

ARBITRAL AWARD

(BAT 2118/24)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Clifford J. Hendel

in the arbitration proceedings between

Ms. Sabina Simonovicova

- Claimant 1 -

Mr. Sébastien Dekeirel

- Claimant 2 -

both represented by Mr. Sébastien Dekeirel, agent,

vs.

Slavia Banska Bystrica
Komenskeho 3, 97401 Banska Bystrica 1, Slovakia

- Respondent -

represented by Mr. Juraj Koval, Managing Director

1. The Parties

1.1 The Claimants

1. Ms. Sabina Simonovicova¹ (“the Player” or “Claimant 1”) is a Slovakian professional basketball player.
2. Mr. Sébastien Dekeirel (“the Agent” or “Claimant 2”, and together with Claimant 1, “the Claimants”) is a French FIBA licensed agent.

1.2 The Respondent

3. Slavia Banska Bystrica (“the Club”, and together with the Claimants, “the Parties”) is a professional basketball club competing in the Slovakian professional basketball league.

2. The Arbitrator

4. On 20 March 2024, Mr. Ulrich Haas, the President of the Basketball Arbitral Tribunal (the “BAT”), appointed Mr. Clifford J. Hendel as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal in force as from 1 February 2024 (hereinafter the “BAT Rules”).
5. In its Answer, the Club objected to the appointment of Mr. Clifford J. Hendel as arbitrator and requested his disqualification. The reason for such objection “*is that the appointed arbitrator most likely does not know Slovak law and does not have sufficient knowledge of the legal system of the Slovak Republic [...] and thus is not competent to decide this dispute*”. As the Club’s objection is linked to the issue of the law applicable to the dispute,

¹ Maiden name, Sabina Oroszova (Exhibit 2 to the Request for Arbitration, “RfA”)

the Arbitrator will discuss it later in the Award (see Section 7.1 below).

3. Facts and Proceedings

3.1 Summary of the Dispute

6. The relevant facts and allegations presented in the Parties' written submissions and evidence are summarised below. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.
7. Although the Arbitrator has considered all the facts, allegations and evidence submitted by the Parties in the present proceedings, he refers in this Award only to those necessary to explain its reasoning.

3.1.1 The Agreement

8. On 23 March 2023, the Player, the Agent (as the Player's representative), and the Club entered into an agreement, executed in the English language, whereby the latter engaged the Player for the 2023/24 season (the "Agreement").²
9. According to Article 1 of the Agreement:

"The Club undertakes to employ Player as professional basketball player for season 2023/24 to play Slovakian League, Slovakian Cup and other competitions in which the club will compete from September 1st, 2023 until April 30th, 2024 or later until team's game last obligation [sic]."

The Club agrees that his contract is no-cut guaranteed agreement and not have right to suspend or release the Player in the event that the Player does not exhibit skill or competitive ability, or in the event that an injury shall befall the Player. The Club shall

² Exhibit 1 to the RfA.

continue to pay the Player her guaranteed salary payment and provide the housing provided herein for the full term of this Agreement at the times and amounts as specified below. [...]

10. Article 2 of the Agreement provides:

“The Player will attend all games, practice sessions, exhibition matches, social and promotional activities arranged by The Club during her period of employment, unless specifically excused by Management. [...]”

11. With regard to the Player’s salary, Article 5 of the Agreement provides:

“Financial Conditions

During the Contract, the Club agrees to pay the Player in Euros for the season 2023/2024. By other way, the club agrees to pay the agency fee authorized and requested by the Player (below detailed in the article 6).

5.1 Salary

The Club agrees to pay the Player a total net salary of 52.000€ (fifty-two thousand euros) for a for [sic] the season 2023/2024 as specified in the SCHEDULE, below, free of all taxes and deductions. The Club agrees to remunerate The [sic] Player under the following schedule of payments:

5.1.1. Within 5 Days from passing medical tests: 3000€ nets

5.1.2 September 31, 2023: 35000€ nets

5.1.3 October 30, 2023: 6500€ nets

5.1.4 November 31 [sic], 2023: 6500€ nets

5.1.5 December 30, 2023: 6500€ nets

5.1.6 January 31, 2024: 6500€ nets

5.1.7 February 31 [sic], 2024: 6500€ nets

5.1.8 March 27, 2024: 6500€ nets

5.1.9 April 31, 2024: 6500€ nets

[...]

5.3 All the payments detailed above are cumulative and net amounts, with The Club responsible for making and covering all taxes and social fees, statutory, administration, registration, visa, licence, development fee and insurance payments on The Players behalf.

These payments will continue uninterrupted for the full term of the contract.

The Club shall provide the Player with an appropriate regular fiscal document (tax indication) at the end of the contract – this document shall indicate that all required income taxes due in Club's nations, state or province and city on all salaries, bonuses and agent fee sums have been paid and showing the amount of tax that have been paid on the Player's behalf by the Club.

5.4 After a default in payments of more than 10 (ten) days, The Club will be liable to pay additional penalties at the rate of 20€ (Twenty Euros) net per day until payment is done. [...]"

12. Article 6 of the Agreement provides for the Agent's Commission as follows:

"6.1 The Club agrees to pay The Player's agent, M Sébastien Dekeirel from company Basket Promotion EURL officially registered in France a total net commission of 5200€ (five thousand two hundred euros) net on November 15th, 2023.

After a default in payments of more than 10 (ten) days, The Club will be liable to pay additional penalties at the rate of 20€ (Twenty Euros) net per day until payment is done.

6.2 This agency fee is a fixed and freely agreed amount among the Club, the Player and the Agent. This agency fee is wloed [sic] definitely [sic] upon the present contract becomes in force. Such agency fee could not be prorated in case of premature termination of the contract by any reason."

13. According to Article 11 of the Agreement:

"This contract may be cancelled with immediate effect for the following reasons:

11.1 If The Club fails to observe any of the conditions set out above, in which case the full amount contracted for is payable to The Player.

11.2. If The Player fails to pass the prescribed medical examination within five days of her first practice in the team. After this delay of five days, the contract can not be cancelled for medical reasons.

11.3 If The Player is found guilty of prohibited substance abuse.

11.4 If the player is engaged in extreme sports or any other activities of similar nature such

as skiing, surfing, motorcycle riding, parachuting and suffers any injury or ailment as a result of such activity. In this case the club has no further obligation to the player and her agent.

11.5 If the player fails to behave according to conditions specified in this contract. In this case the club has no further obligation to the player and her agent”

14. Lastly, Article 13 of the Agreement provides:

“For the purpose of resolving any disputes between The Club and The Player at a later stage, it is expressly agreed by both parties that this English language version of the agreement is the official and valid contract between the parties.”

3.1.2 Factual background of the dispute

15. On 14 September 2023, the Agent issued an invoice to the Club for his services in the “*Representation and negotiation in Slovakia of contract for Sabina Oroszova*”, in the amount of EUR 5,200.00.³

16. At some point in October 2023, the Player found out she was pregnant. After consultation with her gynaecologist, on 30 October 2023, her doctor advised her to rest.⁴

17. On 31 October 2023, the Player and the Club’s General Manager, Ms. Gabriela Chovanikova, had a conversation via WhatsApp, in which the latter stated:⁵

“Hi Sabi, so officially congratulations. As a mom and a woman. Health is the most important .. so stay healthy and good luck.

Workwise it surprised us, but it is life...

³ Exhibit 3 to the RfA.

⁴ Exhibit 6 to the RfA.

⁵ Exhibit 7 to the RfA.

After an agreement with Mr. Koval in todays practice we will resolve necessary matters and contract termination by mutual agreement. Furthermore I ask you to clean out the apartment by end of the week. Eva Vodrazkova will take over the keys.. make arrangements with her.”

18. That same day, the Club’s General Manager had a conversation with the Agent on WhatsApp:⁶

“[Gabriela Chovanikova]

Hi Sebastian

I’m GM Slavia Banska Bystrica

I’m contacting you regarding Sabina Simonovicova – her contract from 23.3.2023 with our club.

We want to cancel the contract with immediate effect for her pregnancy today, 31.10.2023.

[Sébastien Dekeirel]

Hello Gabriela

Romca gave birth to her baby during the night so, yes, easier to communicate together.

The question is... pregnancy is a great news and not a reason to cancel or breach a contract...

[Gabriela Chovanikova]

“Not a reason to cancel a contract” ????

I really don’t understand what do you think?

We’re playing tmrrw against Besiktas / ECW and she refused to play...”

19. On 13 November 2023, the Club sent a letter of termination of the Agreement (in Slovakian), via email, to the Player and the Agent, which reads in its English translation

⁶ Exhibit 8 to the RfA.

as following:⁷

“Dear Ms. Simonovicova,

*The contract between our company as a basketball club and you as a professional basketball player was concluded on 23 March 2023, the subject of which is to perform sports activities as a professional basketball player for our basketball club Slavia Banska Bystrica, i. e. to play for our club in the Slovak League, Slovak Cup and all other competitions in which our club will compete from 01 September 2023 to 30 April 2024 or later until the last match obligation of our club (hereinafter referred to as the “**Contract**”).*

Pursuant to clause 2 of the Contract, the Player shall participate in all matches, training sessions, exhibition matches, social and promotional activities organised by the Club during the period of her employment, unless specifically excused by the Club management.

Pursuant to clause 11.5 of the Contract, this Contract may be terminated with immediate effect for the following reasons: if the Player fails to behave in accordance with the terms and conditions of this Contract, in which case the Club shall have no further obligations towards the Player and her agent.

In accordance with Clause 11.5 of the Contract, we hereby terminate the Contract concluded on 23 March 2023 between you and our Club with immediate effect, i.e. as of 13 November 2023.

The reason for the termination of the Contract by our Club is due to multiple breaches of your obligations under the Contract. Since November 2023, you have not participated in any training processes and matches for our Club without any proper notification to our Club or proper proof of the legitimacy of your action, which we consider to be a serious breach of your contractual obligations that entitle our Club to terminate the Contract with immediate effect.”

20. On 27 November 2023, the Agent replied to the Club by email:⁸

“Dear Juraj

I had to pay for a translation of your document written in Slovakian (despite by contract any communication must be done in English) and, of course, will add the refund of the translation (350,00€) to the global request to the FIBA arbitral tribunal.

⁷ Exhibit 9 to the RfA (translation to English in Exhibit 11 to the RfA).

⁸ Exhibit 12 to the RfA.

By the way, you terminated the contract of Sabina Simonovicova (Oroszova) without right.

Since day 1 of Sabina's communication to the club about her pregnancy, the ONLY words from the club were to terminate the contract despite, on article 1 of the contract, it is clearly agreed that the contract is "not-cut guaranteed agreement" and the club "not have the right to suspend or release the Player in the event that the Player does not exhibit skill or competitive ability".

On article 8 of the contract, "the Club undertakes to insure the Player against all risk and will pay all of the Player's medical and dental expenses".

As I explained from day 1 to the General Manager of the club, while she already asked for a release document after being informed of Sabina's pregnancy, on October 21, 2023 at 15h09: "The question is .. pregnancy is a great news and not a reason to cancel or breach a contract..."

So you terminated against all contract agreement, on November 2023 the commitment of Sabina with the club. You also missed the payment on player's behalf of the commission

I will introduce our case to the Fiba arbitral tribunal, as agreed in the article 12 of our contract to claim for:

- *All remaining salaries payments of Sabina until the end of her contract: 39.000€ nets*
- *Proof that all taxes has been paid on Player's behalf to Slovakian administration as agreed in the contract*
- *Fiscal document indicating that all required income taxes due in club's nation (SVK), state or province or city on all salaried [sic] and agent fee sums have been paid and showing the amount of tax that have been paid on the Player's behalf by the Club*
- *Any due late fees in link with any late monthly salary payment*
- *Compensation for the moral damage suffered in the context of a pregnancy: 5000€*
- *Payment on Player's behalf of the agent commission: 5200€ + any late fees in link with the contract*
- *Translation of Club's termination letter written in Slovakian: 350€*
- *Legal fees and arbitration costs: to be determined"*

21. On 4 December 2023, the Club sent a further letter in Slovakian, via email, to the Agent and the Player, in reply to the Agent's email of 27 November 2023, which reads in its

English translation as following:⁹

“Dear Ms. Simonivicova,

By letter dated 13 November 2023 we sent you the Termination of the Player’s Contract concluded on 23 March 2023 between you and our Club, on the basis of which you performed sports activities for our Club as a professional basketball player (hereinafter referred to as the “Contract”). We have also addressed the above letter to your agent for his information.

On 27 November 2023 we received an email from your agent stating that any communication in relation to the Contract is to be in English and relating our termination of the Contract to your alleged pregnancy. He also states that he will claim against our Club payment of your remaining salary in the amount of EUR 39.000.00 kind of moral damages in connection with your alleged pregnancy in the amount of EUR 5.000.00, payment of commission in the amount of EUR 5.200.00, and the costs of translation of our letter dated 13 November 2023 from Slovak to English.

We would like to comment on your agent’s statements as follows.

The Contract has been terminated by us in accordance with clause 11.5 of the Contract, which provides for the possibility for our Club to terminate the Contract with immediate effect if the Player does not behave in accordance with the terms and conditions of the Contract, i.e. with reference to clause 2 of the Contract, she does not participate in all matches, training sessions, exhibition matches, social and promotional activities organised by the Club during the period of her employment or the term of the Contract.

Our Club does not yet have any official notification or medical report that you are pregnant. Apparently, you only informed the coach of our Club about this fact, without, however, proving your medical condition (pregnancy) to our Club in any credible way. Therefore, we reject your agent’s claims that the Contract has been terminated because of your pregnancy. The Contract has been terminated by our Club due to your failure to fulfil the contractual obligations to which you have agreed in the Contract and we consider it unjustified to demand payment of any financial claims under the Contract.

With regard to the moral damages, which your agent incomprehensibly quantifies to the amount of EUR 5.000.00, we state that this claim is absolutely unfounded, unproven and without any justification whatsoever.

Regarding the commission for your agent in the amount of EUR 5.200.00, we refer to the aforementioned clause 11.5 of the Contract which states that the Contract may be terminated with immediate effect for the following reasons: if the Player fails to behave according to the terms and conditions of this Contract, in which case the Club shall have

⁹ Exhibit 13 to the RfA (translation to English in Exhibit 15 to the RfA).

no further obligations towards the Player and her agent.

Finally, we point out that nothing in the Contract states that any communication between you and our Club must be in English. Insofar as your agent refers to clause 13 of the Contract, according to which any communication is allegedly to be in English language, we state that this clause only provides that for the purposes of any subsequent disputes between you and our Club, the English version of the Contract shall be the official and valid contract between the parties to the Contract. We are under no obligation to reimburse your agent for any costs in connection with the translation of any correspondence which we address solely to you, and we give such correspondence to your agent for his information only. Similarly, we are under no obligation to translate any documents for your agent that are addressed to you.”

3.2 The Proceedings before the BAT

22. On 4 March 2024, the Claimants filed a Request for Arbitration dated 20 February 2024, in accordance with the BAT Rules. The non-reimbursable handling fee in the amount of EUR 2,000.00 was received in the BAT bank account on 20 February 2024.
23. On 20 March 2024, the BAT informed the Parties that Mr. Clifford J. Hendel had been appointed as the Arbitrator in this matter, invited the Respondent to file its Answer by 15 April 2024, and fixed the advance on costs to be paid by the Parties as follows:

<i>“Claimant 1 (Ms Sabina Simonovicova)</i>	<i>EUR 2,000.00</i>
<i>Claimant 2 (Mr. Sébastien Dekeirel)</i>	<i>EUR 1,000.00</i>
<i>Respondent (Slava Banska Bystrica)</i>	<i>EUR 3,000.00”</i>

24. None of the Parties raised any objections to the appointment of the Arbitrator or to his declaration of independence.
25. On 27 March 2024, the BAT received an advance on costs paid by Claimants in the total amount of EUR 3,000.00.
26. On 12 April 2024, Respondent submitted its Answer. In its final paragraph, the Club’s Answer stated:

“Notwithstanding that the amount in dispute does not exceed EUR 50,000 in accordance with Article 16.3(a) of the BAT Arbitration Rules, our Club requests that the BAT to ensure [sic] that any decision issued by the BAT includes a statement of reasons for the decision.”

27. On 15 April 2024, the BAT sent a communication by email to the Respondent regarding its request for a reasoned award. Respondent was invited to confirm its request by 17 April 2024. Respondent was informed that the Arbitrator should issue an award with reasons only if the requesting party paid an amount of EUR 3,000.00 within a time-limit to be set by the BAT Secretariat.
28. On 18 April 2024 the BAT informed that the Respondent had failed to pay its share of the advance on costs. Claimants were invited to substitute for Respondent by 29 April 2024. Additionally, Respondent’s counsel was invited to provide a duly signed Power of Attorney. Respondent replied the same day stating: *“our company has no legal representative and has not authorized any legal representative in this proceeding”*.
29. On 26 and 29 April 2024, the BAT received a further advance on costs paid by Claimants in substitution for the Respondent and in the total amount of EUR 3,000.00.
30. On 30 April 2024, the BAT, in accordance with Article 16.3(a) of the BAT Rules, invited Respondent to pay an amount of EUR 3,000.00 by 13 May 2024 in respect of its request for a reasoned award. Claimants were invited to translate into English the untranslated exhibits to the Request for Arbitration by 13 May 2024.
31. On 10 May 2024, the Claimants submitted the requested translations.
32. On 14 May 2024, Respondent paid EUR 3,000.00 for its request for a reasoned award.
33. On 15 May 2024, the Parties were notified that the exchange of submissions was closed in accordance with Article 12.1 of the BAT Rules. The Parties were granted a deadline until 22 May 2024 to set out how much of the applicable maximum contribution to costs

should be awarded to them and why, and to include a detailed account of their costs, including any supporting documentation in relation thereto.

34. On 21 May 2024, Respondent submitted its account on costs.
35. On 23 May 2024, the BAT transmitted copies of the account of costs submitted by Respondent, and informed that the Claimants had failed to file their costs submission.
36. On the same day, the Claimants submitted their account on costs. The BAT informed that the Arbitrator had decided to admit the Claimants' belated cost submission on file and transmitted a copy for Respondent's information.

4. The Positions of the Parties

4.1 The Claimants' Positions

37. The Claimants seek compensation for the Respondent's (alleged) unlawful termination of the Agreement. It is the Claimants' position that the Club terminated the Agreement immediately after the Player informed the Club about her pregnancy, and on the grounds of such pregnancy. The Claimants contend that the Agreement does not allow for termination on such grounds. On the contrary, the Agreement is styled as no-cut, fully guaranteed, and therefore the Club is obligated to pay the Player's salary and the Agent's fee even in the event that the Player "*does not exhibit skill or competitive ability*".
38. Additionally, the Claimants request payment of the agreed late penalties under articles 5.4 and 6.1 of the Agreement.
39. The Player further claims compensation for her alleged moral damage "*suffered in the context of her pregnancy*", in the amount of EUR 2,000.00.

40. In their Request for Arbitration, the Claimants requested the following relief:

"Claimant(s) request(s):

1 Player: for a total appr. Of [sic] 43.000€ + refund of arbitration cost

Salaries: *39.000€ nets (salaries for 2023 November, December and 2024 January to April as stipulated in the contract)*

Late Penalties: *additional late penalties of 20€ net per day until payment has been done as stipulated in the contract with a minimum of 2000€*

Document: *fiscal document stating that all required indicating that all required income taxes [sic] due in club's nation (SVK), state or province or city on all salaried [sic] and agent fee sums have been paid and showing the amount of tax that have been paid on the Player's behalf by the club*

Compensation: *for psychological damage suffered by the Player in the context of a pregnancy: 2000€*

Legal fees: *3000€*

Refund Arbitration cost of the player

2 Agent for a total of 6700€

Agent commission on player's behalf: 5200€

Late penalties: *additional late penalties of 20€ net per day until payment has been done as stipulated in the contract with a minimum of 1500€*

Legal fees: *3000€*

Total amount in dispute: 49.700€

4.2 Respondent's Position

41. Respondent makes three main submissions in its Answer.

42. First, the Club refers to the law applicable to the substance of the dispute. Respondent underlines that according to the BAT Confirmation Letter of 20 March 2024 and pursuant to Article 15.1 of the BAT Rules, the Arbitrator shall decide the dispute "ex aequo et

bono”, i.e. *“applying general considerations of fairness and impartiality without reference to specific national or international law”*.

43. Respondent contends, however, that the arbitration clause in Article 12 of the Agreement *“lacks any agreement on the applicable law, i.e. under which law, which State’s law, any dispute arising out of the Contract is to be resolved, or any agreement by the parties to resolve the dispute “ex aequo et bono”*. Citing several provisions of the Slovakian arbitration law, Respondent alleges that the Arbitrator shall decide the dispute *ex aequo et bono* only if the parties have expressly authorized him to do so. Absent such agreement, the dispute *“shall be governed by the law the application of which corresponds to a reasonable arrangement of the given [contractual] relationship”*. In this case, the Agreement *“was concluded between ... club and Sabina Simonovicova as a player, with the participation of Sebastien Dekeirel as agent, and its subject matter was an agreement on the performance of sports activities by Sabina Simonovicova for our club. In view of the fact that Sabina Simonovicova, as a citizen of the Slovak Republic, performed sporting activities for our club based in the territory of the Slovak Republic... referring to the absence of any express agreement of the parties to the Contract on the arbitration of a dispute arising from the Contract “ex aequo et bono”... and referring to the national regulation of the Slovak Republic concerning arbitration... we hold that the appointed arbitrator is not entitled to decide the dispute “ex aequo et bono”, but is obliged to decide the dispute in accordance with the law and regulation of the Slovak Republic”*.
44. Second, but closely linked to the former, Respondent objects to the appointment of the Arbitrator and requests his disqualification from deciding the present dispute, precisely on the grounds that the dispute shall, in Respondent’s view, be decided in application of Slovak law and that *“the appointed arbitrator most likely does not know Slovak law and does not have sufficient knowledge of the legal system of the Slovak Republic necessary for a fair and lawful decision”*.
45. Third, regarding the substance of the dispute, the Club alleges that it terminated the

Agreement in accordance with its Article 11.5, and based on “*the multiple violations of Sabina Simonovicova under the Contract*”. The Club states that “[s]ince November 2023, she has not participated in any training sessions or matches” as obligated under Article 2 of the Agreement, “without any proper notification to [the] Club or proper proof of the legitimacy of her actions”, which amounts to a serious breach of her contractual obligations. Respondent adds that “[t]he reason for the termination of the Contract was not Sabina Simonovicova’s pregnancy but her failure to perform her obligations under the Contract”.

46. Respondent further alleges that the Club “*did not have any official notification or medical report that Sabina Simonovicova was pregnant until the date of the arbitration request*”. The Club acknowledges that the Player verbally informed the team’s coach and the Club’s General Manager “*but without any credible proof of Sabina Simonovicova’s medical condition (pregnancy) being provided to our club*”.
47. In sum, Respondent contends that the Claimants are not entitled to any of the amounts claimed, as the Agreement was validly terminated by the Club. Regarding the moral damages claimed by the Player, Respondent alleges that such claim “*is not only unfounded but also unproven*”.
48. In its Answer, the Club requests the following relief:

“In light of all of the foregoing we find the claim asserted by the Claimants to be frivolous, unproven and vexatious as to our Club, and we therefore request the BAT, upon application for arbitration, to dismiss any financial claim asserted by the Claimants against our Club in its entirety.”

Notwithstanding that the amount in dispute does not exceed EUR 50,000 in accordance with Article 16.3(a) of the BAT Arbitration Rules, our Club requests the BAT to ensure that any decision issued by the BAT includes a statement of reasons for the decision.”

5. The jurisdiction of the BAT

49. 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).
50. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
51. The dispute is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA¹⁰.
52. The jurisdiction of the BAT over the Claimants’ claims results from the arbitration clause contained under Article 12 of the Agreement, which reads as follows:

“All of the parties to this contract further retain the individual right, if they so chose, to also submit any dispute arising from the present contract to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland, where it will be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of any such BAT arbitration shall be Geneva, Switzerland.”

53. The Agreement is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
54. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).

¹⁰ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

55. The jurisdiction of BAT over the Claimants' claims arises from the Agreement. The wording "*any dispute arising from the present contract [...]*" clearly covers the present dispute. Moreover, Respondent has fully participated in the proceeding without any objection to BAT jurisdiction, thus accepting the jurisdiction of the BAT.

56. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claims.

6. Other Procedural Issues

57. None of the parties requested a hearing. In accordance with Article 13.1 of the BAT Rules, the Arbitrator will decide the Claimants' claims based on the written submissions and the evidence on record.

7. Discussion

7.1 Applicable Law – *ex aequo et bono* – Respondent's objection to the appointment of the Arbitrator

7.1.1 The law applicable to the dispute

58. As summarized above (Section 4.2), Respondent contends that the present dispute should not be resolved *ex aequo et bono*. Instead, Slovak law should be, in its view, applicable to the merits of the dispute. In consequence, Respondent objects to the appointment of the Arbitrator on the basis of his lack of knowledge of Slovak law.

59. The Club's contention is meritless for a number of reasons. While it is true that the arbitration clause in Article 12 of the Agreement does not expressly refer to the resolution of the dispute *ex aequo et bono*, it does refer to arbitration under the BAT Rules, with the seat or the arbitration in Geneva, Switzerland. Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties

or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the arbitrators to decide “en équité” instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

“the parties may authorize the arbitral tribunal to decide ex aequo et bono”.

60. Under the heading " Law Applicable to the Merits", Article 15 of the BAT Rules reads as follows:

“15.1 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.

15.2 If, according to an express and specific agreement of the parties, the Arbitrator is not authorised to decide ex aequo et bono, he/she shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to such rules of law he/she deems appropriate. In both cases, the parties shall establish the contents of such rules of law. If the contents of the applicable rules of law have not been established, Swiss law shall apply instead.”

61. Hence, by agreeing to arbitration in accordance with the BAT Rules, and by not expressly and specifically excluding that the Arbitrator may decide *ex aequo et bono*, the parties agreed to the application of its Article 15.1, pursuant to which the Arbitrator shall decide the dispute *ex aequo et bono*.
62. Additionally, Slovak arbitration law is not applicable to a Geneva seated arbitration under the BAT Rules. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding.
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*¹¹ (Concordat),¹² 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.”¹³

64. 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*”.

7.1.2 Objection to the appointment of the Arbitrator

65. Having established that Slovak law is not applicable to the merits of the dispute, Respondent’s objection to the appointment of the Arbitrator becomes superfluous.
66. Further, under Article 8.3 of the BAT Rules “[a]n Arbitrator may be challenged if the circumstances give rise to legitimate doubts regarding his/her independence. The challenge shall be brought in writing within seven days after the ground for the challenge has become known to the party making the challenge. [...]”. Even if the Club’s objection could be considered as a challenge, it was only brought at the time of the filing of the Answer, outside the time-limit set by Article 8.3.
67. In light of the foregoing considerations, the Arbitrator makes the findings below.

¹¹ 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).

¹² P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

¹³ JdT 1981 III, p. 93 (free translation).

7.2 Findings

7.2.1 Player's monetary claims

68. Claimant 1 seeks the amount of EUR 39,000.00, net of taxes, for her unpaid salaries for the months of November and December 2023, and January to April 2024.
69. Claimant 1 further seeks late penalties of EUR 20.00 net per day until complete payment, in a minimum amount of EUR 2,000.00.
70. Finally, Claimant 1 seeks EUR 2,000.00 as compensation for her alleged psychological damages suffered in the context of her pregnancy.
71. All three claims are based on Claimants' allegation that the Agreement was unlawfully terminated by the Club. The Arbitrator agrees with Claimants. From the evidence in the record and despite the Club's argumental efforts, it is clear that the Club decided to terminate the Agreement after learning that the Player had become pregnant and that she had been recommended to rest by her doctor. In her WhatsApp conversation with the Agent, the Club's General Manager made clear that they wanted *"to cancel the contract with immediate effect for her pregnancy today, 31.10.2023"*.¹⁴ However, under Article 1 of the Agreement *"[t]he Club agrees that his contract is no-cut guaranteed agreement and not have right to suspend or release the Player in the event that the Player does not exhibit skill or competitive ability, or in the event that an injury shall befall the Player"*. The Player's pregnancy is evidently no legitimate cause for the termination of the Agreement.
72. The Club has not contested that the amounts claimed have not been paid under the

¹⁴ Exhibit 8 to the RfA.

Agreement. In its Answer, the Club alleges that the Player did not officially communicate her pregnancy to the Club and thus it was unaware of the Player's condition, so the contract termination was based on the Player's breach of her obligations to participate in the team's training sessions and matches. Such an argument is meritless. It is evident that the Club had learned about the Player's pregnancy through the team's coach and the Club's General Manager. Additionally, the Club at no point requested proof of her pregnancy in the form of a medical report or otherwise.

73. Therefore, the Club unlawfully terminated the Agreement by its letter of 13 November 2023, and in consequence it shall pay the Player's outstanding compensation for the 2023/24 season in the amount of EUR 39,000.00 net.¹⁵
74. Regarding the late penalties claimed by the Player, Article 5.4 of the Agreement provides that “[a]fter a default in payments of more than 10 (ten) days, The Club will be liable to pay additional penalties at the rate of 20€ (Twenty Euros) net per day until payment is done”. Claimant 1 has not calculated the exact amount claimed for late penalties, nor has indicated the *dies a quo* for such calculation. Claimant 1 merely states that the minimum amount due as late penalty is EUR 2,000.00.
75. It is not the Arbitrator's duty to substitute for the Claimant's calculations or to supplement her claims. The Arbitrator decides to award EUR 2,000.00 net as late penalty, i.e. the minimum amount claimed by the Player. Such amount is consistent with the well-established BAT jurisprudence on the proportionality between the penalties and the principal amounts claimed. Moreover, it covers a default period of 100 days which definitely has been served since the Respondent started not to pay the Claimant 1.
76. Lastly, Claimant 1 has claimed EUR 2,000.00 as compensation of her psychological

¹⁵ As requested and agreed under Article 5.3 of the Agreement.

damages suffered in the context of her pregnancy. As Respondent has pointed out, Claimant 1 has not submitted any proof to support such claim. In the absence of any evidence, the Arbitrator must dismiss this claim.

7.2.2 Agent's monetary claims

77. Claimant 2 requests the amount of EUR 5,200.00, net, for his unpaid commission. As in the case of the Player, the Club has not contested that the amounts claimed have not been paid under the Agreement. For the same reasons explained above (for the Player's salary claim) the Club shall pay the Agent's outstanding commission in the amount of EUR 5,200.00, net, as agreed under Article 6 of the Agreement. Article 6.2 expressly states that the agency fee is owed upon the Agreement entry into force and cannot be prorated in case of premature termination of the Agreement for any reason.
78. Claimant 2 further requests late penalties of EUR 20.00 net per day until complete payment, in the minimum amount of EUR 1,500.00. As in the case of the Player, Claimant 2 has not calculated the exact amount claimed for late penalties, nor has indicated the *dies a quo* for such calculation. Claimant 2 merely states that the minimum amount due as late penalty is EUR 1,500.00. Article 6 of the Agreement provides that “[a]fter a default in payments of more than 10 (ten) days, The Club will be liable to pay additional penalties at the rate of 20€ (Twenty Euros) net per day until payment is done”. For the reasons given in the previous section, the Arbitrator decides to award EUR 1,500.00 net as late penalties to the Agent. It covers a default period of 75 days which definitely has been served since the Respondent started not to pay the Claimant 2.

7.2.3 Tax statement

79. Lastly, Claimant 1 requests that the Club provides her with a “fiscal document stating that all required indicating that all required income taxes [sic] due in club's nation (SVK), state or province or city on all salaried [sic] and agent fee sums have been paid and

showing the amount of tax that have been paid on the Player's behalf by the club".

80. Such request is consistent with the provision in Article 5.3, last paragraph, of the Agreement (see Section 3.1.1). Accordingly, the Club must provide Claimant 1 with an appropriate fiscal document indicating that all income taxes due in the Club's nation, state, province or city for the Player's salary have been duly paid and showing the amount of tax paid by the Club on the Player's behalf.

8. Costs

81. In respect of determining the arbitration costs, Article 17.2 of the BAT Rules provides as follows:

"At the end of the proceedings, the BAT President shall determine the final amount of the arbitration costs, which shall include the administrative and other costs of the BAT, the contribution to the BAT Fund (see Article 18), the fees and costs of the BAT President and the Arbitrator, and any abeyance fee paid by the parties (see Article 12.4). [...]"

82. On 25 July 2024, the BAT President determined the arbitration costs in the present matter to be EUR 7,525.00.

83. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 of the BAT Rules provides as follows:

"The award shall determine which party shall bear the arbitration costs and in which proportion. [...] When deciding on the arbitration costs [...], the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties."

84. Considering that the Claimants were the prevailing party in this arbitration (Claimants have been granted around 96% of the relief sought in monetary terms), it is consistent with the provisions of the BAT Rules that costs of the arbitration be borne by the Respondent alone. Given that the Claimants paid the entire Advance on Costs in the

amount of EUR 6,000.00 (of which EUR 1,475.00 will be reimbursed jointly to the Claimants by the BAT) and the Respondent paid EUR 3,000.00 as flat fee for rendering an award with reasons in this matter in accordance with Article 16.3 lit. a) of the BAT Rules, Respondent shall reimburse EUR 4,525.00 jointly to the Claimants.

85. In relation to the Parties' legal fees and expenses, Article 17.3 of the BAT Rules provides that

“as a general rule, the award shall grant the prevailing party a contribution towards any reasonable legal fees and other expenses incurred in connection with the proceedings (including any reasonable costs of witnesses and interpreters). When deciding [...] on the amount of any contribution to the parties' reasonable legal fees and expenses, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.”

86. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses (in this case, Claimant 1 up to EUR 7,500.00 and Claimant 2 up to EUR 5,000.00).

87. The Claimants claim legal fees in the total amount of EUR 6,000.00 - EUR 3,000.00 each - plus EUR 177.20 for translation expenses. They also claim for the expense of the non-reimbursable handling fee (EUR 2,000.00).

88. Taking into account that the Claimants have succeeded virtually in full with their prayers for relief, that they were represented by the same attorney, that the complexity of the factual issues was relatively low, and that the Claimant's counsel only had to file a very brief RfA, the Arbitrator considers it fair and reasonable to award the amount of EUR 4,000.00 in legal fees and expenses, as well as the payment of the non-reimbursable handling fee in the amount of EUR 2,000.00.

89. In summary, therefore, the Arbitrator decides that in application of Articles 17.3 and 17.4 of the BAT Rules:

- (i) The BAT shall reimburse EUR 1,475.00 jointly to the Claimants, being the difference between the costs advanced by the Parties and the arbitration costs fixed by the BAT President;
- (ii) The Club shall pay EUR 4,525.00 jointly to the Claimants, being the difference between the costs advanced by them and the amount they are going to receive in reimbursement from the BAT;
- (iii) The Club shall pay jointly to the Claimants EUR 4,000.00 as a contribution to their legal fees and expenses, as well as EUR 2,000.00 for the non-reimbursable handling fee.

9. AWARD

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

- 1. Slavia Banska Bystrica shall pay Ms. Sabina Simonovicova EUR 39,000.00 net as compensation for her unpaid salaries.**
- 2. Slavia Banska Bystrica shall pay Ms. Sabina Simonovicova EUR 2,000.00 net for late penalties.**
- 3. Slavia Banska Bystrica shall pay Mr. Sébastien Dekeirel EUR 5,200.00 net as compensation for his unpaid commission.**
- 4. Slavia Banska Bystrica shall pay Mr. Sébastien Dekeirel EUR 1,500.00 net for late penalties.**
- 5. Slavia Banska Bystrica shall provide Ms. Sabina Simonovicova with an appropriate fiscal document indicating that all income taxes due in Slavia Banska Bystrica's nation, state, province or city for Ms. Sabina Simonovicova's salary have been duly paid and showing the amount of tax paid by Slavia Banska Bystrica on Ms. Sabina Simonovicova's behalf.**
- 6. Slavia Banska Bystrica shall pay jointly to Ms. Sabina Simonovicova and Mr. Sébastien Dekeirel an amount of EUR 4,525.00 as reimbursement of their arbitration costs.**
- 7. Slavia Banska Bystrica shall pay jointly to Ms. Sabina Simonovicova and Mr. Sébastien Dekeirel an amount of EUR 6,000.00 as reimbursement of their legal fees and expenses (including the non-reimbursable handling fee).**
- 8. Any other or further requests for relief are dismissed.**



BASKETBALL
ARBITRAL TRIBUNAL

Geneva, seat of the arbitration, 29 July 2024

Clifford J. Hendel
(Arbitrator)