BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0098/10)

rendered by

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Rolandas Alijevas

- Claimant -

represented by Ms. Alfreda Pukiene, Vilniaus 8-ta Advokatu Kontora,
J. Basanaviciaus 17-28, 03108 Vilnius, Lithuania

vs.

BC Krasnye Krylia Samara
Yeroshevskogo str. 18, Office 16, 443086 Samara, Russia

- Respondent -

BASKETBALL
ARBITRAL TRIBUNAL

1. The Parties

1.1. The Claimant

1. Mr. Rolandas Alijevas (hereinafter the “Player” or “Claimant”) is a professional basketball player. He is represented by Ms. Alfreda Pukiene, attorney-at-law in Vilnius, Lithuania.

1.2. The Respondent

2. BC Krasnye Krylia Samara (hereinafter the “Club” or “Respondent") is a professional basketball club with its seat in Samara, Russia. Respondent is represented by its General Director, Mr. Sergej Timofejev.

2. The Arbitrator

3. On 17 June 2010, the President of the Basketball Arbitral Tribunal (hereinafter the "BAT") appointed Dr. Stephan Netzle as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules").

4. Neither of the Parties has raised objections to the appointment of the Arbitrator or to the declaration of independence rendered by him.

3. Facts and Proceedings

3.1. Background Facts

5. On 8 August 2007, Claimant and the Russian basketball club CSK-VVS Samara (hereinafter referred to as "CSK-VVS") entered into an employment contract (hereinafter the "Player Contract") according to which Claimant was employed by CSK-VVS as a professional basketball player for the 2007/2008 and 2008/2009 seasons.

6. In Article II No. 7 of the Player Contract CSK-VVS agreed to pay to the Player salaries amounting to USD 220,000.00 net for the 2007/2008 season and USD 250,000.00 net for the 2008/2009 season. In addition, CSK-VVS agreed to pay all "Russian tax and social security payments" (Article II No. 9 of the Player Contract). According to Article I No. 4 of the Player Contract this contract was designated as a "non-cut fully guaranteed agreement" which could not be terminated "before the date of termination".

7. In September 2007, Claimant arrived in Samara and played the 2007/2008 season for the team of CSK-VVS. After that season, Claimant returned home and waited to no avail for an invitation to rejoin the team of CSK-VVS for the 2008/2009 season.

8. Claimant was paid salaries for the 2007/2008 season in a total amount of USD 179,000.00 instead of USD 220,000.00 as stipulated in the Player Contract. During the 2008/2009 season Claimant did not participate in the team's training sessions of matches and did not obtain any payments from CSK-VVS.

9. On 8 October 2008, Claimant entered into a contract with the Lithuanian club Zalgiris Kaunas for the period from 8 October to 4 December 2008. The agreed salaries amounted to EUR 12,000.00 in total.

10. Also in October 2008, Claimant received a letter of clearance dated 9 October 2008 issued by the Russian Basketball Federation and submitted to the Basketball Federation of Lithuania. This letter reads as follows:

> *"Player: Rolandas Alljevas* *DOB: 20.01.1985*
> *Players Agent:* *FIBA License Number:*
>
> *Our Federation hereby grants a letter of clearance to the above-mentioned player. He is free from any contractual obligation with BC "CSK VVS" Samara.*
>
> *Best regards,*
>
> *Vladimir Khlipikov,*
> *Secretary General"*

11. On 10 December 2008, Claimant entered into a contract with the Slovenian club Krka Telekom Novo mesto which lasted from 10 December 2008 to 14 January 2009. The Player was paid EUR 1,050.00 in total.

12. On 22 January 2009, Claimant entered into a contract with the Greek club AEL 1964 Larisa for the period from 22 January 2009 to the end of the 2008/2009 season. The agreed salaries were EUR 39,000.00 in total.

13. On 8 July 2009, Respondent was established under the name *Regional Athletic Non-governmental Organization of Samara "Basketball Club Red Wings"*. Respondent was registered in the "Uniform State Register of Legal Entities" in Russia on 23 July 2009.

14. Thereafter, Respondent and CSK-VVS signed two undated contracts named *"CONTRACT No. 011/01"* and *"CONTRACT No. 011/02"* both titled *"On Assignment of Rights and Duties for Participation in the Championships"* (hereinafter referred to as the "Contract No. 011/01" and the "Contract No. 011/02", both also collectively referred to as the "Contracts No. 011/01 and 011/02").

15. From the 2009/2010 season onwards, Respondent replaced CSK-VVS in the Russian basketball league and in national Russian basketball competitions as well as in the European basketball competitions. However, Claimant never played for Respondent's basketball team.

3.2. The Proceedings before the BAT

16. Claimant's counsel filed on behalf of Claimant an undated Request for Arbitration in accordance with the BAT Rules, which was received by the BAT on 31 May 2010.

17. As Claimant's claim exceeded EUR 200,000.00 and in accordance with Article 17.1 of the BAT Rules, the non-reimbursable handling fee to be paid was EUR 4,000.00 instead of the EUR 3,000.00 paid by Claimant. Thus, on 22 June 2010, the BAT Secretariat requested the payment of the outstanding portion of the non-reimbursable handling fee, being EUR 1,000.00.

18. By letter dated 22 October 2010, the BAT Secretariat confirmed receipt of the Request for Arbitration and of the full payment of the non-reimbursable handling fee of EUR 4,000.00, received in the BAT bank account on 1 June 2010 (EUR 3,000.00) and on 12 October 2010 (EUR 1,000.00), and informed the Parties about the appointment of the Arbitrator. Furthermore, a time limit was fixed for Respondent to file its Answer to the Request for Arbitration in accordance with Article 11.2 of the BAT Rules by no later than 22 November 2010 (hereinafter the "Answer"). The BAT Secretariat also requested the Parties to pay the following amounts as an Advance on Costs by no later than 15 November 2010:

"Claimant (Mr. Alijevas)	*EUR 4,000*
Respondent (BC Krasnye Krylia)	*EUR 4,000"*

19. By letter of 9 December 2010, the BAT Secretariat informed the Parties that Respondent had failed to submit its Answer and that both parties had failed to pay their shares of the Advance on Costs. The BAT Secretariat noted that in accordance with Article 9.3 of the BAT Rules the arbitration would not proceed until the full amount of the Advance on Costs was received. Therefore, the Parties were requested to effect payment of their respective shares of the Advance on Costs by no later than 20 December 2010.

20. By letter of 21 December 2010, the BAT Secretariat acknowledged receipt of Claimant's share of the Advance on Costs in the amount of EUR 4,000.00 on the same date. The BAT Secretariat also informed the Parties that Respondent had failed to pay its share of the Advance on Costs. Therefore, in accordance with Article 9.3 of the BAT Rules, Claimant was invited to effect payment of Respondent's share of the Advance on Costs by no later than 5 January 2011.

21. By letter of 19 January 2011, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs and invited both parties to provide the Arbitrator with further information and documents about the identity of the clubs, as asserted by Claimant, by no later than 2 February 2011.

22. By emails of 1 February 2011, Claimant submitted three player contracts concerning the 2008/2009 season, namely a contract with the Lithuanian club Zalgiris Kaunas, a contract with the Slovenian club Krka Telekom Novo mesto and a contract with the Greek club AEL 1964 Larisa.

23. On 2 February 2011, Claimant forwarded to the BAT an email message from the Russian basketball league dated 21 January 2011. This message referred to assignment agreements between CSK-VVS and Respondent. By separate email, Claimant then sent the Contracts No. 011/01 and 011/02 between CSK-VVS and the

Respondent, in Russian, to the BAT. On the following day, Claimant sent the English translation of these contracts to the BAT.

24. Also on 2 February 2011, Respondent forwarded to the BAT an undated letter of the Russian Ministry of Justice which stated that there were *"no records of any documents, which may confirm legal succession of Regional Athletic Non-governmental Organization of Samara "Basketball club "Krasnye Krylia" as regards to Athletic Non-governmental Organization "Basketball club "ZSK VVS" – Samara."* The email also contained several extracts from the Uniform State Register of Legal Entities both in Russian and English language, which indicated the existence of a "Regional Athletic Non-governmental Organization of Samara "Basketball Club Red Wings" registered on 23 July 2009.

25. By email of 3 February 2011, Claimant asked the BAT Secretariat whether it would be possible *"to draw in CSK VVS Samara as a respondent together with already as a respondent existing Krasnyje Krilja Samara on the basis of possibly new circumstances and full solutinio of arised situation"*(sic).

26. By letter of 1 March 2011, the BAT Secretariat acknowledged receipt of the Parties' additional submissions and informed the Parties about the Arbitrator's decision not to admit a second claim against CSK-VVS together with the claim against Respondent in accordance with Articles 3.1 and 12.2 of the BAT Rules. It also requested Respondent to comment on the Contracts No. 011/01 and 011/02 and to *"submit the document 'Contract No. 9 of 1 July 2008' which is mentioned in the contracts No. 011/01 and 011/02"* by no later than 9 March 2011. Upon request of the Parties, the Arbitrator extended this time limit until 25 March 2011.

27. By letter of 9 March 2011, Respondent submitted its comments on the Contracts No. 011/01 and 011/02 but stated that *"for the present moment, we have no records about*

the Contract #9 dated 01.07.2008." Claimant submitted the requested document on 22 March 2011.

28. On 4 April 2011, the BAT Secretariat informed the Parties that the FIBA Arbitral Tribunal (FAT) had been renamed into Basketball Arbitral Tribunal (BAT) as of 1 April 2011 and that, absent any objections by either party on or before 11 April 2011, the new name would be used also in the present proceedings. Neither of the Parties has raised objections to the change of name.

29. By letter of 6 April 2011, the BAT Secretariat informed the Parties about the Arbitrator's decision to declare the exchange of documents complete and his decision that due to the complexity of the case the Advance on Costs should be readjusted to EUR 12,000.00 in total. Thus, the Arbitrator invited the Parties to submit a detailed account of their costs until 11 April 2011 and to pay by no later than 15 April 2011 an additional Advance on Costs as follows:

"Claimant (Mr. Alijevas)	*EUR 2,000*
Respondent (BC Krasnye Krylia)	*EUR 2,000"*

30. On 11 April 2011, Claimant submitted three invoices for legal services totaling EUR 27,100.00, three invoices for translations from Lithuanian to English (amounting to LTL 1,101.79 = EUR 319.64[1]) and the power of attorney for a further attorney-at-law.

31. Respondent did not submit an account of its costs.

32. Respondent was invited to submit its comments, if any, on Claimant's account of costs by no later than 6 April 2011. Respondent did not submit any comments.

---

1 Exchange rate of 11 April 2011.

33. By letter of 17 May 2011, the BAT Secretariat acknowledged receipt of the full amount of the additional Advance on Costs paid by Claimant in total.

34. Although Claimant requested that Mr. Burgan Nazirov, a representative of the Player's agent in Russia, and Mr. Yaniv Green, a former player in the Club's team, should be examined as witnesses, Claimant stated in his Request for Arbitration that he did not request a hearing ("*I, Rolandas Alijevas, do not requests that a hearing has to be held.*"[sic]). The Arbitrator understands that the primary request of Claimant is for the BAT not to hold a hearing, and that the proposed witnesses should be heard if the Arbitrator nevertheless decided to hold a hearing. Considering that neither of the Parties has requested the BAT to hold a hearing, the Arbitrator has decided in accordance with Article 13.1 of the BAT Rules not to hold a hearing and to deliver the award on the basis of the written submissions of the parties.

4. The Parties' Submissions

4.1. Summary of Claimant's Submissions

35. In summer 2008, CSK-VVS failed to invite Claimant to return to the team for the 2008/2009 season and it did not provide Claimant with an airline ticket and the necessary visa for Russia. CSK-VVS therefore violated Article I No. 4 of the Player Contract.

36. Although the annexes to Claimant's contract with the Lithuanian club Zalgiris Kaunas indicate salaries in the total amount of EUR 12,000.00 for the period from 8 October to 4 December 2008 the Player only received EUR 9,352.00. When the Player played for Greek club AEL 1964 Larissa in 2009 he received only EUR 30,000.00 instead of the contractually agreed EUR 39,000.00.

37. The Player Contract provides that the salaries payable by the club are net payments and the income taxes due on the salaries must be borne by Respondent. An opinion of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania has been submitted by the Player to support his claim in this respect.

38. Respondent and CSK-VVS are one and the same club and the latter only changed its name in summer 2009. Alternatively, Respondent ought to be deemed to have assumed the obligations of CSK-VVS towards Claimant when it replaced CSK-VVS in the Russian championship. On both counts, Respondent is the right party to be sued.

4.2. Claimant's Request for Relief

39. Claimant submits the following request for relief:

> *"I, Rolandas Alijevas, claim the right on the whole amount of Salaries of 291.000 USD net (Two hundred ninety one thousand U.S. Dollars) guaranteed to me by Agreement between me, Rolandas Alijevas and former CSK-VVS Samara B.C., now known as Krasniye Krilya Samara, in article 1 points 1 and 4 and article 2 point 7 for seasons 2007/2008 and 2008/2009 because of contract termination caused by not fulfilling financial commitments by the former basketball club CSK-VVS Samara B.C., now known as Krasniye Krilya Samara towards me as a player, Rolandas Alijevas. Equally I claim the right on the amount of 50.430 USD net (sixty one thousand one hundred and ten U.S. Dollars net)*[sic] *for the expenses of revenue TAX for my as resident's payment in Lithuania based on agreement article 2 point 9 as whole salaries payable by the Club are net. The Club as Respondent should cover all expenses taken by my side in this Arbitration."*

4.3. Summary of Respondent's Submissions

40. Respondent failed to present an Answer but submitted certain information and documents in response to the BAT Secretariat's letters of 19 January 2011 and 1 March 2011. This information can be summarized as follows:

41. Respondent is an independent legal entity established on 21 July 2009. It is registered with the Ministry of Justice of the Russian Federation. Respondent and CSK-VVS are two different clubs not affiliated with each other - neither legally, nor organizationally or financially or with regard to their properties.

42. Respondent is not a legal successor of CSK-VVS and was not created in connection with the restructuring of CSK-VVS. The conclusion of the Contracts No. 011/01 and 011/02 which are not registered in the Register of Agreements of Respondent does not presuppose any assignment between the two clubs. The parties to the Contracts No. 011/01 and 011/02 are CSK-VVS and Respondent but not Claimant. The Contracts No. 011/01 and 011/02 created rights and duties only between these two parties but not in relation to Claimant.

43. Moreover, Clause 2.3 of the Contracts No. 011/01 and 011/02 stipulates the requirement of a court decision. At the moment no such court decision has been issued against CSK-VVS. In addition, Respondent has never entered into any employment contracts or other agreements with Claimant. Therefore, Claimant's requests against Respondent are without grounds.

44. The Contract No. 011/01 and 011/02 do not contain any arbitration clause relating to BAT. There is also no written or oral arbitration agreement between Respondent and Claimant providing for arbitration with BAT. Claimant's claims are of "general civil character and not of labour character". That is why they need to be resolved on the territory of the Russian Federation and according to the laws of the Russian Federation. Claimant's claims are therefore not subject to the jurisdiction of BAT.

45. CSK-VVS has not gone bankrupt. It is still registered with the Uniform State Register of Legal Entities and operates as a sports club. Respondent suggests that Claimant should settle this dispute with CSK-VVS without the participation of Respondent.

4.4. Respondent's Request for Relief

46. As a consequence of its failure to submit an Answer, Respondent has not submitted a formal request for relief.

5. Jurisdiction

47. 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).

48. The jurisdiction of the BAT presupposes the arbitrability of the dispute as well as the existence of a valid arbitration agreement between the parties.

5.1. Arbitrability

49. The Arbitrator notes that the dispute referred to him is clearly of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[2]

[2] Decision of the Swiss Federal Tribunal 4P.230/2000 dated 7 February 2001, cons. 1, reported in ASA Bulletin 2001, p. 523 et seq., with reference to the decision of the Swiss Federal Tribunal dated 23 June 1992, BGE 118 II 353, 356, cons. 3b.

5.2. Formal and substantive validity of the arbitration agreement

50. The existence of a valid arbitration agreement will be examined in light of Article 178 PILA, which reads as follows:

> *"1 The arbitration agreement must be concluded in writing, by telegram, telex, telefax or any other means of communication which allow proof of the agreement by text.*
>
> *2 Furthermore, the arbitration agreement shall be valid if it conforms to the law chosen by the parties, to the law governing the dispute, in particular the principal contract, or to Swiss law."*

51. The Player Contract does indeed contain an arbitration clause in favor of BAT, namely Article II No. 16, which reads as follows:

> *"This agreement is to be governed and interpreted in accordance to the FIBA regulations, the FIBA Arbitral Tribunal* [sic]*. All parties in this agreement (Club, Player and Agent) consent to the jurisdiction of the FIBA Arbitral Tribunal relative to any action or procedure or dispute that may arise relating to this agreement. All parties to this agreement accept the present English version of this contractual agreement as fully binding under both Russian and FIBA laws and guidelines."*

52. It is true that the Player Contract was concluded between Claimant and CSK-VVS and does not include Respondent. The question therefore arises whether the arbitration agreement can also be binding upon a non-signatory such as Respondent.

53. The information submitted by the Parties does not support Claimant's initial argument that Respondent only changed its name but was otherwise identical to CSK-VVS: there are no indications that Respondent is the legal successor of CSK-VVS which has assumed all rights and obligations of CSK-VVS by law. The Arbitrator finds that Respondent and CSK-VVS are two independent legal entities and that the obligations undertaken by CSK-VVS do not automatically bind Respondent.

54. Whether Respondent is subject to the arbitration agreement signed by CSK-VVS is therefore a question pertaining to the scope of application of the relevant clause in the

Player Contract *(jurisdiction ratione personae)*. This question is to be answered under the applicable arbitration law, i.e. the PILA. The Swiss Federal Tribunal has held in a decision dated 16 October 2003 (BGE 129 III 727) that while the validity of the arbitration agreement between the initial parties was subject to the formal requirements of Article 178 (1) PILA, the validity of its extension to non-signatory parties was not.[3] Therefore, once it is established that an arbitration agreement complies with the formal requirements of Article 178 (1) PILA with respect to its initial signatories, the extension of that arbitration agreement to other parties does not need to satisfy such requirements.[4]

55. However, the extension of an arbitration agreement requires a legal relationship between the third party and the initial parties to the arbitration agreement, which must be of a certain intensity to justify the extension. According to Swiss jurisprudence and doctrine, the assumption of a debt by which the previous debtor is released from its debts includes the arbitration agreement which covers the corresponding claim. Otherwise the claim would no longer be actionable. The new debtor must therefore be bound by the arbitration agreement which was applicable to the initial creditor and debtor and to the assumed debt[5]. To establish the jurisdiction of the BAT, the Arbitrator must therefore determine whether the salary debts of CSK-VVS (which are subject to an arbitration agreement providing for arbitration with the BAT) have been validly assumed by Respondent.

---

3 Decision of the Swiss Federal Tribunal dated 16 October 2003, BGE 129 III 727, 735, cons. 5.3.1. See also FAT 0081/10, Ramasar, Life Sports Management and Diamantopulos vs. Shermadini and BC Panathinaikos, para. 87 et seq.

4 FISCHER: When can an arbitration clause be binding upon non-signatories under Swiss law?, in: Jusletter of 4 January 2010.

5 BERGER/KELLERHALS: International and Domestic Arbitration in Switzerland, 2nd Edition, London 2010, N 509.

56. The validity of the assumption of a debt is governed by the law governing the assumption agreement and by the contractual provisions of the assumption agreement itself.

(a) The relevant assumption agreement

57. In summer 2009, CSK-VVS and Respondent signed two agreements "On the Assignment of Rights and Duties for Participation in the Championship", namely Contract No. 011/01 relating to the NU Basketball Super League and the identical Contract No. 011/02 relating to the Russian Federation of Basketball (RFB). The purpose of these contracts was to enable Respondent to participate in the Russian basketball championship in lieu of CSK-VVS. The Contracts No. 011/01 and 011/02 contain the following provisions (whereby Respondent was referred to as "the Organization" and CSK-VVS Samara as "the Club")[6]:

> *"1.1 The Organization fully takes upon itself all rights and duties of the Club according to the Contract No. 9 as of 1 July 2008, which was drawn between the Club and the non-commercial organization "Basketball Super League" (further referred to as NU Basketball Super League).*
>
> *2.3 The Organization takes upon herself the duties related to redemption of all current debts of the Club, unpaid salaries and other indebtednesses to the sportsmen-basketball players and coaches of the Club, basing on the court decisions, which came or will come later into legal force."* [sic]

58. The Arbitrator considers the Contracts No. 011/01 and 011/02 as the relevant assumption agreements. The Contracts No. 011/01 and 011/02 are not dated. However, since Respondent was established on 8 July 2009 and registered on 23 July 2009 and then participated in the 2009/2010 season of the Russian basketball

---

6 The quotation reproduced above is from Contract 011/01. Contract 011/02 contains a similar provision with the sole difference that it refers to the RFB instead of the NU Basketball Super League.

championship, which began on 16 October 2009[7], these contracts must have been signed between those dates because such assignment was required for Respondent to become eligible as a participant in the 2009/2010 season of the Russian basketball championship.

(b) The statutory requirements for the validity of the assumption of a debt

59. The Contracts No. 011/01 and 011/02 are subject to the laws of the Russian Federation. They regulate the mutual rights and obligations of two legal entities located in, and registered under the law of, the Russian Federation. They do not contain any choice of law and there are no indications that any laws other than those of the Russian Federation should apply. The assumption of debts is regulated in Articles 391 and 392 of the Civil Code of the Russian Federation which read in their English translation as follows[8]:

> *"2. The Transfer of the Debt*
>
> *Article 391. The Terms and the Form of the Transfer of the Debt*
>
> *1. The transfer by the debtor of his debt to the other person shall be admitted only with the creditor's consent.*
>
> *2. To the form of the transfer of the debt shall be correspondingly applied the rules, contained in Items 1 and 2, Article 389[9] of the present Code.*

---

7 Respondent played its first game on 21 October 2009.

8 The English translation refers to http://www.russian-civil-code.com.

9 Article 389 para. 1 and 2 of the Civil Code of the Russian Federation reads in its English translation as follows:

> Article 389. The Form of Ceding the Claim
>
> *1.* The cession of the claim, based on the deal, performed in the simple written or in the notarial form, shall be effected in the corresponding written form.
>
> *2.* The cession of the claim by the deal, requiring the state registration, shall be registered in conformity with the order, established for the registration of this deal, unless otherwise established by the law.

Article 392. Objections of the New Debtor Against the Creditor's Claim

The new debtor shall have the right to put forward objections against the creditor's claims, based on the relationships between the creditor and the primary debtor."

60. The statutory requirements for the validity of the transfer of the salary debts from CSK-VVS to Respondent are met: the assumption agreement is in writing. The consent of Claimant as the creditor of the salary debts is demonstrated by the present claim against Respondent. As a result, the Arbitrator concludes that by signing the Contracts No. 011/01 and 011/02, Respondent validly assumed the salary debts of CSK-VVS.

61. Russian law does not require that the respective agreement indicate the exact amount of the transferred debt, but the transferred debt must be sufficiently determinable. This requirement is also met in the present case: the assumption concerns the salary debts of CSK-VVS players (Clause 2.3 of the Contracts No. 011/01 and 011/02)[10] and therefore the salary debts of Claimant which were due at the time when CSK-VVS and Respondent signed the Contracts No. 011/01 and 011/02 which date was definitely several months after the last installment of Claimant's salary became due.

(c) The contractual requirements for the validity of the assumption of debts

62. The Contracts No. 011/01 and 011/02 contain further requirements for the validity and enforceability of the transfer of debts, namely (1) these contracts must be "coordinated" with the NU Basketball Super League and the Russian Basketball Federation (Clauses 2.1, 2.2 and 5.1 of the Contracts No. 011/01 and 011/02), and (2) the assumed debts must be based "on court decisions, which came or will come later into legal force" (Clause 2.3 of the Contracts No. 011/01 and 011/02).

---

[10] Clause 2.3 of the Contracts No. 011/01 and 011/02 provides that: "*The Organization takes upon herself the duties related to redemption of all current debts of the Club, unpaid salaries and other indebtednesses to the sportsmen-basketball players and coaches of the Club, basing on the court decisions, which came or will come later into legal force.*" (emphasis added).

63. According to Clauses 2.1, 2.2 and 5.1[11], the Contracts 011/01 and 011/02 entered into legal effect only upon "coordination" with the NU Basketball Super League or the Russian Basketball Federation (RBF). The term "coordination" is not further defined in the Contracts No. 011/01 and 011/02. The Arbitrator finds that "coordination" in this context must mean that the NU Basketball Super League and the RBF accepted the assignment of the salary debts as a condition for admitting Respondent to the games of the following championship season 2009/2010. While the admission of Respondent to the Russian Championship 2009/2010 may depend on the acceptance by both the NU Basketball Super League and the RBF, the validity of each of the Contracts No. 011/01 and 011/02 only depends on the "coordination" with the organization mentioned in the respective contract.

64. Claimant obtained a copy of the Contracts No. 011/01 and 011/02 from the RBF. Undisputedly, Respondent was admitted to the Russian Championships 2009/2010 and it was not asserted by the Parties that the admission of Respondent to the Russian Championships 2009/2010 was based on another agreement which contained no or a different assignment of salary debts. The Arbitrator thus concludes that the Contract No. 011/02 was indeed "coordinated" with the RBF. Whether also Contract No. 011/01 was "coordinated" with the NU Basketball Super League is irrelevant to determine the validity of the assignment of the salary debts.

---

11 *"2.1 The parties should coordinate this Contract with NU Basketball Super League (in Contract 011/02: APO "RFB") in written form. Without decision of NU Basketball Super League on the issue of assignments of rights, the present Contract on Assignment of Rights and Duties for Participation in the Championship, as well as on admittance of the Organization to the games under the aegis of Super League A among men's teams has no juridical power."*

"2.2 At the moment of signature of the present Contract by the Parties and coordination of it with NU Basketball Super League (in Contract 011/02: APO "RFB"), the Club hands over the Contract No. 9 as of July 1, 2008, as well as all necessary documentation to the Organization for realization of its rights and duties."

"5.1 This contract comes into force since the moment of its signature by the Parties and after coordination of it with NU Basketball Super League (in Contract 011/02: APO "RFB")."

65. Respondent argues that Claimant's salary debts are not due because they have not been determined by a court. Decisions of an arbitration tribunal in an international matter are considered to be recognized and enforceable like decisions of a state court if the requirements of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention") are met. The Russian Federation is a party to the New York Convention. Furthermore, the Russian Federation has enacted the International Arbitration Act. The BAT is an independent arbitral tribunal conducting its proceedings under the BAT Rules, which have been designed to meet the requirements of the New York Convention. The Arbitrator therefore finds that also according to Russian law BAT awards are on a par with decisions by a competent state court. Furthermore, there are no indications that the parties to the Contracts No. 011/01 and 011/02 intended to exclude debts adjudicated by an arbitration tribunal from the debts assumed by Respondent. Since Clause 2.3 of the Contract No. 011/01 refers to "court decisions which came or *will come later into legal force*" (emphasis added), the present award falls also within the temporal scope provided for such decisions.

(d) Effective transfer of the salary debts to Respondent

66. The Arbitrator therefore finds that the statutory requirements provided by the Civil Code of the Russian Federation as well as the contractual requirements according to the Contract No. 011/02 have been met. Respondent has validly assumed the debt claims relating to the salaries of the players of CSK-VVS. The salary claims of Claimant are subject to arbitration with the BAT. By assuming these salary claims, Respondent also assumed the obligation to have these salary claims adjudicated by the BAT.

(e) Validity of the arbitration agreement

67. The arbitration agreement in Article II No. 16 of the Player Contract is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PILA.

68. With respect to substantive validity, 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 (cf. Article 178(2) PILA). In particular, the wording *"relative to any action or procedure or dispute that may arise relating to this agreement"* in Article II No. 16 of the Player Contract clearly covers the present dispute.[12]

69. The Arbitrator thus finds that he has jurisdiction to decide the claims of Claimant against Respondent.

70. Claimant claims the salaries for the 2007/2008 and 2008/2009 seasons. The last monthly salary became due on 15 May 2009 or 5 days after the team's last season game, which took place on 11 April 2009[13] and therefore were due at the time when Respondent signed the Contracts No. 011/01 and 011/02. The Arbitrator finds therefore that the assumption of debts which Respondent accepted by signing the Contracts No. 011/01 and 011/02 included the salaries claimed by Claimant. Since the full assumption of the debts of CSK-VVS by Respondent was required by the Russian Basketball Federation to enable Respondent to participate in the Russian basketball championship in CSK-VVS's place, the Arbitrator also finds that the agreement of Respondent to assume the debts of CSK-VVS discharged the latter from the assumed debts and obligations.

---

12 *See for instance* BERGER/KELLERHALS, op. cit., N 466.

13 *See* team competition schedule 2008/2009 under www.eurobasket.com.

6. Other Procedural Issues

71. Article 14.2 of the BAT Rules, which have been declared to be applicable in the Player Contract, specifies that *"the Arbitrator may nevertheless proceed with the arbitration and deliver an award"* if "*the Respondent fails to submit an Answer"*. The Arbitrator's authority to proceed with the arbitration in case of default of one of the parties is in accordance with Swiss arbitration law[14] and the practice of the BAT.[15] However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.

72. This requirement is met in the present case. Respondent was informed of the initiation of the proceedings, of the appointment of the Arbitrator in line with the relevant rules and it was also given an opportunity to respond to Claimant's Request for Arbitration and to the further submissions made by Claimant. It was Respondent's decision not to submit a formal Answer and not to submit the documents requested by the BAT Secretariat's email of 14 March 2011 or a detailed account of its costs as requested by the BAT Secretariat's letter 6 April 2011. On the other hand, Respondent has submitted information and documents in response to the BAT Secretariat's letters of 19 January 2011 and 1 March 2011. The Arbitrator has taken these information and documents into consideration when rendering this award.

---

14 Decision of the Swiss Federal Tribunal dated 26 November 1980, in: Semaine Judiciaire (SJ) 1982, p. 613 et seq., p. 621; KAUFMANN-KOHLER/RIGOZZI, Arbitrage international - Droit et pratique à la lumière de la LDIP, Bern 2010, N 483; LALIVE/POUDRET/REYMOND: Le droit de l'arbitrage interne et international en Suisse, Lausanne 1989, Art. 182 PILA N 8; RIGOZZI, L'arbitrage international en matière de sport, Basel 2005, N 898; SCHNEIDER, in: Basel commentary to the PILA, 2nd ed., Basel 2007, Art. 182 PILA N 87; VISCHER, in: Zurich Commentary to the PILA, 2nd ed., Zurich/Basel/Geneva 2004, Art. 182 PILA N 29.

15 *See* for instance FAT Decision 0001/07 dated 16 August 2007, Ostojic and Raznatovic vs. PAOK KAE; FAT Decision 0018/08 dated 10 February 2009, Nicevic vs. Beşiktaş; FAT Decision 0020/08 dated 19 March 2009, Dimitropoulos vs. Athlitiki Enosis Konstantinoupoleos; FAT Decision dated 11 May 2009, Sakellariou and Dimitropoulos vs. S.S. Felice Scandone Spa.; FAT Decision 0030/09 dated 12 May 2009, Vujanic vs. Enterprise Men's Basketball Club "Dynamo" Moscow; FAT Decision 0031/09 dated 12 May 2009, Misanovic and Ristanovic vs. Enterprise Men's Basketball Club "Dynamo" Moscow; FAT Decision 0010/08 dated 16 June 2009, Grgurevic vs. AEP Olympias Patras; FAT Decision 0043/09 dated 13 October 2009, Gomis vs. Women's Basketball Club Fenerbahçe.

7. Applicable Law – *ex aequo et bono*

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

> *"the parties may authorize the arbitral tribunal to decide ex aequo et bono".*

74. With regard to the applicable law, Article II No. 16 of the Player Contract begins with the following wording:

> *This agreement is to be governed and interpreted in accordance to the FIBA regulations, the FIBA Arbitral Tribunal."*(sic)

75. The last sentence of Article II No. 16 of the Player Contract then says:

> *"All parties to this agreement accept the present English version of this contractual agreement as fully binding under both Russian and FIBA laws and guidelines."*

76. This clause could be read as a choice of Russian law for the entire contract. However, when interpreting the entire arbitration clause in the Player Contract the Arbitrator finds that the Parties primarily agreed on the FIBA Regulations and the rules applicable to BAT arbitration. These rules include the provision governing the applicable law (Article 15.1 of the BAT Rules):

> *"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."*

77. On the other hand, the reference to Russian law is not exclusive but placed on an equal footing with the reference to the "FIBA laws and guidelines." Furthermore, the reference to Russian law is restricted to the validity and the binding force of the "present English version of this contractual agreement". The Arbitrator finds that the purpose of this provision is to clarify that it is acceptable also under Russian law that the Player Contract is written in English (rather than Russian). Under these circumstances, the reference to Russian law is not to be understood as a choice of Russian law as the law governing the entire Player Contract.

78. The Arbitrator will therefore rely on the BAT Rules as explicitly addressed in the first sentence of Article II No. 16 of the Player Contract and decide the present matter *ex aequo et bono*.

79. 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*[16] (Concordat),[17] under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit*:

> *"When deciding ex aequo et bono, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*[18]

80. 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*

---

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

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

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

rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand".[19]

81. This is confirmed by Article 15.1 of the BAT Rules in fine according to which the arbitrator applies "general considerations of justice and fairness without reference to any particular national or international law".

82. In light of the foregoing developments, the Arbitrator makes the following findings:

8. Findings

8.1. Duty of Respondent to pay the outstanding salaries

83. The Arbitrator has accepted the jurisdiction of BAT because he found that Respondent had assumed the salary debts of CSK-VVS when it signed the Contracts No. 011/01 and 011/02, since at least Contract No. 011/02 was notified to the RBF and Respondent was admitted to the Russian Basketball Super League 2009/2010. However, the Arbitrator must still determine the existence and the quantum of the assumed debts. The Arbitrator will only refer to the Contract No. 011/02 since the wording of the Contract No. 011/01 is identical and because the assumption became effective upon evidence of "coordination" of this contract with the RFB.

8.2. Claim for outstanding salaries in the amount of USD 291,000.00

84. According to Clause 1.1 of the Contract No. 011/02 Respondent undertook to fully release CSK-VVS from all "rights and duties" as specified in Clause 2.3 of the Contract

---

19 POUDRET/BESSON, Comparative Law of International Arbitration, 2nd edition, London 2007, N 717, pp. 625-626.

No. 011/02, which states that Respondent assumed all *"current debts of the Club"*, especially *"unpaid salaries and other indebtednesses to the sportsmen-basketball players and coaches (…)".* While the assumption is restricted to the current debts at the time, it is not restricted to the unpaid salaries of those players of CSK-VVS who joined Respondent for the 2009/2010 season.

85. Claimant has played with CSK-VVS throughout the 2007/2008 season. Of his contractual salary for that season, USD 41.000,00 remained unpaid. This has not been disputed by Respondent and there are no indications of an early termination of the Player's employment with CSK-VVS or that he played for another club or otherwise earned an alternative salary in the 2007/2008 season. The Arbitrator therefore finds that Claimant is entitled to the remaining salary for the 2007/2008 season, which amounts to USD 41.000,00.

86. Claimant then submits that CSK-VVS did not invite him to join the team for the following 2008/2009 season. The basketball statistics indeed show that Claimant did not play for CSK-VVS in the 2008/2009 season. In the absence of any arguments to the contrary, the Arbitrator accepts that Claimant and his agents tried in vain to get in contact with the responsible persons of CSK-VVS and that it was impossible for Claimant to travel to Samara without an invitation and a valid visa for the Russian Federation.

87. On 9 October 2008, Claimant's agent received a letter of clearance from the RBF. Claimant does not explain the circumstances which led to this letter of clearance. The Arbitrator notes, however, that the letter of clearance was sent to the Basketball Federation of Lithuania which indicates that there was a prior request from a Lithuanian basketball club to the Basketball Federation of Lithuania which was then presented to the RBF. This corresponds to the employment of Claimant by the Lithuanian club Zalgiris Kaunas which began on 8 October 2008 and lasted until 4 December 2008.

Therefore the letter of clearance did not come as a surprise to Claimant but as a consequence of his new employment with the basketball club Zalgiris Kaunas.

88. This new employment with Zalgiris Kaunas which relates to the letter of clearance issued by RBF does not automatically mean that all claims related to the Player's employment with CSK-VVS had been settled. According to Article II No. 14.1 para 1 of the Player Contract, all monetary claims became due if CSK-VVS was late in making the contractual payments by seven or more days. Accordingly, when CSK-VVS failed to pay the last installment of the 2007/2008 salary, all payments provided in the Player Contract, including the salaries for the 2008/2009 season, became due seven days later.

89. Article II No. 14.1 para. 2 of the Player Contract requires that such non-payment be "officially" notified to CSK-VVS within five days before the Player may exercise an additional remedy, namely "*to cease or temporarily suspend himself and his activity in the Club without derogating the Player's rights to collect this agreement full payment."* Noting that this paragraph has not been invoked by either party, the Arbitrator holds that in any event the right of the Player to claim all payments under the Player Contract does not depend on such official notification but begins seven days after any payment under the Player Contract became due and was not paid.

90. As a further remedy in case of the Club's default, the Player was entitled, according to Article II No. 14.2 of the Player Contract, *"to void the agreement by so indicating in a registered letter to the Club and the Player shall be deemed immediately as "Free Player" and such letter shall constitute as immediate "letter of clearance" regarding the Player."* No such registered letter has been submitted in this arbitration. However, the fact that a letter of clearance was issued demonstrates that CSK-VVS agreed on the release of the Player, which agreement is further supported by the fact that CSK-VVS did not make any attempt to get the Player back after the break before the 2008/2009 season. The Arbitrator finds therefore that Claimant's right to request all salaries for the

2008/2009 season does not depend on the evidence of a registered letter as addressed in Article II No. 14.2 of the Player Contract. However, according to his obligation to mitigate the damage, Claimant was required to look for a new salary opportunity when he was not able to join CSK-VVS.

91. After his engagement with the Club Zalgiris Kaunas, which lasted approximately two months, Claimant signed another employment contract with the Slovenian club Krka Telekom Novo mesto (12 October 2008 – 14 January 2009) and finally entered into a contract with the Greek club AEL 1964 Larisa (from 26 January 2009 until the end of the regular 2008/2009 season). The respective salaries to which Claimant was entitled under these agreements must be deducted from Claimant's claim for salaries under the Player Contract for the 2008/2009 season.

92. Turning to the quantum of the claim, the Arbitrator notes that the Player Contract does not allow the employing club to deduct or withhold any payments in case of the Player's inability to participate in the training and matches of the team. Accordingly, Claimant is entitled to the entire salary agreed for the 2008/2009 season (i.e. USD 250,000.00), subject only to the deduction of the salaries to which Claimant was entitled from other sources during the same period of time.

93. The employment contracts with the three clubs which Claimant has joined during the 2008/2009 season indicate the payment of salaries in a total amount of EUR 52,050.00. However, Claimant asserts that he was paid only EUR 40,402.00. Whether or not the amounts to which he is contractually entitled were paid in full is not a matter of this arbitration. Therefore, the Arbitrator bases his calculation on the signed employment contracts according to which Claimant is entitled to EUR 52,050.00.

94. Accordingly, Claimant is entitled to the unpaid salaries for the 2007/2008 and 2008/2009 seasons from which the alternative compensations agreed in the

employment contracts with Zalgiris Kaunas (EUR 12,000.00), Krka Telekom Novo mesto (EUR 1,050.00) and AEL 1964 Larisa (EUR 39,000.00) must be deducted.

8.3. Claim for reimbursement of Lithuanian revenue taxes

95. Claimant also requests compensation for payment of Lithuanian income taxes. In his Request for Arbitration he quantifies this claim differently in words ("sixty one thousand one hundred and ten U.S. Dollars") and figures ("USD 50,430.00"). Claimant's tax claim is allegedly supported by a general opinion of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 26 November 2009 which refers to the double taxation treaty between Russia and Lithuania.

96. The Arbitrator rejects Claimant's claim for compensation of Lithuanian taxes on the income derived from his engagement with CSK-VVS for the following reasons:

a. The claim is not sufficiently substantiated. While the two different amounts in Claimant's request may be attributed to a clerical error, Claimant does not set out at all how he arrived at the requested amount.

b. Although it is a well-known fact that taxes must be paid on income, Claimant failed to submit any tax return or tax invoice which would demonstrate the concrete amount to be paid in Lithuania because of his engagement by CSK-VVS.

c. The legal opinion of the State Tax Inspectorate is rather general and does not address the specific situation of Claimant.

d. Claimant does not provide any evidence demonstrating that CSK-VVS failed to pay the taxes according to Article II No. 9.1 and 9.2 of the Player Contract on the amounts which were actually paid to Claimant.

e. According to Article II No. 9.2 of the Player Contract, CSK-VVS undertook to *"pay all Russian tax and social security payments according to the relevant law."* The Player Contract does however not oblige the club to reimburse Claimant for taxes payable outside Russia and Claimant does not explain on which legal basis the compensation for taxes is requested.

8.4. Summary

97. Respondent is obliged to pay to Claimant the remaining salaries for the 2007/2008 season and the salaries agreed for the 2008/2009 season, amounting in total to USD 291,000.00, from which the compensations to which Claimant was entitled under the contracts he entered into with the other clubs, in a total amount of EUR 52,050.00, shall be deducted. Applying an exchange rate as of the date of this award of USD 1 = EUR 0.71, the deduction to be made amounts to USD 73,309.86 and therefore the amount payable shall be USD 217,690.14. The claim for compensation related to the taxes payable in Lithuania is rejected.

9. Costs

98. Article 17.2 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and may either be included in the award or communicated to the parties separately. Furthermore, Article 17.3 of the BAT Rules states that the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

99. On 24 May 2011, 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 at EUR 12,000.00.

100. In the present case, in line with Article 17.3 of the BAT Rules and considering that Claimant prevailed on approximately 2/3 of his claims, the Arbitrator finds it fair that the costs of the arbitration be allocated accordingly and thus that Respondent pay 2/3 of such costs and Claimant 1/3.

101. Given that Claimant paid the totality of the Advance on Costs of EUR 12,000.00, the Arbitrator decides that:

(i) Respondent shall pay EUR 8,000.00 as reimbursement for the Advance on Costs.

(ii) Furthermore, the Arbitrator considers it adequate that Claimant is entitled to the payment of a contribution towards his legal fees and other expenses (Article 17.3. of the BAT Rules). Claimant requests reimbursement of a) lawyer fees in a total amount of EUR 27,100.00 for the services of two lawyers corresponding to 250 hours of work in total (invoices from 3 November 2009, 15 March 2011 and 7 April 2011) and b) translation costs in an amount of EUR 319.64[20]. The Arbitrator holds it adequate to take into account the non-reimbursable handling fee of EUR 4,000.00 and those of Claimant's further legal costs which are connected, time-wise, to the present arbitration proceedings when assessing Claimant's expenses.

[20] Applying the exchange rate as of 11 April 2011, i.e. the date of the submission of Claimant's account of costs, on the amount of LTL 1,101.79.

Having reviewed and assessed all the circumstances of the case at hand, including the complexity of the case, the procedural questions raised and the fact that Claimant prevailed on approximately 2/3 of his claims, the Arbitrator fixes the contribution towards Claimant's legal fees and expenses at EUR 14,280.00.

10. AWARD

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

1. **BC Krasnye Krylia Samara is ordered to pay to Mr. Rolandas Alijevas the amount of USD 217,690.14.**

2. **BC Krasnye Krylia Samara is ordered to pay to Mr. Rolandas Alijevas the amount of EUR 8,000.00 as a reimbursement of the advance on arbitration costs.**

3. **BC Krasnye Krylia Samara is ordered to pay to Mr. Rolandas Alijevas the amount of EUR 14,280.00 as a contribution towards his legal fees and expenses.**

4. **Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 25 May 2011

Stephan Netzle
(Arbitrator)