

ARBITRAL AWARD

(BAT 1850/22)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Benny Lo

in the arbitration proceedings between

Mr. Vedran Bosnic

- Claimant -

represented by Messrs. Sébastien Ledure and Wouter Janssens, attorneys at law,

vs.

Basketball Federation of Bosnia and Herzegovina

- Respondent -

represented by Mr. Amer Čolan, Secretary General of the Respondent

1. The Parties

1.1. The Claimant

1. Mr. Vedran Bosnic (“**Coach**” or “**Claimant**”) is a Bosnian professional basketball coach.

1.2. The Respondent

2. Basketball Federation of Bosnia and Herzegovina (“**Federation**” or “**Respondent**”) is the national basketball federation of Bosnia and Herzegovina.

2. The Arbitrator

3. On 14 September 2022, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal (“**BAT**”), appointed Mr. Benny Lo as arbitrator (“**Arbitrator**”) pursuant to Article 8.1 of the Arbitration Rules of the Basketball Arbitral Tribunal in force as from 1 January 2022 (“**BAT Rules**”). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1. Summary of the Dispute

4. On 14 July 2021, the Coach and the Federation¹ entered into a written agreement providing for the Coach’s employment as the head coach of the senior male national team of Bosnia and Herzegovina for two years from 30 October 2021 (“**Agreement**”).

5. The Agreement includes, *inter alia*, the following terms:

“ *Article 1.*

The KSBiH shall hire the Coach to perform a job of the head coach of the senior male

¹ Referred to in the Agreement as the “*KSBiH*”.

national team of Bosnia and Herzegovina.

Article 2.

This Contract shall be concluded to the limited period.

The Contract shall come into force on 30 October 2021 and shall expire on 30 October 2023.

Following the expiration of the Contract the coach shall have no obligations towards KSBIH.

Article 3.

The contracting parties shall agree that by signing the contract the coach shall fulfill the following obligations:

[...]

b) Selection of players that will participate in the activities of the national team

[...]

Article 4

The KSBIH shall have obligation to pay the coach with following amounts per season:

Season 2021/22 amount of EUR 20.000,00

Season 2022/23 amount of EUR 20.000,00

Payment schedule.

30.01.2022 EUR 5.000,00

30.04.2022 EUR 5.000,00

30.07.2022 EUR 5.000,00

30.10.2022 EUR 5.000,00

30.01.2023 EUR 5.000,00

30.04.2023 EUR 5.000,00

30.07.2023 EUR 5.000,00

30.10.2023 EUR 5.000,00

01.08.2020 EUR 5.000,00

[...]

Article 6

The contracting parties shall agree that all the stated amounts, defined in Articles 4 and 5 of this contract, are NET amounts, which implies that the exclusive obligation of KSBiH is to pay all taxes, contributions, fees and other duties, in accordance with the positive regulations refer to the payment of the stated amounts.

[...]

[Article 8]

The contracting parties shall agree that the coach's obligations listed under points A, B, D are exclusively his, and the KSBiH shall accept that it fully respects the coach's decisions, i.e. that it refrains from interfering with the coach in any aspect of the decision-making process.

The contracting parties shall agree that KSBiH does not have the possibility of fining the coach or reducing the financial obligations assumed by this contract for any reason.

[...]

Article 10

The contracting parties especially point out that this shall be a FULLY GUARANTEED CONTRACT and can be terminated unilaterally, exclusively in the cases specified in the following articles, with the indication that the right to terminate even thus stimulated has to be interpreted extremely restrictively.

[...]

Article 11

The coach shall have right unilaterally to terminate the contract in the following cases:

- c) If KSBiH is late in fulfilling any of the financial obligations assumed by this contract (Articles 4 and 5 of this contract) for more than 60 days.*
- d) In the event, that KSBiH acts contrary to Articles 8 and 9 of this contract.*

In the event that the coach shall unilaterally terminate the contract in accordance with the above, it shall be considered that the contract was terminated to the detriment of KSBiH, in which case KSBiH shall remain in obligation to pay the coach the due obligations stipulated in the contract.

Article 12

KSBIH shall have the right to unilaterally terminate the contract in the following cases:

- a) *If the coach does not grossly respect the provisions of this contract from Article 3, points H, L and I*

[...]

In the event that KSBIH shall unilaterally terminate the contract according to this article, it shall be considered that the contract has been terminated to the detriment of the coach, in which case KSBIH has the obligation to pay only the monetary amounts provided for in this contract, which were due before the declaration of termination.

If the termination of the contract according to paragraph A of this article shall occur because of a violation of the provisions of article 3, point H, and as a result of which there is an impossibility to perform work for more than 30 days, the KSBIH shall have no financial obligations towards the coach.

Article 13

The contracting parties shall agree that in case of unilateral termination of the contract by the KSBIH, beyond the reasons strictly provided for in the previous article, it will be considered that the KSBIH has violated the contractual provisions. In the said case, the obligations of the KSBIS shall be established to pay the coach all due monetary obligations provided for in this contract within 30 days from the date of notification of termination of the contract

Article 14

The contracting parties shall agree that the coach, for the entire duration of the contract, has the right to perform the duties of coach, advisor, head of the professional team and similar in any club, but not in another national selection. The coach shall have the right to terminate the contract without any obligations in case he coaches a team in the League that does not allow its coach to be the coach of the national selection.

Article 15

In the event that the KSBIH shall not terminate the contract in accordance with this contract and shall publish in the media the change of coach, i.e. appoints another person to the position of coach of the senior men's national team, it shall be considered that the contract has been terminated by the KSBIH, in which case the provision of Article 13 of this contract shall be fully applied.

Article 17

Termination of the contract in terms of articles 11 to 15 of this contract shall be declared in writing with delivery, which shall be confirmed by the recipient.

In case that the termination of the contract shall be not declared in writing or shall be executed without confirmation by the recipient, it shall not produce a legal effect.

Article 18

The parties to the contract shall determine the address for receiving letters under this contract, including the letter about the termination of the contract:

The KSBIH: Basketball Federation of Bosnia and Herzegovina, _____

The Coach: Vedran Bosnic, _____

In the event that any writing, related to the execution of this contract, shall not be delivered to the above-mentioned addresses, it will be considered that it does not produce a legal effect. In the event that any of the contracting parties changes their address during the term of the contract, they shall inform other contracting party about this, and if they do not do so, they cannot refer to that fact, if the delivery was made to the previously indicated addresses.

Article 19

All amendments to this contract must be in writing; otherwise, they shall have no legal effect.

Article 20

In the event of a dispute, the contracting parties determine the jurisdiction of the BAT (FIBA Arbitration Court in Geneva), and that the dispute shall be resolved on the basis of the BAT Arbitration Rules.

The judge-arbitrator shall decide the case ex aequa [sic] et bono (good and fair).

[...]"

6. It is common ground that, although the Coach has duly provided his services pursuant to the Agreement, the Federation has not made the January 2022 and April 2022 salary payments to him under Article 4 of the Agreement in the total amount of EUR 10,000.00. This amount had remained unpaid despite the Coach's repeated reminders.
7. On 18 May 2022, the Coach sent to the Federation his list of 24 selected players for the international games of July 2022 against the teams from the Czech Republic and Bulgaria.² _____ was among the 24 players selected by the Coach.

² RfA, para. 10, RfA, Exhibit 5.

8. Later on the same day, _____, the Federation's President, sent the Coach the following WhatsApp messages:

"Hello, Due to conversation I had with _____ before departure to Lithuania when he was very rude saying he did not care and that he would not go no matter what (22:28)

He has no longer right to play for the national team Full stop I do not want to see him on the list (22:28)

One more thing, I am look at the list now and I see no _____, is there a reason for it? (22:52)

_____ should be removed from the list and _____ should be added (22:52)"³

9. On 23 May 2022, _____, the Federation's Secretary General, sent an email to the Coach stating, *inter alia*:

"In relation to the statement and the list of player, it is necessary to get information in a form a statement why player _____ will not play in this window and what a plan is for _____.

The statement will be used for media when the list is published on Thursday, so it is necessary to send the statement by Wednesday in order to allow for its shaping to avoid issues with media who will, I am sure, start giving negative comments in relation to _____ not playing in the upcoming window.

We have to shape the statement well to protect the players and prevent negative comments.

Also, invitation to _____ will not be sent so do not count on him, as _____ already informed you.

_____ spoke to him, and we all had a chance to hear _____ opinion how Bosnia and Herzegovina and the national team provided nothing to him and that he did not care – I would restrain from any additional comments about him."⁴

10. On 25 May 2022, the Coach replied by email as follows: *"I would kindly ask you to respect my list of 24 players and to send invitations to all players who are on my list"*.⁵

11. Subsequently, the Federation submitted a list of players to FIBA and announced the

³ RfA, Exhibit 6.

⁴ RfA, Exhibit 7.

⁵ RfA, Exhibit 8.

list on website on 26 May 2022 in an article entitled “*The Head Coach Vedran Bosnic announced the basketball roster for matches against Czech Republic and Bulgaria*”.⁶ However, _____ was not included on that list.

12. On 27 May 2022, the Coach’s legal counsel sent a formal notice to the Federation on the Coach’s behalf. In the notice, with reference to Articles 2, 3(b), 4, 6, 8 and 11 of the Agreement, the Federation was urged to (i) pay the Coach his then outstanding salaries of EUR 10,000.00; and (ii) reinstate the Coach’s original selection of players within the next 5 days. The notice concluded with the following statement:

*“In the absence of full payment and reinstatement of the Coach’s original selection within next five (5) days, the Federation will not only have obstructed the Coach from performing his services but also confirmed its breach of the Agreement, upon which the Coach will be entitled to terminate the Agreement.”*⁷

13. On 2 June 2022, not having received a reply, the Coach’s legal counsel sent a reminder to the Federation, reiterating the Coach’s request for payment and reinstatement by 6 June 2022 failing which the Coach reserved his right to terminate the Agreement.⁸
14. On 8 June 2022, still not having heard anything from the Federation, the Coach’s legal counsel sent a notice to the Federation to formally terminate the Agreement and request payment of the full amount of the Coach’s salaries under the Agreement.⁹ That notice was sent by email with a receipt confirming completed delivery.¹⁰
15. On the same day, the Federation acknowledged and confirmed the receipt of the Coach’s termination notice in a press release.¹¹ In that notice, while the Federation accepted that “*there is a debt to the head coach for the first quarter of 2022*”, it expressed surprise over the Coach’s decision to terminate the Agreement.

⁶ RfA, Exhibit 9.

⁷ RfA, Exhibit 10.

⁸ RfA, Exhibit 11.

⁹ RfA, Exhibit 12.

¹⁰ RfA, Exhibit 12a.

¹¹ RfA, Exhibit 13.

16. It is the Coach's case that the Federation was in breach of the Agreement by (i) failing to pay his salaries for more than 60 days; and (ii) disregarding his exclusive competence to select players for the national team, by reason of which he terminated the Agreement with just cause. The Coach thus claims both his overdue salaries and the remaining value of the Agreement respectively in the net amounts of EUR 12,143.00 and EUR 27,857.00, plus late payment interest, a tax certificate and costs.
17. On the other hand, accepting that the Coach was not paid his salary pursuant to the Agreement, the Federation contended, *inter alia*, that the Coach was only entitled to an award of EUR 5,000.00, said to be the only unpaid financial obligation as of the date of termination of the Agreement. The Federation further submitted that it was not a breach of the Agreement for _____ to be excluded from the list for the national team and hence the Coach was not entitled to terminate the Agreement on that basis.

3.2. The Proceedings before the BAT

18. On 6 September 2022, the Coach filed his Request of Arbitration ("RfA") in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 2,000.00 on 5 August 2022.
19. On 15 September 2022, the BAT informed the Parties that Mr. Benny Lo had been appointed as the Arbitrator in this case, invited the Federation to file its Answer to the RfA by 6 October 2022, and fixed the advance on costs to be paid by the Parties by 26 September 2022 as follows:

"Claimant (Mr. Vedran Bosnic) *EUR 3,000.00*

Respondent (Basketball Fed. of Bosnia & Herzegovina) *EUR 3,000.00"*

20. The BAT also informed the Parties that, given that the value of the dispute does not exceed EUR 50,000.00, the Arbitrator shall issue an award without reasons unless a Party requests an award with reasons and pays an additional AoC, or if the BAT

President determines in his sole discretion that it should be rendered with reasons.

21. On the same day, the BAT also requested the Coach to submit, by no later than 22 September 2022, English translations of the exhibits which were not in English, viz. Exhibits 1-3, 4-9 and 13 to the RfA.
22. On 20 September 2022, the Coach requested an extension of time for him to submit the English translations to 13 October 2022.
23. Later, on the same day, the BAT reiterated that it was incumbent on the Coach to provide English translations of any relevant evidence in the first place in accordance with Articles 4.1 and 4.2 of the BAT Rules. Nevertheless, having considered all the circumstances of the case, the BAT decided to extend the time for the Coach to submit English translations to 29 September 2022. Consequentially, the BAT also extended the due date for the Federation to submit its Answer to 13 October 2022.
24. On 23 September 2022, the BAT received the Coach's share of advance on costs, paid by the Coach himself, in the amount of EUR 3,000.00.
25. On 27 September 2022, the Coach submitted the English translations of Exhibits 1-9 and 13 to his RfA.
26. On 13 October 2022, the Federation filed its Answer to the RfA.
27. On 17 October 2022, the BAT informed the Parties that the Federation had failed to pay its share of the advance on costs by the stipulated deadline and invited the Coach to substitute for the Federation's share, pursuant to Article 9.3 of the BAT Rules, by 27 October 2022.
28. On 25 October 2022, the BAT received the Federation's share of advance on costs paid by the Coach in the amount of EUR 3,000.00.
29. On 22 November 2022, the BAT invited the Coach to comment on the Federation's

Answer by 29 November 2022, with liberty for the Federation to reply to the Coach's comments. On 24 November 2022, upon the Coach's request, the BAT extended the time limit for the Coach to file any comments on the Answer to 9 December 2022.

30. On 8 December 2022, the Coach filed his Reply to the Federation's Answer ("**Reply**").
31. On the same day, the BAT invited the Respondents to file a rejoinder by 15 December 2022.
32. On 15 December 2022¹², the Federation filed a rejoinder ("**Rejoinder**").
33. On 22 December 2022, the BAT invited the Parties to address several specific questions by 9 January 2023 ("**Arbitrator's Questions**").
34. On 9 January 2023, both Parties filed their respective replies to the Arbitrator's Questions ("**9 January Submissions**").
35. On 10 January 2023, the BAT forwarded each Party's respective 9 January Submissions to the other Party, and informed the Parties that, if either Party wished to reply to the other side's submissions, it may do so by 18 January 2023.
36. On 18 January 2023, both Parties filed their respective replies to the other's 9 January Submissions ("**18 January Submissions**").
37. On 23 January 2023, the BAT informed the Parties that the exchange of submissions was completed in accordance with Article 12.1 of the BAT Rules. The Parties were invited to file submissions on 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, by 30 January 2023.

¹² The Rejoinder mentions the date of 15 February 2022, which is a typo.

38. In the same communication, the BAT informed the Parties that, while the amount in dispute in this proceeding falls below the threshold of EUR 50,000.00 established in Article 16.2 of the BAT Rules for the issuance of an award with reasons, the BAT President had determined, pursuant to the discretion afforded to him by Article 16.3(b) of the BAT Rules, that given the circumstances, certain issues that the case raises and the interest of the basketball community in having a sufficient body of publicly-available awards with reasons, a reasoned award is appropriate in this case.
39. On 23 January 2023, the Coach filed his costs submissions. The Federation has not filed any costs submissions up to the present day.

4. The Positions of the Parties

4.1. The Coach's Position

40. It is the Coach's case that he terminated the Agreement on 8 June 2022 for just cause since the Federation "*tortiously breached the Agreement in two manners*": (i) first, by failing to pay him salaries under Articles 4 and 6; and (ii) secondly, by breaching his exclusive competence to select players for the national team under Articles 3(b) and 8.
41. On the first ground, under Articles 4 and 6 of the Agreement, the Federation was obliged to pay him salary in the amount of EUR 5,000.00 on each of 30 January 2022 and 30 April 2022. By the time of termination of 8 June 2022, these instalments had been overdue for 130 days and 40 days respectively. Accordingly, the Coach submitted that he was entitled to unilaterally terminate the Agreement pursuant to Article 11(a).¹³
42. On the other hand, under Articles 3(b) and 8 of the Agreement, the Coach was obliged and enjoyed the exclusive competence to select players for the national team's squad, which the Federation agreed to fully respect. Despite the Coach's list dated 18 May 2022, the Federation went directly against the Coach's exclusive competence by

¹³ RfA, paras. 24-29.

excluding _____ from the list and subsequently refusing to reinstate the list despite the Coach's repeated demands. Consequently, the Coach further submitted that he had the right to unilaterally terminate the Agreement under Article 11(b).¹⁴

43. Despite the termination of the Agreement, the Coach submitted that the Federation is obliged under Article 11 to respect all its financial obligations. As such, the Coach submitted that he is entitled to the remaining value of the Agreement from 9 June 2022 (the day after the termination) until 30 October 2023 (the date of expiry of the Agreement), being the total amount of EUR 27,857.00 net as termination indemnity.¹⁵
44. Recognising that his claim for termination indemnity could be subject to mitigation under the *ex aequo et bono* principles, the Coach submitted that he is entitled to the full amount without any mitigation in this case. In particular, he cited BAT 1255/18 and contended that mitigation principles should apply less rigorously on coaches. He also drew an analogy between this case and the case of BAT 0584/14. He argued that the termination indemnity does not impose a disproportionate burden on the Federation, and he had by his multiple reminders offered the Federation the chance to avoid it.¹⁶
45. As to the overdue salaries, the Coach submitted that he had duly fulfilled his obligations towards the Agreement from 30 October 2021 until his termination on 8 June 2022, and hence should be fully remunerated for the period of service. The Coach submitted that, apart from the January and April 2022 payments, the July 2022 instalment also fell due *pro rata* by 42.86%, reflecting 39 out of 91 days for the Coach's services from 1 May 2022 to 8 June 2022. The total overdue salaries thus amount to EUR 12,143.00.¹⁷
46. In the RfA, the Coach seeks the following relief:

"Claimant requests an award to be rendered, per which Respondent shall:

¹⁴ RfA, paras. 30-38.

¹⁵ RfA, paras. 40-44.

¹⁶ RfA, paras. 45-47.

¹⁷ RfA, paras. 48-52.

- *pay Claimant:*
 - *an aggregate amount of of [sic] twenty-seven thousand eight hundred fifty-seven Euro (€ 27.857) net, as Termination Indemnity;*
 - *an aggregate amount of twelve thousand one hundred forty-three Euro and [sic] (€ 12.143) net, as overdue payables;*
 - *late payment interests at a rate of five percent (5%) per annum on:*
 - *the overdue payables of the January 2022 instalment amounting to five thousand Euro (€ 5.000), as from the day after the due date of the overdue instalment until the date of full payment;*
 - *the overdue payables of the April 2022 instalment amounting to five thousand Euro (€ 5.000), as from the day after the due date of the overdue instalment until the date of the full payment;*
 - *the overdue payables for performances rendered between May 1, 2022, and June 8, 2022, amounting to two thousand one hundred forty-three Euro (€ 2.143) as from the day after the termination of the Agreement until the date of full payment;*
 - *the Termination Indemnity amounting to twenty-seven thousand eight hundred fifty-seven Euro (€ 27,857), as from the day after the termination of the Agreement until the date of full payment the date of full payment; and*
 - *at the date of filing of the present Request for Arbitration equalling an amount of six hundred eight Euro and twenty-two cents (€ 608,22).*
- *provide Claimant with a tax certificate evidencing that all Bosnian taxes have been paid by Respondent on behalf of Claimant on the full amount awarded by the BAT in the present proceedings.*
- *reimburse Claimant all BAT expenses and procedural costs:*
 - *Claimant's share of the Advance of Costs;*
 - *in case Claimant would have to substitute for (part of) Respondent's share of the Advance on Costs, the reimbursement hereof; and*
 - *in addition to the contributions for Claimant's legal expenses, the BAT Handling Fee ex article 17.1 of the BAT Rules 2022 in the amount of two thousand Euro (€ 2.000);*
- *indemnify Claimant for all incurred legal and advisory expenses up to an amount to be determined during the BAT proceedings, at present estimated at six thousand Euro (€ 6.000), without prejudice to any potential expense related to the services of an interpreter."*

4.2. The Federation's Position

47. In its Answer, the Federation did not dispute the validity of the Agreement. The Federation also admitted having excluded _____ from the Coach's list.
48. According to the Federation, _____ had been suspended on 25 February 2022 against the following background:
- (a) On 24 February 2022, the Coach expressed his intention not to lead the team to the match scheduled for 27 February 2022 in Vilnius, Lithuania due to a state of emergency, despite the fact that both a charter flight (which was requested by the Coach) and hotel accommodation had been booked and paid in advance;
 - (b) Given the Coach's position, on 25 February 2022 at 04:32 hours, the Federation wrote to FIBA requesting a postponement of the game in Lithuania;
 - (c) On 25 February 2022 at 10:55 hours, the Coach sent a message stating that the players should go home, dismissed the team, sent the players home, and told them not to go to the game in Lithuania, even though the Federation had told the players to stay at the hotel and wait for FIBA's response;
 - (d) On 25 February 2022 at 18:31 hours, FIBA replied to the Federation saying that the game in Vilnius must be played according to the pre-arranged schedule;
 - (e) On 26 February 2022, the Federations' Secretary General called an emergency meeting with the Coach and players to ask them to go to the game in Vilnius which remained as scheduled on 27 February 2022;
 - (f) At the said emergency meeting, _____ stated "*I don't want to go to the match and play for the national team of Bosnia and Herzegovina, which has not given me anything, I have no obligations and I don't want to go*", and he repeated that statement several times;

- (g) Eventually, only 10 players travelled to the game in Lithuania, while _____ was suspended immediately after the meeting due to “*non-fulfillment of obligations and a gross violation of the regulations of the national teams*”, and the Coach was immediately informed of _____ suspension.¹⁸
49. As regards the debts owed to the Coach, the Federation submitted, *inter alia*:
- (a) “*All the financial obligations of the KSBiH towards Mr. Vedran Bosnić as of December 31st, 2021 were paid at that moment*”;¹⁹
- (b) “*As of June 8th 2022, the only outstanding financial obligations of the KSBiH towards Mr. Vedran Bosnić were financial obligations for the first quarter of 2022, i.e. in total for the period from January to June 2022 in the amount of EUR 5.000.00*”;²⁰
- (c) Due to the financial situation from February and not going to Lithuania, the Federation “*did not manage to pay the obligations to the Coach from February in the amount of 5.000 Euro, which were agreed to be paid during the final 1st cycle of the Qualification for the World Cup and before going to Eurobasket 2022*”;²¹
- (d) Notwithstanding the debt owed before termination, it is “*absolutely unarguable and unacceptable*” for the Federation to pay the Coach (i) for the post-termination period in which “*he did not work and did not fulfill his obligations under the Contract*”; and (ii) from October 2022 to October 2023, “*which has not yet occurred*”.²²
50. Specifically on the Coach’s termination of the Agreement, the Federation submitted:²³
- (a) The Coach never formally terminated the Agreement in the prescribed manner

¹⁸ Answer, pages 1-3; Answer, Exhibits 1-6.

¹⁹ Page 6, 5th para. of the Answer.

²⁰ Page 6, 4th para. of the Answer.

²¹ Page 4, 8th para. of the Answer.

²² Page 8, 6th para. of the Answer.

²³ Answer, pages 6-8; Answer, unnumbered exhibit named “Contract Cancellation Letter”.

under Article 17 of the Agreement, but only announced his purported termination through an online statement which did not have legal effect;

- (b) Hence, on 12 July 2022, by a letter to the Coach's address in Sweden as specified in the Agreement, the Federation terminated the Agreement under Article 12 thereof, on account of the Coach's non-performance of his duties after his purported, yet ineffective, termination of the Agreement as aforesaid;
- (c) Due to the Coach's violation and refusal to fulfil his obligations, the Federation had to appoint a new coach, _____, at the end of July 2022.

51. For all these reasons, the Federation submitted in its Answer that:

*"[...] the request of Mr. Vedran Bosnić in this case to be partially accepted, in the amount of 5.000.00 Euro, which represents the amount due at the time of the termination of the Employment Contract by KSBIH, in accordance with Article 12 paragraph 2. of the same Contract, and in the remaining part of the request to reject the said request."*²⁴

52. In its 18 January Submissions, the Federation concluded that:

*"[...] we again propose to partially accept the request of Mr. Vedran Bosnic in this case, in the amount that represents the amount due at the time of the termination of the Employment Contract, regardless of who initiated it. And in accordance with the above-mentioned Articles 11 and 13 of the Contract as well as in accordance with Article 12 paragraph 2 of the same Contract, and in the remaining part of the request to reject the said request."*²⁵

5. The Jurisdiction of the BAT

53. 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, the BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

²⁴ Answer, page 9.

²⁵ Federation's 18 January Submissions, page 3.

54. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the exercise of a valid arbitration agreement between the parties.
55. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.²⁶
56. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under Article 20 of the Agreement as follows:

“In the event of a dispute, the contracting parties shall determine the jurisdiction of the BAT (FIBA Arbitration Court in Geneva), and that the dispute shall be resolved on the basis of the BAT Arbitration Rules.

The judge-arbitrator shall decide the case ex aequa [sic] et bono (good and fair).”

57. The Agreement is in writing and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
58. 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).
59. The predicate wording in Article 20, i.e. *“In the event of a dispute”*, clearly covers the present dispute.
60. In any event, the Federation has not challenged the jurisdiction of the BAT in this case.
61. For the above reasons, the Arbitrator rules and finds, pursuant to Article 1.3 of the BAT Rules, that he has jurisdiction to finally decide and rule upon the Coach’s claims.

6. Other Procedural Issues

62. None of the Parties requested a hearing. In accordance with Article 13.1 of the BAT

²⁶ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

Rules, the Arbitrator will decide the Coach's claims based on the written submissions and the evidence on record.

7. Discussion

7.1 Applicable Law – *ex aequo et bono*

63. 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*" 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".

64. 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."

65. Article 20 of the Agreement expressly provides that the Arbitrator shall decide the dispute *ex aequo et bono*.

66. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in these proceedings.

67. 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*²⁷ (Concordat),²⁸ 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.*”²⁹

68. 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*”.

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

7.2 Findings

70. As the Coach’s claims are to enforce contractual payment obligations, the doctrine of *pacta sunt servanda* (which provides that parties who make a bargain are expected to stick to that bargain) is the principle by which the Arbitrator will examine their merits.

71. In the Arbitrator’s view, the factual and legal issues presented by the Parties outlined above under Section 4 give rise to four broad issues for consideration, namely:

(a) First, did the Federation commit a breach of the Agreement by failing to make payments to the Coach outstanding as of 8 June 2022, and if so, was the Coach entitled to terminate the Agreement on this basis? (“**Issue 1**”)

(b) Second, did the Federation commit a breach of the Agreement by not respecting the Coach’s “*exclusive competence*” to select players for the national team, and if

²⁷ 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).

²⁸ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

²⁹ JdT 1981 III, p. 93 (free translation).

so, was the Coach entitled to terminate the Agreement on this basis? ("**Issue 2**")

- (c) Third, if the Coach was entitled to terminate the Agreement on either basis, was the termination on 8 June 2022 effective as a matter of formality? ("**Issue 3**")
- (d) Fourth, in view of the findings on the above issues, what if any relief is the Coach entitled to in his claim against the Federation? ("**Issue 4**")

7.2.1. Issue 1 – Did the Federation commit a breach of the Agreement by failing to make the payments to the Coach outstanding as of 8 June 2022, and if so, was the Coach entitled to terminate the Agreement on this basis?

- 72. On the first issue, there is no dispute that Articles 1 and 2 of the Agreement provide for the Federation's employment of the Coach as the head coach of the senior team of Bosnia and Herzegovina for the period from 30 October 2021 to 30 October 2023 (i.e., the 2021/2022 and 2022/2023 seasons). Under Article 4, the Federation undertook to pay the Coach a total salary of EUR 40,000.00 for the two seasons. Payment was agreed to be made in eight equal quarterly instalments of EUR 5,000.00.
- 73. The Coach terminated the Agreement on 8 June 2022. It is undisputed that the Coach had been rendering his services to the Federation until that day but has received no compensation for his services under the Agreement. Since the first two instalments of the Coach's salaries were payable on 30 January 2022 and 30 April 2022 under Article 4, they had respectively been overdue for 130 and 40 days as of 8 June 2022.
- 74. Under Article 11, the Coach had the right to unilaterally terminate the Agreement if the Federation "*is late in fulfilling any of the financial obligations assumed by this contract (Articles 4 and 5 of this contract) for more than 60 days*". Given the undisputed fact that the first instalment had been outstanding for 130 days (i.e., more than 60 days) as of 8 June 2022, the Coach was *prima facie* entitled to terminate the Agreement on this basis.
- 75. In its Answer, the Federation submitted that (i) all its financial obligations towards the

Coach as of 31 December 2021 were paid; (ii) it only owed the Coach an amount of EUR 5,000.00 for the period from January to June 2022; (iii) the failure to pay was due to its financial situation and failure to attend the match in Lithuania; and (iv) the Parties had agreed to postpone the payment until “*the final 1st cycle of the Qualification for the World Cup and before going to Eurobasket 2022*” (“**Postponement Agreement**”).

76. In his Reply, the Coach (i) reiterated that he has not received a single instalment under the Agreement and is entitled to the pre-termination salary of EUR 12,143.00; (ii) denied the existence of the Postponement Agreement; and (iii) submitted that the Federation’s alleged financial difficulty is not a valid defence (citing BAT 1627/20 at para. 77), for which the Coach cannot be held accountable in any event.
77. In its Rejoinder, the Federation stressed that it was put in a very awkward situation by (i) the Coach’s alleged failure to fulfil his obligations according to the competition calendar without explanation; and (ii) the Coach’s publication of inaccurate information on the media, which had caused great material and financial damage to the Federation. In the Arbitrator’s view, the Federation’s alleged financial difficulty, whether caused by or contributed by the Coach or not, is irrelevant to its payment obligations under the Agreement which is “*a FULLY GUARANTEED CONTRACT*” as per Article 10. It is trite that financial hardship is not a valid defence (see, e.g., BAT 1627/20, para. 77 with further reference to BAT jurisprudence).
78. In the Arbitrator’s Questions, the Federation was invited to clarify (i) the exact financial obligations said to have been paid to the Coach by 31 December 2021; (ii) how the Postponement Agreement was made as alleged; and (iii) how the amount of EUR 5,000.00, accepted to be due to the Coach from January to June 2021, was calculated.
79. In its 9 January Submissions, the Federation only made submissions in reply to the Arbitrator’s Questions but adduced no additional evidence. It explained that its financial obligations under the Parties’ previous labour contract dated 27 November 2018 were

all settled. In particular, the Federation submitted that the last instalment of EUR 5,000.00 due on 1 August 2021 under the old contract was settled on 16 February 2022.

80. As for the payments under the Agreement, the Federation submitted that, due to its financial problems, it was “*unable to pay the obligations to the coach Mr. Vedran Bosnić for the first quarter of 2022 in the amount of 5,000.00 Euros, for which a verbal agreement was reached with the head coach Mr. Vedran Bosnić that the payment will be made after the final 1st cycle of World Cup Qualification – the end of the second quarter and before going to the Eurobasket 2022*”. It was further submitted that such Postponement Agreement was verbally approved and agreed upon between the Parties as was the case of the delayed payments under their old labour contract. Other than this, the Federation did not explain how the amount of EUR 5,000.00, accepted by it to be owing to the Coach for the period of January to June 2021, was calculated.
81. In his 9 January Submissions, the Coach submitted that the Postponement Agreement did not exist, and that the Federation had failed to substantiate its case on the same.
82. In the Federation’s 18 January Submissions in reply to the Coach’s 9 January Submissions, the Federation made no submissions in respect of the Postponement Agreement, nor did it adduce any evidence to substantiate its alleged existence.
83. In his 18 January Submissions, the Coach reiterated that (i) he never accepted, whether orally or in writing, any amendment to the payment schedule as set out in the Agreement; and that, on the contrary (ii) he had repeatedly requested the due and timely payment of his salaries according to the Agreement. The Coach also relied on Article 19 of the Agreement as implying that “*in case Parties would have verbally agreed to a changed payment schedule, quod non, such agreement would not be binding*”.
84. In the Arbitrator’s view, the Federation, having raised the allegations of the Postponement Agreement, would bear the burden to prove its existence, particularly when this is repeatedly denied by the Coach. However, despite the Arbitrator’s request,

the Federation has adduced no evidence showing the existence of the Postponement Agreement. Therefore, the Federation's case in this regard remains a bare assertion.

85. Importantly, if the Parties did enter into the Postponement Agreement, it is inexplicable why the Federation had never mentioned it when the Coach was repeatedly chasing for payments at the material times. Further, even if the Coach had formerly *accepted* delayed payments under the old labour contract, it does not necessarily follow that the Parties had in fact *agreed* to postpone such payments under the old contract, let alone under the present Agreement in question. On the entirety of the evidence, the Arbitrator rejects the Federation's case that the Parties had entered into the Postponement Agreement or otherwise agreed to delay the payments under the Agreement.
86. In any event, as the Coach submitted, Article 19 of the Agreement provides that, “[all] amendments to this contract shall be in writing; otherwise, they shall have no legal effect”. Thus, even if the Postponement Agreement was reached orally as alleged by the Federation, *prima facie*, it would have no effect of postponing the payment as scheduled in the Agreement. While this does not necessarily preclude an argument based on estoppel to be run, there is no evidential basis capable of supporting it.
87. For all these reasons, the Arbitrator finds that the Federation was in breach of the Agreement by failing to pay the first instalment due on 30 January 2022 under Article 4. As that instalment remained overdue for 130 days as of 8 June 2022, the Arbitrator further finds that the Coach was entitled to terminate the Agreement under Article 11.
- 7.2.2. Issue 2 – Did the Federation commit a breach of the Agreement by not respecting the Coach’s “exclusive competence” to select players for the national team, and if so, was the Coach entitled to terminate the Agreement on this basis?**
88. Since the Arbitrator has found that the Federation's non-payment was a just cause for early termination, it is strictly speaking not necessary to decide whether the Coach's termination was also justified on the further basis of the Federation's alleged breach of the Coach's exclusive competence to select players for the national team.

89. However, the Arbitrator will consider this further basis in the interest of development of the BAT jurisprudence and in deference to the helpful submissions made by the Parties.
90. Under Article 3(b) of the Agreement, the Coach was obliged to select players for the national team. At the same time, Article 8 provides that, “*the coach’s obligations listed under points A, B, D are exclusively his, and the KSBIFH shall accept that it fully respects the coach’s decisions, i.e. that it refrains from interfering with the coach in any aspect of decision-making process*”. Thus, on their face, these clauses appear to give the Coach the exclusive right to select players free from interference by the Federation.
91. As mentioned above, on 18 May 2022, the Coach proposed a list of 24 players for the national team. The Federation, however, did not adhere to that list and excluded one selected player, _____, from the list. The Federation’s defence is that _____ had been suspended beforehand on 26 February 2022. This raises the question of whether the Coach’s “*exclusive*” right under Articles 3(b) and 8 of the Agreement is an absolute one. In particular, is the Coach’s right to select players under totally unfettered, or should there be any implied limit to it, for example where (as alleged) the selected player has been genuinely and validly suspended from playing?
92. Given the importance of this issue, the Parties were invited to comment on this in the Arbitrator’s Questions. Only the Coach addressed the point. The Federation, however, made no submissions on this, whether in its 9 January or 18 January Submissions.
93. In his 9 January Submissions, the Coach sought to draw a distinction between sporting competences and regulatory competences. The Coach submitted, *inter alia*, that:
- (a) All matters relating to the sporting aspect of the national team selection were the Coach’s exclusive competence, without limit and unfettered;
 - (b) On the other hand, federative bodies, such as FIBA or the Federation, enjoy regulatory competences. By exercising regulatory competence, federative bodies may make decisions that legitimately interfere with the sporting competence of the

Coach, for instance by genuinely and validly suspending a player, on the condition that such a decision (i) is founded in that body's regulations; (ii) is not made on an arbitrary basis; (iii) is duly communicated to all parties concerned; and (iv) respects the minimum requirements of due process and governance;

(c) As such, where a regulatory body, such as the Federation, validly and genuinely suspended a player, the Coach could be limited in his competence to select a player.

94. The Arbitrator agrees, as a matter of construction under *ex aequo et bono* principles, that the Coach's "exclusive" right of selection under Articles 3(b) and 8 is not unfettered but is subject to the Federation's legitimate and genuine exercise of its power to suspend a player in accordance with its own internal regulations, and/or the relevant local laws. Were it to be otherwise, a player who has been validly suspended by the regulatory body (e.g., the Federation) would still be entitled to participate in the national team's matches so long as the coach is determined to select the player for the team in defiance of the regulatory body's legitimate exercise of its power to suspend or disqualify the player. Such an interpretation would make little sense and would most unlikely be intended by the parties' short of clear and unequivocal language. Articles 3(b) and 8 do not consist of such language. Crystal clear language would be required if the Federation was to be regarded to have surrendered its regulatory competence under contract. Indeed, the Coach has fairly made no submission to the contrary effect.
95. It follows that, if the Federation's alleged suspension of _____ was genuinely and validly made, his exclusion from the Coach's list would not amount to a breach of Articles 3(b) and 8 of the Agreement, nor would it entitle the Coach to terminate the Agreement on that basis. It is therefore necessary to examine the circumstances and basis of suspension of _____ as alleged by the Federation.
96. As mentioned in para. 48 above, the factual basis put forward by the Federation for _____ alleged suspension was his refusal to travel to Vilnius, Lithuania for the match scheduled for 27 February 2022. In terms of the decision to suspend the player,

the Federation has adduced a one-page document entitled "*THE DECISION*" dated 26 February 2022 at Exhibit 6 to its Answer ("**Decision**"). This document reads in its English translation:

"Based on Article 46 of the Statute of the Basketball Federation of Bosnia and Herzegovina (hereinafter: the Federation), and the request of the President of the Basketball Association of Bosnia and Herzegovina Mirza Teletović, the following is adopted:

THE DECISION

ABOUT PLAYER SUSPENSION

Article 1.

- Player _____ is suspended due to non-fulfillment of obligations and gross violation of the regulations on national teams.

- The player _____ is suspended because of the mentioned sentences (he does not want to go to the match and perform for the national team of Bosnia and Herzegovina, which did not give me anything, he has no obligations and do not want to go to the match in Lithuania).

Article 2.

The decision enters into force on the day of its adoption

Number: 102-AČ/22

Sarajevo, 26.02.2022"

97. In his Reply, the Coach disputed the alleged suspension of the player _____ and submitted that ___ "*has more than serious reasons to believe that the Decision is fake and fabricated in tempore suspecto for the purpose of the present proceedings*". ___

submitted that (i) the Decision did not include a suspension duration; (ii) it is based on grounds of which no evidence has been provided; (iii) it was never notified to the Coach or communicated on the Federation's website, to FIBA or through any other channel or means; and (iv) all communications between the Parties regarding the omission of the player did not mention the Decision but merely referred to a personal conflict between Federation's former President and _____.

98. Exhibit 15 to the Coach's Reply is a signed witness statement of the player _____ dated 6 December 2022. In that statement _____ stated:

"I have been informed that the Bosnian Basketball Federation states that I have been subject to an official decision on February 26, 2022, to suspend me from the national team, in the framework of a proceedings against Mr. Bosnic, which I hereby strongly contest.

To the best of my knowledge:

- I have not been subject to an official decision by the Bosnian Federation to suspend me;*
- I have never been informed of such a decision until today; and*
- I have never received this decision through any means whatsoever.*

Consequently, I strongly doubt the veracity of the decision to suspend me from February 26, 2022."

99. Faced with the Coach's and _____ explicit dispute over the Decision, the Federation filed no further rebuttal submissions or evidence to this point in its Rejoinder, nor has the Federation requested the opportunity to cross-examine _____ on his witness statement. Instead, the Federation merely submitted that "[we] stand by all the allegations we made in the response to the Lawsuit on 13.10.2022".

100. In the premises, in the Arbitrator's Questions, the Federation was specifically invited to provide any further evidence and submissions regarding (i) whether the alleged suspension was genuinely made and for valid reasons; (ii) whether, at the material time after the alleged suspension was made, the decision to suspend was communicated to the player, the Coach, FIBA and/or any others, or otherwise published; and (iii) if the alleged suspension was not communicated or published as aforesaid, whether any such suspension was valid and effective by reference to the relevant regulations.
101. Despite this, in its 9 January Submissions, the Federation adduced no further evidence on the alleged suspension of _____, but submitted, *inter alia*, that:
- (a) The suspension was carried out due to a statement made in front of the Coach, staff and other players (as quoted in para. 48(f) above) which was not in accordance with the code of conduct of a national team member who plays for his country;
 - (b) The suspension was presented orally to the player by the Federation's Secretary General and to the Coach immediately after the relevant meeting;
 - (c) The Federation's Secretary General also informed the Director of the Basketball National Team of Bosnia and Herzegovina about the decision who informed the Coach, verbally and via WhatsApp, that _____ no longer had the right to play in the men's senior basketball team of Bosnia and Herzegovina;
 - (d) The suspension only applied to the performance in the senior basketball national team of Bosnia and Herzegovina and the matches of the national team, but did not ban performances in the club or club's competition; and
 - (e) It was not communicated further to the FIBA or the club, considering that the player is 36 years old and will soon finish his basketball career.
102. In response, in his 18 January Submissions, the Coach submitted, *inter alia*, that:
- (a) The Federation has failed to prove that the Decision was valid and genuine;

- (b) The Decision failed to adhere to the basic principle of due process and right of the defence, including notification of charges against the player, a fair hearing, a legal provision upon which the sanction is based, a proportionate sanction, an impartial sanctioning body, a possibility to be represented by counsel and to appeal;
 - (c) The Federation had failed to refute the Coach's evidence demonstrating that the suspension was unauthentic and false;
 - (d) The Federation had adduced no evidence showing the communication of the Decision to any one after it was allegedly made;
 - (e) The evidence showed that the Coach was never informed of the suspension but was only asked not to select the player due to a personal conflict between the Federation's former President and the player, but not due to any suspension; and
 - (f) The Federation had failed to provide any information concerning its internal regulations or procedural rules for suspending a player, which should be deemed as its own acknowledgement that the suspension was not valid or effective.
103. The Federation did not address the point any further in its 18 January Submissions.
104. The Arbitrator accepts the Coach's submission that the burden rests on the Federation to prove that its alleged suspension of _____ was genuinely made and for valid reasons in accordance with the relevant regulations and/or laws. However, despite the multiple opportunities afforded to it, the Federation has failed to adduce any evidence to prove that _____ was so suspended on 26 February 2022, and that the Decision was properly communicated to the Coach after due process.
105. Although the Federation has adduced a copy of the Decision itself, it is a simple, one-page confirmation reciting the fact of _____ suspension. Moreover, there is nothing on the face of the Decision to suggest that it was addressed to or was otherwise communicated to _____. In this regard, it is noteworthy that back in May 2022, the

Federation's correspondence (see paras. 8-10 above) did not make any mention of the fact that _____ was formally suspended on 26 February 2022.

106. In view of these evidential lacunae, the Arbitrator is unable to take the Decision simply at face value. Given _____ specific denial in his signed witness statement of not having been informed of the alleged suspension at the material time, the Arbitrator finds the evidence to be equivocal as to whether _____ was genuinely and validly suspended on 26 February 2022 as the Federation alleged.
107. Absent any cogent evidence substantiating the alleged suspension of _____, it follows that the Federation was in breach of Articles 3(b) and 8 of the Agreement by unduly interfering with the Coach's exclusive right to include _____ for the international games of July 2022 against the Czech Republic and Bulgaria.
108. Accordingly, the Arbitrator finds that the Coach was entitled to terminate the Agreement on the further or alternative basis of the Federation's breach of Articles 3(b) and 8.

7.2.3. Issue 3 – If the Coach was entitled to terminate the Agreement on either basis, was his termination on 8 June 2022 effective as a matter of formality?

109. Having established that the Coach was entitled to terminate the Agreement, the next question is whether the termination complied with the formality requirements under Articles 17 and 18 of the Agreement. This is something put in issue by the Federation.
110. Under Article 17 of the Agreement, the termination of contract "*shall be declared in writing with delivery, which shall be confirmed by the recipient*", failing which "*it shall not produce a legal effect*". Article 18 of the Agreement sets out the Parties' respective addresses "*for receiving letters under this contract, including the letter about the termination of the contract*". Article 18 also provides that any written document which is not delivered to the stipulated addresses "*does not produce a legal effect*".
111. It is the Federation's case that the Coach "*never formally requested termination of the*

Contract in the prescribed manner.” In particular, the “termination of the Contract itself, which was announced through the electronic media in BiH, does not affect the obligations of the contracting parties from the Contract”.³⁰ The Federation’s reference to the said announcement appears to be a reference to a statement allegedly made by the Coach on an electronic media in Bosnia and Herzegovina dated 8 June 2022 that “he is resigning from the position of Basketball National Team Coach”.³¹ However, the Federation has not adduced a copy of this alleged announcement.

112. In his Reply, the Coach submitted that (i) Article 17 of the Agreement only requires a termination notice to be in writing, but not specifically by registered mail, letter or courier; (ii) he had communicated his termination notice via email with confirmation of receipt to the Federation’s email address; and (iii) the Federation’s own press statement on its website dated 8 June 2022 confirmed receipt of the Coach’s termination notice. That press statement (at Exhibit 13 to the RfA) started with the sentence (as translated into English):

“This morning, Vedran Bosnic requested termination of the contract with the Basketball Federation of Bosnia and Herzegovina (KSBiH) via his lawyer.”

113. The Coach further submitted that, even if the Agreement must be terminated by registered letter, it is well-established under BAT jurisprudence that (i) a termination notice has effect for as long as it is clear in its content and is received by the other party (BAT 0720/15, para. 53); (ii) a proper notification has occurred when a letter has reached the sphere of influence of the recipient, who had the opportunity to obtain knowledge of the content of said notice (BAT 0480/13, para. 104), which is the case when the sender can prove the email was successfully sent to the addresses through which the parties routinely communicated (BAT 1255/18, paras. 106-107); and (iii) in any case, excessive formalism with regards to termination notices is prohibited (BAT 1571/20, para. 66).

³⁰ Answer, page 6.

³¹ Answer, page 7.

114. In the Arbitrator's view, Article 17 of the Agreement only requires notice "*in writing with delivery [...] confirmed by the recipient*" but does not preclude termination notice to be given by way of email. Given the advancement of information technology, unless there are express provisions to the contrary, "*writing*" cannot be understood as being limited to handwritten or typewritten medium but should include also other reasonable mode of communication in a visible, permanent form such as emails. Hence, the Arbitrator finds that, as a matter of formal requirements under the Agreement, termination notice does not necessarily have to be by letter but could also be effected by email.
115. Given that the Federation has indeed specifically acknowledged receipt of the Coach's termination notice by email dated 8 June 2022, all three requirements under Article 17 (i.e., written notice with delivery confirmation) have been met. There can be no question that the Coach's email dated 8 June 2022 constituted a valid and effective notice to terminate the Agreement. Accordingly, deciding *ex aequo et bono*, the Arbitrator finds that the Coach's termination was valid and effective as a matter of formality.

7.2.4. Issue 4 – In view of the findings on the above issues, what if any relief is the Coach entitled to in his claim against the Federation?

116. It will be recalled that, under Article 11 of the Agreement:

"The coach shall have right unilaterally to terminate the contract in the following cases:

- a) *If KSBIH is late in fulfilling any of the financial obligations assumed by this contract (Articles 4 and 5 of this contract) for more than 60 days.*
- b) *In the event, that KSBIH acts contrary to Articles 8 and 9 of this contract.*

In the event that the coach shall unilaterally terminates the contract in accordance with the above, it shall be considered that the contract was terminated to the detriment of KSBIH, in which case KSBIH shall remain in obligation to pay the coach the due obligations stipulated in the contract."

117. Thus, in view of the findings made under Issues 1 and 2, the Coach's termination of the Agreement was regarded as "*to the detriment of KSBIH, in which case KSBIH shall*

remain in obligation to pay the coach the due obligations stipulated in the contract.”

118. In this arbitration, the Coach claims, *inter alia*, (i) pre-termination salaries in the amount of EUR 12,143.00 from 30 October 2021 to 8 June 2022; (ii) post-termination salaries of EUR 27,857.00 from 9 June 2022 to 30 July 2022, together with (iii) interest thereon.
119. On outstanding pre-termination salaries, there is no dispute that the Coach is entitled to these. The Parties' difference lies only in the amount: the Coach submitted that EUR 12,143.00 was due, while the Federation argued that only EUR 5,000.00 was due.
120. Under Article 4 of the Agreement, the Coach would receive EUR 5,000.00 on each of 30 January 2022 and 30 April 2022. In light of the Coach's claim, the Federation has adduced no evidence that these were paid. As for the period from 1 May 2022 to 8 June 2022, the Coach has calculated his salary, on a *pro rata* basis, to be EUR 2,143.00.
121. On the other hand, it is unclear how the Federation could maintain that all the Coach was owed was the amount of EUR 5,000.00. As noted in para. 80 above, the Federation has been unable to give any explanation for how the said amount was arrived at.
122. The Coach is accordingly entitled to pre-termination salaries of **EUR 12,143.00 net**. Article 6 of the Agreement expressly provides that the Coach's salary payments are net amounts with all tax liability borne by the Federation exclusively.
123. On post-termination salaries, the Federation is clearly liable to pay these as well under Article 11 of the Agreement (see paras. 116-117 above). In any case, it is trite under the BAT jurisprudence that post-termination salaries may be claimed as damages for a club's breach of its contractual duties which provoked the termination of the contract (see BAT 0155/11, para. 62). Therefore, the Coach is *prima facie* entitled to payments of the agreed post-termination salaries under the Agreement, subject to mitigation.
124. In the Arbitrator's Questions, the Coach was invited to explain (i) the effort he has spent on finding alternative employment since the termination of his employment with the

Federation; and (ii) as a matter of fact, whether he successfully obtained any alternative employment at any given time since the termination up to the date of the Questions.

125. In his 9 January Submissions, the Coach submitted, *inter alia*:

- (a) The general BAT jurisprudence on players' obligations to mitigate their losses does not apply as strictly on coaches in general (BAT 1255/18, para. 116), and not at all to national team coaches who have an alternative full-time job (BAT 0584/14, para. 76). In the latter case, the BAT arbitrator stated:

“Furthermore, the Arbitrator finds that, in the circumstances of this case, the duty to mitigate is not applicable because the Coach had a full-time job with a professional club in Russia in addition to his role as head coach of the Greek national team, meaning that in good faith and legitimately he could have preferred to focus on that activity alone after having been terminated as national coach, and because, in any event, the job of national trainer is not necessarily one which a coach applies for or seeks but often one that a coach is approached for by a national federation, considering the limited number of senior national teams competing at this high level.” (emphases in the original)

- (b) This applies in the present case. The Coach was concurrently employed as head coach of the Bosnian national team, and as head coach of the Belgian basketball team Belfius Mons-Hainaut from 11 June 2019 up to the present date, which double employment is permitted under Article 14 of the Agreement;
- (c) Hence, the duty to mitigate is not applicable to the Coach who could legitimately direct his full focus to his work at the Belgian team;
- (d) Further, it is extremely unlikely for the Coach to find alternative employment as head coach of a national team with a similar level as the Bosnian national team. This is

because³² (i) since 8 June 2022 (i.e., the date of termination of the Agreement), only 3 of 23 national teams which qualified for the FIBA EuroBasket 2022 hired a new head coach; (ii) 17 out of 24 qualified national teams currently employ a head coach with the federation's own nationality; and (iii) all 3 positions that became vacant since 8 June 2022 have been filled by nationals of the respective federations;

(e) As evidenced by the witness statement of the Coach's agent _____ dated 7 January 2023³³, it was impossible, as a matter of fact, for the Coach to find alternative employment as head coach of a national team with a similar level.

126. In its 18 January Submissions, the Federation made no alternative submissions or adduced contrary evidence in reply to the Coach's 9 January Submissions on mitigation.
127. In the Arbitrator's view, the statistics as submitted by the Coach (which were not contradicted by the Federation) speaks volumes about the difficult reality in the job market for coaches, in particular head coaches for national teams. The unchallenged fact that the Coach was and remains employed by another club only makes it all the more difficult for him to find an alternative job after the Agreement was terminated.
128. As the Coach correctly pointed out, when the issue of mitigation is considered, the difficulty for coaches, particularly head coaches of national teams, to find new employment is well-recognised under established BAT jurisprudence. The Arbitrator sees no reason to depart from such approach and would adopt the same in this case.
129. Accordingly, the Arbitrator finds that no reduction in the Coach's claim for post-termination salaries should be made. Deciding *ex aequo et bono*, the Arbitrator finds that the Coach is entitled to his claim for post-termination salaries of **EUR 27,857.00 net**. That is the aggregate sum of (i) the remaining 52/91 days (i.e., from 9 June 2022 to 30 June 2022) of the fourth instalment, under Article 4 of the Agreement, in the *pro*

³² Coach's 9 January Submissions, Exhibit 18.

³³ Coach's 9 January Submissions, Exhibit 19.

rata amount of EUR 2,857.00; and (ii) the remaining 5 instalments thereunder of EUR 25,000.00 in total. Again, Article 6 of the Agreement expressly provides for net amounts with all tax liability borne by the Federation exclusively.

130. As to default interest, the Coach claims interest on the principal amounts at the rate of 5% per annum from the respective due dates until full payment as follows:

Interest accrual date	Principal Amount	Interest accrued up to the date of filing the RfA
31 January 2022	EUR 5,000.00	EUR 150.00
1 May 2022	EUR 5,000.00	EUR 88.36
9 June 2022	EUR 2,143.00	EUR 26.42
9 June 2022	EUR 27,857.00	EUR 343.44
Total:		EUR 608.22

131. It is well-established in BAT jurisprudence that interest runs from the day after the date on which the amounts are due. Hence, on the awarded pre-termination salaries, the Arbitrator finds that default interest should start to accrue from the day after the due dates of 30 January 2022 and 30 April 2022 under Article 4 of the Agreement. As to the awarded post-termination salaries, they became due on the date of the Coach's termination on 8 June 2022, and hence interest should start to accrue from the following day, i.e 9 June 2022.

7.2.5. Conclusion on Liability

132. In conclusion, and deciding the case *ex aequo et bono*, the Arbitrator is satisfied and finds that the Federation is liable to pay the Coach the overdue salaries and damages in the total amount of EUR 40,000.00 net, together with interest at 5% per annum on:-

- (a) the amount of EUR 5,000.00 from 31 January 2022 until payment in full;
- (b) the amount of EUR 5,000.00 from 1 May 2022 until payment in full; and

(c) the amount of EUR 30,000.00³⁴ from 9 June 2022 until payment in full.

133. As to the Coach's request for a tax certificate, Article 6 of the Agreement expressly provides that his salary payment are net amounts with all tax liability borne by the Federation exclusively. The Agreement however does not expressly provide for the Federation's obligation to issue a tax certificate. Nevertheless, since the Agreement guarantees that the Coach's salary shall be free of "all taxes, contributions, fees and other duties", the Arbitrator – deciding *ex aequo et bono* – will order that the Federation shall provide a certificate confirming that it has duly paid, on behalf of the Coach, any Bosnian taxes due on the full amount awarded (see also BAT 0535/14, para. 62).

8. Costs

134. In respect of determining the arbitration costs, Article 17.2 of the BAT Rules provides:

"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). [...]"

135. On 17 April 2023, the BAT President determined the arbitration costs in the present matter to be EUR 9,000.00.

136. Pursuant to Article 18.2 of the BAT Rules, a contribution of EUR 3,000.00 is paid from the BAT Fund towards the costs of the arbitration. Accordingly, the portion of the arbitration costs to be borne by the Parties is EUR 6,000.00.

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

"The award shall determine which party shall bear the arbitration costs and in which

³⁴ This being the sum of EUR 2,143.00 and EUR 27,857.00.

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."

138. The Coach has been wholly successful for his claims. As such, in the exercise of his discretion pursuant to Article 17.3 of the BAT Rules, the Arbitrator determines that the costs of the arbitration be borne solely by the Federation. Since the Coach has paid EUR 6,000.00 for the total advance on costs, the Federation shall reimburse EUR 6,000.00 to the Coach in terms of arbitration costs.

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

"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."

140. Moreover, Article 17.4 of the BAT Rules provides for the maximum amounts a party can receive as a contribution towards its reasonable legal fees and other expenses (excluding the non-reimbursable handling fee). Considering the total amount of EUR 40,608.22 as claimed by the Coach in this arbitration, the maximum amount of contribution is up to EUR 7,500.00.

141. The Coach claims contribution of legal fees in the amount of EUR 7,500.00. The Coach also claims reimbursement of the non-reimbursable handling fee paid by him in the total amount of EUR 2,000.00.

142. For the reasons as stated in para. 138 above, and that the present case presents issues of some technicality and complexity, the Arbitrator determines that it is fair and reasonable to award the respective amounts of (i) EUR 7,500.00 as contributions towards the Coach's legal fees and expenses, and (ii) EUR 2,000.00 as the Coach's



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payment of the non-reimbursable handling fee in the present arbitration.

9. AWARD

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

- 1. Basketball Federation of Bosnia and Herzegovina shall pay Mr. Vedran Bosnic the amount of EUR 5,000.00 net together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 31 January 2022 until payment in full.**
- 2. Basketball Federation of Bosnia and Herzegovina shall pay Mr. Vedran Bosnic the amount of EUR 5,000.00 net together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 1 May 2022 until payment in full.**
- 3. Basketball Federation of Bosnia and Herzegovina shall pay Mr. Vedran Bosnic the amount of EUR 30,000.00 net together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 9 June 2022 until payment in full.**
- 4. Basketball Federation of Bosnia and Herzegovina shall provide to Mr. Vedran Bosnic a tax certificate evidencing that it has paid all taxes due on all payments required to be made in accordance with paragraphs 1 to 3 above.**
- 5. Basketball Federation of Bosnia and Herzegovina shall pay Mr. Vedran Bosnic the amount of 6,000.00 as reimbursement for his arbitration costs.**
- 6. Basketball Federation of Bosnia and Herzegovina shall pay Mr. Vedran Bosnic the amount of EUR 9,500.00 as a contribution towards his legal fees and expenses (including the non-reimbursable handling fee).**
- 7. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 19 April 2023

Benny Lo
(Arbitrator)