



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1813/22)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Mr. Jarrell Isaiah Brantley

- Claimant -

represented by Messrs. Juan de Dios Crespo Pérez & Alessandro Mosca,
attorneys at law

vs.

Basketball Club Unics
420107, Kazan, Spartakovskaya str. 1, Russia

- Respondent -

represented by Mr. Evgeny Bogachev, President of the Respondent

1. The Parties

1.1 The Claimant

1. Mr. Jarrell Isaiah Brantley (the “**Player**” or “**Claimant**”) is a professional basketball player of U.S. nationality.

1.2 The Respondent

2. Basketball Club Unics (the “**Club**” or “**Respondent**”) is a professional basketball club located in Kazan, Russia.

2. The Arbitrator

3. On 10 May 2022, 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. On 15 September 2021, the Player and the Club entered into an employment agreement, pursuant to which the Club engaged the Player as a professional basketball player for the 2021-22 season (the “**Player Contract**”). Pursuant to Clause 1.1 of the Player Contract, the season was to begin for the Player on 20 September 2021 and end 5 days after the last official game of the Russian championship (VTB League) or European competition (whichever came later).

5. The Player's duties as the Club's employee were defined in Clause 2 of the Player Contract:

"2.1 By this contract and during its entire duration the Player undertakes to provide the Club with the following services and activities at the time and place fixed by the Club

- *Attendance at any training camp, at any practices and meetings conducted by the Club during the whole season*
- *Playing all 100% games at a national and international championships scheduled by and for the Club during the whole season.*

[...]

By signing this very Agreement the Player agrees to follow Regulations of Behavior and duties of Player of BC UNICS which is an integral part of the agreement and is compulsory to fulfil by the Player. In case of breaching the Player shall pay the fees provided by rules of RFB and Regulations of Behavior and duties of BC UNICS."

6. Pursuant to Clause 3.1 of the Player Contract, the Player was to receive a total net salary of USD 450,000.00, payable as follows:

"The payment schedule is as follows:

1-st payment – October 10, 2021 – 50 000 US Dollars

2-d payment – November 10, 2021 – 50 000 US Dollars

3-d payment – December 10, 2021 – 50 000 US Dollars

4-th payment – January 10, 2022 – 50 000 US Dollars

5-th payment – February 10, 2022 – 50 000 US Dollars

6-th payment – March 10, 2022 – 50 000 US Dollars

7-th payment – April 10, 2022 – 50 000 US Dollars

8-th payment – May 10, 2022 – 50 000 US Dollars

The last payment will be paid within 7 working days after the last official game of the season – 50 000 US Dollars." (bold original)

7. Clause 3.1 of the Player Contract further provided the Club with a termination right in case of a breach of contract by the Player. The relevant provision reads as follows:

"The Club has the right to immediately terminate this Contract and stop all the payments under the contract in the following cases:

[...]

- *The Player breaches Internal disciplinary Regulations of the Club, the disciplinary rules of FIBA, VTB League, Euroleague and/or Russian Basketball Federation, [...]"*

8. In the event of an unjustified unilateral withdrawal from the Player Contract by the Player, Clause 11 provided the Club with a compensation claim:

“11.1. In the event that the Player withdraws unilaterally from this Contract before its expiration and the FIBA arbitration decides that the player was in a breach of the contract then the Player is obliged to return to the club all the money he has received up to the moment as a compensation to the Club. The compensation shall be paid on the Club’s account within 10 days after contract annulment.”

9. Clause 9 of the Player Contract contained a force majeure clause (“**Force Majeure Clause**”), which reads as follows:

“9.1 The parties shall be exempted from liability for partial or full failure to fulfil obligations under this agreement if this failure was the result of force majeure circumstances arising after the conclusion of the agreement as a result of extraordinary events that the party could neither foresee nor prevent by reasonable measures (force majeure). Such emergency events include: flood, fire, earthquake, explosion, storm, subsidence, pandemics, epidemics and other natural phenomena, as well as war or hostilities, a strike in an industry or region, government restrictions, the announcement of the “Emergency” regime on the territory of the Russian Federation and / or the Republic of Tatarstan, the adoption of a decision by the state authority or administration that entailed the impossibility of fulfilling this agreement.

9.2 In the event of force majeure circumstances, the party for which the impossibility of fulfilling its obligations under this agreement was created must verbally inform within three business days, and in writing within 7 business days to the other party.”

10. Together with the Player Contract, the Player received and signed the Club’s regulations of behaviour and duties of Player (“**Regulations**”). In relevant part, the Regulations imposed the following obligations on the Player:

“1. To perform the basketball services to the Club participating in the competitions and the training process of the basketball team “UNICS”.

[...]

4. To keep himself in a good physical condition in time and place set by Club throughout the season and be ready to participate in all games and competitions of the basketball team UNICS, to accept without any objections the means of transport and the routine, to engage himself to fulfil his activities as a basketball player and to perform at the proper level in the official competition of Club hold during the season and cup competitions and exhibition games.

[...]

18. In case of breaching his obligations the Player is obliged to pay the following fees:

[...]

18.17 Unilateral refusal to perform his obligations under the contract, leaving the Club before the end of the season - up to 100% of the sum of the contract or annulment of the contract. [...]"

11. In January 2022, the Player became increasingly dissatisfied with his role in the team, with the Coach not giving him the amount of playing time he had wished for. Therefore, on 20 and 21 January 2022, the Player's agent sent the following messages to the Club's sport director:

"Great win for sure.

Obviously I'm frustrated and I think we should start looking at alternatives. We didn't leave the NBA to sit.

[...]

I don't begrudge the success but cannot understand why he [the Club's head coach] can't give the kid [the Player] a role?"

12. On 25 January 2022, the Player's agent sent a WhatsApp message to the Club's sport director addressing the political escalation between Russia and Ukraine (*"Let's stay in touch regarding all the political stuff that is going on. Hoping this result turns around"*). The Club's sport director informed the agent that the situation in Russia was normal and promised further updates (*"I will keep you updated when I have more news, so far it looks like we will not have any problem... In Russia everything is normal."*).

13. During the Club's game against BC Enisey on 13 February 2022, the Club's head coach substituted the Player, following which the Player went to the locker room without the head coach's permission. Later, the Club's sport director sent the following message to the Player's agent:

"We have a problem During the second quarter, when Jarrell was replaced by coach, he went straight to the locker room. Leaving the team....

He returned to his seat after 5 minutes ...

Let's talk about it in an hour if you have time, at the end of the game ..."

14. The Player's agent replied as follows:

"At this point it's obvious the coach doesn't like him and this stuff is personal. I could tolerate his bullshit earlier but at this point the coach is doing damage and went to far as to say 'you can go home, I'm done with you'.

He may pull that nonsense with other agents players but not mine and if he has a problem with that he call muster the balls to call me himself.

I think it's best we work out a settlement and leave before this coach can cause some real damage."

15. On 14 February 2022, the Player's agent sent another message to the Club's sports director, proposing the immediate termination of the Player's employment by way of a settlement:

"Hey Claudio,

Thanks for taking the time to sit with JB today. I appreciated it because we know he's in a terrible situation with that coach.

My stance in this should be 100% clear. I am absolutely in favour of JB leaving Kazan, however I'm not willing to make a deal that doesn't make financial sense for my client.

I am going to take the next few days to search for a situation that would be better for him and would be happy to receive your input as well.

Once I have a clear picture of what I'm facing in the market, we can start to talk about numbers. I understand the need for speed on both sides and am equally eager to finish this.

I will leave that part to you and Paolo, so that you don't feel like your negotiating with two people."

16. On 24 February 2022, Russia started a military intervention in Ukraine. On the same day, the Council of the North Atlantic Treaty Organization (NATO) and the Secretary General of the United Nations (UN) condemned the military attack and urged Russia to immediately cease any action and withdraw its forces from Ukraine.

17. On the same day, the CEO of the EuroLeague Basketball announced the suspension of all games involving Russian clubs, including the game of the Respondent against Bitci Baskonia Vitoria-Gasteiz, as a "precautionary measure according to Article 151 of the EuroLeague Bylaws".



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18. On 25 February 2022, the EuroLeague decided to temporarily move the Russian clubs' home games to neutral territory. It was also announced that the final decision on the dates and venues of the Russian clubs' home games would be made on 28 February 2022. On the same day, the EuroLeague Players Association (ELPA) made the following public statement:

“In the light of unprecedented events in Ukraine and the upcoming EuroLeague and clubs' meeting, we insist that any decisions made about the continuation and regularity of the competition are done with players, coaches, club personnel and referees safety in mind as an absolute number one priority.”

19. Between 25 and 27 February 2022, the U.S. Embassy & Consulates in Russia provided daily information and instructions for U.S. citizens living in Russia, which are quoted, in relevant part, below:

25 February 2022	<p><i>“There are reports of Russian attacks on targets in several Ukrainian cities, including Kyiv. As part of its military invasion of Ukraine, the government of Russia imposed airspace restrictions and closed a number of Russian commercial airports until at least March 2. Additional airport closures and restrictions to Russian airspace may occur with little or no notice.</i></p> <p>[...]</p> <p><i>Actions to Take:</i></p> <ul style="list-style-type: none"> • <i>Avoid the areas of Russia along its border with Ukraine.</i> • <i>Monitor local and international media for updates.</i> • <i>Notify friends and family of your safety.</i> • <i>Be aware of your surroundings.</i> • <i>Review your personal security plans.</i> • <i>Carry proper identification, including a U.S. passport with a current Russian visa.</i> • <i>Have a contingency plan that does not rely on U.S. government assistance.”</i>
26 February 2022	<p><i>“There are multiple reports of non-Russian credit and debit cards being declined in Russia. The problem appears to be related to recent sanctions, imposed on Russian banks following the unprovoked and unjustified attack by Russian military forces in Ukraine. U.S. citizens in Russia should be prepared with alternate means of payment should cards be declined.</i></p> <p><i>The U.S. Embassy reminds U.S. citizens that the Department of</i></p>



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	<p><i>State's Travel Advisory level for Russia is at "Level 4: Do Not Travel."</i></p> <p><i>Do not travel to Russia due to the unprovoked and unjustified invasion of Ukraine by Russian military forces, the potential for harassment against U.S. citizens by Russian government security officials, the singling out of U.S. citizens in Russia by Russian government security officials including for detention, the arbitrary enforcement of local law, limited flights into and out of Russia, the Embassy's limited ability to assist U.S. citizens in Russia, COVID-19 and related entry restrictions, and terrorism. U.S. citizens residing or travelling in Russia should depart Russia immediately."</i></p> <p>[Bold original]</p>
27 February 2022	<p><i>"An increasing number of airlines are cancelling flights into and out of Russia, and numerous countries have closed their airspace to Russian airlines. U.S. citizens should consider departing Russia immediately via commercial options still available."</i></p>

20. On 27 February 2022, at 11:19 am, the Player arrived at the Club's training facilities. The Player did not participate in the Club's team pre-match practice for the game against BC Olimpia Milan on 1 March 2022. Instead, he informed the Club's management about his decision to leave Russia with his family due to a force majeure situation caused by the war between Russia and Ukraine. Despite the Club's President request that he stays with the team, the Player left the Club's premises two hours later, around 1:30 pm.
21. In the early evening of 27 February 2022, the Player's agent contacted the Club's sport director with a view to find an amicable solution to the dispute. Shortly thereafter, at 8:15 pm, the Player's agent sent a draft settlement agreement to the Club's sport director. The draft proposed the immediate termination of the Player Contract against payment of USD 50,000.00, representing the outstanding February salary. Any and all claims were to be definitely and conclusively settled through this arrangement.
22. A few minutes later (still on 27 February 2022), at 8:57 pm, the agent sent the Club's

sport director the following e-mail:

[...]

As you perfectly know, both me and Jarrell personally duly informed you about his necessity to leave the country due to the current war, in which Russia is directly involved, which exempts Jarrell from liability for failure to fulfil obligations under the employment contract. Afterward, we also verbally agreed on a settlement and Jarrell's departure. I'm frankly surprised you then stopped communicating with us and now refuse to confirm our agreement.

Jarrell will leave the country, as he's entitled to do and as agreed, and your current lack of communication doesn't change the situation.

I kindly request you once again to simply acknowledge receipt of my emails/messages in order to avoid uncomfortable consequences.

[...]"

23. A few hours later, the Club's sport director responded as follows (via WhatsApp):

"Tod, Sorry to correct you. I never talk to you that Jarrell was leaving the team. I informed Paolo and Jarrell the 23rd of February that we could not sign any players and we were going to keep him in the roster until the end of the season. Not only, the coach told him that he was giving him more playing time....

He came today, he decided to do not practice and he informed us that he was going home to the states. I forwarded your email to Elvira and to our attorney. The Club will decide what to do. This topic is no more in my hands."

24. On 28 February 2022, at 2:00 am in the morning, the Claimant left Russia together with his wife and daughter and flew to Charlotte, USA. The flight tickets cost USD 5,478.49. Until that day, the Club had paid salaries to the Player in the total amount of USD 250,000.00.

25. On the same day, the U.S. Embassy & Consulates in Russia released the following recommendations:

*"Do not travel to Russia due to the **unprovoked and unjustified attack by Russian military forces in Ukraine**, the potential for **harassment against U.S. citizens by Russian government security officials**, the **embassy's limited ability to assist U.S. citizens in Russia**, **COVID-19** and related entry restrictions, terrorism, limited flights into and out of Russia, and the **arbitrary enforcement of local law**. U.S. citizens should consider departing Russia immediately via commercial options still available.*

Due to Russia's further invasion of Ukraine, an increasing number of airlines are cancelling flights into and out of Russia, and numerous countries have closed their airspace to

Russian airlines. In addition, air space around southern Russia is restricted and a number of airports in the area have closed. U.S. citizens located in or considering travel to the districts of the Russian Federation immediately bordering Ukraine should be aware that the situation along the border is dangerous and unpredictable.

The U.S. government's ability to provide routine or emergency services to U.S. citizens in Russia is severely limited, particularly in areas far from the U.S. Embassy in Moscow due to Russian government limitations on U.S. staffing and travel, and the ongoing suspensions of operations, including consular services, at U.S. consulates."

26. On 28 February 2022, the EuroLeague announced the suspension of Russian teams from participation in the EuroLeague and EuroCup. As a result, the Club's game against BC Olimpia Milan scheduled for 1 March 2022 was cancelled. The team, which had left Kazan to travel to Milan in the morning of the same day (without the Player) had to return to Kazan. On the same day, the EuroLeague also announced the freeze of its marketing partnership with the VTB Bank.

27. On the same day, the Club took the following resolution regarding the Player:

"In violation of the terms of the agreement dated September 15, 2021, concluded with the UNICS Basketball Club, forward Jarrell Isaiah Brentley did not appear at the team's pre-match training on February 27, 2022, left the club's location without permission and flew out of the city at 02:00 on February 28, 2022. Kazan to his homeland in the USA, without going with the UNICS basketball team to Milan for the away match of the regular Euroleague championship with the Olimpia Milan team, which is to be held on March 1."

28. With respect to other foreign players under contract with the Respondent, the President, still on 28 February 2022, publicly announced that "[w]e will send all the foreign players and coaches home, everyone is scared."

29. This decision was confirmed on the next day, when the Club's general manager announced the following:

"We will leave everyone free, at least until the situation settles down. Unfortunately, the situation is complicated. And we, in Kazan, are much farther from Kiev than many other teams."

30. Still on 1 March 2022, with the Club's express consent, foreign players Lorenzo Brown (USA), Isaiah Canaan (USA) and Marco Spissu (Italy) left Kazan. Lorenzo Brown and

Marco Spissu returned to the Club later in the season to play in the VTB United League. By contrast, Isaiah Canaan's contract was terminated by mutual agreement.

31. On 1 March 2022, the Club sent a termination letter to the Player ("**Termination Letter**"), which provided the following:

[...]

In Violation of the terms of clause 2.1 of the Agreement and the provisions of the Regulations, forward Jarrell Isaiah Brantley did not appear at the pre-match training session of the team on February 27, 2022 and left the club's location without permission and at 02-00 hours on February 28, 2022 flew from Kazan to his homeland in the United States without going with the basketball team UNICS to Milan for the away match of the regular season of the EuroLeague with the team "Olympia Milan", which was to be held on March 1.

[...]

According to clause 3.1. The Club has the right to immediately terminate the agreement and stop all payments to the Player under the agreement if the Player violates the Internal Disciplinary Rules of the Club.

According to clause 11.1. of the Agreement "In case of groundless unilateral termination of this agreement at the initiative of the Player during the entire period of validity, he undertakes to pay the Club all the money received by him up to this point as compensation.

Compensation is to be paid to the Club's current account within 10 days after the termination of the contract.

Sine the Agreement is terminated from March 01, 2022 due to the Player's fault, the Club asks, in accordance with clause 11.1 of the Agreement, to pay the Club, by March 11, 2022, the funds received by the Player in the amount of 250,000 (Two hundred and fifty thousand) US Dollars."

32. The Player's counsel answered the Termination Letter as follows:

[...]

On the same day, being 27 February 2022, the Player's agents and the Club were negotiating a settlement agreement, so the former delivered by email a draft for its review. Surprisingly, the Club stopped communicating with the Player's agents, despite the latter's many messages and emails, which have remained unanswered. Right before the Player's departure, the Club changed its mind and informed the Player's agent it was not going to release the Player. Afterward, the Player's agent unsuccessfully tried again to contact the Club, receiving no meaningful reply.

We now understand the Club purposely adopted such strategy exclusively aimed at terminating the Contract and requesting compensation, while the Player was negotiating in good faith a settlement agreement in wartime. We harshly condemn the Club's



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misbehaviour and bad faith, even more considering the undisputed force majeure and alarming situation in which the Player and his family were forced to live. Furthermore, it is superfluous to state that the Club never travelled to Milan for the Euroleague away game against Olimpia Milano, since the Euroleague had suspended the participation of the Club in the competition on 28 February 2022, let alone that the European Union had imposed a blanket flight ban on Russian planes on 27 February 2022.

In view of the above events, the Player was fully entitled to be temporarily exempted from any liability for failure to fulfill obligations under the Contract as a consequence of the renowned force majeure circumstance related to the war between Russia and Ukraine, as per article 9 of the Contract, as communicated verbally by the Player and in written by his agent and by means of this notice.

It shall also be mentioned that, on 28 February 2022, the Club's President declared to the press "Now we will send all the foreign players and coaches home, everyone is scared". In the same line, on 1 March 2022, the Club's General Manager declared to the press "We will leave everyone free, at least until the situation settles down. Unfortunately, the situation is complicated. And we, in Kazan, are much farther from Kiev than many other teams".

The Player did everything possible to find an amicable solution beneficial for both parties, while the Club was maliciously orchestrating the Termination on his back let alone that, theoretically speaking, the alleged violation would never justify a unilateral and immediate termination of an employment relationship.

In consideration of the foregoing, the Club terminated the Contract without just cause and the Player is entitled to compensation for damages. Nevertheless, we hereby grant the Club a last chance to propose an amicable solution to solve the present matter by 11 March 2022, at the latest.

[...]"

33. Subsequently, the Player signed an employment contract with the NBA G-League, pursuant to which he was placed in the so called "waiver pool" for teams to claim him. Hence, the NBA G-League requested the Player's Letter of Clearance ("**LOC**") from the Russian Basketball Federation.
34. On 5 March 2022, the Respondent's President, together with the Head of International Department, called the Player's agents, informing them that the Club would only issue the Player's LOC if the Player waived his outstanding salaries and other claims against the Club.
35. On 7 March 2022, the Player's counsel requested the issuance of the Player's LOC in writing. On the same day, the Claimant informed the FIBA about the LOC dispute with the Club. In the following days, the Parties exchanged further letters in which they

insisted on their respective positions as to the cause of the termination of the Player's employment.

36. On 13 March 2022, the G-League club Greensboro Swarm signed the Player from the "waiver pool". The Player spent twenty (20) days with Greensboro Swarm, receiving a total salary of USD 4,484.84. Subsequently, the Player signed an employment contract with the Puerto Rican club Leones de Ponce BC. Until 26 May 2022, the date of the Club's last game in the VTB United League (see below), the Player received a salary of USD 23,167.74 from Leones de Ponce BC.
37. On 22 March 2022, the EuroLeague announced the withdrawal of Russian teams from both the EuroLeague and the EuroCup for the 2021-22 season.
38. Although two foreign clubs withdrew their participation, the 2021-22 season of the VTB United League was completed. The Club played its last game on 26 May 2022 against PBC Lokomotiv Kuban.

3.2 The Proceedings before the BAT

39. On 19 April 2022, 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 3,938.16¹ had been received in the BAT bank account on 14 April 2022.
40. On 11 May 2022, 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

¹ The applicable handling fee in this matter is EUR 4,000.00 (Article 17.1 of the BAT Arbitration Rules). The outstanding amount of EUR 61.84 was added by the BAT to the Advance on Costs payable by the Claimant, see below at ¶ 40.

accordance with Article 11.4 of the BAT Rules by no later than 1 June 2022 (the “**Answer**”), and fixed the amount of the Advance on Costs to be paid by the Parties by 23 May 2022 as follows:

<i>“Claimant (Mr. Jarrell Brantley)</i>	<i>EUR 6,061.84 [...]</i>
<i>Respondent (BC Unics)</i>	<i>EUR 6,000.00”</i>

41. On 31 May 2022, the Respondent filed its Answer.
42. On 3 June 2022, BAT acknowledged receipt of the Respondent’s Answer and of the full amount of the Advance on Costs, paid by the Parties, respectively. In the same procedural order, the Arbitrator invited the Parties to consider the option of an amicable settlement of the dispute. The Parties were invited to inform the BAT by no later than 10 June 2022 whether they would be interested in settlement discussions moderated by the Arbitrator. Within the set time limit, both Parties expressed their interest in the proposed settlement discussions.
43. On 9 June 2022, the BAT informed the Parties that a settlement hearing (“**Settlement Hearing**”) would take place on Monday, 20 June 2022 at 10:00 am (CET).
44. On 20 June 2022, the Settlement Hearing took place by video conference. The following participants were present at the Settlement Hearing:
 - Mr. Juan de Dios Crespo Pérez, counsel for the Claimant;
 - Mr. Alessandro Mosca, counsel for the Claimant;
 - Mr. Bogdan Bogachev, Director of the Development and Special Projects of the Respondent;
 - Ms. Elvira Alimova, Head of International Development of the Respondent;
 - Ms. Valentina Chekulaeva, internal counsel of the Respondent;
 - Ms. Annett Rombach, BAT Arbitrator;

- Mr. Sebastian Adloff, Assistant to the BAT Arbitrator;
- Ms. Eva Hatalova, BAT Secretariat;
- Ms. Janet Reinhold, BAT Secretariat;
- Ms. Carmen Paulsen, BAT Secretariat.

45. During the Settlement Hearing, with the express authorization of the Parties, the Arbitrator delivered her preliminary (legal and factual) assessment of the case, followed by a discussion with the Parties. The Parties also conducted bilateral settlement discussions (without the Arbitrator) in a separate virtual hearing room. At the end of the hearing, they informed the Arbitrator that they had not reached a settlement and wished for the proceedings to continue.
46. By Procedural Order of 5 July 2022, the BAT invited the Claimant to comment on the Respondent's Answer by no later than 26 July 2022 ("**Reply**"). The Claimant was instructed to address "*the issue of causation between the alleged breach of the Respondent and the damages Claimant allegedly suffered as a result thereof, in light of the fact that the Claimant also invokes force majeure as a justification for his refusal to perform under the Player Contract.*"
47. On 26 July 2022, the Claimant filed his Reply.
48. On 4 August 2022, the BAT invited the Respondent to comment on the Claimant's Reply by no later than 25 August 2022 ("**Rejoinder**").
49. On 25 August 2022, the Respondent filed its Rejoinder.
50. On 5 September 2022, the BAT acknowledged receipt of the Rejoinder. In the same Procedural Order, the Arbitrator (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 12 September 2022. The Parties submitted their

cost accounts on 11 September 2022 (Respondent) and 12 September 2022 (Claimant), respectively.

4. The Position of the Parties

4.1 Claimant's Position and Request for Relief

51. The Claimant submits the following in substance:

- The Respondent terminated the Player Contract on 1 March 2022 without just cause. The Claimant's departure from the Club at the end of February does not constitute "just cause", because the Claimant was entitled to refuse the provision of his services under the Force Majeure Clause. Russia's invasion of Ukraine created a force majeure situation under the Player Contract. Because of this situation, the Club is also prevented from relying on its Regulations (in particular: Clause 18.17) as a justification for the termination.
- The Russian invasion of Ukraine amounts to force majeure and temporarily exempted the Player from liability for failure to fulfil his obligations under the Player Contract, because:
 - It created a dangerous, unpredictable, and unprecedented situation for the Player and his family. At the time, nobody knew how the situation would evolve. Specifically, nobody knew whether Ukraine, the EU, the NATO, or the United States would counterattack Russia, or whether the invasion was the beginning of a Third World War or a Nuclear War.
 - Already on 27 February 2022 (before the Player left Kazan), four foreign players from PBC CSKA Moscow had left Russia because of security concerns.
 - There were flight bans in place in Russia, which the Player feared could jeopardize his opportunities to leave Russia. The US Embassy &

Consulates in Russia strongly recommended US citizens to leave Russia. The Claimant only followed those recommendations.

- The EuroLeague also relied on force majeure (under Article 151 of the EuroLeague Bylaws) when it suspended Russian clubs (including the Respondent) from participation in the EuroLeague.
- The Club inherently acknowledged the presence of a force majeure situation on 28 February 2022, when its President announced that the Club would send foreign player's home, because "*everyone is scared*".
- The Player did not use Russia's military actions in Ukraine as a pretext to end a contractual relationship that had become sour for other (behavioural and sporting) reasons. As demonstrated by Claimant's extensive evidence, the force majeure cause (i.e. the war in Ukraine) was the only reason why the Player had left the Club.
- Because of the Respondent's unjust termination, the Claimant is entitled to outstanding salaries and compensation in a total amount of USD 177,825.91. This amount is composed of the last four monthly instalments (USD 50,000.00 each), plus the flight tickets in amount of USD 5,478.49, minus the salary received from Greensboro Swarm (USD 4,484.84) and Leones de Ponce BC (USD 23,167.74).
- When the Claimant left Russia on 28 February 2022, his departure was temporary, not permanent. At the time, the Claimant was prepared to return to the Respondent upon the dissolution of the force majeure situation. Had his departure been definitely, he would have terminated the Player Contract.
- The Respondent's unjust termination of the Player Contract was causative for the damages suffered by the Claimant (including the requested salary compensation). As a consequence of the Respondent's breach, from 1 March 2022 onwards, the Claimant was prevented from exercising his legitimate right to re-join the Respondent once the force majeure situation would be solved, and

therefore he also lost the chance to earn his full salary under the Player Contract.

- The date of termination is the relevant date to assess whether the termination was causative for the damages suffered by the Player. Any subsequent events are irrelevant for the purpose of establishing the causation between the Respondent's breach and the Claimant's damages. On 1 March 2022, no one knew how the force majeure situation would evolve. There were, in principle, three more months to complete in the 2021-22 season. The Player could have re-joined the Club "after 1 day, 1 week, 1 month, or never". The Club's termination made this question moot, because it resulted in the Player's impossibility to return.
- In the event that the Club's termination is held to be not causative for the requested compensation, the Arbitrator shall apply, by analogy, the BAT COVID-19 Guidelines (subparagraph A Clause VI), because – in a situation of force majeure – it seems fair and just for the Parties to share the risk. Therefore, the Player shall receive at least a part of his salary.
- The Claimant's previous settlement offers are not prejudicial for the present proceedings.

52. With the Request for Arbitration dated 19 April 2022, the Claimant initially requested the following relief:

"a. To accept this claim.

b. To decide that the Respondent terminated the Contract without just cause.

c. To decide that the Respondent shall pay the Claimant USD 188,393.65 net of any Russian taxes and charges as outstanding salary, reimbursement of flight tickets, and compensation due to the Respondent's termination of the Contract without just cause, together with interest of 5% p.a. from 1 March 2022 until its effective and final payment.

d. To decide that the Respondent shall provide the Claimant with the pertinent Russian tax certificates on the gross amount of USD 182,915.16, demonstrating that the Player receives a total net benefit of USD 188,393.65

e. Further to article 17.3 of the BAT Arbitration Rules to decide that the Respondent shall bear the entirety of the costs of this arbitration.

f. Further to article 17.4 of the BAT Arbitration Rules to decide, besides the payment of the non-reimbursable handling fee, that the Respondent shall pay the Claimant' legal fees with respect to this procedure in the total amount of EUR 10,000.00."

53. With his Reply, the Claimant reduced the requested amounts as follows (with the other requests remaining unchanged):

"a. [...]

b. [...]

c. To decide that the Respondent shall pay the Claimant USD 177,825.91 net of any Russian taxes and charges as outstanding salary, reimbursement of flight tickets, and compensation due to the Respondent's termination of the Contract without just cause, together with interest of 5% p.a. from 1 March 2022 until its effective and final payment.

d. To decide that the Respondent shall provide the Claimant with the pertinent Russian tax certificates on the gross amount of USD 172,347.42, demonstrating that the Player receives a total net benefit of USD 177,825.91

e. [...]

f. [...]"

4.2 Respondent's Position and Request for Relief

54. The Respondent submits the following in substance:

- The Claimant refused to continue fulfilling his obligations under the Player Contract without just cause when he left the Club on 28 February 2022 without the Club's permission. He thereby terminated the Player Contract factually, without cause.
- The Claimant unfairly took advantages of the situation in Ukraine when he began to justify his unauthorized departure from the Respondent by pointing to alleged safety fears. In reality, the Claimant wanted to leave because he was unhappy with his sporting situation, his role in the team and the amount of playing time he received from the head coach. The Player's will to leave the Club (irrespective of the events in Ukraine) is evidenced by the settlement offer proposed by the Player's agent in early February 2022, in which the Player waived his salary

beyond February 2022. The Claimant also never said on 27 February 2022 that his departure would only be temporary.

- The Club's termination on 1 March 2022 was based on just cause. The Claimant breached the Player Contract when he left the team to fly to the United States. The Respondent had the contractual obligation to participate in the VTB United League, which ended on 26 May 2022.
- When the Player departed Russia on 28 February 2022, no force majeure situation existed. None of the circumstances listed in the Force Majeure Clause were present on Russian territory. Military operations only took place on Ukrainian territory, in a separate and independent country. Only the government of Russia had the authority to announce an "*emergency situation*", and to trigger a force majeure situation relevant for Russia.
- The Claimant's situation was different from that of other foreign players employed at the Club, who left Kazan temporarily on 1 March 2022 with the Club's express consent. The Claimant had left already before, and without the Respondent's consent. At the time of the Claimant's departure (at 2:00 a.m. in the morning on 28 February 2022), the suspension of the EuroLeague had not been announced, and the VTB League was to continue as planned.
- The Claimant's allegations regarding causation between the Respondent's alleged breach and the damages suffered by the Claimant are unrealistic. The Claimant never had the intention to re-join the Respondent.

55. In its Answer, the Respondent initially requested the following relief:

*"1. To make a decision that the Claimant terminated the Agreement without a god reason.
2. Decide to dismiss the Claimant's claim for the recovery of \$188,393.65 from the Claimant of unpaid wages, reimbursement of the cost of air tickets and compensation in connection with the termination of the Agreement, together with interests of 5% per annum from March 1, 2022 until its actual and final payment , providing the Claimant with the relevant Russian tax certificates on the total amount of USD 182,915.16, reimbursement of legal costs in the total amount of EUR 10,000.00."*

56. Following the Claimant's adjustments to his prayers for relief in the Reply, the Respondent (in its Rejoinder) adjusted its own requests as follows:

*"1. To make a decision that the Claimant terminated the Agreement without good reason.
2. to decide to dismiss the Claimant's claim for the recovery of \$177,825.91 from the Respondent of unpaid wages, reimbursement of the cost of air tickets and compensation in connection with the termination of the Agreement, together with interest of 5% per annum from March 1, 2022 until its actual and final payment , providing the Claimant with the relevant Russian tax certificates in the total amount of USD 172,347.42, deciding to bear all costs of this arbitration, and reimbursement of legal costs in the amount of EUR 10,000.00."*

5. The Jurisdiction of the BAT

57. 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**").
58. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
59. 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.
60. The Player Contract (Clause 8.1) contains the following dispute resolution clause in favour of BAT:

*"Any disputes arising under this Contract shall be settled in amicable way. In case of failing to achieve the consent the dispute will be solved in accordance with the rules of FIBA Arbitral (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT arbitration rules by a single arbitration by the BAT president.
The seat of arbitration shall be Geneva, Switzerland.
The arbitration shall be governed by chapter 12 of the swiss Act on Private International Law (PIL). Irrespective of the parties domicile. The language of the arbitration shall be English. BAT decision will be final. The arbitrator shall decide the dispute ex aequo et bono."*

61. The arbitration agreement is in written form and thus fulfils the formal requirements of Article 178(1) PILA.
62. 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). The Parties to this arbitration are expressly identified as parties to the Player Contract in the recitals and are thus bound by the arbitration clause *ratione personae*. The Respondent did also not dispute BAT's jurisdiction.
63. Hence, the Arbitrator has jurisdiction to decide the present dispute.

6. Applicable Law – ex aequo et bono

64. 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”.

65. 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.”

66. In the arbitration agreement quoted above at para. 60, 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*.
67. 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’arbitrage² (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

68. 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*”.
69. In light of the foregoing considerations, the Arbitrator makes the findings below.

7. Findings

70. The Claimant requests the following relief, each item to be addressed by the Arbitrator, in turn, below:

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).

- Outstanding salaries until the termination (below at **7.1**);
- Salary compensation as from the termination until the end of the 2021-22 season (below at **7.2**);
- Reimbursement for advanced flight ticket costs (below at **7.3**);
- Tax certificate (below at **7.4**);
- Default interest (below at **7.5**).

7.1 Outstanding Salary until the Termination

71. The Club terminated the Player Contract on 1 March 2022. It is undisputed that the Player had been receiving, until that day, a total salary of USD 250,000.00, including a last payment of USD 50,000.00 paid on 10 February 2022. It is also undisputed that the Player rendered his services to the Club until (including) 26 February 2022, and that he refused to provide further services as of 27 February 2022 (the day before his departure).
72. Hence, the Player is entitled to receive a *pro rata* monthly salary from 11 February 2022 until 26 February 2022, *i.e.* for 16 days. The relevant monthly period for the February salary is 11 February until 10 March, *i.e.* 28 days. As a result, the Player's pro-rated salary for providing services on 16 out of 28 days is USD 28,571.43 (out of USD 50,000.00).
73. With respect to the time period from 27 February until 1 March 2022 (which is the period between the Player's cease of performance and the Club's termination), the Arbitrator finds that the Player is not entitled to receive any salary absent any offer of performance during these days. Irrespective of whether the Player's announcement to stop playing was justified under the Force Majeure Clause or not, the principal rule under employment law, as well as under BAT's jurisprudence, is that a player only receives a salary when he performs, or offers to perform. The Force Majeure Clause only relieves

the Player from his contractual duty to perform, meaning that the Player does not commit a breach of contract when his refusal to perform is based on a force majeure situation. At the same time, the Force Majeure Clause does not protect the Player's financial consideration for the (stopped) performance. Rather, following the typical mechanism of a contractual force majeure provision, the Force Majeure Clause results in the Club's right to cease performance as well if the Player justifiably stops playing due to a force majeure situation.

74. As a result, the Club has to pay the Player his pro-rated salary for February in the amount of USD 28,571.43.

7.2 Salary Compensation from the Termination until the end of the 2021-22 Season

75. The Player requests salary compensation in the amount of the last four instalments of the 2021-22 season in the amount of USD 200,000.00 (March, April, May and June 2022 instalments), minus the amounts earned with his new clubs Greensboro Swarm and Leones de Ponce BC.
76. Because the Player had not been providing any playing services to the Club as of the end of February 2022, he may only be entitled to damages in the form of salary compensation if the Club terminated the Player Contract without just cause (below at **7.2.1**), and if – as a result of the presumably unlawful termination – the Player suffered a damage which corresponds to the outstanding remuneration (below at **7.2.2**).

7.2.1 Did the Club terminate the Player Contract for just cause?

77. The Termination Letter served on the Player on 1 March 2022 (quoted in full above at para. 31) relies on Clause 3.1 of the Player Contract and the fact that the Player

“did not appear at the pre-match training session of the team on February 27, 2022 and left the club's location without permission and at 02-00 hours on February 28,

2022 flew from Kazan to his homeland in the United States without going with the basketball team UNICS to Milan for the away match of the regular season of the EuroLeague with the team "Olympia Milan", which was to be held on March 1."

78. Pursuant to Clause 3.1 of the Player Contract (quoted above at para. 7), the Club had the "*right to immediately terminate*" the Player Contract, if the Player (*inter alia*) breached the Club's Regulations. Under the Club's Regulations (quoted above at para. 10), the Player had to play basketball for the Club (including practices and games), which he undisputedly ceased doing on 27 February 2022, *i.e.* before the agreed expiration of the Player Contract.
79. The central question in this case is whether the Player's premature departure from the Club constituted a breach of contract, justifying the Club's subsequent termination, or whether the Player was contractually allowed to cease performance under the Force Majeure Clause (Clause 9 of the Player Contract). The Player, on the one hand, argues that the military actions of the Russian government in Ukraine, beginning on 24 February 2022, and the subsequent political developments worldwide, compromised his and his family's safety in Russia, and that it was unacceptable for him to stay in Russia in light of the unclear and unpredictable situation at the time. The Club, on the other hand, submits that the military operation in Ukraine did not affect Russian territory, and that it was, therefore, well possible and feasible for the Player to continue playing for the Club. The Club had provided respective reassurances to the Player.
80. The starting point for any determination of whether the overall situation triggered by Russia's military attack on Ukraine created a situation for the Player in which he was entitled to cease performance under the Force Majeure Clause must be the language of Clause 9, which is quoted in full above at para. 9. Pursuant to Clause 9 of the Player Contract, "*force majeure circumstances*" are defined as "*extraordinary events*" arising after the conclusion of the Player Contract "*that the party could neither foresee nor prevent by reasonable measures*", including force majeure events such as "*war or hostilities, [...] government restrictions, the announcement of the "Emergency" regime*

on the territory of the Russian Federation". As also made clear by the language of Clause 9.1 and (particularly) 9.2, such "*force majeure circumstances*" only result in the Parties' exemption from liability for failure to fulfil their obligations if the relevant force majeure event "*entailed the impossibility of fulfilling this agreement*". In other words, a force majeure event alone is not sufficient for a party to be relieved of its contractual obligations. Only if a force majeure event makes it impossible for a party to honour its contractual obligations, the force majeure defense applies, and the Parties are allowed to cease performance.

(i) *Is the military conflict in Ukraine started by the Russian Federation an event of force majeure under Clause 9.1?*

81. Pursuant to Clause 9.1 of the Player Contract, "*war or hostilities*" as well as "*government restrictions*" form events of force majeure. In the sense of international law, the classical concept of war is characterized by two features: there must be an armed struggle between states or groups of states, which is accompanied by a declaration of war or an ultimatum⁵. The latter is missing here. However, since the Second World War, the term (international) "armed conflict" has been predominantly used, and a war is regarded as a subcategory of an (international) "armed conflict"⁶. Whether the more recent definition should apply here can, however, be left open, because the military conflict in any event qualifies as "*hostilities*" within the sense of Clause 9.1. Under the generic term "*hostilities*", it is also irrelevant how and where the aggressions started, and whether they are considered a "*war*" (as proclaimed by the UN and the NATO), or a "*special military operation*" (as proclaimed by the Russian President). The simple and undisputed fact that a military conflict began on 24 February

⁵ See Art. 1 of the Convention (III) relative to the Opening of Hostilities, The Hague, 18 October 1907.

⁶ See e.g. Art. 2 of the Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Geneva, 12 August 1949: "[...] *all cases of declared war or of any other armed conflict* [...]".

2022, initiated by the Russian Federation, is sufficient to have the force majeure event “*hostilities*” fulfilled in the present case.

82. Furthermore, the Arbitrator is satisfied that the force majeure event of “*government restrictions*” also applies in the present case. “*Government Restrictions*” include any decrees of a government that potentially prevent the fulfilment of the duty to perform. Whether these restrictions have to be imposed by the Russian government (as alleged by the Respondent) or whether restrictions imposed by other states or state unions (such as the EU) are also sufficient can be left open here, because Clause 9.1 only provides for a non-exhaustive list of examples. Clause 9.1 aims to include restrictions imposed by official bodies with a direct effect on the territory where the Player is obligated to offer his services. In the night of 27 to 28 February 2022, the EU's airspace ban on Russian planes, announced on 27 February 2022, came into force. Even if only the Russian government's restrictions were relevant here, Russia had also imposed airspace restrictions on several EU countries in the days before the Player's departure. Therefore, at the time the Player left the Club, “*government restrictions*”, i.e. yet another force majeure event, were in place.
83. The identified force majeure events (hostilities and governmental restrictions) are undisputedly “*extraordinary events*” arising after the conclusion of the Player Contract “*that the party could neither foresee nor prevent by reasonable measures*”. Therefore, the first prerequisite for the applicability of the Force Majeure Clause is met here.
- (ii) *Was it “impossible” for the Player to provide his services because of the force majeure events?*
84. The second question under Clause 9 of the Player Contract is whether the identified force majeure events made it impossible for the Player to render his services to the Club as of the time the Player first invoked these events on 27 February 2022, when he refused to attend the morning practice session. As indicated above, a force majeure event alone does not trigger the consequences under the Force Majeure Clause,

because such an event can have rather different effects on contractual relationships and contractual partners. Therefore, it is in each case an individual analysis whether a force majeure event (such as here, the military conflict and the resulting government restrictions) disturbs a contractual relationship to an extent that a force majeure defence applies. A generic assessment has to strictly stand behind such an individual case-by-case analysis.

85. Furthermore, the Arbitrator notes that in her assessment of the relevant circumstances, she is strictly limited to review the situation which had unfolded until the Player's refusal to practice, because only if the impossibility existed at the time of his refusal to play, the force majeure defence would apply, with the consequence that the Club's subsequent termination was unlawful. Any events occurring after the Player's first refusal to perform (and his ultimate departure) cannot retrospectively justify his actions.
86. Under the required individual assessment of the Player's situation, the Arbitrator rejects the Club's narrow interpretation that an "*impossibility*" should be *per se* excluded here because the military conflict did not take place on Russian territory. The consequences of a force majeure situation do not necessarily unfold only locally, as is demonstrated, for example, by the economic sanctions imposed on Russia as a result of its military intervention, which had drastic effects on local and international businesses and business relationships with Russian companies. Therefore, the relevant test is not where the conflict takes place, but where and how its consequences unfold. In other words, the central question is if and to what extent the contractual relationship between the Player and the Club was affected by the conflict, and if the effects of the conflict (if any) essentially made it impossible for the Player, objectively or subjectively, to stay with the Club.
87. The Player's core argument is that the developments in the days following the military intervention – including imposed airspace restrictions, cancellation of flights, closure of airports, sanctions imposed by the EU affecting use of foreign credit cards in Russia,

alerts from the U.S. Embassy and Consulates regarding safety risks for U.S. citizens in Russia, travel warnings – made him fear for his safety and the safety of his wife and daughter. In addition to these safety fears, his career was at stake because of the EuroLeague’s decision to cancel games involving Russian clubs. The Club disputes the Player’s allegations and purports that the Player’s primary motivation to leave Kazan was his difficulties with the coach and dissatisfaction with his sporting situation. In the Club’s view, the military conflict in Ukraine was a welcome pretext for the Player to execute what he has had in mind for many weeks: his departure from the Club without having to fear any (monetary) consequences (e.g. in the form of damages).

88. In light of the fact that the application of a force majeure clause amounts to a deviation from the fundamental principle of *pacta sunt servanda*, courts and arbitral tribunals should not apply such clauses too lightly. Rather, because the preservation of contractual stability is central for the healthy functioning of the whole (basketball) market, the Arbitrator is called to assess the prerequisites of the Force Majeure Clause strictly, taking account of the entirety of the facts and evidence on record.
89. Because of the high burden required for the finding of a force majeure defence, the Arbitrator holds that the Player’s fear that his career could be negatively affected by the fact that he was blocked out from playing the EuroLeague (or other international competitions) as a result of the EuroLeague’s suspension of games involving Russian clubs, is not sufficient to justify the application of Clause 9 of the Player Contract. Apart from the fact that the Player had no right under the Player Contract to enforce any playing time in competitive games at all (let alone in international competitions), the principle of *pacta sunt servanda* requires a party to bear certain disadvantages in case of unforeseen circumstances affecting a contractual relationship. For example, if a vendor faces delivery problems and (significant) price increases as a result of political frictions, embargos, or other unforeseen circumstances, he principally has to bear the risk of such higher costs and cannot automatically invoke a force majeure defence. In the case of the Player, this means that he would have principally been obligated to

accept the fact that as of the end of February 2022, he would no longer be able to play in international competitions and games. This burden was all the more acceptable for the Player given that his contract was to expire at the end of the 2021-2022 season, *i.e.* only a few months after the EuroLeague suspended Russian clubs from participating internationally. In this context, it is also important that the VTB League was not affected by any international measures, but continued to be played as planned, until the end of the season.

90. What remains is the Player's allegation that he feared for his safety and that of his family. This allegation is corroborated by the fact that the Player contacted the Club's sport director, via WhatsApp, immediately after the military conflict started (still on 24 February 2022), expressing his concerns, as he had done (through his agent) already in January. The Arbitrator finds it credible that the Player closely monitored the situation and was fully aware of the available information issued by the U.S. Embassy & Consulate and others. However, because the alleged safety fears are an inner fact which is naturally difficult to prove, the Arbitrator has to assess, taking into account the special circumstances of the case, whether it appears reasonable from the perspective of an objective third party that the political events following Russia's invasion of Ukraine urged the Player to leave Russia.
91. Based on the record before her, the Arbitrator is prepared to accept the arguments presented by the Player in this respect. In particular, she accepts that the entire situation in the days following the beginning of the military conflict was uncertain, unpredictable and uncontrollable. Specifically:
- The military intervention was accompanied by a speech of the President of the Russian Federation, Vladimir Putin, in which he directly accused the United States (the Player's home country) of being responsible for the escalation.
 - The conflict immediately expanded to an international dimension. Russia became the subject of extensive sanctions imposed by the European Union,

which confined, *inter alia*, the financial freedom and the freedom to travel for foreign citizens in Russia.

- In the days following Russia’s invasion of Ukraine, an immediate rhetorical escalation occurred, in which fears of a World War III, or of a nuclear war (fuelled by President Putin’s signal of escalation when he put Russia’s nuclear forces on high alert), were publicly expressed world-wide.
- At the same time, the U.S. Embassy and Consulate in Russia – evidently one of the most important sources of information for U.S. citizens living in Russia – released alarming alerts (see above at para. 19), warning, e.g., on 26 February 2022 (two days before the Player’s departure), of the “*potential for harassment against U.S. citizens by Russian government security officials, the singling out of U.S. citizens in Russia by Russian government security officials including for detention, the arbitrary enforcement of local law, limited flights into and out of Russia, the Embassy’s limited ability to assist U.S. citizens in Russia, COVID-19 and related entry restrictions, and terrorism.*” U.S. citizens residing or travelling in Russia were advised to “*depart Russia immediately*”. These warnings culminated in the Embassy’s urgent alert one day later, on 27 February 2022, that due to an increasing number of airlines cancelling flights into and out of Russia, U.S. Citizens residing in Russia “*should depart Russia immediately*”.

92. It appears reasonable and fully plausible that a young American basketball player, whose job is to play basketball and not to cope with diplomatic frictions, let alone military conflicts, feels scared by a situation like the one that unfolded in Russia and the world as of 24 February 2022; a situation unprecedented in his life and the life of most other people who were born after the cold war. What else should such an individual do but to trust the urgent advice of his own Embassy and Consulate to “*immediately depart Russia*”? The Arbitrator cannot but believe that the Player indeed felt worried and scared. This is even more true in light of the fact that still on the same day on which the

Player flew out of Kazan, the Club's President publicly announced that he would send the foreign Player's home, because "*everyone is scared*". Through this official statement, the Respondent conceded that the Player's safety concerns were for real. It is also undisputed that other players in Russia took the same decision as the Player and left Russia.

93. While the Arbitrator is mindful of the fact that the Player may have had other reasons to leave the Club, most importantly his unsatisfactory sporting situation, she is sufficiently satisfied that his personal safety concerns were his dominant motive to leave. That a decision is determined by a bundle of motives is in no way unusual. However, the chain of events coherently demonstrates that it was the escalation in Ukraine which triggered the Player's decision to leave Russia. Leaving Russia was the Player's only possibility to escape the possible frictions for his family's daily life in Russia, and leaving Russia was precisely what the U.S. Embassy urgently advised U.S. citizens in Russia to do. Whether or not the Player had any intention to return to the Club at the time of his departure is immaterial for the question of his force majeure defence. His intention to return or not is only relevant for the question of the causal link between the Club's breach of contract and the Player's damages, to be addressed immediately below.
94. As a result, the Arbitrator finds that the force majeure event resulted in the Player's (subjective) impossibility to fulfill his duties under the Player Contract. Therefore, the Player's departure, the very reason why he was no longer able to train and play with the Club, was justified by the Force Majeure Clause. The Player's decision to leave Kazan, and – consequently – to cease playing and training did not constitute a breach of contract. Hence, the Club's termination of the Player Contract occurred without just cause and was unlawful.

7.2.2 What are the consequences of the Club's unlawful termination of the Player Contract?

95. Under established BAT jurisprudence, the consequence of an illegal termination of a player contract by a club before the employment's designated expiration is that the Player is entitled to receive compensation for the damage he incurred as a result of the termination. In practice, players usually request lost salaries for the (hypothetically) remaining duration of the contract, minus the amounts they have earned, or could have reasonably be expected to earn, with a replacement club (mitigation). It is the immediate consequence of the (unjust) termination that the player is – usually – deprived of the chance to earn the remainder of the salary promised under the employment contract with the club who (unjustly) terminated the contract.
96. The underlying premise of this standard damages claim is that a player would have been able and willing to render playing services to his club, and that the termination was the only (or at least primary) reason for the Player's impossibility to continue performance.
97. The present case stands in stark contrast to this standard scenario. In the present case, it is a decisive and undisputed fact that the Player had become unable to perform already before the termination, as a result of his seizure of the force majeure defence. To be crystal clear, the Player had not left Kazan because of the Club's (unjust) termination, but because he had found the situation in Russia unbearable for himself and for his family after the military conflict between Russia and Ukraine had begun. The timeline of the Player leaving the Club already before the termination was announced is a strong indication that it was not for the termination, but for the force majeure situation that the Player ceased rendering his services to the Club. It would be unfair for the Player to benefit from a posterior event to receive a compensation he would not have earned without such event. Causation between the termination and the Player's non-performance can only be established if it appears reasonable, on the balance of

probabilities, that the Player would have returned to the Club at some point in time between 1 March 2022 (the date of the termination) and 26 May 2022 (the end of the season for the Respondent). Put differently, the Arbitrator must be comfortably satisfied that the Player would have returned to the Club before the end of the season but for the termination.

98. The initial burden of proof to demonstrate a reasonable chance of return rests on the Player. The Arbitrator is mindful of the fact that full proof of a hypothetical future situation is rather difficult, if not impossible. Therefore, the Arbitrator accepts that the Claimant cannot be required to submit full proof for an expected future development that would have hypothetically materialized but for the termination. On the other hand, these difficulties of proof cannot amount to a “free pass” for a player to rely on a factual scenario, the materialization of which is up in the blue sky. Therefore, even in consideration of the inherent difficulties to prove the hypothetical future, a player must be expected to submit certain tie-in facts which allow the Arbitrator to reasonably conclude that there was a fair chance that the Player would have returned to Russia but for the (unjust) termination.
99. In the present case, no such tie-in facts have been submitted by the Claimant. To the contrary, the Claimant himself argued that it was entirely unclear whether he would have returned to the Club at any time before the end of the season. In particular, the Claimant submitted that the Player could have re-joined the Club “*after 1 day, 1 week, 1 month, or never*”, meaning that it was vague if and when the Player would return. Hence, it is the Claimant’s own case that there was no increased possibility (let alone an increased probability) of the Player’s return to the Club. In fact, the record indicates quite the opposite. The record indicates that the Player, who had been considering to part ways with the Club even before the beginning of the military escalation because of his unsatisfactory sporting situation, would not have ever considered to re-join the Club after his departure. The following facts corroborate the assumed unlikelihood of the Player’s return:

- At the time the Player left Kazan, his sporting situation at the Club was still difficult. Only a few days before the beginning of the military conflict, the Player had an argument with the head coach, following which his agent informed the Club that it would be “*best we work out a settlement and leave before this coach can cause some real damage*” (see above at para. 14).
- After the Player refused to participate in the training session on 27 February 2022, on the basis of force majeure, he did not express any intention to re-join the Club in case of an improvement of the situation. Rather, his agent – for the second time in a few weeks – addressed the Club with the view to sign a settlement agreement. The draft settlement agreement provided by the agent to the Club in the evening of 27 February 2022 proposed the immediate termination of the Player Contract. Such a sudden termination of the contract is by no means warranted by the Force Majeure Clause. The Player could have easily made it clear that his refusal to play is only temporary for as long as the force majeure situation is present. In fact, this is what other foreign players under contract in Russia did (even some of Respondent’s players). They left their clubs temporarily and returned once they had come to a clearer assessment of the situation. By contrast, the Player directly linked his departure – based on force majeure – with an offer to terminate the Player Contract. This was re-emphasized by his counsel in the letter of 1 March 2022, in which counsel repeated that the Player had tried, in good faith, to negotiate “*a settlement agreement in war time*”, and that the Player “*did everything possible to find an amicable solution beneficial for both parties*”. The Player had simply tried his best (and legitimately so) to use the force majeure situation as a trigger to amicably terminate a contract he had been unhappy with for quite some time.
- Furthermore, there is no proof that the Player’s firm intention to leave to Club for good was changing over the days following his departure. While rejecting the Club’s termination, the Player did not insist on his right to re-join the Club after a dissolution of the force majeure situation. Instead, the Player – almost

immediately after the termination - requested his Letter of Clearance to join the NBA G-League waiver pool.

- Finally, the Arbitrator notes that the military conflict continued, and in fact expanded, over the remainder of the contractual term. There is, therefore, no indication that the situation changed to a degree that would have resulted in a change of the Player's mindset. In any event, it would have been for the Player to submit a plausible explanation on why he would have considered to return to Kazan despite the ongoing conflict that had direct consequences for life in Russia. The fact that some players later returned (while others did not) is certainly not sufficient to demonstrate the plausibility of his own return.

100. In light of all of the above, the Arbitrator concludes that the Claimant has failed to establish sufficient tie-in facts for the required causation between the termination and his damages. To the contrary, the (undisputed) facts of the case suggest that the chance that the Player would have returned to the Club was remote. A remote chance for a certain event to occur is, however, insufficient to provide a legal basis for an award of damages.

101. Finally, the Arbitrator rejects Claimant's proposal to apply the BAT COVID-19 Guidelines by way of analogy in the present case. Claimant has already failed to explain comprehensively the basis for the suggested analogy. In any event, the COVID-19 Guidelines have been enacted to address an exceptional situation, which means that they are, as a matter of principle, not suitable to be applied to different situations analogously.

102. Therefore, the Claimant's claim for salary compensation is dismissed.

7.3 Flight Ticket Reimbursement

103. Pursuant to Clause 3.4 of the Player Contract,

“The Club provides the Player and his family (only the wife and the kids) with 3 round trip economy airplane tickets on the route USA – Kazan plus Club will pay for the emergency exit seat (with extra leg space). [...]

The Club does not compensate for unused tickets during the season. [...]”

104. The Player submitted a receipt for the purchase of flight tickets for himself, his wife and his child for a trip from Kazan, Russia to Charlotte, USA via Istanbul, Turkey and Chicago, USA (economy/premium economy tickets in the amount of USD 5,478.49). The Club has only formally contested the claim (see its request for relief above at 4.2), but it did not further elaborate on its denial of the flight ticket costs. In particular, the Club neither argued against the legal basis of its duty to reimburse the Claimant’s flight tickets (see Clause 3.4 of the Player Contract), nor did it challenge the receipts submitted by the Claimant in this respect. Therefore, the Arbitrator finds that the Player is entitled to receive USD 5,478.49 as a reimbursement for the advanced flight tickets, pursuant to Clause 3.4 of the Player Contract.

7.4 Tax Certificate

105. The Player requests that the Club provide him with a pertinent Russian tax certificate for the outstanding salary. According to Clause 3.1 of the Player Contract, the Player’s salary payments shall be free of tax as follows:

“3.1 The Club shall pay the Player for the season 2021/2022 the total amount of 450 000 (four hundred and fifty thousand) US Dollars

All payments regarding point 3.1 shall be paid as net payments after all local taxes and charges have been deducted [...].”

106. The Player Contract does not expressly provide for the Club’s obligation to provide a respective tax certificate. However, since the Player Contract guarantees that the Player’s salary will be free of all local taxes, the Arbitrator – *deciding ex aequo et bono* – finds it appropriate that the Club provides proof of the fact that it has duly paid any Russian tax due on behalf of the Player (see also BAT 535/14 para. 62). The Player’s request for the issuance of a tax certificate is therefore accepted.

7.5 Default Interest

107. The Claimant requests interest on the claimed salary and flight ticket reimbursement at the rate of 5% per annum from 1 March 2022 (the date of the termination pronounced by the Club).
108. The Player Contract does not provide for any provision concerning interest. According to constant BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. As requested by the Claimant, and in line with BAT's jurisprudence, the applicable interest rate is 5% per annum.
109. With respect to the starting date requested by the Claimant (which corresponds to the day of the unjust termination of the Player Contract), the Arbitrator notes that interest principally begins running as of the day after the principal debt falls due. Because the Club unlawfully terminated the Player Contract, the Player had the right to request his February salary immediately as of the termination, i.e. as of 1 March 2022 (and not, as initially agreed in the Player Contract, as of 10 March 2022). Therefore, the Player is entitled to default interest on the outstanding salary as from 2 March 2022.
110. Regarding the flight tickets to be reimbursed by the Club, the Player Contract does not include any due date for such reimbursement. Rather, the Player Contract suggests that flight tickets will be reimbursed upon a respective request by the Player. This is also evident from the fact that the Club is not obliged to pay for unused tickets at the end of the season. Accordingly, the reimbursement was not already due at the time of the termination, but only when the Player requested the reimbursement in its actually incurred amount. The first specific reimbursement request, with a specific amount and respective evidence for the purchase of the flight tickets, was introduced in the Request for Arbitration dated 19 April 2022. Accordingly, the Player is entitled to default interest on the flight ticket reimbursement as from 20 April 2022.

7.6 Summary

111. In summary, the Arbitrator finds that the Club must pay the Player the remainder of his salary for the time period from 11 February 2022 until 26 February 2022 in the amount of USD 28,571.43 (net), plus interest of 5% p.a. on this amount as from 2 March 2022. The Club must further pay the Player USD 5,478.49 as a reimbursement for flight tickets, plus interest of 5% p.a. on this amount as from 20 April 2022.

8. Costs

112. 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). [...]”

113. On 3 November 2022, the Vice-President of the BAT determined the arbitration costs in the present matter to be EUR 12,000.00.

114. As regards the allocation of the arbitration costs as 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.”

115. Comparing the relief sought by the Claimant with the relief granted, the Arbitrator notes that the Claimant's claims were dismissed preponderantly, at approximately 85%. Specifically, the Claimant's entire salary compensation claim failed, and Claimant only won with respect to the salary he had already earned before leaving the Club. However, under the special circumstances at hand, and deciding *ex aequo et bono*, the Arbitrator

finds it unfair to look strictly and exclusively at the success rate, but considers it necessary to take into account that the present case is of an extraordinary nature, and that the Respondent significantly contributed to the necessity of this arbitration. At no time did the Respondent acknowledge that the dramatic political situation impacted the Claimant and made him feel scared. The Respondent refused to enter into any discussions about the force majeure circumstances, but left the Player out in the rain when he developed and executed the idea of leaving Russia as a result of Russia's military aggressions against Ukraine. By terminating the Player Contract on an extraordinary basis as an immediate reaction to the Player's departure, the Club further fuelled the dispute and left the Player with no choice but to initiate the present arbitration in order to obtain an award at least for the outstanding salary and the flight costs, as well as for the tax certificate. Had the Club offered a better cooperation, which is to be expected from every party to a contract in extreme situations, the present arbitration could have well been avoided, given that the Player's agent made reasonable settlement offers. Furthermore, the Arbitrator acknowledges that the Claimant won on one of the central questions of this arbitration, the issue of force majeure. This issue was the main subject of the Parties' pleadings, and is a central subject of the present award. In light of these circumstances, the Arbitrator decides that the arbitration costs shall be borne evenly, i.e. 50% by the Claimant and 50% by the Respondent. Because both Parties advanced 50% of the arbitration costs, no reimbursement is owed by either Party.

116. In relation to 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."

117. 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 the amount in dispute in the present case (between EUR 100,001.00 and EUR 200,000.00) according to Article 17.4 of the BAT Rules is EUR 10,000.00.

118. The Respondent has not incurred any legal fees or expenses for external legal counsel. The Claimant claims reimbursement of lawyer's fees and expenses in the amount of EUR 10,000.00. While the Claimant's statement on costs contains a high-level summary of the services rendered by legal counsel in connection with these proceedings, it does not contain any further details with respect to the composition of the legal fees. However, in light of the unprecedented nature of the present case, the complexity of the legal issues, which were novel, and the fact that a (settlement) hearing took place, the Arbitrator finds the incurred legal fees reasonable. In line with the cost allocation determined above, the Arbitrator decides that the Respondent shall reimburse the Claimant for 50% of his legal fees. Therefore, the Respondent shall pay the Claimant EUR 5,000.00 as a reimbursement towards his legal fees and expenses.
119. Furthermore, the Claimant is entitled to a reimbursement of 50% the non-reimbursable handling fee (EUR 4,000.00) in the amount of EUR 2,000.00.

9. Award

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

- 1. Basketball Club Unics is ordered to pay Mr. Jarrell Isaiah Brantley an amount of USD 28,571.43 net of taxes in unpaid salaries, plus 5% interest per annum on any outstanding balance (as may be the case from time to time) thereof from 2 March 2022 until payment in full.**
- 2. Basketball Club Unics is ordered to pay Mr. Jarrell Isaiah Brantley an amount of USD 5,478.49 as a flight ticket reimbursement, plus 5% interest per annum on any outstanding balance (as may be the case from time to time) thereof from 20 April 2022 until payment in full.**
- 3. Basketball Club Unics shall provide to Mr. Jarrell Isaiah Brantley a tax certificate proving that it paid all taxes due on all payments made to Mr. Jarrell Isaiah Brantley under the employment contract with him.**
- 4. Basketball Club Unics is ordered to pay to Mr. Jarrell Isaiah Brantley EUR 7,000.00 as a contribution towards his legal fees and expenses.**
- 5. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 9 November 2022

Ms. Annett Rombach
(Arbitrator)