

[...]

b. A repeated violation by the Player of the stipulations of the Regulations caused by actions and activities falling under the stipulated in points 2.3., 2.8., 2.9., 2.10., 3.3. of the Application to the Regulations, in an instance when the Player was previously fined for the same violation.

5. *Sanctions foreseen by these Regulations are to be applied to the Player in the following order:*

I. Upon receiving the information regarding the fact of violation of the Regulations and other conditions of the Agreement by the Player, the General director of the Club shall make a decision concerning the imposition of a fine on the Player or the termination of the Agreement. The Club may impose a fine or terminate the Agreement 30 (thirty) days after discovering the fact of violation.

II. The decision on the imposition of fine or termination of Agreement is issued in writing, signed by the General manager.

III. The decision on the imposition of fines or termination of Agreement shall be sent to the Player by e-mail for informational purposes. The notification on the decision on the imposition of fine or termination of Agreement shall be sent to the Player's Agent if the Player's -mail address is not at the disposal of the Club."

12. On 30 November 2020 and 1 December 2020, respectively, the Club imposed a monetary fine on the Player in the total amount of USD 4,500.00 to sanction certain technical fouls the Player had committed in previous games.
13. On 11 December 2020, the Player played in the Club's game against CSKA Moscow.
14. On 14 December 2020, the Player was dismissed from practice by the Club's head

coach. The dismissal was based on the Player's disagreement with the team's game tactic in general and the Player's role in the coach's tactical defensive schemes in particular.

15. On 15 December 2020, the Club sent a warning notice to the Player's agent in Russia. The warning letter stated the following:

"[T]he Player [...] on 14 December 2020 during the practice of the Main Team in the Basketball Center "Khimki", expressed disrespect towards the coaching staff of the Club, for what he was dismissed from the training.

According to the point 11 of the Article 6, the Player must practice properly and in observance of discipline and the instructions of the coaching staff.

In accordance with the point 4 of the Article 2 of the Regulations, the Player must treat with respect his teammates, the coaching staff, other personnel of the Club, the fans and other persons. With this in mind, the Player is prohibited from expressing disrespect towards teammates, coaching staff or any other persons, either verbally or non-verbally, in gestures, by action or by failure to act, during practices, games and other activities during the time when the Player performs his duties under the Agreement (point 3 of the Article 2).

According to the point 2.5. of the Application to the Regulations, for the removal from practice the Player may be fined for 2% of the sum due to be paid in the respective month.

According to the point 2.11.3 of the Application to the Regulations, for the demonstration of disrespect toward coaching staff the Player may be fined for 5% of the sum due to be paid in the respective month.

However, in the particular case, the Club is willing to resort to the issue of the Official Warning only. We, hereby, inform you that should you violate the rules of the Regulations in the future, the Club will be penalizing you with a monetary fine in accordance with the conditions of the Agreement."

16. On the same day, during the team practice, the Club's head coach told the Player that he would not be traveling with the team to the three upcoming away matches (taking place, respectively, on 16, 18, and 23 December 2020).

17. Between 15 December 2020 and 25 December 2020, the Claimant was practicing on his own.
18. On 25 December 2020, the Club's General Manager, its Sports Director and another Club employee had a meeting with the Player at the General Manager's office. The contents and the result of this meeting are in dispute between the Parties. In particular, it is disputed whether the Player received the Club's permission to leave Moscow and return to the United States, or whether the Player made a unilateral decision to leave without the Club's consent.
19. After the meeting, the Club sent a letter to the e-mail address of the Player's Russian agent, notifying him of the Player's alleged refusal to fulfil his contractual duties as follows:

"Today, on December 25, 2020, the player [...] informed the General Director of the Club, Mr. Pavel Astakhov, with Sports Director of the Club Mr. Vitaliy Trofimenko also present, on his intention to leave the Club in the nearest time, as well as to stop fulfilling his obligations towards the Club, as per the Agreement dated July 29, 2020, No. 9/2020. With the above told, we inform you that these actions of the Player Gregory Keith Monroe, Jr., will be considered by the Club as the unilateral rejection to fulfil the obligations as per the Agreement dated July 29, 2020, No. 9/2020."

20. Neither the Player nor his agents replied to this correspondence.
21. Until 25 December 2020, the Club had paid the Player a total salary of USD 508,407.80 and had withheld an amount equalling the fine for the technical fouls (USD 4,500.00 see above at para. 12).
22. On 27 December 2020, the Player's Russian agent forwarded to the Club a draft termination agreement (prepared by the Player's U.S. agent). This draft agreement suggested, *inter alia*, the immediate termination of the Player Contract, with the Club's obligations to pay the outstanding salaries until 25 December 2020 (but no salaries or

salary compensation beyond that date).

23. On 28 December 2020, the Club sent an e-mail to the Player's Russian agent commenting on the Player's settlement proposal. The Club wrote, *inter alia*, the following:

"The initiative to terminate the contract comes from the Player. However, the terms of the contract do not provide for such a possibility to the Player. By signing the contract [...], the Club expected that the Player would fulfil his obligations under the contract properly throughout the entire season 20-21.

As it follows from our contract, if the Club violates its terms, the Club pays [...]. I suppose it will be reasonable and fair to believe that the Parties to the contract are equal, and if the Player violates the terms of the contract with the Club, he should also be financially liable."

24. On 29 December 2020, the Club sent the Player's Russian agent a counter settlement proposal. In this counter proposal, the Club agreed to make the payments suggested by the Player, but proposed that the Player pay USD 500,000.00 as compensation for his premature release from the contract. Neither the Player nor his agents replied to this correspondence.
25. On 6 January 2021, the Club sent a written notice to the Player's Russian agent, informing him that the Player was in breach of contract because he had not participated in any team practice or game since 25 December 2020.
26. Starting from 7 January 2021 until 14 January 2021, the Club imposed ten (10) monetary fines on the Player, totalling USD 180,000.00 (the "**Fines**"), as follows:

Date	Amount	Reason
7/1/2021	USD 7,500.00	Player failed to attend the team practice on 28 December 2020 at 12 pm.
8/1/2021	USD 15,000.00	Player failed to attend the team practice on 29 December 2020 at 12 pm.

9/1/2021	USD 22,500.00; USD 15,000.00	Player failed to attend the game against BC Olympiacos on 29 December 2020; The Player failed to attend the team practice and the video analysis on 30 December 2020 at 4 pm.
10/1/2021	USD 15,000.00; USD 45,000.00	Player failed to attend the team practice on 31 December 2020 at 12 pm; Player failed to attend the game against BC Lokomotiv Kuban on 3 January 2021.
11/1/2021	USD 15,000.00	Player failed to attend the team practice on 1 January 2021 at 5 pm.
12/1/2021	USD 15,000.00	Player failed to attend the video analysis on 2 January 2021 at 12 pm and the following departure for the away game against BC Lokomotiv Kuban.
13/1/2021	USD 15,000.00	Player failed to attend the team practice on 2 January 2021 at 6 pm.
14/1/2021	USD 15,000.00	Player failed to attend the team practice and the video analysis on 5 January 2021 at 11 am.
Sum	USD 180,000.00	

27. The corresponding warnings and notifications were sent to the e-mail address of the Player's Russian agent. Neither the Player nor his agents replied to these notifications.
28. On 22 January 2021, the Club sent a termination notice to the e-mail address of the Player's Russian agent (the "**Termination Notice**"), which reads as follows.

[...]

According to point 5.1. of the Agreement, the Player agrees, that the Club has the right to terminate the Agreement at any time without further financial obligations toward the Player, except for the amounts already due to the Player on the date of termination of the Agreement, when the Player has taken actions prohibited by point 4 Article 11 of the Internal Regulations of the Team of the Basketball Club 'KHIMKI', hereinafter, as the 'Regulations'.

As per point 4 Article 11 of the Regulations, the termination of the Agreement upon the initiative of the Club with no further, consequential, financial obligations is applicable in an instance when

the Player repeatedly commits a violation of the stipulations of the Regulations, by taking actions and activities specified in point 2.3. of the Application to the Regulations, when the Player was already previously fined for the same violation.

Point 2.3. of the Application to the Regulations prescribes a fine for the failure to attend a game of the Main game (exception- friendly game).

Previously, on 09 January 2021, and 10 January 2021, the Player was fined for the failure to attend the games against BC Olympiacos (held on 29 December 2020), and BC Lokomotiv-Kuban (held on 03 January 2021).

Moreover, the Player failed to attend the following games of the Main team:

- *vs BC Zalgiris, on 08 January 2021;*
- *vs BC Barcelona, on 12 January 2021;*
- *vs BC Anadolu Efes, on 14 January 2021;*
- *vs BC UNICS, on 17 January 2021;*
- *vs BC Panathinaikos, on 21 January 2021.*

Thus, relying upon point 5.1. of the Agreement, and point 4 Article 11 of the Regulations, the Club made the decision, on this 22 January 2021, to terminate the Agreement with the Player, who violated point 2.3. of the Application to the Regulations, after two previous counts when the Player had been fined for the failure to attend the games of the Main team.

In regard to the payments due to the Player on the date of termination, we state the following.

On 25 December 2020, the ceased to fulfil his obligations under the Agreement, thus severely breaching the conditions of the Agreement, which does not grant the Player the right to cease the fulfilment of one's duties on the Agreement upon one's unilateral initiative.

Due to this, starting from 25 December 2020, onwards, the Club has been lacking any legal basis to pay the Player any monetary means for the period following the stated date (point 2.5. of the Agreement).

Furthermore, in the period between 08 January 2021, and 14 January 2021, the Club applied the fines for the failure of the Player to attend practices (other events of the Club) and the games of the Main team of the Club.

The total amount of the fines applied to the Player for the aforementioned period significantly exceeds the amount of the payables where due to the Player as of 25 December 2020.

According to the stipulations of the Agreement (point 4.1.), the Club

has the right to deduct the amount of the applicable fines from the monies payable to the Player in the amount specified in the Regulations.

Based on all of the above, we, hereby, inform you, that, as of 22 January 2021, the Club has no outstanding or pending payables owed to the Player on the Agreement.

Thus, relying upon point 5.1. of the Agreement, with this notification, the Association 'Basketball Club 'KHIMKI' informs you of the termination of the Agreement dated 29 July 2020, No 9/2020, on this 22 January 2021.

[...]"

29. Neither the Player nor his agents replied to this correspondence.
30. On 26 February 2021, the Club paid USD 4,831.57 to the Player.
31. On 3 June 2021, the Player's counsel sent a payment notice to the Club, requesting the payment of a settlement sum of USD 500,000.00 net in two equal instalments.
32. On 15 June 2021, the Club rejected the Player's settlement proposal.
33. On 28 June 2021, the Player's counsel sent a second and final payment notice to the Club. This notice remained unanswered by the Club.

3.2 The Proceedings before the BAT

34. On 12 August 2021, the BAT received a Request for Arbitration together with several exhibits filed by the Claimant in accordance with the BAT rules. The non-reimbursable handling fee of EUR 5,000.00 had been received in the BAT bank account on the same day.
35. On 26 August 2021, the BAT informed the Parties that Ms. Annett Rombach had been appointed as Arbitrator in this matter, invited the Respondent to file its Answer in accordance with Article 11.4 of the BAT Rules by no later than 16 September 2021 (the

“Answer”), and fixed the amount of the Advance on Costs to be paid by the Parties by 6 September 2021 as follows:

*“Claimant (Mr. Gregory Keith Monroe Jr.)
Respondent (BC Khimki)”*

*EUR 5,500.00
EUR 5,500.00”*

36. On 7 September 2021, the Respondent informed the BAT that due to its unstable financial situation it is unable to pay the requested Advance on Costs.
37. On 16 September 2021, the Respondent submitted its Answer to the Request for Arbitration.
38. By procedural order of 20 September 2021, BAT acknowledged receipt of the Claimant’s share of the Advance on Costs and noted the Respondent’s failure to pay its share. In accordance with Article 9.3 of the BAT Rules, the Claimant was invited to substitute for the Respondent’s (unpaid) share in order to ensure that the arbitration could proceed, by no later than 30 September 2021.
39. On 12 October 2021, BAT acknowledged receipt of the full amount of the Advance on Costs, paid by the Claimant. The Claimant was invited to comment on the Answer by no later than 26 October 2021 (the **“Reply”**). The Arbitrator further requested the Claimant to address the following points in his Reply:
 - *Submit evidence with respect to the total salary amount received from the Respondent until 25 December 2020, and from 26 December 2020 until 22 January 2021;*
 - *Explain in more detail his understanding of Mr. Astakhov’s alleged “permission” for him “to leave Moscow” on 25 December 2020.*
 - *Explain whether there was any termination in writing before the Club’s letter dated 22 January 2021.”*
40. On 2 November 2021, within the (extended) time limit, the Claimant submitted his Reply together with further exhibits. In his Reply, the Claimant requested a hearing by video conference in case the Arbitrator was not satisfied with the written witness

statements and required additional information.

41. On 16 November 2021, the BAT acknowledged receipt of the Claimant's Reply and invited the Respondent to comment on the Reply by no later than 30 November 2021 (the "**Rejoinder**"). The Arbitrator further requested the Respondent to address the following points in its Rejoinder:
- *Explain its understanding on when exactly the contract was terminated;*
 - *Submit evidence for such termination;*
 - *Comment on the Claimant's request for a (video-) hearing."*
42. On 7 December 2021, within the (extended) time limit, the Respondent submitted its Rejoinder together with further exhibits and comments on the necessity of a hearing. Moreover, the Respondent filed a counterclaim (the "**Counterclaim**"). The respective non-reimbursable handling fee of EUR 7,000.00 was received in the BAT bank account on the same day.
43. On 14 December 2021, the BAT acknowledged receipt of the Respondent's Rejoinder and Counterclaim. In accordance with Art. 9.3.1 and Art. 9.4 of the BAT Rules, the Respondent was requested to pay an additional Advance on Costs for the Counterclaim in the amount of EUR 5,500.00, by no later than 3 January 2022. The BAT informed the Respondent that the Counterclaim shall be deemed withdrawn if the additional Advance on Costs was not paid on time.
44. On 4 January 2022, the BAT acknowledged receipt of the additional Advance on Costs for the Counterclaim. The Claimant was invited to reply to the Counterclaim by no later than 25 January 2022 ("**Counterclaim Reply**").
45. On 1 February 2022, within the (extended) time limit, the Claimant submitted his Counterclaim Reply.

46. On 17 February 2022, the BAT acknowledged receipt of the Claimant's Counterclaim Reply and invited the Respondent to submit further evidence with respect to its allegation that the Claimant duly received the Termination Notice as well as the notifications on the imposition of the Fines.
47. On 7 March 2022, the BAT acknowledged receipt of the Respondent's response and invited the Claimant to provide his comments by no later than 21 March 2022.
48. On 21 March 2022, the Claimant filed his comments on the Respondent's previous submission.
49. On 28 March 2022, the BAT (in accordance with Article 12.1 of the BAT Rules) declared that the exchange of documents was completed and requested the Parties to submit their detailed cost accounts by 4 April 2022. The Parties submitted their respective cost account on 4 April 2022.
50. As further explained below in Section 6.2, the Arbitrator decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to render the award based on the written record before her.

4. The Position of the Parties

4.1 Claimant's Position and Request for Relief

51. The Claimant submits the following in substance:

4.1.1 On the Main Claim

- The Respondent, which was – and still is – in a very difficult financial situation, tried to release the Claimant to save future salary payments. The Respondent is

facing several BAT proceedings because it has been unable to pay salaries to its players for the 2020-21 season. It was even sanctioned by FIBA with a ban on registering new players. Because of its financial difficulties, the Respondent decided to act against the best paid non-Russian players, namely the Claimant and Mr. Jonas Jerebko, who is also facing a counterclaim by the Respondent in a parallel BAT proceeding;

- In the meeting of 25 December 2020, the Respondent's General Manager gave the Claimant the oral permission to return to the United States;
- The Respondent tricked the Claimant into leaving the Club without obtaining a written permission in order to impose the Fines. Respondent's ultimate goal was to set off the Fines against Claimant's justified salary payment claims;
- The Claimant neither received the Termination Notice nor any of the notification letters that imposed the Fines. On the Respondent's own account, these documents were only sent by e-mail to the Player's Russian Agent, not to the Player himself (as provided by Clause 10 of the Player Contract). This is a breach of Clause 10 of the Player Contract and Clause 11.5.III of the Internal Regulations;
- Due to the non-receipt of the Respondent's notifications, the Claimant never had any opportunity to defend himself. The Respondent violated the Claimant's right to be heard;
- The Club's contention that the Claimant terminated the Player Contract on 25 December 2020 is absurd. The Claimant did not terminate the Player Contract. Hence, the Respondent remains obliged to pay the Claimant his salaries until 22 January 2021 when the Respondent unilaterally terminated the Player Contract without just cause;
- The Respondent's unilateral termination of 22 January 2021 lacked just cause. The termination was based on the Fines imposed on the Claimant due to his absence from the team. However, the Claimant's absence was justified, because the General Manager had given him the permission to leave Moscow. Furthermore, the Fines, which form the basis for the termination, had not been

properly notified to the Claimant;

- Until 22 January 2021, the Claimant was to receive USD 787,500.00 in salaries (for the period between 15 September 2020 and 22 January 2021, on a *pro rata* basis). He only received USD 512,908.80 (USD 508,408.80 plus USD 4,500.00 to be added for fines admitted by the Claimant), which leads to a difference of USD 274,591.20 that is still outstanding;
- The Respondent's argument that it was not obligated to pay any salary as of 25 December 2020 due to the alleged termination of the Player Contract by the Player is directly contradicted by its imposition of the Fines since the beginning of January 2021. The Fines were based on the Player Contract and the Club's Internal Regulations. The Club cannot, at the same time, argue that the Player Contract had been terminated on 25 December 2020 and later impose the Fines on the legal basis of that same (allegedly terminated) contract;
- Claimant's loss of his January 2021 salary, combined with his obligation to pay the Fines of USD 180,000.00, would be disproportionate, unfair, and amount to an undue double penalty;
- Even if the Arbitrator found that both the termination of the Player Contract on 22 January 2021 and the Fines were valid, the Respondent would still have to pay the Claimant outstanding salaries of USD 94,591.20, *i.e.* the difference between the overall contractual salary until the date of termination (USD 787,500.00), minus the salary received (USD 508,408.80), minus the uncontested fines for technical fouls (USD 4,500.00), minus the Fines (USD 180,000.00);
- The Player is entitled to receive additional compensation in the amount of USD 285,000.00 as damages for the unjust termination. His remaining salary as from the date of termination (22 January 2021) would have been USD 712,500.00. The Claimant only requests appr. 40% of this amount (USD 285,000.00) as he acknowledges his failure to mitigate damages and to find a new financially comparable employment.

4.1.2 On the Counterclaim

- The Counterclaim was filed late. According to Article 11.4 of the BAT Rules, a respondent may file a counterclaim only with the Answer to the Request for Arbitration;
- The Claimant did not breach the Player Contract because he was given permission to leave Moscow;
- The Respondent did not suffer any financial loss. It also failed to establish a causal link between the alleged breach of the Player Contract and the requested amount of damages of USD 844,592.20 (USD 559,592.20 + USD 285,000.00). According to well established BAT case law (e.g. BAT 0041/09), a club can only be awarded damages it has actually sustained. The Club bears the burden of proof to establish a link between the breach of contract and the incurred damages. The Club failed to prove both that it suffered any damage and that there was a causal link;
- The Counterclaim is senseless. The amount of USD 559,592.20 is described as the loss the Respondent would suffer if the Request for Arbitration were successful. As such, it is the direct mirror image of the Claimant's claim without any stand-alone legal significance;
- The additional compensation of USD 285,000.00, which the Respondent's requests, is entirely unproven. In fact, it is the exact same amount the Claimant requests as salary compensation for the unjust termination. The Respondent filed the Counterclaim without any supporting evidence whatsoever.

4.1.3 Request for Relief

52. With the Request for Arbitration, the Claimant initially requested the following relief:

- "1. BC Khimki shall pay to Mr. Gregory Keith Monroe Jr. the following amounts:*
- 576.033,00 USD net plus interest of 5% per annum since 13 August 2021 until full payment*

- *Interests in the amount of 9.000,00 USD net*

2. *BC Khimki shall pay for Mr. Gregory Keith Monroe Jr.'s taxes in regard to the income determined in the employment contract and shall provide Mr. Gregory Keith Monroe Jr. with an official tax statement issued by the Russian tax authorities.*
3. *The costs of the arbitration shall be borne by BC Khimki.*
4. *BC Khimki shall pay Mr. Gregory Keith Monroe Jr. the maximum contribution to his legal fees under the BAT Rules."*

53. In his Reply, the Claimant replaced and amended his prayers for relief as follows:

"24. Taking everything into account, the Claimant requests the following:

- *274.591,20 USD net as outstanding payments*
- *285.000 USD net as a compensation for the unilateral termination of the Contract without just cause*

*in total the amount of **559.591,20 USD net.***

*25. If the Sole Arbitrator would decide that the Contract was terminated with just cause, quod non, the Respondent would still have to pay the outstanding amount of **274,591,20 USD net.***

*26. Finally, even if the Sole Arbitrator would further decide that the penalties were validly applied, quod non, the Respondent would still have to pay the outstanding amount of **94.591,20 USD net.***

27. Notwithstanding the above, for tax reasons, the Claimant requests pursuant to Art. 3.1.1.1. of the Contract that the Respondent provides the official statement indicating that all Russian taxes have been paid by the Respondent on the Claimant's behalf."

54. In his Counterclaim Reply, the Claimant requests the following relief in respect of the Counterclaim:

"Based on the above, the Claimant requests the Arbitrator to dismiss the Counterclaim filed by the Respondent and to order the Respondent to bear all costs and legal expenses of this proceeding."

4.2 Respondent's Position and Request for Relief

55. The Respondent submits the following in substance:

4.2.1 On the Main Claim

- During the 25 December 2020 meeting, the Player informed Respondent's General Manager about his intention to leave the Club and to return to the United States. The General Manager informed the Player that his departure would be a violation of the Player Contract, because he was not entitled to terminate the agreement unilaterally;
- The Player Contract was terminated *de facto* on 25 December 2020 by the Player, through his refusal to further fulfil his duties thereunder. Therefore, the Claimant is not entitled to any salary for the period after 25 December 2020;
- The Claimant's witness statements are unsuitable to prove the Claimant's allegations on what was discussed during the 25 December 2020 meeting. None of these witnesses were present at the meeting. As far as the witness testimony refers to statements made by the Club's head coach, the head coach was also not in the meeting, and was not informed about the details of the conversation between the Claimant and the General Manager;
- After the Player's departure, the Club found itself in an uncertain (legal) situation absent any clear termination arrangement. Therefore, in order to obtain legal certainty, the Club initiated an alternative termination process pursuant Clause 5.1.2 of the Player Contract, which required, in a first step, to impose the Fines on the Player. When the Player did not respond to any of the notifications involving the Fines, the Respondent, on 22 January 2021, terminated the Player Contract. While the Player terminated the contract *de facto* on 25 December 2020, the Player Contract was formally terminated on 22 January 2021;
- Although the Respondent did not send the letters and notices to the Claimant's e-mail address, the Player must have been informed about them by his agents. The Player Contract was executed through the agent and his e-mail account. It is an established practice in the basketball business that (legal) communication between players and clubs is channelled through agents. Therefore, the Respondent was justified in trusting that all correspondence sent to the

Claimant's Russian agent would be received by the Claimant;

- The Claimant is not entitled to the payment of salary in any period of non-performance (notably between 26 December 2020 and 22 January 2021);
- The Claimant's allegation that the Respondent's payment of 26 February 2021 is an admission of the Claimant's claims is erroneous. The Respondent made this payment to comply with Russian labour law requiring the compensation of an employee for unused annual leave.

4.2.2 On the Counterclaim

- The Respondent's obligation to pay the Claimant's salary is the consideration for the Claimant's specific performance under the Player Contract. In the 2020-21 season, the Claimant fulfilled his obligations only until 25 December 2020 (corresponding to a *pro rata* salary in the amount of USD 650,000.00). From this amount, the Respondent already paid USD 512,907.80;
- Starting from 26 December 2020, the Claimant refused to perform, which constitutes a violation of the Player Contract. Accordingly, he is not entitled to any salary for the period from 26 December 2020 to 22 January 2021;
- As the Claimant refused to perform and to discuss the conditions of a mutual termination of the Player Contract, the Respondent had no other choice but to initiate the unilateral termination process;
- The Fines were duly imposed on the Claimant in accordance with the Player Contract and the Internal Regulations. The Fines are to be set-off against the remaining salary the Player was to receive. Accordingly, he does not have any outstanding salary claims;
- The Respondent terminated the Player Contract for just cause. Therefore, the Claimant is not entitled to the requested compensation payment in the amount of USD 285,000.00;
- If the Claimant is awarded salaries and salary compensation of USD 559,592.20 (USD 137,092.20 + USD 137,500.00 + USD 285,000.00) for the remainder of the

2020-21 season, the Respondent has a corresponding counterclaim, because the Respondent did not receive the Claimant's performance;

- Because the Player unlawfully terminated the Player Contract, the Respondent is entitled to a fair compensation for its loss of the Player's performance in the amount of USD 285,000.00:
 - When it signed the Claimant, the Respondent expected him to play the team for the entire 2020-21 season, and not only for parts if it;
 - Due to COVID-19 restrictions in place at the time, the Claimant arrived in Moscow only two weeks before the kick-off of the official season. He missed a substantial part (one full month) of the pre-season training;
 - Just when the Claimant began to be fully in shape and to meet the expectations placed in him, he decided to leave the team;
 - It was impossible to find a suitable replacement for the Claimant after his departure because players with his level of ability were all contractually bound to other clubs.

4.2.3 Request for Relief

56. In its Answer, the Respondent requests the following relief in respect of the Claimant's Main Claim:

"Based on the foregoing, I ask the BAT Arbitrator to refuse to satisfy the Claimant's claim in full"

57. With its Counterclaim, the Respondent requests the following relief:

*"Mr. Gregory Keith Monroe Jr. is obliged to pay the Club **559 592,20 USD** as compensation for the losses that will be incurred by it in the future due to the payment of salary under the Agreement without taking into account the fines applied to him and without taking into account the fact of the termination of the Agreement without following financial obligations.*

Mr. Gregory Keith Monroe Jr. is obliged to pay the Club fair compensation for the unjustified termination of the Agreement in the amount of 285 000 USD.

Mr. Gregory Keith Monroe Jr. is obliged to pay the Club all legal costs and expenses as compensation for the losses that will be incurred by it in the future due to the consideration of the Request for Arbitration on the payment of salary under the Agreement (case No 1710/21).

Mr. Gregory Keith Monroe Jr. is obliged to reimburse the Club all costs and expenses in conjunction with the filing of a counterclaim to BAT.”

5. The Jurisdiction of the BAT

58. Pursuant to Art. 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”).
59. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
60. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Art. 177(1) PILA.
61. The Player Contract (Clause 6.1) contains the following dispute resolution clause in favour of BAT:

“6.1. “Any dispute arising from or related to the present Contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.”

62. The arbitration agreement is in written form and thus fulfils the formal requirements of Article 178(1) PILA.
63. With respect to substantive validity, the Arbitrator considers that there is no indication

in the file which could cast any doubt on the validity of the arbitration agreement in the present matter under Swiss law (cf. Article 178(2) PILA).

64. However, in Clause 6.2 of the Player Contract, the Parties have agreed on a pre-arbitration procedure to be followed before the initiation of a BAT arbitration. The provision reads as follows:

“6.2. At this, the Parties have agreed to observe the prejudicial order of settlement of dispute(s).

Prior to submitting a complaint to the FIBA Basketball Arbitral Tribunal (BAT), the Player must submit his motivated claim to the Club in writing. The Player’s submission shall outline his claim but does not need to be the full claim to be submitted to BAT, and the Club acknowledges that it will not be prejudiced in this respect.

Such claim shall be reviewed by the Club within 10 (ten) calendar days from the moment it is received, after which the Club shall present to the Player a written motivated response. The Player shall have the right to apply to the FIBA Basketball Arbitral Tribunal (BAT) after the designated term for the review of the claim complaint by the Club, if the Player does not receive the written motivated response or if such response fails to satisfy the Player. Player is not obligated to accept any proposal submitted by the Club.”

65. The Arbitrator finds that the Claimant’s written notice of payment sent to the Club on 3 June 2021 (see above at paragraph 31) constitutes a *“motivated claim”* within the meaning of Clause 6.2 of the Player Contract. After the expiry of the 10-day time limit for the Respondent to send its *“motivated response”*, and after the Respondent’s refusal to make any payments in its letter of 15 June 2021 (see above at paragraph 32), the requirements under Clause 6.2 of the Player Contract were fulfilled, and the Player was entitled to initiate the BAT arbitration.
66. Finally, the Arbitrator notes that the Respondent did not challenge the jurisdiction of BAT and made extensive submissions on the merits of the case. The same is true for the Claimant in respect of the Counterclaim. As a result, the Arbitrator finds that she has jurisdiction to decide the present case, both in respect of the Main Claim and the Counterclaim.

6. Other Procedural Issues

6.1 Admissibility of the Counterclaim

67. The Claimant has challenged the timeliness of the Counterclaim, which the Respondent introduced as late as with its Reply. According to Article 11.4 of the BAT Rules, any counterclaim “*shall*” be contained in the Answer, *i.e.* in the Respondent’s first submission on the merits. The Counterclaim was submitted more than 3 months after the Answer. While BAT arbitrations shall principally be conducted as expeditiously as possible, in order to serve the BAT’s purpose to provide for a “*simple, quick and inexpensive means to resolve [basketball-related] disputes*” (BAT Rules, preamble), the nature and complexity of the Counterclaim need to be taken into account as well when determining whether or not it should be admitted.

68. Insofar, the Arbitrator finds that Article 11.4 does not exclude the Arbitrator’s right to admit a Counterclaim that was filed after the time limit for the Answer. In the present case, the Counterclaim is very closely connected with the main claim. It does not raise any additional complexity, because it relies on the very same facts introduced by the Respondent in its Answer to the Request for Arbitration. Hence, it would be procedurally inefficient to reject the Counterclaim as belated, and to force the Respondent to initiate a new arbitration, which would then have to address precisely the same topics that are already pending in the present proceedings. As a result, the Arbitrator finds that, due to the close connection of the Counterclaim with the main claim, and due to the fact that the Counterclaim only requires an additional legal assessment of the same facts, the Counterclaim is admissible.

6.2 Claimant’s Request for a Hearing

69. With his Reply, the Claimant lodged the following request:

"If the Sole Arbitrator would be of the opinion that the written witness statements are not sufficient and that additional information is needed, the Claimant suggest to a hearing of Dairis Bertans and Errick McCollum in regard to the events related to the Claimant after the team's return from Valencia and a team meeting on 25 December 2020."

70. For the reasons set forth below in the legal discussion, the Arbitrator is of the opinion that the written witness statements of (former) teammates of the Claimant are not relevant for the issues at stake in the present case. To the extent that it is relevant what was discussed in the 25 December 2020 meeting, none of the witnesses was present in that meeting. Their written statements are mere "*hearsay*" on what the head coach (who was also not present in that meeting) had allegedly said. The source of the information allegedly shared by the head coach with the team is also unclear. Therefore, the oral testimony of the witnesses would not have added any value to clarify the factual issues at stake here.
71. As a result, in accordance with Article 13.2 of the BAT Rules, the Arbitrator decided not to hold a hearing in the present case.
72. **Applicable Law – ex aequo et bono**
73. 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 reads as follows:
- "the parties may authorize the arbitral tribunal to decide ex aequo et bono".*
74. Under the heading "Applicable Law to the Merits", Article 15.1 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.”

75. In the arbitration agreement quoted above at paragraph 61, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to any other law. Consequently, the Arbitrator will decide the issues submitted to her in this proceeding *ex aequo et bono*.
76. 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’arbitrage¹ (Concordat)², 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.”³

77. 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*”.

¹ 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). .

² P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

³ JdT 1981 III, p. 93 (free translation).

78. In light of the foregoing considerations, the Arbitrator makes the findings below.

7. Findings

79. The Arbitrator will discuss, in turn, the Main Claim (below at **7.1**) and the Counterclaim (below at **7.2**).

7.1 Part One: The Main Claim

80. Claimant's Main Claim consists of three separate monetary positions:

- Salary until 25 December 2020 (the day before the Player left the Respondent), in the amount of USD 137,091.20 (net), see below at **7.1.1**;
- Salary from 26 December 2020 until 22 January 2021 (the day on which the Club delivered the Termination Notice), in the amount of USD 137,500.00 (net), see below at **7.1.2**;
- Salary compensation for the remainder of the contractual period as from 23 January 2021 in the amount of USD 285.000,00 (40% of the full salary that would have become payable until 15 June 2021), see below at **7.1.3**.

81. The question of whether the Fines imposed by the Club in the amount of USD 180,000.00 have to be set off, in whole or in part, against any of these salary claims, will be addressed below at **7.1.4**. The Player's request for the issuance of a tax certificate will be discussed below at **7.1.5**.

7.1.1 Salary until 25 December 2020

82. It is undisputed between the Parties that the Player, in principle, properly provided his services to the Club until 25 December 2020, *i.e.* that he participated in games and practices until that day. The Club's decision not to use his services in the away matches

on 16, 18 and 23 December 2020 does not affect the Player's salary payment claims under the guaranteed nature of the Player Contract (see, e.g., Clause 1.4 of the Player Contract).

83. It is also undisputed that from the total salary the Player is entitled to receive for the period between 15 September 2020 until 25 December 2020 (4x USD 150,000 [September to December], plus USD 50,000 [pro rata for 16 December until 25 December] = USD 650,000), the amount of USD 4,500 in fines is to be deducted, because the Player accepted these fines in this arbitration. Hence, the total salary amount the Player earned until 25 December 2020 (minus the fines) is USD 645,500.00.
84. In its Answer, the Club provided a detailed table of payments made by it, which stated a total of USD 508,407.80. In response to the Club's accounting, the Claimant confirmed to have received an amount of 508,408.80 (i.e. 1 EUR more than claimed by the Club). Claimant's request for relief is calculated on this basis. It refers to an outstanding amount for the relevant period of time of USD 137,091.20 (and adds the additional amount of EUR 137,500.00 in salary for the period addressed below at **7.1.2**, which sums up to the amount he requests, EUR 274,591.20). While the Arbitrator finds no explanation for the Claimant's version of the receipt of the higher amount, she is, in any event, barred from making a ruling *ultra petita*, i.e. to grant the Claimant more than he requests. Therefore, the Arbitrator accepts Claimant's calculation, which results in an outstanding amount of 1 EUR less than what is purported by the Club. As a result, the Arbitrator finds that the Player is entitled to receive USD 137,091.20 (net).
85. The question whether the Club validly set off the Fines against such amount will be discussed below at **7.1.4**.
86. The amount does not carry any interest, because the Claimant, in his Reply, no longer made any request for interest, despite the fact that Claimant is represented in this

proceeding by legal counsel. The Reply does not include any indication that the initial request for interest was to be maintained. Rather, the Claimant introduced new prayers for relief with his Reply (*"Taking everything into account, the Claimant requests as follows"*), without indicating that any original request not expressly mentioned shall be maintained.

7.1.2 Salary for the period between 26 December 2020 until 22 January 2021

87. The *pro rata* salary amount claimed by the Player for the period between 26 December 2020 and 22 January 2021 is USD 137,500.00. The question arises whether the Player is contractually entitled to receive any salary for this period, considering that he no longer offered his playing services to the Respondent after he left the Club on 26 December 2020 to return to the United States.
88. As a matter of principle, an employee's salary is the consideration for performance, or – if performance is not accepted by the employer – for a proper offer to perform. In the absence of performance, or of an appropriate offer to perform, the burden of proof is on the employee (here: the Player) to demonstrate that he or she is nevertheless entitled, under the contract or the law, to receive his or her salary. This central legal principle is also reflected in the Player Contract, which – in Clause 3.2.3 – confirms that the Player *"must be ready, at any moment, to resume fulfilling his duties under the Agreement"*.
89. In basketball, an important exception to this central principle of labour law is the fully guaranteed nature of playing contracts, which is agreed between players and clubs on a regular basis. In the present case, Clauses 1.4 and 2.4 include a payment guarantee on behalf of the Player as follows:

"1.4.[...]

In this regard, even if the Player is removed or released from the Club

*or this Agreement is terminated or suspended by the Club due to the Player's lack of or failure to exhibit sufficient skill due to the Player's illness, injury or other mental or physical disability (whether incurred on or off the court, with the exception of the instances specified in the Agreement) or for any other reason whatsoever **other than Player's direct and material breach of this Agreement, the Club shall still be liable to pay to the Player the full amounts set forth below on the dates set forth below.***" (emphasis added)

*"2.4. The Club is obliged to pay money to the Player in accordance with the schedule agreed by the Parties, regardless of any circumstances **other than the fact of the proper fulfilment of the obligations under this Agreement, including the provision of professional services by the Player as a basketball player to the Club.***" (emphasis added)

90. Under these provisions, the Club's decision to release the Player (and, accordingly, the waiver of its right to receive the Player's performance) for lack of skill, illness or injury does not compromise the Player's right to receive his salary. By contrast, the Player's unilateral decision to cease performance despite his ability to perform amounts to a forfeiture of his salary claims, because this scenario is not covered by the contractual guarantee contained in Clauses 1.4 and 2.4 of the Player Contract.
91. The reason for the Player's departure on 26 December 2020 is at the core of the present dispute. While the Player alleges that the Club, during the meeting on 25 December 2020, permitted him to leave the team (which scenario would not compromise his salary claim under Clauses 1.4 and 2.4 of the Player Contract), the Club purports that the Player unilaterally, and without any authorization, left the Club to return to the United States (which scenario would not be covered by Clauses 1.4 and 2.4 of the Player Contract and would result in the forfeiture of his salary claim). Hence, the central question is whether the Player's departure and following absence from the Club was authorized by the latter. The burden of proof in this respect rests on the Claimant, as the party seeking a right from the alleged permission to leave.
92. In support of his claim, the Player submitted the written statements of three of his teammates, who do not, however, have direct knowledge of what was discussed in the

meeting on 25 December 2020 because they were – undisputedly – not present in that meeting. These witness statements center around the argument the Player had with the head coach in mid-December, after the game against CSKA Moscow. This argument, however, has no bearing on what was discussed in the 25 December 2020 meeting. With respect to the meeting itself, one witness does not give any testimony at all, and two witnesses testify that the head coach later said that the Player *“is not a member of the team any more and that the club is sending him home.”* The head coach was undisputedly not present in the meeting either. The Claimant does not explain where the information spread by the head coach came from. In the end, the testimony of Claimant’s witnesses remains vague and is double hearsay. For the reasons set forth immediately below, such indirect evidence does not support Claimant’s position and is insufficient to meet his burden of proof:

- The Respondent submitted a witness statement of one of its sports directors, Mr. Trofimenko. Although the Claimant purports that he *“does not recall Mr. Trofimenko being present at the meeting on 25 December 2020”*, the Arbitrator is comfortably satisfied that Mr. Trofimenko witnessed the meeting. That the Claimant *“does not recall”* his presence does not exclude that Mr. Trofimenko was indeed present, particularly in light of the fact that his role was that of a passive observer rather than of an active speaker. Furthermore, Mr. Trofimenko’s witness statement comprises significantly more detail than the statements of the Claimant’s teammates. The description of the discussion between the Player and the general director (which Mr. Trofimenko directly witnessed) is not only very detailed, but appears coherent and plausible. Claimant has not requested a cross examination of the sports director, thereby waiving the opportunity to discredit his written testimony, which would have been well possible if his assertion were correct that Mr. Trofimenko did not attend the meeting. Mr. Trofimenko’s statement is also not one-sided or self-serving. Rather, Mr. Trofimenko explained in clear terms that the Player did not bash the Club in general, but focused on his difficulties with the head coach

which he was concerned would affect his further game. This is plausible, also in light of the earlier argument between the Player and the head coach that led to the Player's non-nomination for the following away games-series.

- The version of the Club is corroborated by the e-mail which the Club sent to the Player's Russian agent (Mr. Stanislav Ryzhov) after the meeting, on 25 December at 4:31 pm. The letter attached to this e-mail informed the agent that the Player had stated his intention to leave the Club in the nearest future, and that the Club would consider such action "*as a unilateral rejection to fulfill the obligations as per the [Player Contract]*". The letter also expressly mentions Mr. Trofimenko as a participant of the meeting. The e-mail and the letter were sent to the e-mail address "_____", which belongs to the Claimant's Russian agent. From that same e-mail address, the Player's draft settlement agreement was sent to the Club only two days later (see above at paragraph 22). The letter, the content of which is consistent with the Respondent's portrayal of the facts in the present proceeding, remained uncontested. At the time, the Player's agents did not reject the Club's summary of the discussions in the meeting, including the fact that Mr. Trofimenko attended the meeting, and including the Player's (alleged) announcement to leave. One would have expected an immediate objection and corrective statement had the agents considered any of the Club's statements false. The fact that the letter (which was sent to the e-mail address used by the Player's Russian agent only two days later) remained unanswered is a strong indication that its contents were – to say the least – not blatantly wrong.

93. Against the background of the compelling counter-evidence submitted by the Club, the Arbitrator is not comfortably satisfied of the Claimant's portrayal of the relevant events. In addition, Claimant's version lacks any detail as to the terms and conditions of the Club's alleged authorization. Given that the Player's story of the Club's permission for him to leave immediately and without any consequences is such a significant departure

from the terms of the Player Contract (full salary without any performance), it would have been obvious for any reasonable party to obtain such authorization in written form, in particular in light of the immense impact the issue had on the Player's salary claims, and also given that the Player was represented by two professional agents.

94. As a result, the Player is not entitled to receive any salary for the period of 26 December 2020 until 22 January 2021.

7.1.3 Salary compensation for the remainder of the contractual period as from 23 January 2021

95. As from 23 January 2021 until the end of the 2020-21 season, the Claimant requests salary compensation in the amount of USD 285,000.00 (=40% of the remaining salary) based on the Respondent's alleged unjust termination of the Player Contract.
96. As explained above in the facts section (paragraph 28), the Club terminated the Player Contract on the basis of its previous warnings because of the Player's absence from practices and games. Between 7 and 14 January 2021, the Club sent daily warnings to the Player and imposed fines totalling USD 180,000.
97. The Arbitrator finds that the Club's termination remained without any effect, because the Player Contract was no longer in existence when the Club initiated the termination. On the Club's own account, the Player's definite leave on 26 December 2020 qualified as a "factual termination" of the Player Contract. The Club's reliance on a subsequent Termination Notice is incompatible with this notion of a factual termination.
98. In fact, while the Parties, in the present proceeding, vigorously fought about what the reason for the Player's departure in December 2020 was, they silently agree that the Player's actions factually brought an end to their contractual relationship. The record makes it clear that neither of the Parties expected that the Player would return. The

Club admitted that its warnings and termination notices had the sole purpose of removing any potential legal uncertainty by creating a paper trail in respect of a termination that had occurred already weeks before, when the Player's departure created a *fait accompli*.

99. As a result, the Club's Termination Notice was irrelevant and ineffective and cannot form the basis for any salary compensation claim by the Player. Since it was the Player who initiated the termination of the Player Contract by leaving the Club in an unauthorized manner, there is no legal basis for any damages claim (in the form of salary compensation) from the beginning.
100. Therefore, the Claimant's request for salary compensation in the amount of USD 285,000.00 must be dismissed.

7.1.4 Did the Club validly set off the Fines against the outstanding salary?

101. As stated above, the Player is - in principle - entitled to outstanding salaries in the amount of USD 137,091.20 for the contractual period until 25 December 2020.
102. Clause 4.1 of the Player Contract provides that the Club, in case of the Player's breach of his contractual duties, has the right to withhold any fines from the monthly salary amount due to the Player. In principle, it would, therefore, be conceivable to offset the Fines imposed against the Player's unpaid salary. However, as explained above in Section 7.1.3, the Player Contract was factually terminated already in December 2020, and both Parties had the respective understanding that the Player would not return to resume his duties. Therefore, the contractual basis for the imposition of the Fines was no longer existent at the time. As a result of the factual termination, and in case it is established that the Player breached his duties when he left the Club, the Respondent could, potentially, have claims for damages for the unlawful termination of the contract (as introduced, in fact, with the Counterclaim). However, the Respondent cannot derive

new claims from a contract that it claims has been factually terminated, when the Player was no longer obligated nor expected to perform under the Player Contract.

103. As a result, the Fines carry no legal effect and cannot be set off against the Player's outstanding salary claims.

7.1.5 Tax Certificate

104. According to Clause 3.1.1.1. of the Player Contract, the Club has the following obligations:

"3.1.1.1. The Club shall make all payments of the Russian taxes on behalf of the Player (Article 2). All payments to the Player, as outlined in this Agreement shall be free and clear (net) of all local, national or any other social taxes or fees levied in Russia under Russian Tax Laws. Club will give the Player an official statement indicating that all Russian taxes have been paid by the Club on behalf of the Player."

105. In view of this contractual duty, the Arbitrator finds that the Player is entitled to a tax certificate indicating that all Russian taxes have been paid by the Club on behalf of the Player.

7.2 Part Two: The Club's Counterclaim

106. Respondent's Counterclaim consists of two parts (see above at paragraph 57).
107. In the first part, Respondent seeks damages that form the precise mirror image of the payment claims lodged by the Claimant (*"compensation for the losses that will be incurred by [Respondent] in the future due to the payment of salary under the Agreement without taking into account the fines applied to him and without taking into account the fact of the termination of the Agreement without following financial obligations."*).

108. This claim has to be dismissed. As demonstrated above at Section 7.1, the Claimant is only entitled to those salaries which he earned until 25 December 2020. This salary is not a “damage” for the Respondent, because the Respondent received the Claimant’s due services for this salary. Similarly, the fact that the Respondent is not entitled to collect the Fines it imposed after the factual termination of the Player Contract (see above at Section 7.1.4) is not a “damage” suffered by the Respondent as a result of the Claimant’s departure, because it was just the Club’s disciplinary reaction to the Player’s wrongdoing.
109. In the second part, the Respondent seeks damages in the amount of EUR 285,000,00 as compensation for the Player’s unjustified termination of the Player Contract, which resulted in the Club’s loss of the Player’s services. While the Arbitrator finds that, in principle, the unlawful termination of an employment contract in the middle of the season forms a legitimate basis for a club’s request to be compensated for the losses caused by that termination, no such losses have been established by the Club in the present case. Losses that are recoverable may be, in principle, the transfer fee for a replacement player, or any higher salary the Club is forced to pay to a replacement player. However, the Club does not seek any such damages. Instead, the Club argues, in rather generic terms, that it suffered a damage because the Player was no longer with the team. It is unclear, however, what the financial impact of the Player’s absence was. The amount of USD 285,000.00 is a fictitious number not corroborated by any explanation, let alone evidence. Even in cases where the Arbitrator is entitled to estimate a damage due to certain difficulties of proof, or due to the need to project the future, the party seeking damages always has to establish tie-in factors as a basis for an estimation. No such tie-in factors have been offered by the Club.
110. As a result, the Counterclaim has to be entirely dismissed.

7.3 Summary

111. The Player is entitled to receive USD 137,091.20 net of all Russian taxes in outstanding salaries together with a tax certificate. All other claims are dismissed.

112. The Counterclaim is rejected in its entirety.

8. Costs

113. In respect of determining the arbitration costs, Article 17.2 of the BAT Rules provides as follows:

“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). [...]”

114. On 8 July 2022, the Vice-President of the BAT determined the arbitration costs in the present matter to be EUR 14,050.00.

115. With respect to the allocation of the arbitration costs between the Parties, Article 17.3 of the BAT Rules provides as follows:

“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.”

116. Approximately 25% of the Claimant's payment claims are granted. 75% are rejected. The Counterclaim remained entirely unsuccessful. Hence, the Parties were largely unsuccessful with their claims, with only the Claimant winning on a smaller part of the Main Claim. Considering the outcome of the proceedings, the Arbitrator, deciding *ex aequo et bono*, finds it fair and just for the Claimant to bear 35% of the overall arbitration

costs, while the Respondent shall bear 65% of the arbitration costs. Hence, from the total arbitration costs of EUR 14,050.00, the Claimant shall bear EUR 4,917.50, and Respondent shall bear EUR 9,132.50. Considering that the Claimant paid an advance of EUR 11,000, Respondent shall reimburse Claimant in the amount of EUR 3,632.50. The remainder of the un-used Advance on Costs in the amount of EUR 2,450.00 will be reimbursed to the Claimant by the BAT.

117. Regarding the Parties' legal fees and expenses, Article 17.3 of the BAT Rules provides that

"[...] 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."

118. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses. The maximum contribution for an amount in dispute over EUR 1,000,000.00 (excluding the handling fee) according to Article 17.4 of the BAT Rules is EUR 40,000.00. The amount in dispute (including the amount of the Counterclaim pursuant to Article 17.5 of the BAT Rules) in this case is approx. EUR 1,324,372.00 (USD 1,400,000.00).

119. The Parties claim the following reimbursement for lawyer's fees and expenses:

- EUR 23,400.00 (legal fees and expenses for the Claimant)
- EUR 111.20 (legal fees and expenses for the Respondent)

120. In light of the complexity of the case and the high value at stake, the Arbitrator finds that Claimant's legal fees are principally proportionate and sufficiently established. The

Claimant provided a detailed breakdown of his counsel's hours (78.00) and hourly rates (EUR 300.00/hour). Hence, in consistence with the cost allocation applied for the advance on costs, the Arbitrator decides that the Claimant shall receive a contribution to his legal fees in the amount of 65%, i.e. EUR 15,210.00. The same applies to the handling fee paid by the Claimant. 65% of EUR 5,000 is EUR 3,250.00, which Claimant shall receive as a reimbursement.

121. Respondent shall bear its own legal fees and the handling fee paid for the Counterclaim.
122. In summary, therefore, the Arbitrator decides that in application of Articles 17.3 and 17.4 of the BAT Rules:
 - (i) The Respondent shall pay EUR 3,632.50 to the Claimant as a reimbursement for the advance on costs; and
 - (ii) The Respondent shall pay EUR 18,460.00 (EUR 15,210.00 in legal fees, EUR 3,250.00 as handling fee) to the Claimant, representing the amount of his reasonable legal fees and other expenses.

9. Award

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

- 1. BC Khimki is ordered to pay Mr. Gregory Keith Monroe Jr the amount of USD 137,091.20 net of taxes in outstanding salaries.**
- 2. BC Khimki shall provide Mr. Gregory Keith Monroe Jr with a tax certificate which documents that the correct amount of Russian taxes has been paid to the Russian Tax Authority in the name of Mr. Gregory Keith Monroe Jr.**
- 3. The Counterclaim is dismissed in its entirety.**
- 4. BC Khimki shall pay to Mr. Gregory Keith Monroe Jr EUR 3,632.50 as a reimbursement for the arbitration costs.**
- 5. BC Khimki is ordered to pay to Mr. Gregory Keith Monroe Jr EUR 18,460.00 as a contribution towards his legal fees and expenses.**
- 6. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 12 July 2022

Annett Rombach
(Arbitrator)