BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0317/12)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Ulrich Haas

in the arbitration proceedings between

Azovmash Mariupol Basketball Club
Mashinostroiteley Square 1,
87535 Mariupol, Ukraine

- Claimant -

represented by Mr. Miodrag Ražnatović, attorney at law,
Strahinjica Bana 14, 1100 Belgrade, Serbia

vs.

Mr. Luca Bechi

- Respondent -

represented by Mr. Sébastien Ledure, attorney at law,
Boulevard du Régent 37-40, 1000 Brussels, Belgium

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1. The Parties

1.1 The Claimant

1. Azovmash Mariupol Basketball Club (hereinafter also referred to as “the Club” or “the Claimant”) is a Ukrainian basketball club that competed during the season 2012-2013 in the Ukrainian Superleague.

1.2 The Respondent

2. Mr. Luca Bechi (hereinafter also referred to as “the Respondent” or “the Coach”) is a professional basketball coach of Italian citizenship.

2. The Arbitrator

3. On 5 September 2012, the President of the Basketball Arbitral Tribunal (the "BAT"), Prof. Richard H. McLaren, appointed Prof. Dr. Ulrich Haas as arbitrator (the “Arbitrator”) pursuant to Article 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 his declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

4. On 9 February 2012, Claimant signed an employment agreement with Respondent (hereinafter referred to as the “Contract”). According thereto, Respondent was employed as the head coach of the Claimant’s senior men’s team for the remainder of the 2011-2012 season and – under certain conditions – also for the entire 2012-2013

season. It is undisputed between the parties that the aforementioned conditions for an extension of the Contract are fulfilled.

5. The main provisions of the Contract read as follows:

> *"Article 1*
>
> *Employment duration*
>
> *The Club, hereby employs the Coach in the capacity of professional basketball coach as the first (head) coach of men's senior professional team of the Club competing in the Ukrainian Superleague, VTB League and ULEB Eurocup, for a term of two (2) basketball seasons (2011/2012 and 2012/2013) to commence on the date hereof and to continue through the first day following the final game in which the Club participates in the 2012/2013 regular season, as applicable and/or the 2012/2013 Ukrainian Superleague playoffs for that season, whichever date occurs later. Coach's employment during the term of this Contract only includes coaching of the senior professional basketball team of the Club participating in the Ukrainian Superleague, VTB League and ULEB Eurocup. It is absolutely understood that Club can not assign Coach to coach any other subdivision of the Club other than the senior professional team of the Club participating in the Ukrainian Superleague, VTB League and ULEB Eurocup. It is understood that the Coach shall not be required to participate in any postseason exhibition games scheduled by the Club after the conclusion of the Club's participation in their last official Ukrainian Superleague game (whether regular season or playoffs) for the 2011/2012 and 2012/2013 basketball season respectively.*
>
> *[…..]*
>
> *Article 2*
>
> *Obligations of the Coach*
>
> *Coach agrees:*
>
> *A) To prepare to lead end execute all games, practices and all other necessary sessions and activities for the Club with the purpose to achieve the best possible goals in all competitions, both league and cup, in which participates.*
>
> *B) To be an example for the players on and off the court in all respects.*
>
> *C) To participate in all activities of the Club with a positive outlook and serious manner.*
>
> *D) To keep up with the most recent developments in the sport of basketball and to assimilate the instructions promulgated by the directors of the Club with intention of putting his talents at the service of the Club in order to assure a good performance before the public/spectators.*

E) To be present at all meetings and events organized by the Club (press conferences, meetings with sponsors, receptions, dinners etc.)

[…..]

Article 3

Obligations of the Club

The Club agrees to pay to the Coach the fully guaranteed Base Salary of € 65,000.00 Euro (sixty five thousand Euro) Net of taxes for the 2011/2012 basketball season and € 175,000.00 Euro (one hundred and seventy five thousand Euro) Net of taxes for the 2012/2013 basketball season in accordance with the payment schedule set forth below. All payments to Coach hereunder must be made in Euros in accordance with wire transfer instruction or other instructions to be provided by the Coach.

[…..]

Club agrees that this contract is a fully guaranteed contract for the 2011/2012 basketball season and in case that in the 2011/2012 basketball season Club reaches the finals of the Ukrainian Superleague or the Final Four of the VTB League for the 2012/2013 basketball season.

In this regard, even if Coach is removed or released from the Club or this contract is terminated or suspended by Club due to Coach's lack of or failure to exhibit sufficient skill or achieve certain result, Coach's death, illness, injury or mental or physical disability (whether incurred on or off the court) or for any other reason whatsoever other than Coach's direct and material breach of this contract, Club shall nevertheless be required to pay to Coach and Agent, on the dates set forth above, the full amounts set forth above. If any scheduled payment is not received by Coach's bank within twenty one (21) days of the date due, the Coach's performance obligations shall cease, Coach shall have the right, at Coach's option, to terminate this contract and accelerate all future payments required under this contract. In this case, Coach shall be free to leave Club to coach basketball anywhere in the world he chooses, but the duties and liabilities of Club toward Coach and Agent under this contract shall continue in full force and effect. Furthermore, the Club shall have no rights over or with respect to Coach, and the Club will not be entitled to request or receive any payments pertaining to the Coach coaching basketball anywhere in the world.

[….]

Article 6

Amenities

In addition to the fully guaranteed Base Salary payments to the Coach contained in Article 3, the Bonuses payable to the Coach as per Article 4 and the payments of all taxes by the Club on behalf of the Coach as specified in Article 5, Club further agrees to provide the Coach during this contract with the following without charge or cost to the

Coach.

a) Automobile. The Club will provide an automobile for exclusive use by the Coach and his family during the time of this contract and for a period of ten (10) days thereafter. Club shall pay "full" car insurance throughout the term of this contract on the automobile, covering damage to the car. The cost of normal inspection of the vehicle will be covered by the Club, including replacement of use parts and changing tires, as long as those damages have not been caused by the negligent conduct of the Coach or by abusing the vehicle. The Club shall be responsible for all expenses for the automobile except for the cost of gas and traffic tickets which shall be paid by the Coach.

b) Apartment. The Club shall provide the Coach a fully furnished large two bedroom apartment for his exclusive use during the entire period of this contract and for a period of ten (10) days thereafter. Coach shall maintain the premises placed at his disposal in good condition, excepting normal wear and tear. Such apartment's furnishings shall include all normal and reasonable items including a king size bed, washer and dryer, television with satellite hook-up, DVD player and internet access.

The Club shall be responsible for all payments associated with the assigned apartment including but not limited to rent, taxes, electricity, water, gas, etc.

[…..]

d) Mobile phone expenses. The Club agrees to pay Coach's mobile phone expenses, but not more than 500 USD.

[…..]"

6. In the Club management's view, the men's team of the Club performed unsatisfactorily in the play-off finals of the 2011-2012 season. Therefore, the Club wished to end its collaboration with the Coach. Talks were conducted between representatives of the Club and the Coach – *inter alia* – at the Euro camp in Treviso (10 and 11 June 2012), the contents of which are disputed between the Parties. While the Coach is of the view that the Club terminated the Contract, the latter submits that it had only made an offer to the Coach for early termination of the Contract. According to the Coach however, the parties were unable to agree on the amount of compensation due to the Coach. Thus, according to the Club, it decided to keep Respondent as its head coach.

7. On 2 July 2012, Claimant signed an agreement with Mr. Aleksandar Kesar (hereinafter referred to as the "Kesar Agreement"). The main parts of the Kesar Agreement read as follows:

"Article 1: Employment – Duration

The Club, competing in the First National Division of Championship of Ukraine, undertakes to employ the Consultant in the capacity of professional basketball consultant of the head coach of men team of the club, for the 2012/13 and 2013/14 seasons.

This contract starts on 1st of August 2012, and will run till the last game of the club in the league of Ukraine (play-off) in the season 2013/14 or any other official game in the competition, where the club will participate.

[….]

Article 2: Obligations of the Consultant

The Consultant agrees:

A. to help with advises and consultation to head coach, as well as to coaches, included in youth program of the club

B. to be an example for the players on and off court in all respects;

C. to present on time, and to participate with a positive outlook and serious manner, at the Club's training sessions and at the Club's league and non-leagues games;

D. to keep up with the most recent developments in the sport of basketball and to assimilate the instructions promulgated by the directors of the Club with intention of putting his talents at the service of the Club in order to assure a good performance before the public/spectators;

E. to be present at all meetings and events organized by the Club (press conferences, meetings, with sponsors, receptions, dinners, etc.);

[….]

Article 3: Obligations of the Club

The Club agrees:

A. to pay the Consultant the following NET amounts

SEASON 2012/13 – 120.000 USD

b) in ten equal monthly instalments, paid on the 12th of each months starting from September 2012 and finishing June 2013 amount of 12.000 USD

SEASON 2013/14 – 160.000 USD

a) in ten equal monthly instalments, paid on the 12th of each months starting from

September 2013 and finishing June 2014 amount of 16.000 USD

[….]

Article 12: Public statement

The parties agree, due to the protection of the Consultant's reputation, to do all public statements about signing consultant as the head coach of the club.

The Club shall be bound to pay indemnification to the Consultant in the amount of 25,000 USD, if it announces that Consultant is hired for any position besides head coach position."

8. The signing of the Kesar Agreement was reported on several digital media forums, inter alia:

- on Claimant's counsel Twitter account (4.7.2012): *"Aleksandar Kesar, winner of University games 09 and assistant coach of Olympiacos, is the new head coach of Azovmash, runner up in Ukraine."*
- on BeoBasket's (i.e. the agent of Mr. Aleksandar Kesar and Claimant's counsel agency) official website (26.7.2012): *"Aleksandar Kesar hired as the new head coach of Azovmash."*
- on www.eurobasket.com (5 July 2012): *"Azovmash hires Aleksandar Kesar as new Head Coach".*

9. On 16 July 2012, Mr. Stefano Meller (one of Respondent's agents) addressed an email to Mr. Rolandas Jarutis, i.e. Claimant's General Manager, that reads as follows:

"Dear Mr. Jarutis

I am writing to you in order to ask about your intentions towards our client Luca Bechi, who is under contract as the head coach of Azovmash BC for the season 2012-2013.

Following the updates through your official website, there is a new head coach that was hired on the 5th of July. According to the contract between your club and Luca Bechi this clearly constitutes the breach of the contract by your club, and your action shall be perceived as a one sided termination of the contract made by your club.

I would like to remind you that his contract was automatically renewed entering the final of the play offs of Superleague 2011-12 and we are ready to protect his working rights from any violation.

Looking forward to hearing from you as soon as possible."

10. On 17 July 2012, Mr. Jarutis responded to the above email as follows:

> *"Dear Stefano,*
>
> *Following your letter we would like to inform you that your client Luca Bechi is still the head coach of our club for the 2012-2013 season. The information concerning Aleksandr Kesar is false, because he will be the main consulting person for the head coach. As a result, we kindly ask Luca Bechi to arrive to Mariupol on 1st August 2012.*
>
> *We regret that we cannot find common language concerning the situation about which we spoke during the meeting in Treviso."*

11. With email of the same day, Mr. Meller replied as follows:

> *"Dear Mr. Jarutis*
>
> *You clearly stated in your conversation with coach Bechi and me in Treviso that Mr. Bechi is being terminated as a head coach for the upcoming season and we are ready to confirm that in front of the BAT if necessary.*
>
> *Moreover, it has been reported throughout the media that you appointed coach Kesar as your head coach, and this news has been published, among other places, on your official web site. Coach Kesar gave interviews in which he confirmed his position of a head coach of your Club.*
> *Coach Bechi has documented all these reports and clippings and will use them as evidence if necessary.*
>
> *There are other mounting evidence that confirms this fact that coach Bechi will use in case this case ends up going to the FIBA Arbitral Tribunal.*
>
> *Please be advised that all the actions that you or anyone else from your club might try to do, from the point of receiving the letter that I sent you yesterday done in order to present this matter in a different light are useless.*
>
> *You appointed a new head coach and by doing so you unilaterally terminated the agreement with Coach Bechi for the upcoming season.*
> *The only thing coach Bechi is ready to discuss at this point is how and when do you plan to pay the salary compensation owed to him for the 2012/13 basketball season. If coach Bechi does not get a satisfactory proposition from your behalf regarding the payment of the above mentioned salary payments in the near future, be advised that my client will seek resolution of this matter in the FIBA Arbitral Tribunal."*

12. On 24 July 2012, Mr. Jarutis sent the following explanation to Mr. Meller:

> *"Dear MR Meller,*

Thanks for your letter with explanation of the position of our coach, and your client MR Bechi.

We completely disagree with you, and would like to state as follows:

1. You don't need to prove that I clearly stated in Treviso, that Luca will not be our coach. That s truth and I m always honest. But, as you know our Managing board changes its mind very often, and after they recognized that we can t find the financial solution with you, as well as after calming down upon loosing final 0 4, the decision have been changed. Luca is still our coach and under valid contract with us.

It s more than common nowadays that position of the Club during the summer time and negotiations changed, and also happened in this case.

2. I would like to remind you that according to the article 12 of the agreement, the contract cannot be altered or modified except by written agreement. In the current situation, our Club did not do any written communication, what means the contract is unchanged and in the force. If Our Club sends the letter about termination of the contract, you will have right to ask for compensation and to understand that contract is terminated. Also, if we do not pay his salary for the certain period of the time, you will have right to terminate. But, for the moment, we did not terminate the contract in written, and we don't intend to do this, as well as we fulfill all financial obligations.

3. Also, you do not need any clipping for proving that club hired MR Aleksandar Kesar. We did it. But we did not hire him as the head coach, despite different information in media (we did it because it was wish of the coach). If you need we can send you the copy of his contract. We are going to have very serious young project, and also from our point of view Luca will need some help from the Club s side, in the role of consultant. Hiring MR Kesar, is in the best interest of Luca as well, who missed that support in the final of playoff. Also, you completely forget that situation with MR Kesar and national team of Serbia is not clear, and most likely he will be again assistant of Ivkovic, what means will arrive in Mariupol on the 20th of September 2012.

4. I carefully checked the contract, and I did not find any clause, saying about breach of the contract, if Club hires anybody for any position in the Club, including the head coach position.

5. To make long story shorter, is obvious that we have valid contract with coach Luca Bechi, and that with this letter we officially invite him to join us on the 1st of August 2012, and start performing his obligation according to the contract. We would kindly ask you to inform us about his flying schedule, that we can organize ticket for him. That's the obligation stipulated in the article 2 point I of this contract. [sic]*"*

13. On 30 July 2012, Mr. Jarutis sent an email to the Respondent which reads as follows:

"Dear Luca,

As I informed you in my previous e mail, I need to know your flying schedule for the 1st of August. We expect you in Mariupol to start working for the next season, and we need to know, do you prefer morning or afternoon flight, and from where you will be departed.

We cannot purchase the ticket without information from your side.

This is urgent matter."

14. On 31 July 2012, Respondent's counsel addressed a first formal notice to Claimant that reads as follows:

"According to Article 1 of the Agreement, our client is employed as the head coach of the Club's senior men's team for the remainder of the 2011-2012 season and, since the Club reached the finals of the Ukrainian Super League during the 2011-2012 season, for the 2012-2013 season.

However, our client was dismissed by the Club at the end of May 2012. This was orally confirmed by Mr. Rolandas Jarutis as the Club's General Manager during a meeting with our client and his representative agents in Treviso in the weekend of June 10 and 11, 2012. This was also confirmed in a letter from Mt. Jarutis to Mr. Stefano Meller, one of our client's representative agents.

Despite several negotiations, the Club, our client and his representative agents did not agree on a compensation for the breach of contract by the Club.

On July 5, 2012, the Club hired Mr. Aleksandar Kesar as the new head coach of the senior men's team. This was published on the Club's official website as well as on several other websites.

Subsequently, there is no doubt as to the unilateral termination of the Agreement by the Club as from July 5, 2012

[….]

According to Article 3 of the Agreement, our client is entitled to a salary of one hundred and seventy-five thousand Euro (175.000 €) net for the 2012-2013 season. According to Article 11 of the Agreement, our client's representative agents are entitled to a fee of seventeen thousand five hundred Euro (17.500 €) net for the 2012-2013 season.

We therefore address you this formal notice to inform the Club that unless payment of one hundred and seventy-five thousand Euro (175.000 €) net to our client as well as of seventeen thousand five hundred Euro (17.500 €) net to our client's representative agents is carried out within eight (8) days, our client will initiate a procedure before the Basketball Arbitral Tribuna1 (BAT) in Geneva in accordance with article IX of the Agreement."

15. Since the Respondent did not show up in Mariupol, Claimant fined Respondent with letters dated 1 and 2 August 2012. On 3 August 2012, Claimant sent a termination letter to Respondent which reads as follows:

> *"Dear MR Bechi,*
>
> *With this letter, BC Azovmash Mariupol, TERMINATES the contract, signed on the 9th of February 2012, with immediate effect.*
>
> *The GM of the Club, Rolandas Jarutis, sent several time invitation to you, to inform the club about route of traveling and request to be present in Mariupol, on the 1st of August 2012, for beginning of the work for playing season 2012/13.*
>
> *Unfortunately, you did not appear on the team meeting on the 1st, 2nd and 3rd of August 2012.*
>
> *According to the article 11.2.B of Internal rules and regulations of the Club, the fine for absence from practice (team meeting), when it is repeated for the 3 times case, without an excusal, is 50 percents of monthly salary or termination of the contract, and the Club decide to terminate the contract.*
>
> *In the next following days, we would inform you about monetary compensations, which will be required from you, due to the breach of the contract."*

16. By email dated 9 August 2012, Mr. Jarutis informed Counsel of Claimant (and Agent of Mr Kesar) that "*Aleksandar Kesar is from today appointed for head coach of the team, based on article 8 of the agreement signed on the 2nd of August*."

17. On the same day, Respondent's counsel addressed a second formal notice to Claimant, advising the latter of its alleged breach of the Contract and claiming compensation.

18. Still on 9 August 2012, Claimant signed an employment agreement with Mr. Samir Seleskovic (hereinafter referred to as "the Seleskovic Agreement"). This agreement reads in Art. 1 inter alia as follows:

> *"The club … undertakes to employ the Coach in the capacity of professional basketball coach as the assistant coach of men team of the club for the 2012/13 season. This contract starts on 5th of August 2012 and will run till the last game of the club in Ukraine*

league or play off in the season 2012-13, or any other official game in the competition, where the club will participate."

19. On 17 August 2012, Respondent's Counsel sent a final formal notice to Claimant advising it of its alleged breach of the Contract.

20. On 4 March 2013 Respondent signed a contract (hereinafter referred to as "Second Contract") with the club Virtus Pallacanestro Bologna s.p.a (hereinafter referred to as "Virtus"). According to the Second Contract, Respondent is employed as a professional basketball coach by Virtus for the remainder of the season 2012/2013. The total remuneration due under the Second Contract to the Respondent amounts to EUR 15,000.

3.2 The Proceedings before the BAT

21. On 15 August 2012, the BAT Secretariat received Claimant's Request for Arbitration (hereinafter referred to as "the RfA"). The non-reimbursable fee of EUR 3,000 was received in the BAT bank account on 20 August 2012.

22. On 22 August 2012, Counsel for the Coach informed the BAT Secretariat that he had been appointed as counsel and advised the BAT Secretariat that he intended to file an RfA in the above matter and that the Coach had already paid the handling fee in the amount of EUR 3,000.

23. On 5 September 2012, the BAT informed the Parties that Prof. Dr. Ulrich Haas had been appointed as Arbitrator in this matter.

24. On 12 September 2012 the BAT Secretariat acknowledged receipt of the RfA filed by the Claimant and the letter submitted by Counsel of Respondent. Furthermore, it credited the EUR 3,000 paid by Respondent against his share of the Advance of Costs in this proceeding. In the same letter, the BAT Secretariat invited the Respondent to file his answer in accordance with Article 11.2 of the BAT Rules by no later than 3 October

2012 (the "Answer"); and fixed the (further) amounts of the Advance on Costs to be paid by the Parties by no later than 24 September 2012 as follows:

"Claimant (Basketball Club Azovmash)	*EUR*	*4,000*
Respondent (Mr. Luca Bechi)	*EUR*	*1,000"*

25. On 7 October 2012, the Arbitrator extended the time limit for Respondent to file his Answer to 10 October 2012.

26. On 10 October 2012, the Respondent filed his Answer (with exhibits). The Answer contained a counterclaim.

27. On 11 October 2012, the BAT Secretariat extended the deadline for Respondent to pay the last part of his share of the Advance on Costs.

28. On 17 January 2013, the BAT Secretariat acknowledged receipt of the full Advance of Costs and invited the Claimant to comment on the counterclaim by no later than 1 February 2013.

29. By letter received by the BAT Secretariat on 23 January 2013, Claimant submitted its comments on the counterclaim.

30. On 28 January 2013, the Arbitrator acknowledged receipt of Claimant's comments and requested further information from the Parties. Furthermore, he advised the Parties that once the additional information was received, the exchange of documents would be closed. Accordingly, the Parties were invited to submit a detailed account of their costs on or before 4 February 2013.

31. On 4 February 2013, Respondent submitted his detailed account on costs and his answer to the questions raised by the Arbitrator. With email dated the same day,

Claimant submitted its account on costs, but no answers to the questions raised by the Arbitrator.

32. On 5 February 2013, the Arbitrator invited the Parties to comment on the other party's account of costs.

33. On 6 February 2013, Claimant submitted comments that related to the Account of Costs of Respondent, but also to the merits of the dispute, in particular the Claimant referred to a decision by the BAT (in the matter BAT 0291/12) and to an alleged failure of Respondent to mitigate his (alleged) damage.

34. On 8 February 2013, Respondent submitted his comments on Claimant's account of costs.

35. On 15 February 2013, the Arbitrator forwarded the Claimant's and Respondent's submissions to the Parties for information.

36. On 20 February 2013, Respondent indicated its opposition to the filing of the Claimant's submissions dated 6 February 2013 on the basis that they were not timely filed.

37. On 5 March 2013, Claimant advised the BAT Secretariat by email that Respondent had signed the Second Contract with Virtus.

38. On 8 March 2013, Claimant submitted a printout of the website of Virtus which stated that Respondent had been hired as professional basketball coach.

39. On 11 March 2013, the Arbitrator forwarded Claimant's emails dated 5 and 8 March 2013 to Respondent and requested the latter to provide a copy of the Second Contract by 15 March 2013.

40. On 12 March 2013, Respondent provided a copy of the Second Contract.

41. By email dated 14 March 2013, Claimant requested a translation of the Second Contract. The Arbitrator denied the request and invited Claimant instead to submit – if need be – those parts of the Second Contract in English it intended to rely upon.

42. By letter dated 18 March 2013, Claimant wrote to the BAT Secretariat – *inter alia* – that "*the Claimant fully accept[s] Italian version, because from our point of view this is as we said many times, completely irrelevant.*"

43. By procedural order dated the same day, the BAT Secretariat informed the Parties on behalf of the Arbitrator that the exchange of documents was complete. The Parties were invited – if they deemed necessary – to submit an amended account of their costs by 22 March 2013.

44. Claimant responded to the procedural order by email dated 19 March 2013. Respondent submitted his amended Account of Costs on 22 March 2013.

4. The Positions of the Parties

45. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Arbitrator, however, has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

4.1 Claimant's Position

46. Claimant submits the following in substance:

<u>On the main claim</u>

- The Contract had not been terminated by Claimant during the Euro camp in Treviso (10 and 11 June 2012). The Parties had only conducted negotiations regarding the conditions for a possible early termination of the Contract. Claimant submits that, since no agreement could be reached between the Parties, Respondent remained head coach of Claimant's men's team.

- The Respondent's failures to attend in Mariupol on 1 August 2012 and to perform his obligation under the Contract constituted a breach of Contract, entitling Claimant to terminate the Contract.

- Because of this breach of contract committed by Respondent, Claimant is entitled to recover damages. The damages incurred by Claimant are calculated as follows:

  - costs incurred by "activating" Article 8 of the Kesar Agreement and promoting Mr Aleksandar Kesar to the position of head coach. This led to a total increase in salary payments in the amount of USD 100,000. Furthermore, the agent fee related to the Kesar Agreement increased by USD 5,000 according to its Article 13.

  - costs incurred for being obliged to contract a new assistant coach. The Seleskovic Agreement resulted in additional salary payments to the detriment of the Club in the amount of USD 44,000.

<u>On the counterclaim</u>

- The Claimant did not breach the Contract. In particular, the Claimant is of the view that the signing of the Kesar Agreement – even if the latter was hired as head coach – does not automatically terminate the Contract. The same is true for a suspension of the services of the Coach.

47. As a result, Claimant requests in its Request for Arbitration and in its submission received by the BAT Secretariat on 23 January 2013, that an award be rendered against Respondent as follows:

> *"- to declare that agreement between BC Azovmash and Luca Bechi on the 9th of February 2012 is terminated due to the breach of the Respondent.*
>
> *- To award claimant BC Azovmash with amount of 149.000 USD plus interest at the applicable Swiss statutory rate from 14th of August 2012.*
>
> *- All the claims of Respondent are dismissed.*
>
> *- To award claimant with the full covered the costs of this Arbitration."*

4.2 Respondent's Position

48. Respondent submits the following in substance:

<u>On the main claim</u>

- The Contract had been terminated by the Claimant at the Euro camp in Treviso (10 and 11 June 2012). The negotiations between the Parties related only to the consequences of this early termination. However, these negotiations did not result in any amicable settlement. The fact that no agreement could be reached does not, in the view of Respondent, lead to a reinstatement of the Contract.

- The fact that Claimant contracted Mr. Aleksandar Kesar on 2 July 2012 is a further implicit confirmation of Respondent's dismissal. Despite the contents of the Kesar Agreement, Mr. Aleksandar Kesar was employed as head coach of Claimant's senior men's team. This clearly follows from statements that were spread on the internet or announced by Claimant's counsel without any protest by Claimant. Claimant alleges that it had to do these public statements, which were contrary to

the real legal situation, due to Article 12 of the Kesar Agreement. Respondent submits that any clause requiring false public statements is contrary to public policy.

- The fact that Claimant signed Mr. Aleksandar Kesar as head coach is – according to Respondent – further evidenced by looking at the contents of both the Kesar Agreement and the Seleskovic Agreement. According to Article 8 of the Kesar Agreement, Claimant has the option to appoint Mr. Kesar as head coach by simply sending a written notice to Claimant's Counsel. The consequences of the enforcement of this option are elaborated in detail. On the other hand, the Seleskovic Agreement, which is intended to sign Mr. Seleskovic as an assistant coach, does not contain an analogous option. Therefore – according to Respondent – it is obvious that the intention behind the Kesar Agreement was not to sign Mr. Kesar as assistant coach but as head coach.

- The early termination of the Contract constitutes a breach by Claimant. Consequently, Respondent was not obliged to show up in Mariupol. Therefore, Claimant's allegation that Respondent has breached the Contract by remaining absent from the team meetings on 1, 2 and 3 August 2012 without cause is baseless and Claimant is not entitled to any damages.

- In the alternative, Respondent submits that in the event the Contract was terminated by Claimant on 3 August 2012, the calculation for damages submitted by the latter is flawed. In fact, according to Respondent, Claimant saved money by terminating the Contract on 3 August 2012. The total costs to employ both the Respondent and Mr. Kesar for the 2012-2013 season equal EUR 294,580, whereas the total costs to employ Mr. Kesar and Mr. Seleskovic amount to EUR 217,100. Hence, Claimant incurred no loss by the alleged breach of Contract by Respondent.

<u>On the counterclaim</u>

- Claimant breached the Contract when it terminated the latter at the Euro camp in Treviso (10 an 11 June 2012). Hence, Respondent is entitled to damages.

- According to Respondent, the damage suffered by him consists of

  - the salaries to be paid by Claimant for the remainder of the Contract in the amount of EUR 175,000 net;

  - the value of the various benefits the Respondent was entitled to under the contract including: the vehicle, the apartment, and the mobile phone expenses. In particular the Respondent states that these benefits constitute a substantive part of Respondent's compensation that the Respondent has now been deprived of due to the Claimant's breach. As such, these amounts must be accounted for any calculation of damages awarded to Respondent. The Respondent estimates the value of these benefits at EUR 24,388. The Respondent provided no documentation to substantiate these amounts, claiming only the Claimant had access to these figured.

- Lastly, Respondent submits that he is entitled to interest at the rate of 5% per annum on the above amount, totalling EUR 199,388 since 10 June 2012, i.e. the date of the confirmation of the dismissal during the Treviso meeting. In the alternative, Respondent submits that the interest rates should be accumulated from 31 July 2012, i.e. the date of Respondent's Counsel first formal notice.

49. As a result, Respondent requests in his Answer dated 10 October 2012 that an award be rendered against Claimant as follows:

> *"- Respondent is not liable for breaching the Bechi Agreement;*
>
> *- Claimant is liable for breaching Article 1 of the Bechi Agreement by dismissing Respondent and confirming this dismissal on 10 June 2012;*

- *Claimant is liable to pay to Respondent an amount of one hundred and ninety-nine thousand three hundred and eighty-eight Euro (199.388 €) net in principal;*

- *Claimant is liable to pay Respondent interest on late payments of 5% per annum on the amount of one hundred and ninety thousand three hundred and eighty-eight Euro (199,388 €) net since June, 10, 2012, being the confirmation of the dismissal during the Treviso meeting, or, in the alternative, at least since July 31, 2012, being the date of Respondent's Counsel first formal notice, until the date of complete payment;*

- *Claimant is liable to reimburse all BAT expenses and procedure costs which have been advanced by Respondent; and*

- *Claimant shall indemnify Respondent for incurred legal expenses (including compensation for attorney's fees) up to an amount to be determined in the course of the BAT proceedings."*

50. In his submissions dated 4 February 2013, Respondent further wrote: "*Last, please note that for all of the above-mentioned reasons, Respondent fully maintains his counterclaim. Please also note that Respondent has formally requested Claimant to provide him with a tax certificate indicating the net nature of all salary payments made by Claimant.*" It is not quite clear what Respondent intends by this last sentence. In his requests for relief filed before 4 February 2013, Respondent did not request the BAT order the Claimant to provide him with a tax certificate indicating the net nature of all salary payments made by the Claimant. Should this submission by Respondent be intended to supplement / amend the prayers for relief filed so far, the Arbitrator is not prepared to accept this at this stage of the proceedings and will, thus, not deal with such claim.

5. Jurisdiction

51. 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).

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

5.1 Arbitrability

53. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA[1].

5.2 Formal and substantive validity of the arbitration agreement

54. Article 9 of the Contract contains an arbitration clause that reads as follows:

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

55. This arbitration clause included in the Contract and signed by the Parties to the Contract fulfils the formal requirements of Article 178(1) PILA.

56. 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). As to the scope of the

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

arbitration agreement, the Arbitrator notes that the wording *"[a]ny dispute arising from or related to the present contract"* in Article 9 of the Contract is very broad[2] and covers both the main claim and the counterclaim.

57. Finally, the Arbitrator, when interpreting the arbitration clause, takes note of Article 18.2 of the BAT Rules, according to which any reference to FAT shall be understood as a reference to the BAT. Therefore, no contradiction arises from the fact that according to the arbitration clause "BAT" is competent to decide the dispute, but that "FAT Arbitration Rules" apply. How the reference to the CAS in the last sentence of Article 9 of the Contract is to be interpreted, is of no relevance to the present dispute before the BAT.

6. Admissibility of the Counterclaim

58. Article 11.2 of the BAT Rules provides that the Respondent may file a counterclaim with his Answer. No particular prerequisites apply to the filing of such counterclaim. In particular, the BAT Rules do not provide that claim and counterclaim must show any material link. Furthermore, and in line with the standing BAT jurisprudence on the interpretation of Article 9.3 of the BAT Rules, the counterclaim is admissible since the Respondent paid its share of the Advance on Costs.

7. Applicable Law

59. 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

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2 *See for instance* BERGER/ KELLERHALS: International and domestic Arbitration in Switzerland, Berne 2010, N 466.

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".*

60. 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."*

61. Article 9 of the Contract provides in relation to the applicable law as follows:

> *"… The arbitrator and CAS shall decide the dispute ex aequo et bono."*

62. Consequently, the Arbitrator will decide the present matter *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 1969[3] (Concordat),[4] 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."*[5]

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

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3 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).

4 KARRER, in: Basel commentary to the PILA, 2nd ed., Basel 2007, Art. 187 PILA N 289.

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

> *"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".*[6]

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

8. Findings

66. It is undisputed between the Parties that the Contract has been terminated early. It is equally undisputed by the Parties that Claimant terminated the Contract. However, what is disputed between the Parties is when (and on what grounds) Claimant terminated the Contract (see 8.1 below) and what consequences derive therefrom (see 8.2 below).

8.1 When (and on what grounds) did Claimant terminate the Contract?

67. Respondent submits that the Contract was terminated at the Euro camp in Treviso (10 and 11 June 2012). Claimant on the contrary alleges that the Contract was only terminated on 3 August 2012. For the reasons that follow and based on the evidence before him, the Arbitrator finds that the Contact was not terminated on 3 August 2012, but rather at the Treviso camp.

68. In his letter dated 17 July 2012, Respondent's agent Mr. Meller stated as follows: "*Dear Mr. Jarutis, You clearly stated in your conversation with coach Bechi and me in Treviso that Mr. Bechi is being terminated as head coach for the upcoming season and we are ready to confirm that in front of the BAT if necessary.*" In the letter dated 24 July 2012, Claimant's General Manager Mr. Jarutis responded to this email as follows: "*Dear Mr. Meller, […] You don't need to prove that I clearly stated in Treviso, that Luca will not be*

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

our coach. That's truth and I am always honest." Claimant's desire to end the relationship with the Respondent during the Euro camp at Treviso is also evidenced in the Claimant's RfA where it is stated that "*the Management of the Claimant* […] *wanted to finish collaboration with the respondent* […]". It follows from this that - contrary to what Respondent suggests - the Contract was terminated by Claimant already on 10 or 11 June 2012. Claimant intended already at this point in time to terminate the collaboration with Respondent and communicated this to him.

69. Whether or not after terminating the Contract, the Claimant changed its position and wished to continue collaborating with the Respondent – as submitted by Claimant's General Manager in his letter dated 24 July 2012 ("*But, as you know our Managing board changes its mind very often, and after they recognized that we can't find the financial solution with you, as well as after calming down upon losing final 0 4, the decision have been changed … It is more than common nowadays that position of the Club during the summer time and negotiations changed, and also happened in this case*.") – is immaterial. The alternation of a previously communicated position cannot undo or revoke a termination of an agreement. The situation may be different, where both parties express their will to continue collaborating as if the agreement was never terminated. However, no such evidence can be found on file. The actions taken by the Claimant following the camp at Treviso are further evidence that the Claimant had terminated the relationship with the Respondent. In particular, Claimant hired another coach without consulting with or informing Respondent. This, however, would have been expected, if the new coach's task should consist of assisting the Respondent. Furthermore, communication was spread (attributable to Claimant) that Claimant's new coach (Mr. Aleksandar Kesar) was hired as head coach and, thus, had taken over the position from Respondent. Claimant's argument that these public statements did not reflect the reality, i.e. that Claimant still wanted to continue the collaboration with Respondent and that the statements were solely due to Article 12 of the Kesar Agreement, is quite simply, untenable. The latter provision only proves that Claimant was more worried about the reputation of Mr. Kesar than about the reputation of

Respondent, which, again, is a clear sign that Claimant's intention was always to discontinue its relationship with Respondent. Further evidence that Claimant had not reverted positions is in the construction of the Kesar Agreement. The latter agreement includes a provision according to which the assistant coach will be promoted to the position of head coach. This proves that Claimant not only contemplated the promotion of Mr. Kesar to the position of head coach, but saw it as a certain possibility. Interestingly, the Seleskovic Agreement does not contain such option.

70. As a side note, the Arbitrator would like to express that the facts in the case at hand fundamentally differ from the case BAT 0291/12. The latter case concerned not the termination of an agreement between a club and a coach, but the suspension of the coach from his contractual duties. The latter is – according to BAT 0291/12 – possible through a unilateral declaration by the club. However, the consequences of a suspension and a termination differ fundamentally. In case of a suspension – as explained in BAT 0291/12 – the coach is (temporarily) freed from complying with his obligations while at the same time, the club remains under the obligation to pay the agreed remuneration. In case of doubt whether a declaration was intended to be a suspension or a termination of an agreement, the declaration must be interpreted. The standard to be applied is how a reasonable third person would have understood the declaration under the specific circumstances. However, since termination is – in basketball practice – the rule and not the exception, there must be clear indication to the contrary in order to qualify a declaration by the club as a "suspension". For this reason, the arbitrator in the award BAT 0291/12, expressly stated (at para. 63) that when interpreting the declaration of a club the "text is most relevant". In BAT 0291/12, the written declaration by the club expressly referenced a "suspension of the Coach's obligations". According to the arbitrator, none of the other circumstances in said case indicated that a diligent and reasonable addressee could have attributed any other meaning to the club's declaration than the literal meaning of the wording. It follows from all of the above, that in case an interpretation of the declaration does not lead to unequivocal results whether to qualify the latter as a suspension or as a termination,

the principle of *contra proferentem* applies, i.e. that the declaration must be qualified as a termination of the agreement.

71. In the case at hand there are no indications on file that the Club might have intended its (original) declaration as a mere suspension of Respondent's contractual duties nor that a reasonable addressee could have qualified the club's declarations and behaviour as anything other than a termination. Nowhere in the correspondence between the Parties at the relevant time did Claimant (or its representatives) use the term "suspension". Instead, all evidence on file (in particular the letter of Mr. Juratis to Mr. Meller dated 24 July 2012) clearly indicate that the club (originally) wished to end the contractual relationship with the Coach, but then – at a later stage – altered its position. This, however, is irrelevant for the qualification of the club's declaration. To conclude, therefore, the Arbitrator finds that the Claimant effectively terminated the Contract with the Respondent at the Euro camp in Treviso.

72. Claimant lacked justifiable grounds to terminate the Contract at the Euro camp in Treviso. According to Article 7 of the Contract, the latter is a "No cut – Fully Guaranteed contract". As such, the Club cannot terminate the Contract, subject to a breach by Respondent. However, no such breach has been claimed or submitted by Claimant for the period of time prior to the Euro camp in Treviso. Thus, Claimant has not terminated the Contract with just cause.

8.2 What are the consequences of early termination of the Contract?

a) Consequences in respect of the agreed salaries

73. Respondent submits that he is entitled to damages because of early termination of the Contract by Claimant. In fact, Article 3 of the Contract provides that "*even if Coach is removed or released from the Club or this contract is terminated or suspended by Club due to Coach's lack of or failure to exhibit sufficient skill or achieve certain result, … or*

for any other reason whatsoever other than Coach's direct and material breach of this contract, Club shall nevertheless be required to pay to Coach and Agent, on the dates set forth above, the full amounts set forth above."

74. It follows from the above that Claimant was in breach of the Contract when terminating the latter. In such case, Respondent is entitled to damages, i.e. Respondent is – in principle – entitled to those amounts he would have collected if Claimant had honoured its obligations. However, it also follows from the above that the salaries for the remainder of the season are not due as a lump sum as from the date of (illicit) termination of the Contract. Contrary to the case of late payment, the Respondent in case of termination without just cause is not automatically entitled to "*accelerate all future payments required under the contract*". On the contrary, the provision provides that "*Club shall … be required to pay to Coach …, on the dates set above*" the agreed amounts.

75. The Contract contains a *lacuna* in case the Contract is terminated without just cause by Claimant and the latter does not pay the respective amounts "on the dates set above". The Contract regulates what consequences apply, if – while the Contract is still in effect – the Claimant fails to pay the salaries according to the agreed payment schedule. In such case, Article 3 of the Contract provides that if the scheduled payments are not received by Respondent within 21 days of the due date, the Coach's performance obligations shall cease and he "shall have the right, at his discretion, to terminate this contract and accelerate all future payments required under this contract". The Arbitrator finds that the right to demand accelerated payments – under certain conditions – applies by analogy also to the case at hand. It follows from this that Respondent is entitled to demand accelerated payments 21 days after the due date for the first scheduled payment for the season 2012-2013, i.e. 21 days after 12 August 2012. This means that while EUR 17,500 became due on 12 August 2012, the salaries for the remainder of the 2012-2013 season in the amount of EUR 157,500 only became due on 2 September 2012. All the above amounts are – as is evidenced by Article 3 and 5

of the Contract – net amounts, and the taxes on these amounts are to be paid by the Claimant.

76. In order to prevent undue enrichment and in line with BAT jurisprudence, all salaries that Respondent earned in the 2012/2013 season elsewhere must be deducted from the above amount. Since Respondent signed on 4 March 2013, the Second Contract for the remainder of the season, the total value of the Second Contract in the amount of EUR 15,000 must be deducted from the above amounts.

b) Consequences in respect of the amenities

77. The Contract provides in Article 6 that Respondent is entitled to certain amenities during the term of the Contract. The amenities include – *inter alia* – a car (lit. a), an apartment (lit. b) and mobile phone expenses (lit. c).

78. In principle, the Respondent is also entitled to recover the counter-value of the amenities in case Claimant breaches the Contract by terminating the latter early, since these amenities are – in the end – to be considered as part of Respondent's salaries.

79. The Arbitrator has asked the Parties, in particular the Respondent, to provide evidence regarding the value of the car and the apartment. Respondent did not provide any evidence to assist the Arbitrator in this regard. Claimant submitted in its letter received on 6 February 2013 by the BAT Secretariat that the car and the apartment are "*property of Factory Azovmash … Generally, Mariupol is one of the worst cities in Ukraine, with the highest level of air pollution, and rent of the apartments are far away from 1.000,00 Euro per month.*"

80. Even though the Arbitrator is not prepared to take Claimant's submissions on file, because they were filed late and not in conformity with the Arbitrator's procedural directions, the Arbitrator is not bound by the factual submissions of the Respondent.

The Arbitrator is nevertheless entitled to freely weigh them when assessing the damage suffered. In doing so, the Arbitrator finds that EUR 1,000/per month for a car (including full insurance, costs for the inspection of the car, replacement of used parts) and EUR 1,000/per month for an apartment seem to be reasonable and, therefore, accords to Respondent – in principle – EUR 12.000 in total with respect to the car and EUR 12,000 in relation to the apartment. However, the Arbitrator finds that in order to prevent undue enrichment by the Coach, certain amounts must be deducted. According to the Second Contract, Respondent is entitled to a furnished 2-room apartment (in addition to his salary). Furthermore, given that the Claimant is Italian, he can be taken to have a car available when working in Italy. Hence, the Arbitrator finds that the Respondent is only entitled to damage in relation to the amenities from August 2012 to the end of February 2013, i.e. in the amount of EUR 7,000 for each of them.

81. In relation to the mobile phone, the Contract expressly stipulates that "the Club agrees to pay Coach's mobile phone expenses, but not more than 500 USD". In view of the wording of this provision, the Arbitrator has asked Respondent in his letter dated 28 January 2013 to provide evidence that he had incurred mobile phone expenses since August 2012 equalling or exceeding USD 500. No evidence was provided by Respondent in that respect. Accordingly, this part of the claim must be dismissed.

8.3 Interest

82. According to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest[7]. Although the Contract does not provide for the payment of default interest, this is a generally accepted principle which is embodied in most legal systems.

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7 *See, ex multis,* the following BAT awards: 0092/10, *Ronci, Coelho vs. WBC Mizo Pecs 2010;* 0069/09, *Ivezic, Draskicevic vs. Basketball Club Pecsi Noi Kosariabda Kft;* 0056/09, *Branzova vs. Basketball Club Nadezhda)*

83. The Arbitrator agrees that the interest rate of 5% per annum is acceptable and in line with the interest rate usually awarded by default if no other interest rate has been agreed by the parties. Deciding *ex aequo et bono* and for the reasons explained in para. 75 above, the Arbitrator finds that the Respondent is entitled to interest of 5% p.a. on the amount of EUR 17,500 since 12 August 2012; and on the amounts of EUR 147,500 (accelerated payments) and EUR 14,000 (amenities) since 2 September 2012.

9. Costs

84. 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 legal fees and expenses incurred in connection with the proceedings.

85. On 10 June 2013 – considering that pursuant to Article 17.2 of the BAT Rules "*the BAT President shall determine the final amount of the costs of the arbitration, which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator*", and that "*the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the BAT President from time to time*", taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised – the BAT President determined the arbitration costs in the present matter to be EUR 8,000.

86. Considering that Respondent nearly prevailed with all of his claims and that the financial situation of the Parties does not compel otherwise, the Arbitrator holds it fair that the fees and costs of this arbitration be borne in their entirety by the Claimant and that Claimant be also required to cover its own legal costs as well as those of Respondent.

87. The Respondent's claim for legal fees and expenses is directed for reimbursement of EUR 13,625, subsidiarily to the reimbursement of EUR 10,000. Considering the outcome of the proceedings and the behaviour of the Parties the Arbitrator finds it reasonable and proportionate both by reference to the sums claimed, the sums awarded and the amount of documentation put before the Arbitrator to fix the total amount due to Respondent at EUR 8,000. This amount is in line with the maximum compensation stipulated in Article 17.4 of the BAT Rules for cases of this value.

88. Given that both Parties equally paid their share of the Advance on Costs in the amount of EUR 4,000, the Arbitrator decides that in application of Article 17.3 of the BAT Rules:

    (i) Claimant shall pay EUR 4,000 to Respondent as reimbursement of arbitration costs.

    (ii) Claimant shall pay EUR 8,000 to Respondent as contribution towards the Respondent's legal fees and expenses.

10. AWARD

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

1. **The claim filed by Azovmash Mariupol Basketball Club against Mr. Luca Bechi is dismissed.**

2. **The counterclaim filed by Mr. Luca Bechi against Azovmash Mariupol Basketball Club is admissible. Azovmash Mariupol Basketball Club is ordered to pay to Mr. Luca Bechi salaries in the amount of EUR 160,000 net and damages for the counter-value of amenities in the amount of EUR 14,000. Furthermore, Azovmash Mariupol Basketball Club is ordered to pay to Mr. Luca Bechi interest in the amount of 5% per annum on the amount of EUR 17,500 as from 12 August 2012, 5% per annum on the amount of EUR 142,500 as from 2 September 2012 and 5% per annum on the amount of EUR 14,000 as from 2 September 2012.**

3. **Azovmash Mariupol Basketball Club is ordered to pay to Mr. Luca Bechi EUR 4,000 as reimbursement of arbitration costs.**

4. **Azovmash Mariupol Basketball Club is ordered to pay to Mr. Luca Bechi the amount of EUR 8,000 as a contribution towards his legal fees and expenses. Azovmash Mariupol Basketball Club shall bear its own fees and expenses.**

5. **All other and further-reaching claims are dismissed.**

Geneva, seat of the arbitration, 1 July 2013

Ulrich Haas
(Arbitrator)