



**BASKETBALL**  
ARBITRAL TRIBUNAL

## **CONSENT AWARD**

**(BAT 0156/11)**

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Raj Parker**

in the arbitration proceedings

**Mr. Sergio Scariolo,**

Calle del Pensamiento, Número 27, Escalera Derecha, 1-4. 28020, Madrid, Spain

**- Claimant -**

vs.

**Basketball Club Khimki,**

Khimki, Skhodnya District, Nekrasov str. 2, Moscow Region, 141420, Russia

**- Respondent -**

## 1. Background of the Award by Consent

1. By Request for Arbitration dated 25 January 2011 the Claimant, through his representative Mr. Feliciano Casanova Guasch, initiated this arbitration against the Respondent (the Claimant and the Respondent shall hereinafter also be collectively referred to as "the Parties").
2. By letter dated 9 February 2011 the Parties were informed by the Basketball Arbitral Tribunal ("BAT") as follows:

*"This is to confirm that a Request for Arbitration dated 25 January 2011 was filed by Mr. Feliciano Casanova Guasch on behalf of Mr. Sergio Scariolo and received by the FAT on 28 January 2011.*

*The non-reimbursable handling fee of EUR 5,000 was received in the FAT bank account on 24 January 2011.*

*The President of FAT has determined that the arbitration can thus proceed and has appointed **Mr. Raj Parker** in this case. A copy of the Request for Arbitration (with exhibits), the FIBA Arbitral Tribunal Rules ("FAT Rules") as well as the FIBA Internal Regulations governing the FIBA Arbitral Tribunal are attached for the Respondent."*

3. The letter dated 9 February 2011 also set out a timetable for the further conduct of this arbitration and provided other procedural directions. The Claimant paid his share of the Advance on Costs (EUR 6,000) on 17 February 2011. The Respondent paid its share of the Advance on Costs (EUR 6,000) on 22 February 2011.
4. The Arbitrator has issued two Procedural Orders in these proceedings (dated 9 March 2011 and 11 April 2011) and the Parties have responded accordingly.
5. The Parties were informed, by a letter from the BAT Secretariat dated 4 April 2011, that the FIBA Arbitral Tribunal (FAT) had been renamed into Basketball Arbitral Tribunal

(BAT) and that, absent any objections from the Parties on or before 11 April 2011, the new name would be applied also to the present proceedings. Neither of the Parties raised any objections within the said time limit.

6. By email dated 5 May 2011 the Respondent's attorney informed the BAT that the dispute had been settled. This was confirmed by the Claimant's attorney in an email dated 6 May 2011.

## **2. The Settlement Agreement**

7. The Parties have entered into a Settlement Agreement dated 27 April 2011, which reads as follows:

*"1. The Respondent and the Claimant, both, agree to conclude the Arbitration by mutual consent.*

*2. The Respondent shall pay the Claimant the sum €366,000 (three hundred sixty six thousand Euros) net of taxes.*

*3. The Respondent shall pay the Claimant €366,000 as follows:*

- €200,000            15/05/2011
- €166,000           10/06/2011

*The sums indicated bellow (sic) shall be paid by the Respondent to the following bank account:*

*IBAN: [...]*

*Swift: [...]*

*The Respondent shall bear all expenses incurred in each payment.*

*4. The payment date is essential for this agreement. If the Respondent delays the first payment (15/05/2011) the Claimant shall be entitled to claim the full amount*

*(€366,000) immediately. Furthermore, as a penalty, the respondent shall pay an interest of 5% per year (sic) over the amount due from the date of payment until the complete payment of the total.*

- 5. The Claimant and the Respondent, both, acknowledge and accept this agreement is a final award and they want the BAT confirms (sic) it as a final BAT's (sic) award (FAT 0156/11 – Scariolo v BC Khimki Moscow). As a result, in the event that the Respondent does not observe or accomplish this final award the Claimant shall be entitled to request that FIBA sanction the Respondent according [to] FIBA Internal Regulations governing the BAT (FIBA Internal Regulations, Book 3, Chapter VII), particularly (i) a monetary fine; (ii) ban on registration of new players; [and a] (iii) ban on participation in international club competitions.*
  - 6. The Claimant acknowledges that the Respondent has fully met its obligations regarding the labor agreement dated 8<sup>th</sup> December 2008.*
  - 7. All costs of the arbitration shall be paid ex aequo by both parties, the Claimant and the Respondent.*
  - 8. The Claimant and the Respondent shall pay their own legal fees and expense (sic).*
  - 9. The Claimant and the Respondent shall be obligated to communicate their agreement to the BAT to confirm this friendly settlement as a final award.”*
8. 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**

9. On 22 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 3,930.00 which shall be paid equally by both parties.

10. In accordance with the Settlement Agreement, “All costs of the arbitration shall be paid ex aequo by both parties”. The Arbitrator interprets the phrase “ex aequo by both parties” as meaning “in equal shares by the Parties”. The arbitration costs will therefore be paid from the Advance on Costs received from the Parties, and the balance of the said Advance shall be reimbursed to them in equal shares. Accordingly, the BAT will refund the amount of EUR 4,035.00 to each of the Parties.

#### **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:

- I. Basketball Club Khimki is ordered to pay Mr. Sergio Scariolo EUR 366,000.00 net of taxes and bank transfer charges, as follows:**
  - a. EUR 200,000.00 on or before 15 May 2011; and**
  - b. EUR 166,000.00 on or before 10 June 2011.**
  
- II. Should Basketball Club Khimki fail to pay EUR 200,000.00 to the account designated in the Settlement Agreement on or before 15 May 2011, Basketball Club Khimki shall immediately be obliged to make the following payments to Mr. Sergio Scariolo:**
  - a. EUR 366,000.00, net of taxes and bank transfer charges; and**
  - b. interest of 5% per annum on EUR 366,000.00 for any period that the payment in sub-paragraph II(a) remains outstanding after 15 May 2011.**
  
- III. Subject to paragraphs I and II above, Basketball Club Khimki is considered as having fully met its obligations towards Mr. Sergio Scariolo under the labor agreement dated 8 December 2008.**
  
- IV. Each party shall bear its own legal fees and expenses.**



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**V. Any other or further-reaching claims are dismissed.**

Geneva, place of the arbitration, 24 May 2011

Mr. Raj Parker  
(Arbitrator)