

CORRECTED ARBITRAL AWARD

(BAT 1264/18)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Stefan Jankovic

- Claimant 1 -

Bill A. Duffy International, Inc., dba BDA Sports Management
507 N. Gertruda Ave., Redondo Beach, CA 90277, USA

- Claimant 2 -

both represented by Mr. Billy J. Kuenzinger, Esq. attorney at law,
1601 I Street, 5th Floor, Modesto, CA 95354, USA

vs.

BC Crvena Zvezda
Mali Kalemegdan 2, 11000 Belgrade, Serbia

- Respondent -

represented by Mr. Rajko Ignačević, Mr. Milica Ignačević and
Ms. Bojana Ignačević Vukasović, attorneys at law,
Starine Novaka 3, 11000 Belgrade, Serbia

1. The Parties

1.1. The Claimants

1. Mr. Stefan Jankovic (hereinafter the “Player”) is a Serbian-Canadian professional basketball player.
2. Bill A. Duffy International, Inc. (hereinafter the “Agency”) is a professional agency located in Redondo Beach, USA, representing and advising basketball players. It does business as “BDA Sports Management”.

1.2. The Respondent

3. BC Crvena Zvezda is a professional basketball club located in Belgrade, Serbia.

2. The Arbitrator

4. On 10 October 2018, the Vice-President of the Basketball Arbitral Tribunal (hereinafter the “BAT”), Prof. Ulrich Haas, appointed Dr. Stephan Netzle as arbitrator (hereinafter the “Arbitrator”) pursuant to Articles 0.4 and 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). The Parties did not raise any objections to the appointment of the Arbitrator or to his declaration of independence initially. On 7 February 2019, the Respondent filed a challenge against the Arbitrator “*due to serious infringement of the Respondent’s right to be heard and right to defense.*” On 13 March 2019, the BAT President rejected and dismissed all allegations in the Respondent’s challenge.

3. Summary of the facts leading to this arbitration

5. On 28 July 2017, the Player and the Club signed a guaranteed employment agreement for the seasons 2017/2018, 2018/2019 and 2019/2020 (the “Player Contract”). The Player was entitled to terminate the Player Contract after the 2017/2018 season

and after the 2018/2019 season against payment of a buyout fee, the amount of which was depending on whether he was joining another European team or an NBA team. The Player Contract also provided for an agency fee payable by the Club to the Agency (the “Agency Fee”) and was signed on behalf of the Agency as well.

6. The Club was late with the salary payments for most of the instalments. On 18 June 2018, the Club had missed the past four payments, totalling EUR 60,000. In an email of 19 June 2018, the Club’s General Manager referred to a meeting of the Club’s President with all players. The alleged meeting took place after the Serbian championship final. In this meeting, the players were advised that payment of the outstanding amounts was envisaged by 15 July 2018 and, according to the Club’s allegation in this arbitration, the Player agreed with the extended payment period. However, no payment was made on 15 July 2018.
7. On 16 July 2016, the Agency, on behalf of the Player, sent a termination letter to the Club because the due payments had not been made, and asked for the immediate issue of the letter of clearance.
8. On 18 July 2018, the Club paid EUR 60,000 and promised soon payment of the remaining EUR 2,500, which seems to be the bonus for winning the 2017/2018 Serbian League. In the Request for Arbitration, the Player claimed damages for the 2018/2019 and 2019/2020 seasons in the amount of EUR 450,000 and the Agency claimed lost fees in the amount of EUR 45,000.
9. On 25 September 2018, the Claimants signed a new player agreement with Club Baloncesto Fuenlabrada for three seasons (the “Fuenlabrada Contract”). On 17 October 2018, CB Fuenlabrada signed a loan agreement with Club KK Partizan for one season. On 18 October 2018, the Player entered into a player agreement with Club KK Partizan for one season with the possibility for a second season, if CB Fuenlabrada agreed to extend the loan (the “Partizan Contract”).
10. Because of the alternative income, the Player reduced his claim against the Club to EUR 100,000 and the Agency reduced its claim against the Club to EUR 15,000.

11. The Club argues that the Player was not entitled to terminate the Player Contract. It alleges that the Player agreed to a postponement of the open payments and eventually received all monies due within the agreed extended payment period.

4. The Proceedings before the BAT

12. On 27 September 2018, the Claimants submitted their Request for Arbitration together with 13 exhibits, which was received by the BAT on 1 October 2018. The Claimants did not request a hearing. A non-reimbursable handling fee of EUR 7,000 was received in the BAT bank account on 26 September 2018. The applicable handling fee was only EUR 5,000 and the difference was credited against the Claimants' share of the Advance of Costs.
13. On 15 October 2018, the BAT Secretariat issued the Confirmation Letter by which the deadlines for the Answer were determined. The BAT Secretariat also requested that the Parties pay the following amounts as Advance on Costs by no later than 25 October 2018:

<i>"Claimant 1 (Mr. Stefan Jankovic)</i>	<i>EUR 4,000.00 (EUR 5,000 – EUR 1,000</i>
<i>NRF overpayment)²</i>	
<i>Respondent (BC Crvena Zvezda)</i>	<i>EUR 6,000.00</i>

² Claimant 2 (Bill A. Duffy International, Inc.)'s share of the Advance on Costs in the amount of EUR 1,000 is already paid because of the allocation of the overpayment of the NRF in the amount of EUR 1,000."

14. The entire Advance on Costs was eventually paid by Claimant 2.
15. On 5 November 2018, the Respondent submitted its Answer together with four exhibits. The Answer contains a request *"to issue interim measures by which the player would be suspended to play for KK Partizan until the award is rendered in this proceedings."* In addition, the Respondent reserved the right to file a counterclaim upon receipt of the *"contracts which the Claimants signed with Spanish and Serbian rival clubs."*

16. By Procedural Order of 28 November 2018, the BAT confirmed having received the full Advance on Costs, entirely paid by the Claimants, and invited the Claimants to comment on the Answer until 12 December 2018. The Arbitrator added specific questions for the Claimants to answer.
17. On 12 December 2018, the Claimants responded to the Procedural Order of 28 November 2018 and filed six exhibits, including the contracts requested by the Arbitrator, i.e. the Fuenlabrada Contract and the Partizan Contract.
18. On 13 December 2018, the BAT Secretariat invited the Respondent to comment on the Claimants' submission of 12 December 2018 until 27 December 2018.
19. On 27 December 2018, the Respondent filed its comments ("Brief") together with an exhibit containing seven witness statements.
20. By Procedural Order of 8 January 2019, the Arbitrator invited the Respondent to answer certain questions until 15 January 2019.
21. On 15 January 2019, the Respondent submitted its answers, together with two exhibits.
22. On the same day, the BAT Secretariat forwarded the Respondent's answers to the Claimant and asked for their comments until 22 January 2019.
23. The Claimants asked for an extension of that time limit, which was granted, and submitted their comments on 24 January 2019.
24. On the same day, the BAT Secretariat forwarded Claimants' comments to the Respondent for information and the Arbitrator closed the proceedings, inviting the parties so submit their accounts of costs.
25. On 1 February 2019, the Respondent submitted an unsolicited brief together with 11 witness statements.

26. On the same day, the Arbitrator decided in application of Article 12.1 of the BAT Rules that the Respondent's latest submission was late and would not be taken into consideration, since the proceedings had been closed already on 24 January 2019 and he did not find it necessary to take this submission and the further witness statements into account.
27. On 7 February 2019, the Respondent filed a challenge against the Arbitrator, which was dismissed by the BAT President on 13 March 2019.
28. The Claimants submitted their account of costs on 25 January 2019. The Respondent submitted its account of costs on 28 May 2019, after a reminder sent by the BAT on 24 May 2019.

5. The Positions of the Parties

5.1. The Player's Position

29. On 28 July 2017, the Player signed an unconditionally guaranteed Player Contract with the Club. The parties agreed on a contractual term of three years. The Player was entitled to opt out of the Player Contract after the 2017/2018 and the 2018/2019 season against the payment of certain fees. The Player Contract also expired before the 2020-2021 season if the Club failed to reconfirm the continuation of the employment for that season.
30. The Player Contract provided for annual salaries of EUR 150,000 net for the season 2017/2018, EUR 200,000 net for the season 2018/2019 and EUR 250,000 net for the 2019/2020 season. In addition, the Player was entitled to bonus payments if the team achieved certain sporting results.
31. The Club was constantly late with the salary payments. On 18 June 2018, after the Club had missed the past four monthly payments, the Agency sent a demand letter requesting the then outstanding payments due on 25 February, 25 March, 25 April and 25 May 2018. On 19 June 2018, the Club replied that on 11 June 2018, after the

final game of the Serbian game, the Club's President Mr. Covic had met with all players of the team and informed them that the Club intended to transfer the open salaries and other contractual payments until 15 July 2018.

32. The Club's President did not promise payment on 15 July 2018, but simply said that the Club would "try" to pay the players by 15 July 2018.
33. On the same day, the Player himself sent an email to the Club and denied having agreed to a delayed payment on 15 July 2018. Instead, he requested the Club to make the contractually agreed payments within 7 days.
34. On 16 July 2018, the Agency terminated the Player Contract because the promised payments had not been received and requested that the Letter of Clearance be issued immediately.
35. On 18 July 2018, the Club paid EUR 60,000 to the Player. However, on that day, the Player Contract was already terminated. In addition, also on 18 July 2018, the Player had not yet received the additional bonus payment of EUR 2,500.
36. The Club continued treating the Player as if he was still under contract. It notified him of the start of the preparation of the next season and, when the Player did not appear, initiated disciplinary proceedings and refused to issue the Letter of Clearance. The Club also instituted disciplinary proceedings against the Player before the Basketball Federation of Serbia (BFS).
37. The Player then initiated legal proceedings to obtain the Letter of Clearance. Eventually, the FIBA concluded on 15 October 2018 that the Player Contract had come to an end on 16 July 2018 and ordered the issuance of the Letter of Clearance.
38. According to Article 10 of the Player Contract, the Player was entitled to unilaterally terminate the agreement if the Club was late with any payment by more than 30 days.

39. The Player must be compensated for the loss of salaries for the 2018/2019 and the 2019/2020 season, which amounts to EUR 450,000 net.
40. In the Request for Arbitration, the Player stated that he had not yet found a new club and there was no alternative income to deduct from the compensation.
41. On 25 September 2018, the Claimants signed a new player agreement with Club Baloncesto Fuenlabrada for three seasons. On 17 October 2018, CB Fuenlabrada signed a loan agreement with Club KK Partizan for one season. On 18 October 2018, the Claimants entered into a player agreement with Club KK Partizan for one season with the possibility for a second season if CB Fuenlabrada agreed to extend the loan. Since the Partizan Contract provides for a salary of EUR 150,000 for the 2018/2019 season and a salary of EUR 200,000 for the 2019/2020 if the loan is extended, the Player reduced his claim to EUR 100,000 *“taking into account an assumption that a second year loan agreement can be reached with Fuenlabrada.”*

5.2. The Agency’s position

42. In the Player Contract, the Club agreed to pay an Agency Fee in the amount of 10% of the salaries agreed with the Player. For the 2018/2019 season, that amount was EUR 15,000 net, due on 15 October 2017. This amount was paid only on 10 September 2018.
43. The Agency would have earned Agency Fees of EUR 45,000 net if the Player Contract had not been terminated.
44. Under the new contractual scheme with Club Baloncesto Fuenlabrada and Club KK Partizan, the Agency is entitled to Agency Fees of EUR 35,000, also under the as-

sumption that the loan agreement between these two clubs will be extended for the 2019/2020 season. The Agency is entitled to the difference of EUR 10,000.¹

5.3. The Claimants' Request for Relief

45. Claimants' final Request for Relief in their Response to the Procedural Order (submission dated 12 December 2018), which takes the Fuenlabrada Contract and the Partizan Contract into account, reads as follows:

"Claimants therefore amend their requests as follows:

Claimant 1 – Mr. Jankovic

1. The sum of €100,000 EUR in damages for the 2018/2019 and 2019/2020 season, representing the difference between the original Agreement and the Fuenlabrada Agreement for such time.

2. Costs

Claimant 2 – Bill A. Duffy International, Inc.:

1. €15,000 EUR for the difference in agent fees for the 2018/2019 and 2019/2020 season between the original Agreement and the new contracts based on standard 10%;

2. Costs of this action plus attorney's fees."

5.4. The Club's Position

46. The Club does not dispute that the Player was entitled to the claimed salaries. These have fully been paid, with the latest payments on 18 and 19 July 2018.
47. It is true that the Club was late with the payment of the monthly salaries to all players of the team. However, the Club's President announced at the celebration of the win of the Serbian league 2018 on 11 June 2018 that all payments would be made on 15 Ju-

¹ In the amended request for relief in the Response to Procedural Order, the Claimants request Agency Fees of EUR 15,000, while on page 4 of the Response to Procedural Order, the loss is calculated at EUR 10,000 which seems the mathematically correct result of the subtraction of the agency fee on the Partizan Contract from the agency fee based on the Player Contract.

ly 2018, with which all players, including Claimant 1, agreed. This can be confirmed by several witnesses.

48. Consequently, the Club and the Player agreed to an extension of the payment date until 15 July 2018. According to Article 2 of the Player Contract, the Player was entitled to terminate the Player Contract only in case of a payment delay of 30 days, i.e. only if the payments had not been made by 15 August 2018. Since all debts to the Player have been paid on 18 and 19 July 2018, the early termination of the Player Contract on 16 July 2018 constituted a breach of that agreement, and the Player is not entitled to any payments of the Club.
49. The proceedings which the Player initiated with the Competition Committee of the Serbian Basketball Federation and FIBA and the respective decisions are not relevant for this arbitration.
50. The Player acted in bad faith, breached the contractual and oral agreements and camouflaged a transfer to the Spanish club Fuenlabrada, when he actually intended to join local rival Club KK Partizan. Such transfer was planned already since mid-July 2018 and then executed only one day after the transfer to Fuenlabrada. Such manoeuvre does not deserve legal protection and the Player is not entitled to any compensation.

5.5. The Club's Request for Relief

51. The Answer contains the following Request for Relief:

"17. Having taking all Respondent's allegations there is firm ground that the Claimants' claims must be rejected as ungrounded and that the Claimants should be obligated to compensate the Respondent for all the costs of this proceedings.

Moreover, the Respondent request BAT to issue interim measure by which the player would be suspended to play for KK Partizan until the award is rendered in this proceedings.

6. The Jurisdiction of the BAT

52. Pursuant to Article 2.1 of the BAT Rules, “[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland”. Hence, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).
53. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
54. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.
55. The jurisdiction of the BAT over the dispute results from the arbitration clause contained in Article 11 para. 2 of the Player Contract, which contains the standard BAT arbitration clause:

“11. IN EVENT OF DISPUTE

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 [PIL], irrespective of the parties’ domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.”

56. The Player Contract is in written form and thus the arbitration agreement meets the formal requirements of Article 178(1) PILA.
57. The Arbitrator considers that there is no indication in the file which could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording “[a]ny dispute arising from or related to the present contract” in the above-mentioned Article of the Player Contract covers the present dispute.

58. In addition, the jurisdiction of the BAT has explicitly been confirmed by both Parties.
59. For the above reasons, the Arbitrator finds that he has jurisdiction to adjudicate the Claimants' claims.

7. Applicable Law – *ex aequo et bono*

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

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

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

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

62. In Article 11 para. 2 of the Player Contract, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono*. Consequently, the Arbitrator will decide the issues submitted to him *ex aequo et bono*.
63. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l'arbitrage of 1969² (Concordat),³

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).

³ KARRER, in: Basel commentary to the PILA, 3rd ed., Basel 2013, Article 187 PILA N 290.

under which Swiss courts have held that “*arbitrage en équité*” is fundamentally different from “*arbitrage 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

64. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives

“the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand.”⁵

8. Further procedural issues

8.1. Hearing

65. In its Brief dated 27 December 2018, the Club requested “*that hearings should be held even as video conference call and that all suggested witnesses should be questioned including the player himself as the Claimant.*” The Player did not comment on this request.
66. According to Article 13.2 BAT Rules, the Arbitrator shall determine in his sole discretion whether a hearing by telephone or video conference or whether and where a hearing in person is to be held. In the present case, the Arbitrator accepts that the submission of the Club that the team convened after the final game of the Serbian league on 11 June 2018 and that the Club’s President announced that the outstanding payments would be made at a later date. Whether this announcement was suffi-

⁴ JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

⁵ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

cient to amend the Player Contract is a legal question which does not require a hearing. The Arbitrator therefore determined that no hearing shall be held.

8.2. Provisional Measures

67. In its Answer, the Club also requested that BAT should issue “*interim measure by which the player would be suspended to play for KK Partizan until the award is rendered in this proceedings.*” The Club did not provide any reasons for this request, neither in the Answer nor in any subsequent submission of the Club. The Arbitrator decided not issue the requested measure because the Club had not substantiated the cumulative requirements for interim measures, such as the likelihood of success on the merits, the irreparable harm if the measure was not granted, and the proportionality of the requested measure.

8.3. Late filing

68. On 1 February 2019, the Club filed an unsolicited submission together with 11 witness statements to the BAT. The Arbitrator did not accept this submission because it was late and the proceedings had already been closed on 24 January 2019.

8.4. Counterclaim

69. In its Answer of 5 November 2018, the Club reserved the right to submit a counterclaim upon receipt of the Player’s contracts with BC Fuenlabrada and BC Partizan Belgrade. These contracts were filed later in these proceedings, but no counterclaim was raised.

8.5. Reduction of the Player’s prayer for relief

70. In his Response to the Procedural Order dated 12 December 2018, the Player reduced his claim because he had signed another player contract since the date of the Request for Arbitration and secured an alternative income. A party may reduce its prayer for relief at any time during the arbitral proceedings which shall not be regard-

ed as an amendment to the claim, but rather as a partial withdrawal of the same. The cause of action (i.e. the factual basis) of the Player's Request for Arbitration remained unaffected. The new facts concern the reduction of the Player's prayer of relief and not the cause of action of his claim for the unpaid salary. The Player's reduction of his prayer for relief has not been objected by the Club, and the Arbitrator will take the new player contract into account when deciding the dispute.

9. Findings

9.1. The early termination of the Player Contract

71. According to the Article 10.1.1 of the Player Contract, the Player is entitled to early terminate the Player Contract if any scheduled payment is late by more than 30 days. Undisputedly, the Club was in arrear with the scheduled salary payments on 18 July 2018 by more than 30 days. The Club was also late with the payment of the Agency Fee which was due by 15 October 2017.
72. It is the Club's burden to prove that the Player agreed to a postponement of the payment date until 15 July 2018. The Club submits that it was on 11 June 2018, by occasion of the team's celebration of its victory of the Serbian league, when the Club's President informed all players that they would get paid on 15 July 2018.
73. The Claimants do not question the fact that the Club's President made such a statement at the victory party, as also confirmed by other players. However, that unilateral declaration was far from a contractual agreement. It is yet true that the Player Contract does not require the written form for changes, but as with any contract, it requires proof of acceptance of amendment offers.
74. Legally speaking, the Club President's statement must be understood as an offer of the Club for the amendment of the player contracts, including the contract with the Player. There is no evidence whether and how the players accepted that offer. In particular, the Club does not even assert that all players present explicitly confirmed their

agreement. The Club seems to argue that it understood that all players collectively accepted the offer because they remained silent and because some of them were ready to confirm as witnesses that they accepted the Club's offer.

75. Whether acceptance to a contractual offer may be implied depends on the circumstances. In particular, the offer must be unambiguous, it must be clear that the other party received the offer and the recipient's subsequent behaviour must be understood by the offeror in good faith as consent. On the other side, it is generally not enough for the offeror to simply rely on the silence or passivity of the recipient.
76. It has not been disputed that the Club's President announced that the outstanding amounts would be paid later than scheduled and that such announcement was made on the occasion of the championship party on 11 June 2018. However, the parties disagree on the specific content of the President's announcement: While the Club argues that the date of 15 July 2018 was announced as payment date, the Player submits that the President simply confirmed the Club's intention to make the payments until 15 July 2018. No payment was made on that day. The Club therefore submits that by agreeing to a later payment date, the Player also agreed to another 30-days "*standstill period*" before he could unilaterally terminate the Player Contract. However, it has not been asserted that the President made such a statement of interpretation on 11 June 2018, namely that the player contracts could only be terminated if payment was delayed by further 30 days after the already extended payment period. The Arbitrator finds this interpretation untenable, because this would have included another extension by a further 30 days.
77. The Arbitrator finds therefore that the Player could not in good faith understand the statement of the Club's President in a way the Club now asserts. The fact that the payment was not made on 15 July 2018 supports the understanding of the Player. Finally, there is no evidence of any consensual behaviour of the Player on record. To the contrary: 11 June 2018 was the final date of the 2017/2018 season without any further activity of the Player for the team from which consent could be derived. What is decisive, however, is that the Player immediately and explicitly protested against

the alleged postponement agreement, after the Club rejected the Player's payment request of 18 June 2018.

78. In his email of 19 June 2018, the Player made it clear that he never consented to a postponement of the due salary payments until 15 July 2018. He then set a last grace period for the overdue payments of 7 days from the date of his notice of 19 June 2018, which was 26 June 2018. Considering the clear rejection of the alleged payment agreement, this cannot be understood as a kind of a general acceptance of late payment, as the Club now asserts. The Arbitrator also finds that the Player did not waive his termination right under Article 10.1.1 of the Player Contract when he set a final deadline for the already overdue payments.
79. Thus, the Player was entitled to unilaterally terminate the Player Contract when the overdue payments were not made on 26 June 2018. The notice of 16 July 2018 therefore terminated the Player Contract with immediate effect. Neither did it invalidate the termination when the Player waited another 20 days before he sent the termination notice to the Club – probably to wait and see whether the Club would hold the promise of 11 and 19 June 2018 that payments would be made “until July 15, 2018”, nor did the payment of the due salaries and the due bonus on 18 and 19 July 2018 revive the Player Contract.

9.2. Consequences of the unilateral termination of the Player Contract

80. The consequences of the unilateral termination of the Player Contract are stipulated in Article 10 of the Player Contract:

“10. Breach

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

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

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

10.1.3 *In such case 10.1.1) and 10.1.2), as soon as PLAYER and or the REPRESENTATIVE makes such a request in writing to the CKUB official, PLAYER will*

be granted his unconditional release and free agency and CLUB shall take all necessary steps to issue a Letter of Clearance immediately. Seventy-two (72) hours after notice has been given, all monies due PLAYER and the REPRESENTATIVE during the entire term of his agreement shall become immediately due and payable. PLAYER is under no obligation to mitigate his damages and CLUB shall receive no offset.”

81. The first consequence of the termination of the Player Contract is the maturity of all the Player’s open claims of past salaries and bonus payments against the Club within 72 hours. The Player does not request payment of any past salaries and bonuses as all payments due by the end of the 2017/2018 season have been made before the Request for Arbitration was filed, albeit with delay.
82. The Player however claims the compensation for the remaining two seasons, 2018/2019 and 2019/2020 which he considers the “entire term of this agreement.” It is correct that the Player Contract was concluded for three seasons, according to Article 1.1 of the Player Contract. The Club had the option to negotiate a further contractual term (2020/2021) if it would “reconfirm” the Player by a “fully executed written agreement.” The Player did not extend his claim to the 2020/2021 season.
83. The agreed salary for the 2018/2019 season amounted to EUR 200,000 net of any Serbian taxes. For the 2019/2020 season, the Player was entitled to EUR 250,000 net of any Serbian taxes. In sum, during the remaining contractual term, the Player would have earned EUR 450,000 net of any Serbian taxes.
84. Although according to Article 10.1.3 of the Player Contract, the Player is not obliged to mitigate his damage and to offset any alternative income, he has waived the enforcement of this clause and reduced his request for relief based on the new contracts with KK Partizan. He also accepts that the salary from KK Partizan for both seasons 2018/2019 and 2019/2020 shall be deducted from the entire compensation, although the second season with KK Partizan is subject to continuation of the Loan Agreement between BC Fuenlabrada and KK Partizan. The alternative salary for the 2018/2019 season amounts to EUR 150,000 net (“*exempt from tax in Serbia*”), and for the 2019/2020 season to EUR 200,000 net (“*exempt from tax in Serbia*”), i.e. EUR 350,000 net of any Serbian taxes, in total.

85. The difference between the salary for the remaining term of the Player Contract and the salary agreed with KK Partizan amounts to EUR 100,000, net of any Serbian taxes. While the Player's amended Request for Relief refers to the alternative income received from BC Fuenlabrada, the Arbitrator understands that the relevant agreement is the Partizan Contract, which explicitly states that the salaries must be understood net of any Serbian taxes.

9.3. Contributory fault by the Player

86. The Club asserts that already in July 2018, the Player had initiated negotiations with KK Partizan with the intention to leave the Club. According to the Club, the Player abused the right to early terminate the Player Contract. In fact, the Club argues that it was a welcomed opportunity for the Player to join the rival club without paying the buyout fee and to even claim damages. This fraudulent behaviour is illustrated, in the Club's view, by the strange manoeuvre of the signing of a contract with BC Fuenlabrada and the immediate loan of the Player to KK Partizan on the following day. The Club submits that such manoeuvre should not be honoured by the BAT.
87. The Arbitrator disagrees. The Player correctly fulfilled his contractual obligations during the entire 2017/2018 season. The Club was however in default with the salary and bonus payments. As held before, the Player was entitled to terminate the Player Contract from 26 June 2018 on, and did so by termination notice of 16 July 2018, after the Club even missed his own extended payment date. There is no evidence of any disloyal behaviour of the Player while he was still under contract, and the structure of his transfer to KK Partizan, which was implemented only after the termination of the Player Contract, was in no way causal for the termination of the Player Agreement. By joining a new club so quickly and by agreeing to the deduction of his new salary from the compensation due by the Club, the Player even reduced the Club's financial exposure following the justified termination of the Player Contract. The Arbitrator therefore finds that the Player does not have to accept a further reduction of his claim because of contributory fault.

88. The Club also submits that the Player was in breach of the Player Contract when he did not follow the Club's order to return to the Club's activities after the summer break 2018. However, the Player Contract was terminated on 16 July 2018 and the Player had no further obligations towards the Club.

9.4. Agency Fees

89. The Agency requests an Agency Fee of EUR 15,000 which results from the initially claimed Agency Fee under the Player Contract of EUR 45,000 for the 2018/2019 season and the 2019/2020 season from which an agency fee of 10% of the Player's alternative income (EUR 350,000) may be deducted. This results however in an amount of EUR 10,000, as also indicated in the Claimants' Response to the Procedural Order of 12 December 2018.
90. There is no evidence on file which demonstrates the exact amount of the agency fees actually agreed in relation to the transfer of the Player to KK Partizan. However, it is customary in professional basketball that the agency fee amounts to 10% of the Player's fixed salary. The Arbitrator therefore accepts the Agency's claim for a compensation of EUR 10,000.

10. Cost

91. Article 17 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule, shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.
92. On 15 June 2019 – considering that pursuant to Article 17.2 of the BAT Rules “the BAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator”, and that “[t]he fees of the Arbitrator shall be calcu-

lated on the basis of time spent at a rate to be determined by the BAT President from time to time”, taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised – in accordance with Article 0.4 of the BAT Rules the BAT Vice-President determined the arbitration costs in the present matter to be EUR 12,000.

93. Considering the circumstances, the outcome of this arbitration and the procedural behaviour of the parties, the Arbitrator finds it fair that the Club shall bear the full arbitration costs. Given that the Advance on Costs of EUR 12,000 was paid entirely by the Agency, in application of Article 17.3 of the BAT Rules the Arbitrator decides that the Club shall reimburse EUR 12,000 to the Agency.
94. The Claimants claim legal fees and costs in the amount of EUR 5,950, not taking into account the non-reimbursable handling fee of EUR 5,000. The reduction of the Player’s prayer for relief might have had an effect on the amount of the non-reimbursable handling fee. However, the Player did not initially put forward an excessive claim and the alternative salary was not yet known at the time of the Request for Arbitration. The reduction of the Player’s prayer of relief did not reduce the complexity of relevant facts. The non-reimbursable handling was therefore not adjusted.
95. The Respondent requests the reimbursement of “arbitral cost” of EUR 15,000. The Arbitrator finds that as a consequence of the outcome of the arbitration, the Respondent must contribute to the legal fees and costs of the Claimants. The maximum legal fees and costs in cases with an amount in dispute from EUR 100,001 to EUR 200,000 amount to EUR 10,000 per party, excluding the non-reimbursable handling fee. The amount in dispute is at the lower end of the bandwidth. On the other hand, the case required several written submissions. The Arbitrator therefore finds that the Respondent shall reimburse the Claimants with an amount of EUR 10,950, including the non-reimbursable handling fee.

AWARD

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

- 1. BC Crvena Zvezda is ordered to pay to Mr. Stefan Jankovic the amount of EUR 100,000.00 net of any Serbian taxes.**
- 2. BC Crvena Zvezda is ordered to pay to Bill A. Duffy International, Inc., dba BDA Sports Management the amount of EUR 10,000.00 net of any Serbian taxes.**
- 3. BC Crvena Zvezda is ordered to pay to Bill A. Duffy International, Inc., dba BDA Sports Management the amount of EUR 12,000.00 as a reimbursement of its advance on arbitration costs.**
- 4. BC Crvena Zvezda is ordered to jointly pay to Mr. Stefan Jankovic and Bill A. Duffy International, Inc., dba BDA Sports Management the amount of EUR 10,950.00 as a reimbursement for their legal costs and expenses.**
- 5. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 17 June 2019

Stephan Netzle
(Arbitrator)