ARBITRAL AWARD

(BAT 1763/21)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Benny Lo

in the arbitration proceedings between

Mr. Alexandr Shashkov

- Claimant -

represented by Mr. Jose Lasa Azpeitia, attorney at law,

vs.

CSKA Moscow Professional Basketball Club
VEB Arena, Red Tower (7 floor), 2A 3rd Peschanaya street,
125252 Moscow, Russia

- Respondent -

represented by Messrs. Nicolas Zbinden and Anton Sotir, attorneys at law,

1. The Parties

1.1. The Claimant

1. Mr. Alexandr Shashkov ("**Player**" or "**Claimant**") is a Russian professional basketball player.

1.2. The Respondent

2. CSKA Moscow Professional Basketball Club ("**Club**" or "**Respondent**") is a professional basketball club in the city of Moscow, Russia.

2. The Arbitrator

3. On 9 January 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 December 2019 ("**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 1 October 2019, the Player and the Club entered into a written agreement entitled "LABOR CONTRACT with a Sportsman" providing for the Club's employment of the Player as a professional basketball player from 1 October 2019 to 30 June 2021 ("**Agreement**").[1]

5. The Agreement provides relevantly as follows:

[1] Answer, Exhibit 1.

"*CSKA Professional basketball club, LLC, hereinafter referred as the "Club", represented by CEO [Name Club CEO], acting by virtue of Charter of the Club, on the one hand, and the individual Shashkov Aleksandr Aleksandrovich, 26.02.2000, hereinafter referred to as the "Sportsman", on the other hand, have entered into this contract as follows:*

1. SUBJECT OF CONTRACT

1.1. *The Club undertakes to provide to the Sportsman a job in the position professional player, to ensure the labor conditions provided by the labor law and other regulatory legal acts containing labor law norms, by agreements, local normative acts and this contract, to timely and fully pay to the Sportsman the salary, and the Sportsman undertakes personal providing of the services of professional player and to observe the Internal Labor Conduct Code effective within the Club.*

[…]

1.4. *The Sportsman and the Club have agreed that this labor contract shall be of fixed term.*

2. EFFECTIVE TERM OF CONTRACT

2.1. *The effective term of this contract is from 1 October 2019 till 30 June 2021*

3. SPORTSMAN'S LABOR PAYMENT TERMS

3.1. *For the performance of labor duties the official salary of the professional player is established in the Additional agreement* [sic] *rubles per month is fixed to the Sportsman*.

[…]

6. TERMINATION OF CONTRACT

6.1. *The contract shall terminate with expiry of the term for which it is entered into, by an agreement between the parties and in other cases provided by the Labor Code of the Russian Federation.*

[…]

7. DISPUTE RESOLUTION

7.1. *Any dispute, discrepancy or claim arising from this contract and arising in connection with it, including those relating to its entry into force, conclusion, violation, execution, amendment, termination or invalidity, is resolved by arbitration administered by the "National Center for Sports Arbitration" (NCSA) under the Autonomous non-profit organization "Sports Arbitration Chamber" (ANO "SAC") in accordance with the provisions of the Rules of sports arbitration, subject to the pre-trial settlement of disputes.*

[…]

9. SPECIAL TERMS OF CONTRACT

9.1. *The Sportsman and the Club agree that this contract shall be delivered to the RBF for registration in accordance with the order established by the "Player's Status in the RBF".*

[…]

10. FINAL PROVISIONS

10.1. *After completion of each sporting season, the terms of this contract may be reviewed by the mutual written consent of the parties.*

10.2. *This contract shall enter into force after signing b* [sic] *the both parties. Any and all amendments and modifications of this contract shall be executed by bilateral written agreements.*

[…]"

6. On the same day, the Player and the Club also entered into three additional agreements (respectively "**Additional Agreements Nos. 1, 2 and 3**").[2]

7. Additional Agreement No. 1 lays down, *inter alia*, the terms of compensation for the Player in the 2019-2020 and 2020-2021 seasons plus an option to terminate the Agreement. It relevantly provides:

"*ADDITIONAL AGREEMENT № 1*
TO THE LABOUR AGREEMENT OF PROFESSIONAL
BASKETBALL PLAYER
№ N/N dated 01 of October 2019

[…]

2. SALARY COMPENSATION

SEASON 2019/2020
3 141 790 (Three Millions One Hundred Forty One Thousand Seven Hundred Ninety) for the period from October 01st, 2019 till June 30th 2020. Compensation consists of salary in the amount of 1 413 805 (One Million Four Hundred Thirteen Thousand Eight Hundred Five) Russian rubles and bonus in the amount 1 727 984 (One Million Seven Hundred Twenty Seven Thousand Nine Hundred Eighty Four) Russian rubles.

[2] Answer, Exhibits 2-4 = RfA, Exhibit 1.

- *314 179 (Three Hundred Fourteen Thousand One Hundred Seventy Nine) Russian rubles till October 15, 2019*

[…]

- *314 179 (Three Hundred Fourteen Thousand One Hundred Seventy Nine) Russian rubles till June 15, 2020*

SEASON 2020/2021
6 220 698 (Six Millions Two Hundred Twenty Thousand Six Hundred Ninety Eight) Russian rubles for the period from July 01st, 2020 till June 30th 2021, Compensation consists of salary in the amount of 2 827 590 (Two Millions Eight Hundred Twenty Seven Thousand Five Hundred Ninety) Russian rubles and bonus in the amount of 3 393 108 (Three Millions Three Hundred Ninety Three Thousand One Hundred Eight) Russian rubles.

- *565 518 (Five Hundred Sixty Five Thousand Five Hundred Eighteen) Russian rules till September 15, 2020*

[…]

- *565 518 (Five Hundred Sixty Five Thousand Five Hundred Eighteen) Russian rules till June 15, 2021*

[…]

5. NBA OPTION
After 2019-2020 season the Player shall have the option to terminate Labour Agreement of the Player NN dated 01 of October 2019 and this Additional Agreement for the purpose of entering into a contract with a club from the National Basketball Association (hereinafter "NBA") by notifying the CLUB in writing on or before July 07th, 2020 and providing proof of the transfer to the CLUB of the Penalty Payment of $600 000 (Six Hundred [sic]*) US Dollars (hereinafter called the "Penalty Payment"). The Penalty Payment may be paid by the Player, his agent or the NBA club in any proportion. The Penalty Payment will be divided between the Club and the Player's Agent in a percentage ratio of 50/50. The procedure for its payment will be determined in the agreement between the Club and the Agent in accordance with the legislation of the Russian Federation.*
Immediately upon the receiving of the payment, the CLUB shall contact the Russian Basketball Federation, League and FIBA to issue a letter of clearance for the Player. The Club shall then also be absolved of all responsibility for any salary, bonuses or any other payments to the Player for following seasons.

[…]

10. Any dispute arising from or related to the present contract shall be submitted to the FIBA Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on private International Law (PIL), irrespective of the partie's [sic] *domicile. The language of the arbitration shall be English. The arbitrator*

shall decide the dispute ex aequo et bono.

11. This agreement is constituted in duplicate, one copy for each of the parties and is integral part of the labour contract of the Player NN dated 01 of October 2019. In case of legal controversary [sic] *the English version will prevail. In case of legal controversary* [sic] *between Labour contract of the player NN dated 01 of October 2019 and this additional agreement, this additional agreement will prevail.*"

8. Additional Agreement No. 2 imposes, *inter alia*, an obligation on the Club to offer the Player a new labour agreement upon the expiration of the Agreement and stipulates the Player's compensation from 1 July 2021 to 30 June 2024. It relevantly provides (emphasis added):

"*ADDITIONAL AGREEMENT № 2*
TO THE LABOUR AGREEMENT OF
PROFESSIONAL BASKETBALL PLAYER
№ N/N dated 01 of October 2019

[…]

1. Parties agreed that upon the expiration of the Labour Agreement of the Player NN dated 01 of October 2019, ***the Club is obliged to offer the Player a new Labour Agreement*** *of the Player for a period from July 1, 2021 till June 30, 2024 with the following conditions.*

2. Salary compensation of the Player in the season 2021-2022 for the period from July 01st, 2021 till June 30th, 2022 will be 15 172 432 (Fifteen Millions One undred [sic] *Seventy Two Thousand Four Hundred Thirty Two) Russian rubles.*

3. Salary compensation of the Player in the season 2022-2023 for the period from July 01st, 2022 till June 30th, 2023 will be 347 710 (Three Hundred Forty Seven Thousand Seven Hundred Ten) Euro.

4. Salary compensation of the Player in the season 2023-2024 for the period from July 01st, 2023 till June 30th, 2024 will be 695 409 (Six Hundred Ninety Five Thousand Four Hundred Nine) Euro.

[…]

7. NBA OPTION:
NBA OPTION:
After 2020-2021 season the Player shall have the option not to sign the new Labour Agreement of the Player in order to enter into a contract with a club from the National Basketball Association (hereinafter "NBA") by notifying the CLUB in writing on or before July 07th, 2021 and providing proof of the transfer to the CLUB of the Penalty Payment of $700 000 (Seven Hundred [sic]*) US Dollars (hereinafter called the "Penalty Payment"). The*

Penalty Payment may be paid by the Player, his agent or the NBA club in any proportion. The Penalty Payment will be divided between the Club and the Player's Agent in a percentage ratio of 50/50. The procedure for its payment will be determined in the agreement between the Club and the Agent in accordance with the legislation of the Russian Federation.
Immediately upon the receiving of the payment, the CLUB shall contact the Russian Basketball Federation, League and FIBA to issue a letter of clearance for the Player. The Club shall then also be absolved of all responsibility for any salary, bonuses or any other payments to the Player for following seasons.

8. NBA OPTION:
After 2021-2022 season the Player shall have the option to terminate Labour Agreement of the Player NN dated 01 of October 2019 and this Additional Agreement for the purpose of entering into a contract with a club from the National Basketball Association (hereinafter "NBA") by notifying the CLUB in writing on or before July 07th, 2022 and providing proof of the transfer to the CLUB of the Penalty Payment of $800 000 (Eight Hundred [sic]*) US Dollars (hereinafter called the "Penalty Payment"). The Penalty Payment may be paid by the Player, his agent or the NBA club in any proportion. The Penalty Payment will be divided between the Club and the Player's Agent in a percentage ratio of 50/50. The procedure for its payment will be determined in the agreement between the Club and the Agent in accordance with the legislation of the Russian Federation.*

Immediately upon the receiving of the payment, the CLUB shall contact the Russian Basketball Federation, League and FIBA to issue a letter of clearance for the Player. The Club shall then also be absolved of all responsibility for any salary, bonuses or any other payments to the Player for following seasons.

9. CLUB'S OPTION:
After 2022-2023 season the Club has the right to terminate Labour agreement and additional agreement of the Player by notifying the Player in writing within writing [sic] *on or before July 07th, 2022 and paying to the Player a compensation in the amount of 500 000 (Five Hundred Thousand) Russian rubles.*
Immediately after such notice, the CLUB shall contact the Russian Basketball Federation, League and FIBA to issue a letter of clearance for the Player. The Club shall then also be absolved of all responsibility for any salary, bonuses or any other payments to the Player for the period of 2023/2024 season.

[…]

14. Any dispute arising from or related to the present contract shall be submitted to the FIBA Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on private International Law (PIL), irrespective of the partie's [sic] *domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.*

15. This agreement is constituted in duplicate, one copy for each of the parties and is integral part of the labour contract of the Player NN dated 01 of October 2019. In case of

legal controversary [sic] *the English version will prevail."*

9. Additional Agreement No. 3 also provides for the same terms of the Player's employment from 1 July 2021 to 30 June 2024, although this agreement imposes an obligation on the Player to sign the labour agreement with the Club for the relevant period. It relevantly states (emphasis added):

> "*ADDITIONAL AGREEMENT № 3*
> *TO THE LABOUR AGREEMENT OF*
> *PROFESSIONAL BASKETBALL PLAYER*
> *№ N/N dated 01 of October 2019*
>
> […]
>
> *1.* ***The Player is obliged to sign with the Club new Labour Agreement*** *of the Player for a period from July 1, 2021 till June 30, 2024 with the following conditions.*
>
> *2. Salary compensation of the Player in the season 2021-2022 for the period from July 01st, 2021 till June 30th, 2022 will be 15 172 432 (Fifteen Millions One undred* [sic] *Seventy Two Thousand Four Hundred Thirty Two) Russian rubles.*
>
> *3. Salary compensation of the Player in the season 2022-2023 for the period from July 01st, 2022 till June 30th, 2023 will be 347 710 (Three Hundred Forty Seven Thousand Seven Hundred Ten) Euro.*
>
> *4. Salary compensation of the Player in the season 2023-2024 for the period from July 01st, 2023 till June 30th, 2024 will be 695 409 (Six Hundred Ninety Five Thousand Four Hundred Nine) Euro.*
>
> […]
>
> *7. NBA OPTION:*
> *NBA OPTION:*
> *After 2020-2021 season the Player shall have the option to not to sign the new Labour Agreement of the Player in order to enter into a contract with a club from the National Basketball Association (hereinafter "NBA") by notifying the CLUB in writing on or before July 07th, 2021 and providing proof of the transfer to the CLUB of the Penalty Payment of $700 000 (Seven Hundred* [sic]*) US Dollars (hereinafter called the "Penalty Payment"). The Penalty Payment may be paid by the Player, his agent or the NBA club in any proportion. The Penalty Payment will be divided between the Club and the Player's Agent in a percentage ratio of 50/50. The procedure for its payment will be determined in the agreement between the Club and the Agent in accordance with the legislation of the Russian Federation.*
>
> *Immediately upon the receiving of the payment, the CLUB shall contact the Russian*

Basketball Federation, League and FIBA to issue a letter of clearance for the Player. The Club shall then also be absolved of all responsibility for any salary, bonuses or any other payments to the Player for following seasons.

8. NBA OPTION:
After 2021-2022 season the Player shall have the option to terminate Labour Agreement of the Player NN dated 01 of October 2019 and this Additional Agreement for the purpose of entering into a contract with a club from the National Basketball Association (hereinafter "NBA") by notifying the CLUB in writing on or before July 07th, 2022 and providing proof of the transfer to the CLUB of the Penalty Payment of $800 000 (Eight Hundred [sic]*) US Dollars (hereinafter called the "Penalty Payment"). The Penalty Payment may be paid by the Player, his agent or the NBA club in any proportion. The Penalty Payment will be divided between the Club and the Player's Agent in a percentage ratio of 50/50. The procedure for its payment will be determined in the agreement between the Club and the Agent in accordance with the legislation of the Russian Federation.*

Immediately upon the receiving of the payment, the CLUB shall contact the Russian Basketball Federation, League and FIBA to issue a letter of clearance for the Player. The Club shall then also be absolved of all responsibility for any salary, bonuses or any other payments to the Player for following seasons.

9. CLUB'S OPTION:
After 2022-2023 season the Club has the right to terminate Labour agreement and additional agreement of the Player by notifying the Player in writing within writing [sic] *on or before July 07th, 2022 and paying to the Player a compensation in the amount of 500 000 (Five Hundred Thousand) Russian rubles.*
Immediately after such notice, the CLUB shall contact the Russian Basketball Federation, League and FIBA to issue a letter of clearance for the Player. The Club shall then also be absolved of all responsibility for any salary, bonuses or any other payments to the Player for the period of 2023/2024 season.

[…]

14. Any dispute arising from or related to the present contract shall be submitted to the FIBA Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on private International Law (PIL), irrespective of the partie's [sic] *domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.*

15. This agreement is constituted in duplicate, one copy for each of the parties and is integral part of the labour contract of the Player NN dated 01 of October 2019. In case of legal controversary [sic] *the English version will prevail."*

10. Eleventh months into the term of the Agreement, the Player and the Club entered into a further written agreement on 1 September 2020 to adjust the Player's compensation

for the 2020-2021 season ("**Additional Agreement No. 4**").[3]

11. During the entire 2019-2020 season, the Player played for the Club's second team. In the following season, while the Player initially continued to play for the second team, he was later included in the Club's first team roster for the Euroleague games. Despite this, he was removed from the first team roster at the end of January 2021.[4]

12. In around late April 2021, the Player went to the USA to prepare for the NBA camps with a view to exploring potential employment opportunities with NBA clubs. He returned to Russia in late June 2021. During the Player's training at the NBA camps, his agent [Name Player Agent] and the Club's Vice-President [Name Club Vice-President] kept in touch via WhatsApp as to the Player's updates.[5]

13. On 25 June 2021, [Player Agent] and [Club Vice-President] held a discussion regarding the Player's future, including the idea of loaning him to another club in the following season. After this, [Player Agent] started to search for a club that would match the Player's needs.[6]

14. On 13 July 2021, [Club Vice-President] texted [Player Agent]: "[Name Player Agent] *privet*" and "*Krka is looking for big man..*". They then discussed with Krka further about this opportunity on 14 July 2021 via WhatsApp. Krka's option however did not materialize and [player agent] continued to look for other loan agreement options for the Player.[7]

15. On 30 July 2021, the Player secured a try-out opportunity with BC Nizhny Novgorod ("**Nizhny**"). After a telephone call between [Player Agent] and [Club Vice-President] on 2 August 2021, the Player started his trial period with Nizhny on 4 August 2021. But due to an inflammation of _____ at the time, the Player initially performed individual

[3] Answer, Exhibit 5 = RfA, Exhibit 3.
[4] RfA, paras. 19-22.
[5] RfA, paras. 24-38; RfA, Exhibit 4.
[6] RfA, paras. 38-40; RfA, Exhibit 4.
[7] RfA, paras. 43-46; RfA, Exhibit 4.

exercises within Nizhny's first team's dynamic. It was only on 1 September 2021 that he started to fully practise and compete with the first team in friendly tournaments.[8]

16. In particular, on 3 and 4 September 2021, the Player was, while undergoing his trial with Nizhny, competing in the city of Saint Petersburg on an amateur tournament, in which the Club also participated.[9]

17. Things started to go downhill on 10 September 2021, when the Player informed [player agent] that the Club had not paid his salary instalment of September 2021 in the amount of RUB 1,517,243.20 which on the Player's case was outstanding. There were then back and forth communications between [Player Agent] and [Club Vice-President] over telephone and WhatsApp. Specifically, on 21 September 2021, [Player Agent] sent the following message to [Club Vice-President]:

> "*Privet [Name Club Vice-President], Sasha's "tryout" with NN has ended. The team decided not to keep him. Please let me know where he needs to report tomorrow. Thank you* "[10]

18. On 23 September 2021, the Club requested Nizhny for information in relation to the Player's try-out and any injuries or illness he suffered during the try-out period. After receiving Nizhny's response, the Club further requested Nizhny to specify the duration of the Player's injury in August 2021. Nizhny then provided its further replies.[11]

19. On 27 September 2021, [Player Agent] had a telephone call with [Club Vice-President] shortly after sending his following message:

> "*Hello [Name Club Vice-President], Hope you are well. I am asking you once again, if you could let me know, where and when Sasha needs to report. Also on the payment front; please make sure that all over due payments are paid until the end of this month. Thank*

[8] RfA, paras. 47-57; RfA, Exhibit 4.
[9] RfA, paras. 58-59.
[10] RfA, paras. 62-83; RfA, Exhibit 4.
[11] RfA, paras. 91-95; RfA, Exhibits 5, 6.

you Regards, [Player Agent]"[12]

20. According to the Player, the Club offered to pay him USD 20,000.00 over the said telephone call. That was immediately followed by the exchanges below via WhatsApp:

"[Player Agent]:	*[Name Club Vice-President], 20.000 usd that you have offered to us to get out of the agreement is not acceptable by us. Thank you*
[Club Vice-President]:	*[Name Player Agent], I don't understand what you are talking about. I never offered you this.*
[Club Vice-President]:	*Our lawyers will answer to your previous text messages*
[Player Agent]:	*This is certainly not a good faith behavior."*[13]

21. One week later, on 3 October 2021, [Player Agent] sent an email to [Club Vice-President] requesting an offer of a new labour contract for the Player (quoted below at para. 159).[14]

22. Later, on the same day, [Club Vice-President] replied: "[in] *order to proceed with the answer to your email below, first we need to get the documents, which I've explained to Alexander Shashkov about (see attached)*".[15]

23. On 4 October 2021, [Player Agent] sent [Club Vice-President] the player-agent representation agreement between the Player and him dated 1 March 2018. [16]

24. On the same day, the Club sent the Player the following letter (English translation of Russian original as provided by the Player):

"*Dear Alexandr Alexandrovich!.*

In response to your letter of 04 October 2021 we are hereby notifying you that the Contract

[12] RfA, paras. 97-98; RfA, Exhibit 4.
[13] RfA, paras.99-103; RfA, Exhibit 4.
[14] RfA, para. 104; RfA, Exhibit 7.
[15] RfA, para. 106; RfA, Exhibit 8.
[16] RfA, para. 109; RfA, Exhibit 9.

> *of Employment of Professional Basketball Player no. n.a. of 1 October 2019, concluded between you and "Professional Basketball Club CSKA" for the period until 30 June 2021, contained financial conditions for the event of conclusion of a new contract of employment (Appendices no. 2 and 3). Your acts from May through July 2021, namely your visit to the USA with the aim of placing in the NBA league draft, and after your return from August to September 2021 the visit to BC "Nizhny Novgorod", including your participation at not only training sessions but also games for a third party club without obtaining written consent from the Club for such activities and without notifying the Club healthcare staff about your injuries/illnesses in the said period (which is a serious breach of internal Club regulations), are considered by the Club as a clear sign of your lack of preparedness for further cooperation and rejection of the signing of a new contract of employment for the seasons 2021/2022-2023/2024."*[17]

25. On 10 October 2021, [Player Agent] sent [Club Vice-President] a first warning letter by the Player's counsel (quoted below at para. 155).[18]

26. In response, the Club replied on 12 October 2021 stating:

> "*In response to your letter dated 10.10.2021, we inform you that you did not notify the Club during the period before the start of the official sports season 2021-22 (July 01, 2021) about your desire to sign a new labour contract with the Club on the terms specified in the Labour agreement dated 01.10.2019, moreover, from that time and until the end of September 2021 you were actively searching for a new basketball club, thereby clearly refusing to cooperate with PBC CSKA.*
> *At the time of your notification of the Club about your willingness to join the Club (September 21, 2021), we have competed* [sic] *the roster of all Club's teams.*"[19]

27. On 13 October 2021, [Player Agent] sent [Club Vice-President] a second warning letter by the Player's counsel (quoted below at para. 156).[20]

28. On 15 October 2021, the Club replied to the second warning letter as follows:

> "*In response to your letter dated October 13, 2021, we inform you that PBC CSKA always faithfully fulfilled all its obligations under the labour agreement with you. The Club has never prevented the potential development of young players, that's why by your request the Club helped Alexander Shashkov to get US visa and released him from April 22, 2021, to go to the USA for tryouts in order to participate in the NBA Draft, though he was under the contract with the Club, and we paid him the whole amount of salary and bonuses according*

[17] RfA, para. 110; RfA, Exhibit 10.
[18] RfA, para. 112; RfA, Exhibit 11.
[19] RfA, para. 113; RfA, Exhibit 12.
[20] RfA, para. 126; RfA, Exhibit 13.

to the labour agreement dated 01.10.2019.

Upon his return from USA the agent [Name Player Agent] informed us that the player needs a club where he might be visible for scouts, and the Russian Super League Championship cannot be watched by NBA scouts, and that is why you were actively looking for another club for him.

Therefore we declare your statement that the search of the new club was «recommendation of PBC CSKA as a loan for the season 2021/22» is not true."[21]

29. On 15 November 2021, the Player signed an employment agreement with Nizhny.[22] This employment with Nizhny was however terminated on 14 February 2022.[23]

30. On 14 September 2022, the Player became employed by Kosarkarski Club Ilirija.[24]

31. It is the Player's claim herein that his employment agreement with the Club was valid and enforceable until 30 June 2024 by virtue of the respective clause 1 of Additional Agreements Nos. 2 and 3. In any case, it was wrong for the Club to refuse to offer him a new labour contract when he requested it. The Player therefore contends that the Club had breached the employment agreement and he is entitled to all his remuneration up to its expiration on 30 June 2024. On the Player's case, the Club is liable to pay him the total net outstanding amounts of RUB 15,172,432.00 and EUR 1,043,119.00.[25]

32. On the other hand, it is the Club's case that the Player's employment had expired on 30 June 2021 and no new contract was concluded thereafter. The Club is therefore not liable to the Player for the amounts claimed by him. The Club alternatively submits that, even if there existed a new employment contract for the relevant periods after 30 June 2021, the amount of compensation due to the Player should be substantially reduced in view of various circumstances of the case, including (i) the Club's option to unilaterally terminate the contract in July 2023; and (ii) the Player's failure to mitigate.

[21] RfA, para. 127; RfA, Exhibit 14.
[22] RfA, para. 135, RfA, Exhibit 15.
[23] The Player's submissions entitled "*RELEVANT INFORMATION REGARDING CLAIMANT'S LABOUR SITUATION WITH NIZNHY NOVGOROD*" dated 25 April 2022, para. 1 and Exhibit 1 thereto.
[24] The Player's submissions by email dated 16 December 2022 and attachments thereto.
[25] RfA, paras. 17, 42, 63-66, 117-119, 133-134, 136-137, 227-229, 249.

33. Given the Parties' positions, the key issues in dispute relate to whether the Agreement and the Additional Agreements provided for the Player's employment up to 30 June 2021 only or up to 30 June 2024, and if it was the former, whether the Club was at fault for not offering a new labour contract to the Player as contemplated by the Parties.

3.2. The Proceedings before the BAT

34. On 23 December 2021, the Player filed his Request of Arbitration ("**RfA**") in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 7,000.00 on 20 December 2021.

35. On 14 January 2022, the BAT informed the Parties that Mr. Benny Lo had been appointed as the Arbitrator in this case, invited the Club to file its Answer to the RfA by 4 February 2022, and fixed the advance on costs to be paid by the Parties by 25 January 2022 as follows:

"*Claimant (Mr. Alexandr Shashkov)*	*EUR 6,000.00*
Respondent (CSKA Moscow)	*EUR 6,000.00*"

36. On 21 January 2022, the BAT received an advance on costs paid by the Club in the amount of EUR 6,000.00.

37. On 24 January 2022, the BAT received an advance on costs paid by the Player in the amount of EUR 6,000.00.

38. After the BAT had previously extended the deadline upon request of the Respondent and in the absence of opposition from the Claimant, on 24 February 2022, the Club filed its Answer to the RfA and the witness statement of [Club Vice-President] dated 23 February 2022. At para. 42 of its Answer, the Club states "*CSKA Moscow calls [Name Club Vice-President], Vice President of Sports of CSKA Moscow, to testify as witness either in person or by video/telephone conference. [Club Vice-President] will testify with respect to her witness statement of 23 February 2022 and any matters relating to the*

employment of the Player in CSKA Moscow".

39. On 28 March 2022, in view of the Club's request for a hearing for examination of [Club Vice-President] pursuant to Article 11.4 of the BAT Rules, the BAT invited the Player to advise by 4 April 2022 whether he intended to call any rebuttal witness evidence, and if so, how long he would need to file such rebuttal witness statement(s).

40. On 4 April 2022, the Player informed the BAT that he would present a witness statement of his agent [Name Player Agent], and requested until 25 April 2022 to file the statement.

41. On 5 April 2022, the BAT informed the Parties that the Arbitrator had decided to allow the filing of a written witness statement of [Player Agent] by 25 April 2022, and to request both parties to re-file the RfA, respectively the Answer, with Arabic paragraph numberings.

42. On 25 April 2022, the Player filed (i) his re-numbered RfA, (ii) the witness statement of [Player Agent], and (iii) his further submissions and evidence on his employment with Niznhy. In his further submissions, the Player also amended his request for relief.

43. On 2 May 2022, the Club filed its re-numbered Answer.

44. On 31 May 2022, the BAT informed the Parties that, in accordance with Article 13 of the BAT Rules, the Arbitrator had decided to hold a hearing and proposed that the hearing should last no more than 6 hours and be held virtually. The Parties were requested to provide, by 7 June 2022, any comment on the proposed duration and mode of the hearing, and their respective availabilities among a list of dates proposed by the Arbitrator. The Parties were also informed of the Arbitrator's decision that the holding of the hearing is conditional upon Parties each paying EUR 3,000.00 as additional advance on costs by 13 June 2022, failing which no hearing will take place and the case will be decided based upon the written record.

45. On 7 June 2022, both Parties replied, that they had no comment on the proposed

duration and mode of the hearing and confirmed their availability on the proposed hearing dates.

46. On 19 July 2022, the BAT acknowledged receipt of both Parties´ shares of the additional advance on costs in the amount of EUR 3,000.00 each and informed the Parties of the hearing directions, *inter alia*, that the hearing should take place virtually on 12 September 2022. The Parties were requested to (i) jointly submit a one-page agreed list of issues for the whole matter which should be stated in neutral terms and separately cover liability issues and quantum issues, and (ii) respectively submit the names and capacity of all persons who will be participating at the virtual hearing, both by 22 August 2022. The Parties were also requested to submit and exchange with each other by 29 August 2022 their skeleton arguments succinctly summarising their respective case on the aforesaid agreed issues. As the language of this arbitration is English, the Parties were further requested to indicate by 2 August 2022 whether an interpreter will be needed at the hearing, and if so, in what language(s).

47. On 2 August 2022, the Club replied that it would not require an interpreter at the hearing. On the same day, the Player also indicated that, in principle, interpreters would not be necessary for the hearing, but may be required if one of the Parties and/or the Arbitrator proposed a witness other than [Player Agent].

48. On 3 August 2022, the BAT informed the Parties that the Arbitrator would not be calling any other witnesses and therefore no interpretation will be necessary.

49. On 19 August 2022, the Club contended that the Player had not filed any written statement of [Player Agent] and asked the Arbitrator to reiterate his request for the Player to file that witness statement. The Club also suggested that the Player himself be called as a witness for examination at the hearing.

50. On 22 August 2022, the BAT provided the Club with a copy of the witness statement of [Player Agent] as previously filed by the Player. The BAT also acknowledged the Club's request for cross-examination of the Player at the hearing and invited the Player to

respond to this request by 24 August 2022.

51. On 22 August 2022, the Club submitted its list of attendees at the hearing. The Club requested a two-day extension of the time limit for the Parties to jointly submit a one-page agreed list of issues for the whole matter, i.e. until 24 August 2022, as it received a copy of the witness statement of [Player Agent] and the Player's additional submissions only on 22 August 2022. The Club also requested a suspension of the said time limit for filing the agreed list of issues pending the decision on its extension request.

52. On 23 August 2022, the Player objected to the Club's request to call himself as a witness primarily on the grounds that it would "*not only contravene the procedural rules as set out by the Arbitrator, but also the principle of defence and equality. We are faced with a situation that could undoubtedly lead to the annulment of the entire proceedings*". The Player's correspondence concluded with the following request:

> "*1. The communication made yesterday by the BAT by means of Ms. Hatalova and the requested* [sic] *made by Respondent on August 19th to be annulled.*
>
> *2. That the terms indicated by the Arbitrator in the procedural order of 19 July 2022 be respected, including the deadline for submitting the documents which expires tomorrow, August 24th, 2022. At this regard, this Party hereby informs the Arbitrator about:*
>
> - *Our consent to being recorded in the hearing.*
> - *The names and capacity of the persons who will be in the hearing are:*
>   - *Mr. Jose Lasa Azpeitia; lawyer.*
>   - *Ms. Maria Teresa Nadal Charco; lawyer.*
>   - *Mr. Damià Tomàs Mora; legal assistant.*
>
> *As stated, this Party is awaiting for Respondent's reply in order tu* [sic] *submit the agreed document requested by the Arbitrator.*
>
> *3. To maintain the date of the hearing proposed and accepted by both parties, i.e., September 12th, 2022.*"

53. On 23 August 2022, the BAT stated that, due to an oversight on the part of the BAT Secretariat, [Player Agent]'s witness statement unfortunately had not been forwarded to the Club at the time. The Parties were informed of the Arbitrator's decision, *inter alia*, to (i) deny the Player's request to "*annul*" the Club's email of 19 August 2022 and the BAT's email of 22 August 2022; and (ii) granted the Club's request for a two-day time extension for the Parties to jointly file the agreed list of issues to 24 August 2022. In respect of (iii) the Club's suggestion that the Player be cross-examined, the BAT noted that the Club has not cited any procedural basis that would have allowed it to make such a request, let alone for an order to be made directing the Player to attend the hearing for cross-examination, in view of the Player's refusal to tender himself for examination voluntarily, the hearing schedule of 19 July 2022 needed not be changed. Further, (iv) the BAT also directed the Player to submit and serve a paginated hearing bundle in PDF format by 31 August 2022, after consultation with the Club as to the contents thereof. The time for the Parties to file and exchange their skeleton arguments pursuant to para. 6 of the procedural order of 19 July 2022 was also extended to 5 September 2022.

54. On 24 August 2022, as the Parties were unable to reach an agreement on the list of issues, they each filed their respective list of issues.

55. On 25 August 2022, the Club sought to file and include in the hearing bundle additional documents in response to the witness statement of [Player Agent].

56. On 26 August 2022, the BAT invited the Player to submit his comments by 29 August 2022 on the Club's submission of additional documents.

57. On the same day, the Player requested a 7-day time extension from 29 August 2022 to submit his comments on the additional documents filed by the Club.

58. On 29 August 2022, the BAT clarified that, in the procedural order of 26 August 2022 asking the Player for comments on the Club's materials, it merely wished to know whether the Player would object to the inclusion of such materials in the hearing bundle,

but not the Player's substantial comments or submission in response thereto. As the hearing was fixed for 19 September 2022, with the Parties' skeleton arguments and paginated bundle due respectively on 5 September 2022 and 31 August 2022, the Player was invited to submit by 29 August 2022 whether Club's additional documents could be included in the file, or his confirmation that he is unable to submit his position on this limited issue that day. In the latter case, the Player should also submit his view on whether he objects to the hearing being adjourned to another day to be fixed.

59. On 30 August 2022, the Player opposed to the inclusion of the Club's additional documents. The Player also requested (i) a time extension to argue for his opposition to the inclusion of the Club's submission, and (ii) an extension of all the deadlines for the filing of the Parties' skeleton arguments and the paginated bundle, and to adjourn the hearing "*in order to safeguard the present proceedings and to ensure that none of the parties is left without defence*".

60. On the same day, the Club opposed to the adjournment of the hearing and submitted that its additional documents "*are limited in number and are in no way new or unexpected, as they were all addressed by email to [Player Agent] back in 2019. The Respondent has also sought to introduce them as soon as practicable following receipt on 22 August 2022 of the new evidence of the Claimant, and certainly two full weeks is more than enough time for the Claimant to consider these limited documents*". The Club suggested including its additional documents on a provisional basis at the end of the hearing bundle pending the decision on their admissibility, so as to avoid the hearing adjournment and provide the Player with sufficient time to address the admissibility issue. As to the deadlines for serving a hearing bundle and providing skeleton arguments, the Club indicated no objection to them being extended for one or two days.

61. On 31 August 2022, the BAT decided to adjourn the hearing scheduled on 12 September 2022, and directed that:

> "*1. The hearing scheduled on 12 September 2022, and the current deadlines set for the filing of the hearing bundle (31 August 2022) and skeleton arguments (5 September*

2022), be cancelled.

2. *The hearing shall be re-fixed in consultation with the Parties' diaries. Parties are hereby directed to submit, by **Monday 5 September 2022**, a list of dates in September and October 2022 on which they are available to attend the adjourned virtual hearing.*

3. *The Claimant do file his submissions as to the Respondent's request dated 25 August 2022 to admit additional documents **by Friday 2 September 2022** at the latest. Such submission should be succinct, and be limited to a maximum of 1 page of A4 if possible.*

4. *Further directions for the adjourned virtual hearing will be provided as soon as practicable after receipt of the Claimant's submissions as aforesaid.*"

62. On 1 September 2022, the Player filed his submissions on the Club's request to admit additional documents, alleging, *inter alia*, that these documents are "*irrelevant*".

63. On 5 September 2022, both Parties indicated their respective available dates for the adjourned virtual hearing.

64. After two hearing dates had been initially fixed and then cancelled, on 3 November 2022, after receiving the Parties' confirmation that they would both be available from 12 to 14 December 2022, the BAT directed that the virtual hearing be rescheduled to take place on 12 December 2022. The BAT also extended the deadline for the Parties to file and serve their respective skeleton arguments to 25 November 2022.

65. On 25 November 2022, both Parties filed their respective skeleton arguments, within the deadline as previously fixed by the BAT.

66. On 12 December 2022, a virtual hearing was held. The following participants were present at the hearing:

(a) Mr. Benny Lo, Arbitrator;

(b) Mr. Heiner Kahlert, Head of Case Management, BAT Secretariat;

(c) Ms. Carmen Paulsen, Case Manager, BAT Secretariat;

(d) Ms. Janet Reinhold, Case Manager, BAT Secretariat;

(e) Mr. Jose Lasa Azpetia, Counsel for the Claimant;

(f) Ms. Maria Teresa Nadal Charco, Counsel for the Claimant;

(g) Mr. Damià Tomàs Mora, Counsel for the Claimant;

(h) [Name Player Agent], witness for the Claimant;

(i) [Name Club Vice-President], Vice President of Sports of and witness for the Respondent;

(j) Mr. Dmitry Gladkovsky, Legal Counsel of the Respondent;

(k) Mr. Anton Sotir, Counsel for the Respondent;

(l) Ms. Emma Stobart, Counsel for the Respondent.

67. On 13 December 2022, the BAT forwarded to the Parties the transcript files of the hearing. In the same letter, the BAT invited the Player to submit, by no later than 23 December 2022, the documents / contracts with the Slovenian club referred to by [Player Agent] in his oral testimony given at the hearing.

68. On 16 December 2022, the Player submitted his contract made with Kosarkarski Club Ilirija dated 14 September 2022, together with its English translation.

69. On the same date, 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 23 January 2023. In the same letter, the BAT requested that each Party pays the sum of EUR 6,000.00 by 26 January 2023 as a further advance on costs for this arbitration given the length and

complexity of this procedure and the fact that a hearing took place.

70. On 17 January 2023, the BAT received the Player's share of the further advance on costs in the amount of EUR 5,970.00.

71. On 23 January 2023, the Parties filed their respective costs submissions. In the covering email attaching its costs submissions, the Club requested that BAT do not share its exhibits to its costs submissions with the Player on account of confidentiality.

72. On 25 January 2023, the BAT wrote to the Parties noting that the Club had not explained why the said exhibits were confidential. The BAT further noted that if the Club wished to maintain confidentiality of its exhibits, it may redact the parts of the exhibits considered to be confidential, re-file the same and withdraw the un-redacted version.

73. On 26 January 2023, the Club informed the BAT that, "*for the sake of smooth running of the procedure, CSKA Moscow does not wish to withdraw and re-file a redacted form of any of the submitted exhibits and prefers that the Arbitrator considers the un-redacted exhibits even though they will be circulated to the Claimant as part of the record.*"

74. Upon further time extension requests, the BAT eventually received the Club's share of the further advance on costs in the amount of EUR 6,000.00 on 1 March 2023.

4. The Positions of the Parties

75. The Arbitrator has fully considered all of the Parties' arguments set out in their written submissions and oral submissions made at the oral hearing. To keep the length of this Award manageable, only the key points of the Parties' cases are highlighted below.

4.1. The Claimant's Position

76. It is the Player's case that the terms and conditions of his employment with the Club were laid down both in the Agreement and the Additional Agreements Nos. 1 to 3, all

of which were signed by the Parties on 1 October 2019.[26]

77. In the Player's own words, the Parties' agreement "*was for Claimant to render his services as professional basketball player on Respondent's first team during five (5) sportive seasons, namely, 2019/2020, 2020/2021, 2021/2022, 2022/2023 and 2023/2024, from October 1st, 2019, to June 30th, 2024*".[27]

78. As to Additional Agreement No. 1, the Player submits that it records the Parties' undertakings for the initial two seasons, i.e., 2019-2020 and 2020-2021. As to Additional Agreements Nos. 2 and 3, the Player submits that they record the Parties' undertakings for the subsequent seasons in 2021-2022, 2022-2023 and 2023-2024.[28]

79. The Player specifically draws attention to the fact that the Additional Agreements Nos. 2 and 3 are identical except for one clause, i.e., their respective clause 1. That clause "*provides the possibility for both Parties to enforce the terms and conditions thereto agreed to the other, in the event the default party did not want to recognize the validity of the Agreement and the entitlement to the conditions therein established*".[29]

80. Importantly, the Player submits that the employment agreement is "*thought out as a five (5) seasons agreement where the only agreed exit scenarios lead to subsequent agreed compensation scenarios (NBA buy out should Claimant signed with an NBA franchise and 2023/2024 termination by Respondent)*" were stipulated respectively under clauses 7 and 9 of the Additional Agreements Nos. 2 and 3.[30]

81. The Player submits that, since "[n]*o notices nor any other legal provision was agreed by the Parties for a non-cost termination or an expiration of the Agreement at the end of the season of 2020/2021*",[31] "*Claimant, during* […] *July 1st to October 15th, 2021, had*

[26] RfA, paras. 8, 146.
[27] RfA, para. 9.
[28] RfA, para. 147.
[29] RfA, para. 148.
[30] RfA, paras. 149, 154-156, 158-160.
[31] RfA, para. 152.

an employment Agreement in force with Respondent" and "*Respondent's statements delivered on October 4th, 12th, and 15th, are imprecise and full of contradictions; seeking, unsuccessfully, to find a cause for expiration or dismissal*". [32]

82. As to the Club's allegation of the Player's "*rejection of the signing of a new contract of employment for the seasons 2021/22-2023/24*" in its letter of 4 October 2021 (see para. 24 above), the Player denied having rejected anything as there was simply nothing for him to reject. He explains, "*in order to reject an offer, the offer needs to be put forward to the other party for this to accept it or refute it. No offer was presented in this case*".[33]

83. The Player goes on to explain that "*no offer was needed since Claimant had the obligation to be engaged with Respondent, the latter to provide a contract in the terms set out in Annex 2 and 3 and moreover, both Parties had been conducting the rapport among them as per the existence of a valid employment relationship*".[34]

84. As to the Club's allegation that the Player "*did not notify the Club during the period before the start of the official sports season 2021-22 (July 01, 2021) about* [his] *desire to sign a new labour contract*" in its letter of 12 October 2021 (see para. 26 above), the Player submits "*the Employment Agreement does not stipulate any obligation for Claimant to notify Respondent before* […] *July 1st, 2021, to sign a new labor agreement*". [35]

85. Rather, the Player submits, under clause 1 of the Additional Agreement No. 3, "*Claimant is compelled to sign with Respondent for the term of July 1st, 2021, to June 30th, 2024*", which "*clearly determined Claimant's obligation to undertake the new employment agreement with Respondent on the terms thereto agreed. Therefore, upon July 1st, 2021, the Employment Agreement signed on October 1st, 2019, enclosing a*

[32] RfA, paras. 192-193.
[33] RfA, paras. 202-204.
[34] RfA, para. 202.
[35] RfA, para. 226.

term until June 30th, 2024, is fully in force between the Parties."[36]

86. In answer to the Club's letter dated 15 October 2021 (see para. 28 above), the Player submits that "*Respondent is, unsuccessfully, searching for arguments, no matter how poor and unreasonable they might be, to avoid Claimant's integration with Respondent. The foregoing constitutes a unilateral termination of the Employment Agreement without cause.*"[37]

87. The Player submits that "[none] *of the statements and allegations presented by Respondent are supported by legal grounds nor factor circumstances which could lead to either the absence of an employment agreement or the fairness of Claimant's dismissal*",[38] and accordingly that the Club was in "*unilateral breach of Contract*" and must disburse to him "*all amounts established on the Employment Agreement*".[39]

88. In the RfA, the Player initially sought the following relief:

> "*I. Respondent is to be held liable for breach* [sic] *Claimant's Employment Agreement.*
>
> *II. To declare Claimant entitlement to receive from Respondent the amount of* ***FIFTEEN MILLION ONE HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED THIRTY-TWO RUBLES (₽ 15,172,432.00) and ONE MILLION FORTY-THREE THOUSAND ONE HUNDRED NINETEEN EURO (€ 1,043,119.00) NET of all taxes****.*
>
> *III. Respondent is ordered to pay Claimant legal interest on the sum of 5% per annum on the net amount of FIFTEEN MILION* [sic] *ONE HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED THIRTY-TWO RUBLES (₽ 15,172,432.00) and ONE MILLION FORTY-THREE THOUSAND ONE HUNDRED NINETEEN EURO (€ 1,043,119.00) starting from the dates indicated on paragraph* ***253*** *until the date of filing the present Request for Arbitration, i.e.,* ***One Hundred Seventy-Three Thousand Seven Hundred Fifty-Five and Fifty-Four Russian Rubles (₽ 173,755.54) net and Eleven Thousand Four Hundred Seventy-Five Euro and Twenty-Eight cents (€ 11,475.28) net****.*
>
> *IV. Respondent is ordered* ***to pay expenses and reasonable legal fees at the maximum contribution under the BAT Rules*** *concretely related to the execution of the present Request for Arbitration and Respondent's lack of fulfilment of his*

[36] RfA, paras. 227-229.
[37] RfA, para. 241.
[38] RfA, para. 242.
[39] RfA, para. 243.

obligations to which he committed in the employment agreements.

*V. Respondent, additionally, is ordered to pay the legal costs effectively incurred to have access to BAT proceedings, i.e., **the non-reimbursable handling fee of SEVEN THOUSAND EURO (€ 7,000.00)** and the pertinent advance on costs which should be considered when assessing the Claimant legal fees and expenses.*

VI. Respondent is, as well, ordered to disburse all the advanced of costs eventually determined by BAT."

89. Nevertheless, in his submissions dated 25 April 2022, the Player reduced his claimed amount of compensation as follows (with other terms of relief unchanged):-

"*I.* […]

II. To declare Claimant entitlement to receive from Respondent the following amounts reply upon the following scenarios

- *Mitigating the actual amount of 593,236.04 rubles disbursed by Niznhy to Claimant:* ***FOURTEEN MILLION FIVE HUNDRED SEVENTY-NINE THOUSAND ONE HUNDRED NINETY-SIX RUBLES (₽ 14,579,196.00) plus ONE MILLION FORTY-THREE THOUSAND ONE HUNDRED NINETEEN EURO (€ 1,043,119.00) NET of all taxes;***

or

- *Mitigating the amount of 4,300,000.00 rubles that Claimant should have received from Niznhy:* ***TEN MILLION EIGHT HUNDRED SEVENTY-TWO THOUSAND FOUR HUNDRED THIRTY-TWO RUBLES (₽ 10,872,432.00) plus ONE MILLION FORTY-THREE THOUSAND ONE HUNDRED NINETEEN EURO (€ 1,043,119.00) NET of all taxes.***

*III. Respondent is ordered to pay Claimant legal interest on the sum of 5% per annum on the net amount indicated above upon one (1) of the two (2) stipulated scenarios and starting from the dates indicated on **paragraph 253 of the Request for Arbitration** until the date of filing the present Request for Arbitration.*

IV. […]

V. […]

VI. […]"

4.2. The Respondent's Position

90. The Club does not dispute that it has entered into a written agreement for its employment of the Player on 1 October 2019 (i.e., the Agreement). It also does not dispute that the Parties further entered into Additional Agreements Nos. 1 to 3.

91. According to the Club, there is a requirement in Russia to have a contract based on the standard model contract of the Russian Basketball Federation ("**RBF**")[40], such as the Agreement a copy of which it provided[41].

92. As to the term of the Agreement, the Club contends that the Agreement "*was concluded only for the period from 1 October 2019 until 30 June 2021. It expired on 30 June 2021 and no new contract was concluded between the parties*".[42]

93. In support of this contention, the Club relies on three express contractual provisions, namely: (i) clause 2.1 of the Agreement; (ii) clause 1 of the Additional Agreement No. 2; and (iii) clause 1 of the Additional Agreement No. 3.

94. In particular, clause 2.1 of the Agreement stipulates the exact duration of the Agreement, while the two other clauses provide that "*a new contract must be concluded between the Player and the Club upon the "expiration" of the Employment Contract*", which never happened.[43]

95. The Club goes on to submit that nothing in the four written agreements suggests that "*the parties' intension* [sic] *was to have a five-year contract from the very beginning, or that the Employment Contract could have been extended, automatically or upon certain conditions*".[44]

96. The Club also refers to Article 3.1.7 of the RBF Players' Status Regulations ("**RBF Regulations**"), which provides "[labor] *contract shall be entered into for the period of*

[40] Answer, page 11, footnote 13.
[41] Answer, para. 4; Answer, Exhibit 1.
[42] Answer, para. 46.
[43] Answer, paras. 46-48.
[44] Answer, para. 48.

no more than five (5) years unless otherwise provided for in paragraph 3.1.8 of the present Status". Article 3.1.8 of those Regulations in turn provides "[no] *labor contract with a minor player shall be entered into for a period extending beyond the end date of a sporting season, where the player turns eighteen (18) years.* […]". The Club thus submits that there was no obstacle for the Parties to enter into a five-year contract until 30 June 2024 in October 2019, when the Player already reached 19 years' old at the time.[45]

97. Further, with reference to Articles 3.2 and 3.3.4 of RBF Regulations, the Club submits that the Player became a free agent on 1 July 2021, because the Agreement expired on 30 June 2021 and the Club did not offer him a new employment contract before 31 May 2021 or afterwards.[46]

98. In relation to Additional Agreements Nos. 2 and 3, the Club submits that they "*are not employment contracts per se, but only provide for preliminary agreed financial terms to be incorporated into a new employment contract (if one to be concluded)*"; nor could the Club "*field the Player and register him for competitions solely based on*" the two additional agreements due to the aforesaid model contract requirement by the RBF.[47]

99. The Club adds that Additional Agreements Nos. 2 and 3 also "*contain a condition precedent, condition sine qua non: a new employment contract must have been concluded for the period after expiry of the Employment Contract*". Since that condition was not fulfilled, Additional Agreements Nos. 2 and 3 "*had no binding effect, they could not be and were never terminated, and no compensation can be due*".[48]

100. Citing the principle of *venire contract factum proprium*, the Club submits that "*the Player by his conduct induced legitimate expectations in CSKA Moscow that he did not want to stay with the Club.*" Therefore, the Club submits that the Player "*was estopped from*

[45] Answer, para. 50; Answer, Exhibit 24.
[46] Answer, para. 54(i)-(ii).
[47] Answer, para. 57; Answer, page 11 footnote 13.
[48] Answer, paras. 57, 70.

changing his course of action to the detriment of CSKA Moscow and requesting a contract offer in October 2021, three months later after the Employment Contract expired, when the season started and when CSKA had finalised its rosters".[49]

101. As the Club's alternative case, the Club submits that no compensation should awarded, because even if the Parties concluded an employment contract for the period after 1 July 2021 and the Club was obliged to pay the amounts stipulated in the Additional Agreements Nos. 2 and 3, "*in view of the circumstances of this case, it would be utterly unfair to oblige CSKA Moscow to pay any compensation to the Player*".[50]

102. In particular, the Club's position is that, even if compensation is to be awarded to the Player, the amount should be substantially reduced by reason of (i) first, the Club's option to unilaterally terminate the contract in July 2023 under clause 9 of Additional Agreements Nos. 2 and 3; and (ii) second, the principle of mitigation of damages.[51]

103. In the Answer, the Club requested the following:

> "*(1) The claim filed by Alexandr Shashkov on 23 December 2021 is dismissed in its entirety.*
>
> *(2) Alexandr Shashkov is ordered to pay the BAT arbitration costs.*
>
> *(3) Alexandr Shashkov is ordered to make the maximum contribution of EUR 40,000 to the legal and other costs of CSKA Moscow Professional Basketball Club.*"

5. The Jurisdiction of the BAT

104. 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, even if hearings, if any, are held in another place*". Hence, the BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

[49] Answer, paras. 63-65, 67.
[50] Answer, paras. 71-72.
[51] Answer, paras. 73-79.

105. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the exercise of a valid arbitration agreement between the parties.

106. 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.[52]

107. The jurisdiction of the BAT over the dispute results from the identical arbitration clause contained under clause 10 of Additional Agreement No. 1 and clause 14 of the Additional Agreements Nos. 2 and 3. That arbitration clause reads as follows:-

> *"Any dispute arising from or related to the present contract shall be submitted to the FIBA Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on private International Law (PIL), irrespective of the partie's* [sic] *domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."*

108. Additional Agreements Nos. 1 to 3 are in writing and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.

109. 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).

110. The predicate wording in clauses 10 and 14, i.e. "[a]*ny dispute arising from or related to the present contract* […]", clearly covers the present dispute.

111. For completeness, the Arbitrator notes that, under clause 7.1 of the Agreement, the Parties agreed that any dispute arising thereunder shall be resolved by arbitration before ""*the National Center for Sports Arbitration" (NCSA) under the Autonomous non-profit organization "Sports Arbitration Chamber" (ANO "SAC") in accordance with the provisions of the Rules of sports arbitration, subject to the pre-trial settlement of*

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

disputes." However, neither Party took issue with this and the present dispute has arisen out of the Additional Agreements. In fact, the Club even considers that clause 7.1 of the Agreement to have been modified or replaced by clause 10 of Additional Agreement No. 1 granting the BAT jurisdiction to arbitrate the present dispute[53]. In any event, the Club has not challenged the jurisdiction of the BAT in this case.

112. 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 Player's claims.

6. Other Procedural Issues

113. At the Club's request, a hearing was held (virtually) on 12 December 2022. During the hearing, both Parties' legal representatives made their respective opening and closing statements, and [Player Agent] sent [Club Vice-President] testified respectively for the Player and the Club. In accordance with Article 13.4 of the BAT Rules, the Arbitrator invited them to tell the truth and drew their attention to the fact that false testimony might lead to criminal sanctions. The Arbitrator will decide the Player's claims based on the written and oral submissions and the evidence on record including both witnesses' testimonies.

7. Discussion

7.1 Applicable Law – *ex aequo et bono*

114. 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

[53] Transcript, page 133 lines 4-8.

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*".

115. 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.*"

116. Clause 10 of Additional Agreement No. 1 and clause 14 of Additional Agreements Nos. 2 and 3 expressly provide that the Arbitrator shall decide the dispute *ex aequo et bono*.

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

118. 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*[54] (Concordat),[55] 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.*"[56]

[54] 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).
[55] P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.
[56] JdT 1981 III, p. 93 (free translation).

119. 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*".

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

7.2 Findings

121. As the Player'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.

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

(a) First, on 1 October 2019, did the Club enter into a two-year employment agreement (until 30 June 2021) or a five-year employment agreement (until 30 June 2024) with the Player as a matter of contractual interpretation? ("**Issue 1**")

(b) Second, if the Parties initially only entered into a two-year employment agreement on 1 October 2019, was there any employment agreement in force between them from 1 July 2021 onwards? ("**Issue 2**")

(c) Third, if (i) the employment agreement entered on 1 October 2019 was valid only until 30 June 2021 and (ii) there was no employment agreement in force from 1 July 2021 onwards, what are the implications for the present dispute? ("**Issue 3**")

(d) Fourth, is the Club liable to pay any compensation to the Player? ("**Issue 4**")

7.2.1. Issue 1 – On 1 October 2019, did the Club enter into a two-year employment agreement (until 30 June 2021) or a five-year employment agreement (until 30 June 2024) with the Player as a matter of contractual interpretation?

123. The term of the employment agreement, as a matter of contractual interpretation, is a

vital starting point as it has a fundamental impact on the Parties' positions on liability.

124. There is no dispute that the relevant contracts comprise the Agreement (i.e., the RBF model labour contract) and Additional Agreements Nos. 1 to 3, and that each of these was valid and binding. The exact term of the Player's employment provided thereunder, as well as their interpretation and effect, are however matters hotly in dispute.

125. On the term of employment, the Arbitrator considers the following to be relevant.

126. First, clause 1.1 of the Agreement provides for the Club's employment of the Player as a professional player. Under clause 1.4 of the Agreement, "*this labor contract shall be of fixed term*". By clause 2.1 of the Agreement, the effective term is unequivocally fixed "*from 1 October 2019 till 30 June 2021*". Clause 6.1 of the Agreement states "[t]*he contract shall terminate with expiry of the term for which it is entered into* […]". All these clauses tend to suggest that the Parties had intended to enter into a two-year employment contract that expires on 30 June 2021 at the latest. Nothing in the Agreement suggests otherwise.

127. Second, under clause 1 of Additional Agreement No. 2, the Club is obliged to offer the Player "*a new Labour Agreement*" for the period "*from July 1, 2021 till June 30, 2024*" upon the "*expiration*" of the Agreement. Correspondingly, clause 1 of Additional Agreement No. 3 obliges the Player to "*sign with the Club new Labour Agreement*" for the same period. This covers the 2021-2022, 2022-2023 and 2023-2024 seasons.

128. In the Arbitrator's view, the express language of these two clauses presuppose that the Agreement does not, by itself, provide for the Player's employment from 1 July 2021 to 30 June 2024 – or else there would be no need to the Club to "*offer*", and for the Player to "*sign*", a "*new*" labour contract for that period. This also tallies with clause 2.1 of the Agreement, which provides that the Agreement would expire on 30 June 2021. What the Parties agreed under clauses 2 to 6 of Additional Agreements Nos. 2 and 3 were the salaries and benefits to be included in the "*new Labour Agreement*". The fact that the Parties had "pre-agreed" the key terms of the Player's future labour contract beyond

30 June 2021 does not, in the Arbitrator's view, mean that the Parties had already entered into such a future labour contract. This does not tally with the other express terms of the Agreement and Additional Agreements Nos. 1-3 discussed above.

129. Third, although both Additional Agreement No. 1 on the one hand, and Additional Agreements Nos. 2 and 3 on the other hand, provide the Player with an "*NBA OPTION*" under which he may leave the Club and join an NBA club, the differences in their wording also supports the interpretation that, as of 1 October 2019, the Club did not enter into an employment agreement with the Player that lasted beyond 31 June 2021.

130. Under clause 5 of Additional Agreement No. 1, the NBA option is stated in these terms: "*After 2019-2020 season the Player shall have the option to terminate the Labour Agreement of the Player NN dated 01 of October 2019 and this Additional Agreement for the purpose of entering into a contract with a club from the National Basketball Association* […]" (emphasis added). This provides for the Player's option to leave for an NBA club half-way through the life of the Agreement which provides for his employment from 2019-2021.

131. However, under the respective clause 7 of Additional Agreements Nos. 2 and 3, the NBA option is stated as following: "*After 2021-2022 season the Player shall have the option not to sign the new Labour Agreement of the Player in order to enter into a contract with a club from the National Basketball Association* […]" (emphasis added). In the Arbitrator's view, the underlined words in the beginning of the said clause 7 reinforce the fact that no employment agreement covering 2021-2022 onwards was yet in place as of 1 October 2019.

132. But what about clause 8 of Additional Agreements Nos. 2 and 3, which provides that "[a]*fter 2021-2022 season the Player shall have the option to terminate Labour Agreement of the Player NN dated 01 of October 2019*" (emphasis added)? Does this support the Player's argument that the term of the employment agreement extends beyond 30 June 2021?

133. The Arbitrator takes the view that it does not. In particular, as is evident from the respective clause 1 of Additional Agreements Nos. 2 and 3, the respective clause 8 was meant to form part of the conditions under which the "*new Labour Agreement*" is to be concluded. When read together with the respective clause 7 (for the 2020-2021 season), the purpose of clause 8 (for the 2022-2023 season) was to give the Player another "*NBA OPTION*" to terminate the new contract once it is concluded. Clause 8 cannot properly be construed as contradicting clause 2.1 of the Agreement. It is quite likely that the reference to the Agreement in clause 8 was merely a typographical error.

134. In any case, the Arbitrator considers that clause 2.1 of the Agreement should prevail over clause 8 of Additional Agreements Nos. 2 and 3. This is because, subject to any express provisions to the contrary, the Agreement as the main labour contract should prevail over Additional Agreements Nos. 1 to 3 which are only supplementary. There is nothing in any of the four contracts which undermines overriding effect of clause 2.1.

135. For all these reasons, the Arbitrator rejects the Player's submission that, by reason of clause 1 of Additional Agreements Nos. 2 and 3, the term of the Player's employment agreement made on 1 October 2019 lasted until 30 June 2024.[57] Instead, the Arbitrator finds that, on a proper interpretation of the Agreement and Additional Agreements Nos. 1 to 3, the Club only entered into a two-year employment agreement with the Player on 1 October 2019, with a fixed term from 1 October 2019 to 30 June 2021.

136. For completeness, the Arbitrator will note that, in view of the Player's extensive submissions on the Parties' post-contractual conduct after 1 October 2019 (particularly from May to September 2021), they were asked at the hearing to comment on whether such post-contractual conduct is relevant to this question of interpretation. While the Player made no submission, the Club submitted that such conduct is irrelevant to the interpretation as such.[58] The Arbitrator agrees that the Parties' post-contractual conduct is of no relevance or assistance in the contractual interpretation, as it does not provide

[57] RfA, paras. 227-229.
[58] Transcript, page 136 lines 5-21.

the relevant factual context to explicate the meaning with which the words were used as at the time of signing of the four contracts. Hence, when making the above finding on Issue 1, the Arbitrator has not taken account of the Parties' post-contractual conduct.

7.2.2. Issue 2 – If the Parties initially only entered into a two-year employment agreement on 1 October 2019, was there any employment agreement in force between them from 1 July 2021 onwards?

137. Given that the Parties initially only entered into a two-year employment agreement that expired on 30 June 2021, the next question is whether there was any employment agreement in force between the Player and the Club from 1 July 2021 onwards.

138. On the evidence, no new contract was ever signed covering the Player's employment beyond 30 June 2021. The Club did not offer any such contract, and the Player did not accept one, despite their respective obligations in clause 1 of Additional Agreements Nos. 2 and 3. Without a doubt, no new employment was made between them in writing.

139. This is accepted by the Player. In his skeleton arguments on page 3, he submitted (emphasis added):

> "[…] *From July 1st, 2021, until the unilaterally breach of the Agreement by Respondent, both Parties always acted as Employer and Employee, i.e., holding discussions and calls in relation to Claimant's performance situation. Such scenario can only be understood within a contractual employment frame.* […]"

140. This state of play raises two questions: (i) First, could the Parties make an employment agreement, particularly to extend the original two-year term under the Agreement beyond 30 June 2021, by conduct? (ii) Even if so, did the Parties do so on the facts?

141. In its skeleton arguments at para. 8(iii), the Club accepted that a contract may be varied by conduct but submitted that there was nothing in the Player's conduct which suggested a willingness to continue the employment relationship and extend the term

of the employment agreement. The Club maintained the same position at the hearing.[59]

142. In this connection, clause 10.2 of the Agreement is relevant. It provides, "[a]*ny and all amendments and modifications of the contract shall be executed by bilateral written agreements*" (emphasis added). It is therefore perfectly clear that the Parties are precluded from varying the employment agreement by conduct and may only do so in writing. It follows that the two-year term could not have been validly extended by the Parties' conduct alone.

143. As to whether a new contract could be made by conduct, the Club's case is that the new contract must be made in writing, and in any event no contract was concluded by conduct as the Player was not demanding his right to be offered a new contract.[60]

144. As regards the Player, he made no submissions directly on this point despite having been invited to do so.[61] Instead, he reiterated that for formality reason, it is mandatory to have a written employment contract modelled on the RBF's standard contract, for without which it is impossible to register the Player and for him to play for the Club.[62]

145. According to article 3.1.3 of the RBF Regulations, "[labour] *contract shall be done in writing, authenticated with the club's seal and signed by the parties thereto on each page*". This writing requirement is undisputed.

146. Therefore, looking at the matter in the round, it appears that neither the Club nor the Player positively asserts that an employment contract for the Player could be made by conduct. This must be right, not only because of article 3.1.3 of the RBF Regulations, but also because of the need for a player to be properly registered, as the Player

[59] Transcript, page 138 lines 10-12, page 140 lines 10-25.
[60] Transcript, page 137 lines 1-18, page 138 lines 16-25, page 141 lines 6-13.
[61] Transcript, page 17 lines 8-11.
[62] Transcript, page 8 lines 20-24, page 17 lines 13-17.

accepted during the hearing[63].

147. For all these reasons, the Arbitrator accordingly finds that there was no valid employment agreement in force between the Parties from 1 July 2021 onwards.

7.2.3. Issue 3 – If (i) the employment agreement entered on 1 October 2019 was valid only until 30 June 2021 and (ii) there was no employment agreement in force from 1 July 2021 onwards, what are the implications for the present dispute?

148. So what are the implications of the above findings to the present dispute?

149. In this regard, on page 4 of his skeleton arguments, the Player submitted that:

> "*The feasibility of the above scenario is not possible nor coherent in light of the arguments provided by this Party* [i.e. the Player] *throughout the process as well as in the present document* [i.e. the Player's skeleton arguments]".

150. As regards the Club, in its skeleton arguments at paras. 12 and 13, the Club submitted, *inter alia*, that, as the employment contract expired on 30 June 2021, there was no contract for the Club to breach and it cannot be held responsible for post-expiration breach of contract. Hence it submitted that the Player's claim should be wholly dismissed.

151. In the course of the Club's oral submissions at the hearing, the Arbitrator observed that clause 1 of Additional Agreement No. 2 obligates the Club to offer a new contract to be signed. Given the undisputed failure on the Club's part to offer it, the Club was invited to comment on whether such failure amounted to a breach of clause 1, and if so, whether it matters or not a new contract was signed. This is because if there was a breach by the Club to begin with, certain consequences might follow from the breach.[64]

[63] Transcript, page 17 lines 4-24.

[64] Transcript, page 29 lines 1-8.

152. In reply, the Club submitted that the Player is not claiming damages for breach of clause 1 of the Additional Agreement No. 2 *per se*. Rather, the Player's claim is for the residual value of Additional Agreements Nos. 2 and 3 alleged to be *the* employment contract covering the additional years beyond 30 June 2021 up to 30 June 2024. These, the Club submitted, are "*two different claims with a different legal setting and background*".[65]

153. The Player countered this by arguing that the Club breached the contract by not "[offering] *a possibility to register the Player*", that is, by not "*presenting a federative model in order to register the Player in order to make the Player play for the Club*", and such breach of contract "*created or infringed damages for the Player that must be compensated*".[66] To this, the Arbitrator followed up by asking the Player to point out where in any of his written documents filed in this arbitration did he describe the Club's breach by not offering a new contract. The Arbitrator also observed that there is a difference between the Player saying (i) that the initial contract is for a term of five years, and on the other hand, (ii) that it is for two years, but the Club has an obligation to offer a new contract for three more years but has breached it by failing to make that offer.[67]

154. On this matter, the Player explained that, although his RfA only talks about "*breaching the contract or terminating the contract without cause*", that in fact refers to the Club's breach by not offering a new contract. In support, he refers to two emails sent by [Player Agent] to the Club dated 10 October 2021 and 13 October 2021 respectively.[68]

155. Attached to [Player Agent]'s said email dated 10 October 2021 is the first warning letter from Player's counsel. It reads (underlined emphasis added):

> "*Dear Sirs.*
>
> *I address to you on behalf of my client, the professional basketball player,* ***Mr. Shashkov***

[65] Transcript, page 29 lines 17-25, page 30 lines 1-25, page 31 lines 1-5.
[66] Transcript, page 33 lines 17-25, page 34 lines 1-25.
[67] Transcript, page 35 lines 3-15, page 168 lines 20-25.
[68] Transcript, page 169 lines 9-25, page 170 lines 1-23.

***Aleksandr Aleksandrovich**, to communicate you the following:*

The Professional Basketball Club CSKA Moscow and my client started on October 1st, 2019, a labor rapport according to which my client was engaged as a professional basketball player for the CSKA Moscow in return for the remuneration set out in clause three of such Agreement.

The Employment Agreement enclosed one Agreement related to season 2019/20 and 2020/21 and another successive agreement covering the seasons 2021/2022, 2022/23 and 2023/24. All the enclosed agreements were signed on October 2019.

It was specifically agreed that, unless terminated by any of the concrete provisions set out at such respect in the first agreement, upon expiration thereof, the second agreement covering seasons 2021/22, 2022/23 and 2023/24 be enforceable between the Parties, upon the specific terms and conditions set out in the said document. Such Agreement is therefore enforceable between the Parties from July 1st, 2021.

After my client's communication dated October 4th 2021 requesting thereby the need for the Club to fulfil its undertakings pursuant to the employment agreement signed between the Parties, the Club answered in a very peculiar manner stating a series of events took place before June 2021 which leads the Club to understand them `as a clear sign of your lack of preparedness for further cooperation and rejection of the signing of a new contract of employment agreement for the seasons 2021/2022-2022/2024´.

Despite the lack of any veracity of the statements and accusations to my client enclosed in the said communication by the Club, it is difficult to understand the actual Club's stance as it appears to convey that my client is the one, not ready to engage with the Club as well as rejecting the signing a new agreement.

The above scenario depicted by the Club is unfeasible from a legal standpoint wherein the employment agreement is already enforceable between the Parties since July 1st 2021; let alone the unbelievable and unmerited ground whereby the Club is trying to avoid the effectiveness of the rights and obligations of the employment agreement.

For the clearance of any doubt, my client understands, as it could not be otherwise, that the employment agreement is effective, enforceable and the Club is already missing the first payment for season 2021/22.

At this concrete respect, please deliver the total due amount to date to my client to the bank account wherein he has previously been receiving his wages to date.

We request hereby for the Club to determine its actual position this respect immediately as my client is not rejecting anything, on the contrary, understands such agreement to be already in place and effective.

It is my client's understanding that the Club is seeking an unmerited subterfuge to elude its financial and legal undertakings towards him.

In light of all the above, my client requests to be immediately integrated with the Club and

for the Club to duly and at once commit to the undertakings upon the employment agreement.

Therefore, in light of my client's actual readiness and availability, refuting thereby any possibility of rejection, we call hereby for the Club to summon my client within next three days as per the due fulfilment of the employment agreement covering the seasons 2021/2022, 2022/23 and 2023/24.

In the event that the Club, CSKA Moscow, should not summon my client, he would be compelled to understand the Club's position is for the agreement to be terminated, lacking any actual willpower to integrate him in the Club. Should that be the case, he does reserve his rights to pursue on behalf of his legal and financial interests before the Basketball Arbitral Tribunal (BAT)." [69]

156. At the hearing, the Player specifically drew the Arbitrator's attention to the underlined parts from the warning letter quoted above and submitted that they convey that the Club was obliged to offer a contract. He further quoted the underlined part from the second warning letter below as attached to [Player Agent]'s email dated 13 October 2021 (underlined emphasis added):

"*Further to your letter dated on October 12th, 2021, addressed to my client, Mr. Aleksandr Shashkov Aleksandrovich, it must be stated the following:*

Pursuant to article 1 of the Additional Agreement N.° 2 to the Labour Agreement of Professional Basketball Player entered into by and between the Professional Basketball Club CSKA Moscow (hereinafter, "PBC CSKA") and Mr. Shashkov on October 1st, 2019:

´Parties agreed that upon the expiration of the Labour Agreement of the Player NN dated 01 of October 2019, ***THE CLUB IS OBLIGED*** *to offer the Player a new Labour Agreement of the Player for a period from July 1, 2021 till June 30, 2024 with the following conditions´. -(Emphasis added).*

Therefore, upon July 1st 2021 the employment agreement is enforceable between PBC CSKA and Mr. Shashkov. CSKA is willingly and illegitimately aiming to disguising an unilateral termination without cause on an alternative scenario wherein Mr. Shashkov did not want to engage with the Club.

Furthermore, I must remind the Club that the fact that Mr. Shashkov has been searching a new basketball team is upon the recommendations of PBC CSKA as a loan for this season was the best feasible option for Mr. Shashkov to develop as basketball Player. The Club itself was aware of all the negotiations at this regard, and it was all structures under the premises of an enforceable agreement between the Parties.

[69] RfA, Exhibit 11.

> *Consequently, PBC CSKA's position in this regard can only be interpreted as a unilateral breach of contract through a premediated scenario by the Club itself to get rid of Mr. Shashkov. The Additional Agreement N.° 2 is effective and enforceable between the Parties from July 1st, 2021, and the PBC CSKA is trying to avoid its effectiveness by producing a surreal scenario which lacks any credibility.*
>
> *Notwithstanding your position, it is our Client's understanding that the employment agreement is in place, effective, enforceable and the Club is already missing the first payment corresponding to season 2021/22.*
>
> *In view of the foregoing, if PBC CSKA does not summon Mr. Shashkov within the next three days as per the due fulfilment of the employment agreement covering the seasons 2021/22, 2022/23 and 2023/24 it would have to be understood that the Club is unilaterally terminating the employment without cause.*
>
> *In the event the PBC CSKA should not summon my client and carry out the proper total due amount to date to my client within the deadline above provided, my client should act accordingly, and without any further notice, he does reserve his rights to pursue on behalf of his legal and financial interests before the Basketball Arbitral Tribunal (BAT).* "[70]

157. Having considered these two warning letters, the Arbitrator fails to see how they, individually or collectively, could be understood as the Player complaining about the Club's breach of clause 1 of Additional Agreement No. 2 by failing to offer a new contract and claiming damages flowing from it. To the contrary, the premise of both letters was, plainly, that an employment agreement was in existence for the subsequent three seasons and the Club was in breach of it by failing to pay and summon the Player.

158. Nevertheless, in the Arbitrator's view, the fact that the Player has failed to precisely formulate his case as aforesaid does not mean that his claim is liable to be dismissed. The Arbitrator – *deciding the dispute ex aequo et bono* – is entitled and indeed obliged to apply general considerations of justice and fairness to the present case. So long as the gist of the Player's claim can reasonably be seen from the documents, and that the Club has had a reasonable opportunity to respond to it, the Arbitrator does not consider it right that such a claim should be ignored simply based on his unsatisfactory pleading.

159. In this regard, in both the Player's pre-action letters and the RfA, repeated references

[70] RfA, Exhibit 13.

and discussions were made surrounding the Club's obligation to offer him a new contract. Remarkably, on 3 October 2021, [Player Agent] acting on the Player's behalf had demanded the Club to offer a contract in the following email (emphasis added):

> "*Dear [Name Club Vice-President],*
>
> *I hope this email finds you well.*
>
> *By the present email I am requesting on behalf of Sasha whom I keep in the copy that you fulfil your obligation under the Additional Agreement No2 dated 1 October 2019 and offer Sasha a new contract as agreed.*
>
> *After we agreed to try to find a transfer option for Sasha and send him for a try-out to Nizhny, you have never responded to my requests regarding when and where should Sasha present himself and thus denied to offer him a new contract as agreed under the Additional Agreement No2. Additionally, until today you have failed to pay all outstanding salary payments to Sasha, which I requested already some time ago.*
>
> *Therefore, I have no other option but to request that you send Sasha the new contract offer as specified above and to pay all outstanding salary payments not later than until 6 October 2021 at noon. Should you fail to honour your obligations Sasha will consider fill-in a request for arbitration before BAT.*
>
> *I sincerely hope that awe can find an amicable solution to this matter.* "[71]

160. Therefore, the Club cannot be said to have been taken by surprise by a claim by the Player based on its failure to fulfil its obligation to offer him a contract. In fact, most likely due to being aware of such a claim, the Club has put forward the *venire contract factum proprium* defence by arguing that, the Player has by conduct induced legitimate expectations in the Club that he did not want to stay with the Club or to ask for a new contract to be signed, and he was therefore estopped from changing his course of action to the Club's detriment and requesting a contract offer in October 2021.[72]

161. It follows that, despite the Player's unsatisfactory pleading in the RfA, the Club has not been prejudiced by the Player's claim based on its failure to offer a new three-year contract, as opposed to its failure to pay under an alleged five-year contract. Guided by

[71] RfA, Exhibit 7.
[72] Answer, paras. 58-67; the Club's skeleton arguments, para. 17.

general notion of notice and justice, the Arbitrator is satisfied, *ex aequo et bono*, that he is entitled to entertain the Player's claim. If the Club has breached its obligation to offer, it cannot then rely on its own wrong to get away from its own breach just because of the Player's imprecisely formulated case which has caused no prejudice to the Club.

162. Since the Club has indisputably failed to offer a new labour contract to the Player upon the expiry of the Agreement on 30 June 2021, it is plain that the Club was, *prima facie*, in breach of its obligation to offer under clause 1 of the Additional Agreement No. 2.

163. As to the Club's estoppel defence, the Club relied on a series of conduct of the Player as evidencing his intention and inducing the Club to believe that he did not want to stay with the Club and did not seek to enter a new contract. These include:[73]

(a) Without having any regular practice and play with the Club's main team, the Player went to the USA in April 2021 for workouts and the 2021 NBA draft, before which he had not requested the Club to offer a new contract.

(b) The Player deliberately chose not to make such a request so as to avoid making payment to the Club under clause 7 of the Additional Agreements Nos. 2 and 3.

(c) After his return to Russia from the USA, the Player did not request Club to offer him an employment contract.

(d) Instead, the Player made it clear that he had to be visible for NBA scouts, for which he needed to either regularly play in the Club's main roster (which the Club cannot guarantee) or to play for another club that participates in a top-tier division.

(e) To meet this criteria of visibility, the Player started actively looking for a new club in Russia and abroad, and eventually went to Nizhny for a try-out in August 2021.

(f) On 27 September 2021, when it appeared that Nizhny did not offer the Player a

[73] Answer, para. 58.

contract, his agent for the first time raised the issue that the Club had to pay salary.

(g) Before 3 October 2021, the Player had never requested the Club to send him an employment offer, but only found it necessary to ask for an employment offer when it appeared that he failed to find any new club.

164. The Club went on to add that: [74]

(a) In July 2021, the Player did not ask the Club about when and where he should arrive to continue the training process, the Club's schedule, summer training camps.

(b) The Player never asked about his future in the Club, in which team he would be playing, and whether he was registered for that team in the RBF.

(c) The Player did not seek any written approval from the Club to take part in a try-out in Nizhny.

(d) When the Player got injured in August 2021, he neither informed the Club nor sought any medical advice from the Club.

(e) The Player not only went to Nizhny for a try-out, but also participated in the tournament in Saint-Petersburg on 3 and 4 September 2021, representing Nizhny. If Nizhny won the semi-final match against Parma, the Player would have been playing against the Club. Despite that, he never sought a written permission from the Club to participate in that tournament.

165. Given the Club's emphasis on the Player's failure to request a new contract, the Arbitrator invited the Parties to comment on whether the Player had an obligation to do so. The Player submitted that he is not obliged in any way to notify his desire to sign a new contract.[75] The Club also agreed that the Player had no obligation, but only the

[74] Answer, para. 62.
[75] Transcript, page 176 lines 18-23, page 178 lines 19-21.

right, to request a new contract.[76] Absent such an obligation, the Arbitrator fails to see the relevance of the Player's failure to request a contract. The Club was obliged to offer it in any event, whether or not the Player made a request. The mere fact that the Player made no such request does not absolve the Club of its obligation to present an offer.

166. Furthermore, before the expiry of the Agreement on 30 June 2021, the Club's obligation to offer a new one did not even arise. Thus, it is irrelevant that the Player made no request when he went to the USA as the offer of a new contract was his expected entitlement post-expiry. Because the Club never offered a new contract, the Player was in any event a free agent after the expiration on 30 June 2021. Hence, there is no reason why he could not act like a free agent since 1 July 2021 while waiting for the Club to make the offer. As such, none of the Player's conducts as relied upon by the Club indicates an unequivocal intention to waive his right to be offered a new contract.

167. While the Club might consider it unreasonable for the Player to sit back and wait for three months before requesting a new contract in early October 2021 for the first time, the same could also be said against the Club when it neither made an offer nor attempted to clarify with the Player about his position as regards the new contract. The latter is even more true given that the Parties had already been discussing about the Player's future since as early as 25 June 2021 when the Club's obligation to offer a new contract would soon arise upon the expiry of the Agreement on 30 June 2021.

168. The Club's neglect of its obligation to offer is also evident from [Club Vice-President]'s testimony below during cross-examination (emphasis added):

> "*Q: But if all the documents were guaranteed, were mandatory, because as you said is obliged to, then the entire duration, the five duration was guaranteed, was entirely guaranteed?*
>
> *A: It was not because, you know, life brings changes, and exactly it brought to the Player, because he didn't want to stay in CSKA for the third season because he will not be seen for the American scouts. That was explained carefully by the agent, also, by the way, in the telephone conversation, not in written, and he clearly told me that if he stays in the Super*

[76] Transcript, page 146 lines 17-19.

> *League team, nobody watch him. If he stays in CSKA main team, he will not get playing time, which was also obvious to all of all, because Player did not develop how we expected. So the only way for him was to look for another team where he can be seen. So he didn't want to stay with us, so the situation changed.*
>
> *Q: So if these agreements are the Club was obliged to present an offer and the Player was obliged to sign, and you said that you didn't, after 21 years of experience, you didn't request the Player to express his will in writing? So you just — with the agent saying , 'Okay, we don't want to stay in CSKA", it's enough for you?*
>
> *A: That is not the case. We never — when the contract expires, we never ask anybody to sign for us that he doesn't want to continue."* [77]

169. Even if one accepts that both parties' plan was for the Player to find a new club, the question arises whether this amounts to a waiver of the Player's claim to be offered a new contract. In the Arbitrator's view none of the actions or omissions of the Player seems to have sent the message that he was willing to waive his right to a new contract with the Respondent, in case the plan to find a new club did not materialize.

170. Moreover, it is telling to note the following testimony of [Club Vice-President] during her questioning by the Arbitrator (emphasis added):-

> "*Q:* […] *you agree that there was an obligation on the Club to offer a contract after the first two seasons, right? But you are saying that the Club did not want to offer the contract in the end because the Player didn't want it, right?*
>
> *A: Correct.*
>
> *Q: That is the only reason, according to you?*
>
> *A: No, I have to admit that we also didn't want that, because he did not develop like we expected. But if before July 1 the agent and the Player insisted us to sign this, we will have to do it.*
>
> *Q: Because, as we can read from the annexes, both parties have an obligation. So the Club had an obligation to offer and the Player had the obligation to sign with the Club. So it seems it's a mutual thing after the first two seasons. So basically there is — under the contract there is no choice. Would you disagree with what I have just said? I know you are not a lawyer but …*
>
> *A: I think there is always a choice when both parties thinks* [sic] *differently after two years*

[77] Transcript, page 92 lines 14-25, page 93 lines 1-14.

> *— what really happened, in fact. So we understood that he is not of the level to play for the main team, but we could keep him at the end of the day like 15th or 16th player. If you look to our roster we had such players in our team anyway. So one of them could be Sasha Shashkov instead of some others who finally stayed with us. But he would not be seen for the American scouts and that is why it was our mutual interest not to keep him in the main team. That is how we understood the story."* [78]

171. In conclusion, the Arbitrator finds that the Player's alleged conducts, before and after 30 June 2021, did not constitute a waiver of his right to be offered a new labour contract or that he was estopped from insisting on his contractual entitlement under clause 1 of Additional Agreement No. 2. It was at any rate unreasonable for the Club, being the party who bears the obligation to offer a new labour contract in the first place, rely on the same as releasing itself from the obligation to offer without seeking any clarification at the material time. The Club's estoppel defence is therefore rejected.

172. For all these reasons, the Arbitrator finds that the Player is *prima facie* entitled to be compensated for his consequential loss suffered as a result of the Club's breach of clause 1 of Additional Agreement No. 2 by failing to offer him a new labour contract. The Arbitrator will address the quantification of such compensation under Issue 4.

7.2.4. Issue 4 – Is the Club liable to pay any compensation to the Player?

173. In the RfA, the Player claimed for his salaries as set out in clauses 2 to 4 of the Additional Agreements Nos. 2 and 3 in the amounts of RUB 15,172,432.00 and EUR 1,043,119.00. In his further submissions dated 25 April 2022, the Player reduced his claim by deducting the compensation he actually or should have received from Nizhny.

174. It is uncontroversial that that the onus lies with the Player to prove his loss caused by the Club's breach. The starting point must be the identical provisions of Additional Agreements Nos. 2 and 3 which, as noted above, stipulate the conditions of the new contract the Parties agreed but failed to conclude for the subsequent three seasons.

[78] Transcript, page 111 lines 21-25, page 112 lines 1-25.

175. Under clauses 2 to 4 of the Additional Agreements Nos. 2 and 3, the Player was entitled to be paid total salaries of RUB 15,172,432.00, EUR 347,710.00, and EUR 695,409.00 for the 2021-2022, 2022-2023 and 2023-2024 seasons, respectively. It is indisputable that, barring unexpected developments, the Player would have been contractually entitled to receive these upon conclusion of the new contract but for the Club's failure to offer it at the outset. Hence, in consequence of the Club's breach, the Player lost the very amount of those salaries he should have earned pursuant to the new contract to be signed. Accordingly, the Player is *prima facie* entitled to be compensated for the salaries under clauses 2 to 4 as his consequential loss caused by the Club's breach.

176. In the Answer at paras. 74-75, the Club relied on clause 9 of Additional Agreements Nos. 2 and 3 and argued that the Player's entitlement to the salary for 2023-2024 season was not guaranteed, but instead at the Club's discretion, so that the maximum compensation for that season should not exceed RUB 500,000.00 as per clause 9.

177. Clause 9 of Additional Agreements Nos. 2 and 3 provides, "[a]*fter 2022-2023 season the Club has the right to terminate Labour agreement and additional agreement of the Player by notifying the Player in writing within writing* [sic] *on or before July 07th, 2022 and paying to the Player a compensation in the amount of 500 000 (Five Hundred Thousand) Russian rubles*".

178. Properly construed, the "*Labour agreement*" referred to in clause 9 is likely to mean the new labour contract to be concluded. On the face of clause 9, it seems that the Club has a discretion, which is without limit and unfettered, to unilaterally terminate the new contract by written notification, irrespective of the Player's performance or objection.

179. In his skeleton arguments on page 8, the Player submitted that:

> "[…] *he has not been able to duly render services for Respondent in virtue of the breach of the Agreement and, therefore, Claimant has not been presented the reasonable opportunity for him to attain by way of his performance the extension agreed for the last year. This determent has been solely generated by Respondent and it should not*

double penalize Claimant as this scenario must be jointly construed with the fact that Claimant's early career has been significantly damaged by the breach and the circumstance that would be already see mitigated his compensation by the salaries actually received in Nizhny."

180. However, in light of the clear contractual language, the mere fact that the Player could no longer demonstrate his value to the Club is of no material importance unless he could establish, on the balance of probabilities, that the Club would not exercise its unfettered discretion to terminate the new contract if he had the chance to perform.

181. The Arbitrator is mindful of the inherent difficulties in proving such a hypothetical future event, and thus accepts that the Player cannot be put to strict and full proof. Notwithstanding this, the Player must be expected to submit some concrete evidence (even circumstantial) to substantiate a reasonable inference or conclusion that the Club would be willing to keep him for the last season in 2023-2024, particularly when the Club had already manifested its reluctance to offer him a new contract in the first place.

182. As a matter of fact, the Club was not particularly impressed by the Player's performance in the past. In her witness statement at para. 18, [Club Vice-President] explained that the Player was not good enough for the Club's main roster and also missed a lot of chances due to his illness and injuries in previous seasons. Even during his try-out with Nizhny, according to Nizhny's certificate dated 24 September 2021, the Player underwent rehabilitation procedures immediately upon his arrival in Nizhny on 4 August 2021 up to 30 August 2021.[79] The Club's unwillingness to retain the Player for the subsequent three seasons is also evident in [Club Vice-President]'s testimony quoted in para. 170 above. Apart from bare assertions, little if any evidence has been adduced by the Player to prove that he would have demonstrated sufficient value to the Club by 2023-2024.

183. On the available evidence, the Arbitrator considers it more likely than not that the Club

[79] RfA, Exhibit 6; Answer, Exhibit 8.

would exercise its discretion to terminate the new contract for the 2023-2024 season even if a new contract covering the three seasons up to 2023-2024 was concluded. Hence, by virtue of clause 9 of Additional Agreements Nos 2 and 3, the Player is only entitled to RUB 500,000.00 as agreed compensation for the 2023-2024 season.

184. To summarize, subject to the question of mitigation considered below, the Player is entitled to damages in the amounts of (i) RUB 15,172,432.00 as lost salary for the 2021-2022 season; (ii) EUR 347,710.00 as lost salary for the 2022-2023 season; and (iii) RUB 500,000.00 as lost compensation payable by the Club for the 2023-24 season.

185. On mitigation of loss, the Club submitted that[80], under the Player's employment contract with Nizhny dated 15 November 2021[81], the Player is entitled to salaries and bonuses for the 2021-2022 and 2022-2023 seasons in the respective amounts of RUB 2,894,807.50 and RUB 6,554,820.00. Thus, the Club argued, the aggregate sum of RUB 9,449,627.50 should be deducted from the Player's claim. In other words, the compensation to be awarded should not exceed RUB 6,222,804.50 and EUR 347,710.00: i.e., RUB 15,172,432.00 (*for the 2021-2022 season*) + EUR 347,710.00 (*for the 2022-2023 season*) + RUB 500,000.00 (*for the 2023-2024 season*) – RUB 9,449,627.50 (*recoverable from Nizhny for the 2021-2022 and 2022-2023 seasons*).

186. In his submissions dated 25 April 2022, the Player conceded that his compensation for the employment with Nizhny may be credited to his claim against the Club. However, since the Nizhny labour contract was terminated on 14 February 2022, the Player only received the total sum of RUB 593,236.04: i.e. RUB 100,000.00 (November 2021) + RUB 15,004.00 (December 2021) + RUB 100,000.00 (January 2022) + RUB 378,232.04 (February 2022). For this reason, the Player argued that deduction should be no more than the aggregate of such paid-up amounts. In the alternative, the Player argued that maximum deduction should be the amount of only his salaries for the 2021-

[80] Answer, paras. 78-79; Answer, page 17 footnote 25.
[81] RfA, Exhibit 15.

2022 and 2022-2023 seasons, respectively RUB 1,300,000.00 and RUB 3,000.000.00.

187. Whilst the Player's skeleton arguments made no further submissions in this regard, the Club's skeleton arguments at paras. 27-29 added that:

(a) The Player was also entitled to receive from Nizhny a sum of RUB 285,000.00 under their termination agreement dated 14 February 2022.

(b) In any event, the Player did not fulfil his duty to mitigate his loss, as it was his decision not to continue the employment with Nizhny so that he could travel again to the USA to participate in another NBA draft.

(c) Regardless of the early termination of his contract with Nizhny, the full amount that the Player was entitled to receive under that contract and waived at his own discretion should be deducted from his claimed amount against the Club.

(d) Therefore, the compensation to be awarded to the Player should not exceed RUB 6,222,804.50 and EUR 347,710.00.

188. Meanwhile, at the hearing, [Player Agent] mentioned for the first time that the Player was playing under a contract for Ilirija in Slovenia.[82] Despite this, the Player maintained, in his oral closing, his stance as stated in his submissions on 25 April 2022 and reiterated the maximum mitigation he would accept in respect of his contract with Nizhny.[83]

189. In light of this revelation from [Player Agent] at the hearing, the Arbitrator directed the Player to provide the relevant contract and payment records in respect of his recent employment in Slovenia. The Arbitrator also asked the Club whether it would need to make further submissions after being provided with such records, or it would be happy to leave the matter to the Arbitrator to deal with. The Club replied that its position is that,

[82] Transcript, page 69 lines 4-14.
[83] Transcript, page 186 lines 12-17.

as a matter of principle, everything has to be deduced and thus would not need to make another recalculation unless there is something extraordinary.[84]

190. On 16 December 2022, the Player submitted his employment contract with Kosarkarski Club Ilirija dated 14 September 2022, together with its English translation. They were circulated to the Club which made no further submissions.

191. Under BAT jurisprudence, it is trite that a player has the duty to mitigate his loss, and when assessing the damages, any amounts the player earned or could have earned by exercising reasonable care and efforts during the remaining duration of the player contract in suit must be deducted to prevent overcompensation.

192. In the Arbitrator's view, the new labour contract, had it been concluded between the Parties, would cover three seasons, i.e. 2021-2022, 2022-2023 and 2023-2024 seasons. However, by reason of the Club's option to terminate the new contract for the 2023-2024 season as aforesaid, the Player would not lose any salaries for that season as a result of the Club's failure to offer a new contract. Therefore, in so far as the 2023-2024 season is concerned, the Player would suffer no loss and have no duty to mitigate.

193. On the other hand, the Player's labour contract with Nizhny, had it not been prematurely terminated, would cover four seasons, i.e. 2021-2022, 2022-2023, 2023-2024 and 2024-2025. As stated in the preceding paragraph, only the remuneration for the 2021-2022 and 2022-2023 seasons are relevant for the assessment of damages.

194. Under clause 3.2.1 of the Nizhny labour contract, the Player's base salaries for the 2021-2022 and 2022-2023 seasons were respectively RUB 1,300,000.00 and RUB 3,000,000.00, totalling RUB 4,300,000.00.

195. In addition, Nizhny also agreed to pay a monthly bonus of RUB 212,641.00 and RUB 296,235.00 respectively for those two seasons, i.e. RUB 1,594,807.50 (*7.5 months*

[84] Transcript, page 73 lines 12-15, page 154 lines 12-25, page 187 lines 24-25, page 188 lines 1-12.

from 15 November 2021 to 30 June 2022) and RUB 3,554,820.00 (*12 months from 1 July 2022 to 30 June 2023*). These bonuses therefore add up to RUB 5,149,627.50.

196. Clause 3.2.2 of the Nizhny contract further provides "[t]*he monthly bonus is paid in full, provided that the Employee properly performs their work functions, official duties, observe the sports regime and does not disciplinary penalties in the paid month*". It follows that, had the Player duly performed his duties with Nizhny, he would have earned a total amount of RUB 9,449,627.50 as full payments of his salaries and bonuses for the 2021-2022 and 2022-2023 seasons.

197. Although the Nizhny contract has no payment schedule for base salaries, absent contrary evidence, it is fair and reasonable to assume that the total base salary of RUB 1,300.000.00 for the 2021-2022 season would be proportionately divided into 7.5 instalments for each month from 15 November 2021 to 30 June 2022. Therefore, by the time the contract was terminated on 14 February 2022, the Player would have been entitled to at least 3 months' base salaries of RUB 520,000.00 (i.e., RUB 1,300,000.00 ÷ 7.5 x 3 months), plus 3 months' bonuses of RUB 637,923.00. Thus, when the Nizhny labour contract was terminated, the Player should have been entitled to the total amount of RUB 1,157,923.00, plus RUB 285,000.00 under the termination agreement.

198. According to the Player, however, he has only received a total sum of RUB 593,236.04 from Nizhny for the period from 15 November 2021 to 14 February 2022. No explanation at all was proffered by the Player on whether Nizhny underpaid him and if so why. Nor has the Player explained whether he has received the amount of RUB 285,000.00 as compensation for early termination. Despite the Club's allegation in its Answer that the Nizhny labour contract was terminated prematurely due to the Player's own decision, the Player made no rebuttal submissions whatsoever.

199. Given that the Player has successfully secured his employment with Nizhny shortly after the Club's breach, and in the absence of reasonable explanations as aforesaid, the Arbitrator sees no reason why the total amount of RUB 9,449,627.50 the Player

would have been entitled to receive from Nizhny should not be deducted from his claim herein against the Club. On the available evidence, and in the absence of other reasons, there is no justification to attribute the risk of early termination of the Player's alternative employment with Nizhny (or the risk of Nizhny's underpayment, if any) to the Club.

200. As to the Player's labour contract with Ilirija, it lasts only from 1 October 2022 to 1 May 2023 (i.e., the 2022-2023 season), and pays him a total salary of EUR 7,000.00 (or around RUB 520,842,70). In his submissions dated 16 December 2022, he highlighted that the contract reflects "*the financial damage caused to Claimant as consequence of the unmerited termination of the labour contract signed with the Respondent*".

201. The Arbitrator rejects the Player's submissions that there is a causal link between the termination (or rather, the expiry) of the Parties' labour contract and his significantly lower remuneration under the Ilirija contract. Even with Nizhny, the Player managed to bargain for a four-year contract, and more importantly, a considerably higher salary of RUB 3,000,000.00 (or around EUR 40,260.00) together with monthly bonus for the same 2022-2023 season. Had the Player stayed with and played for Nizhny instead of Ilirija for that season, he would have received significantly more compensation, thereby better mitigating his loss from the Club's breach. The Player has not explained such difference in both the duration of employment and the amount of remuneration. In the circumstances, the Arbitrator finds no justification to attribute to the Club the risk of the Player transferring to Ilirija with a shorter duration and a lower remuneration.

202. In summary, as a result of the Club's breach by failing to offer the Player a new contract for subsequent three seasons, the Player suffered a loss in the amounts of:

(a) RUB 15,172,432.00 and EUR 347,710.00 as the lost salaries he would have earned for the 2021-2022 and 2022-2023 seasons;

(b) *Plus* RUB 500,000.00 as compensation he would have received for the Club's early termination under clause 9 for the 2023-2024 season,

(c) *Minus* RUB 9,449,627.50 as the full amount of salaries and bonuses owed by Nizhny for the 2021-2022 and 2022-2023 seasons.

203. Accordingly, the Arbitrator finds that the Club is liable to compensate the Player in the principal amounts of **RUB 6,222,804.50** and **EUR 347,710.00**. By virtue of clause 5.1.1 of the RBF's model contract (e.g., the Agreement), which obliges the Club to "*timely and in full volume pay to the Sportsman the salary in the amount* […] *established by this contract",* and of clause 5.1.11 of the Agreement, which obliges the Club to "*timely and full calculate, withhold and transfer to the respective budgets any and all taxes and levies for the Sportsman in accordance with the law of the Russian Federation*", all compensation paid by the Club should be net of Russian taxes.

204. As to default interest, the Player requests interest on the principal amounts at the rate of 5% per annum up to the date of filing the RfA on 23 December 2021. In the RfA at para. 253, the Player submitted that the interest should start accruing respectively:

(a) from 1 September 2021 on the net amount of RUB 1,517,243.20 (i.e., alleged salary instalment for September 2021);

(b) from 1 October 2021 on the net amount of RUB 1,517,243.20 (i.e., alleged salary instalment of October 2021); and

(c) from 4 October 2021 on both the amounts of RUB 12,137,945.60 (i.e., the remaining balance of the salaries for the 2021-2022 season) and EUR 1,047,119.00 (i.e., the aggregate sum of the salaries for the 2022-2023 and 2023-2024 seasons).

205. Starting with the rate of interest, although clause 3.8 of the Agreement provides for interest under Russian law, that clause only applies when "*the Club* [is] *in reach* [sic] *of the established time of payment of the salary, the leave allowance, the dismissal allowance and other payments due to the Sportsman*", but not when the Club breached by failing to offer a new contract. Hence, that clause is not applicable on the facts of the present case and neither Party has relied on it. The Arbitrator is prepared to accept

the usual default interest rate of 5% under well-established BAT jurisprudence.

206. As regards the accrual of default interest, in his submissions dated 25 April 2022 at para. 10, although the Player reduced his claimed amounts of compensation by deducting the sum he actually received or would have received from Nizhny, he adopted the same interest starting dates of 1 September 2021, 1 October 2021 and 4 October 2021 without adjusting the principal amounts.

207. The Arbitrator rejects the Player's proposal to adopt 1 September 2021 or 1 October 2021 as the interest starting date for any part of the awarded compensation. Additional Agreements Nos. 2 and 3 only provide the total salaries for the subsequent seasons and do not specify the payment schedules. It is unknown whether and how much the Club would owe the Player by either date under the new contract. Therefore, it would be unreasonable to adopt these two dates as interest accrual dates for the principal amounts alleged to be due by such dates, when these due dates are actually unknown.

208. On the other hand, it is well-established in BAT jurisprudence that interest runs from the day after the date on which the amounts are due. As the Club's breach gave rise to the Player's entitlement to compensation, interest on such compensation should in principle start accruing from the date immediately after the breach. While Additional Agreements Nos. 2 and 3 do not stipulate the due date for the Club to offer a new contract, the Arbitrator notes that it was on 4 October 2021 when the Club made clear for the first time its intention not to employ the Player for the subsequent three seasons, thereby committing a clear breach. Interest should start to run from 5 October 2021.

7.2.5. Conclusion on Liability

209. In conclusion, deciding the case *ex aequo et bono*, the Arbitrator is satisfied and finds that the Club is liable to pay the Player the amounts of **RUB 6,222,804.50** and **EUR 347,710.00**. In line with established jurisprudence of the BAT, the Arbitrator also finds it fair and reasonable to award the interest sought by the Player on the foregoing amounts at the rate of 5% per annum from 5 October 2021 up to the date of filing the

RfA on 23 December 2021 (i.e., 80 days), totalling **RUB 68,195.12** and **EUR 3,810.52**.

8. Costs

210. In respect of 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).* […]"

211. On 5 May 2023, the BAT President determined the arbitration costs in the present matter to be EUR 29,970.00.

212. 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 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.*"

213. The Player has been successful only for around 34.53% of his claims as initially sought in his RfA (or around 34.75% or 36.13% of his two alternative claims as subsequently sought in his submissions dated 25 April 2022). Moreover, the Player has failed on his fundamental contention that the employment agreement with the Club was a five-year one, and only succeeded in his claim following the fine-tuning or reformulation of his claim at the hearing. However, the Club did breach the contract and thus made it necessary for Player to bring his claims to this arbitration. Taking all these factors into account, and in the exercise of his discretion pursuant to Article 17.3 of the BAT Rules, the Arbitrator determines that each Party shall bear an amount of the costs of the arbitration equal to the total amount advanced during these proceedings by it, i.e., the Player shall bear EUR 14,970.00 and the Club shall bear EUR 15,000.00.

214. 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.*"

215. 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 highest amounts as initially claimed by the Player in this arbitration, the maximum amount of contribution is up to EUR 40,000.00.

216. The Player claims contribution of legal fees in the amounts of EUR 40,000.00. The Player also claims reimbursement of the non-reimbursable handling fee paid by him in the total amount of EUR 7,000.00.

217. The Club claims contribution of legal fees in the amount of CHF 43,467.50, which according to the Club equals EUR 42,993.36 based on the exchange rates prevailing at the time the relevant payments were made by the Club to its counsel.

218. For the reasons as stated in para. 213 above, the Arbitrator determines that it is fair and reasonable that each Party shall bear their own legal fees and expenses.

9. AWARD

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

1. **CSKA Moscow Professional Basketball Club shall pay Mr. Alexandr Shashkov the amounts of RUB 6,222,804.50 and EUR 347,710.00 net of Russian taxes.**

2. **CSKA Moscow Professional Basketball Club shall pay Mr. Alexandr Shashkov interest in the amounts of RUB 68,195.12 and EUR 3,810.52**

3. **Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 9 May 2023

Benny Lo
(Arbitrator)