



BASKETBALL
ARBITRAL TRIBUNAL

CONSENT AWARD

(BAT 0243/11)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Klaus Reichert

in the arbitration proceedings

Court Side

Parkwijklaan 229, 1326 JT Almere, Netherlands

- Claimant -

vs.

Krasnye Krylia Samara

Ul. Evrosheskogo 18, 443086 Samara, Russia

- Respondent -

1. Background of the Award by Consent

1. By Request for Arbitration dated 23 November 2011, the Claimant initiated arbitration proceedings against the Respondent (Claimant and Respondent are hereinafter collectively referred to as the "Parties").
2. By three emails of 5 January 2012, the Claimant informed the BAT that the Parties had settled their dispute and provided the BAT with the pertinent exchange of correspondence between the Parties. The Claimant further informed the BAT that the first instalment under the settlement agreement (EUR 10,250) had already been paid by the Respondent and that the Parties were now seeking a Consent Award.
3. By letter dated 31 January 2012, the Parties were informed by the Basketball Arbitral Tribunal ("BAT") as follows:

"This is to confirm that a Request for Arbitration dated 23 November 2011 was filed by Mr. Kirill Glushkov on behalf of Court Side and received by the BAT on 1 December 2011.

The non-reimbursable handling fee of EUR 2,000.00 was received in the BAT bank account on 27 December 2011.

*The President of BAT has determined that the arbitration can thus proceed and has appointed **Mr. Klaus Reichert, SC** in this case. Copies of the Request for Arbitration (with exhibits), the Rules of the Basketball Arbitral Tribunal ("BAT Rules") as well as the FIBA Internal Regulations governing the Basketball Arbitral Tribunal are attached for the Respondent."*

4. The aforementioned letter also provided other procedural directions and informed the Parties that the Arbitrator would proceed with issuing the consent award as soon as the Advance on Costs was paid. In addition, the Arbitrator noted that "the due date for the last instalment was set to "25-2012" while it appears that the parties might have meant "25-4-2012"" and requested the Parties to express their opinion thereon.
5. On 1 February 2012, the Claimant paid EUR 2,000.00 as Advance on Costs.

6. On 6 February 2012, Mr. Kirill Glushkov, a FIBA-licensed agent of Court Side, contacted BAT on behalf of the Claimant and stated – inter alia – the following:

“I hereby confirm, on behalf of both the Claimants and the Respondent, that the date of the last installment should indeed be 25-4-2012. Please disregard the “25-2012” as a slip of the pen.”

7. By letter dated 13 February 2012, the Arbitrator acknowledged receipt of Claimant’s correspondence and further informed the Parties as follows:

“However there is no document on the file indicating that the Claimant is entitled to make any statements on behalf of the Respondent in this arbitration. Therefore, the Respondent is herewith requested to confirm by no later than Wednesday, 15 February 2012, the date by which the last instalment according to the settlement agreement is meant to be made.

Should the Respondent not reply within the time limit set, the Arbitrator will assume that the parties agreed that the due date for the last instalment under the settlement agreement shall be 25 April 2012”

8. The Respondent did not submit a reply.

2. The Settlement Agreement

9. By e-mail of 23 December 2011, Mr. Kirill Glushkov replied to a previous settlement proposal of Respondent as follows:

“Thank you for your offer with a payment proposal. Court Side is ready to accept your proposal on the following conditions:

1-Krasnye Krylia must reimburse us for the EUR 4.000 BAT handling fee.

2-Krasnye Krylia must pay the 15 % interest which is mentioned in our original intermediating agreement which has been forwarded to the BAT.

Here is our proposal:

- Pay USD 10.250 (USD 10.000 plus USD 250 interest) before 30-12-2011.
- Pay USD 21.000 (USD 20.000 plus USD 1.000 interest) before 25-2-2012.
- Pay USD 10.625 (USD 10.000 plus USD 625 interest) before 25-3-2012
- Pay USD 16.125 (USD 15.000 plus USD 1.125 interest) before 25-2012 [sic].
- Pay EUR 4.000 for the BAT handling fee before 1-5-2012.

If your club agrees with the above, then all you need to do is to confirm that by responding to this email. In that case we will forward our email correspondence to the BAT and ask the arbitrator to issue a "consent award" after which the arbitration can be stopped and no further costs will be made."

10. By e-mail of the same day, Ms. Alina Safina, Sports Director of the Respondent, replied as follows:

„On behalf of Mr.Sergey Timofeev, General director of basketball club "Krasnye Krylia", I would like to inform you that Basketball club "Krasnye Krylia" fully agrees to the payment conditions listed below. [followed by a copy of the Claimant's proposal quoted in paragraph 6. above]"

11. The Arbitrator has ascertained that the dispute between the Parties is arbitrable under the law governing the arbitration (Article 177(1) of the Swiss Private International Law Act) and finds that there is no indication on the face of the record that the Settlement Agreement concluded by the Parties is contrary to international public policy.

3. Costs

12. On 16 February 2012, 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 2,000.00.

13. The Settlement Agreement provides that the Respondent shall pay “EUR 4.000 for the BAT handling fee before 1-5-2012”. The Arbitrator finds that the term “handling fee” is meant to include both the non-reimbursable handling fee and the Advance on Costs, which indeed sum up to EUR 4,000. Therefore, while the arbitration costs will be paid from the Advance on Costs received from the Claimant, the Respondent shall pay an amount of EUR 4,000 to the Claimant as reimbursement for the non-reimbursable handling fee and the Advance on Costs by no later than 1 May 2012.

4. AWARD

For the reasons set forth above and in accordance with Article 16.6 of the BAT Rules, the Arbitrator decides, holds and orders as follows:

- 1. Krasnye Krylia Samara is ordered to pay to Court Side a total amount of USD 58,000.00 in four instalments as follows:**
 - a. USD 10,250 (USD 10.000 plus USD 250 interest) before 30 December 2011**
 - b. USD 21,000 (USD 20.000 plus USD 1.000 interest) before 25 February 2012**
 - c. USD 10,625 (USD 10.000 plus USD 625 interest) before 25 March 2012**
 - d. USD 16,125 (USD 15.000 plus USD 1.125 interest) before 25 April 2012**

- 2. Krasnye Krylia Samara is ordered to pay to Court Side before 1 May 2012 the amount of EUR 4,000.00 as a reimbursement of the arbitration costs and of Court Side's legal expenses. Krasnye Krylia Samara shall bear its own legal fees and expenses.**

Geneva, place of the arbitration, 20 February 2012

Mr. Klaus Reichert SC
(Arbitrator)