

ARBITRAL AWARD

(BAT 1915/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Clifford J. Hendel

in the arbitration proceedings between

Mr. Dorde Dzeletovic

- Claimant -

represented by Mr. Ivan Todorovic and Mr. Velimir Zivkovic, attorneys at law,

vs.

Vsl "SSK" (BC Pieno Zvaigzdes)
Musos g. 14, Pasvalys, Lithuania

- Respondent -

represented by Mr. Antanas Paulauskas, attorney at law,

1. The Parties

1.1 Claimant

1. Mr. Dorde Dzeletovic (the "Player") is a Serbian professional basketball player.

1.2 Respondent

2. Vsl SSK (BC Pieno Zvaigzdes) (the "Club", and together with the Player referred to as the "Parties") is a professional basketball club from Pasvalys, Lithuania.

2. The Arbitrator

3. On 10 February 2023, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal (the "BAT"), appointed Mr. Clifford J. Hendel as arbitrator (the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal in force as from 1 January 2022 (the "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 27 September 2022, the Player and the Club entered into an agreement whereby the latter engaged the former for the 2022/2023 season (the "Agreement").
5. The Player (of Serbian nationality and hence not a citizen of the EU) arrived in Lithuania on 30 September 2022.

6. As per the information contained in the Player's passport, he had already stayed in the Schengen Area for 13 days before his arrival in Lithuania, meaning that the remaining period of stay without a visa was 77 days in total (in accordance with the rule of stay of 90 calendar days within the 180 days period in the Schengen Area). The Club denies having notice of this. Concretely, the Club states in the Rejoinder that "*Claimant at no point of time [...] mentioned this information to the Respondent or raised the possibility of violating the Schengen Area rules*"¹ and thus "*Claimant's conduct instilled a genuine belief within the Respondent that there was no imminent violation of the EU 90/180-day rule*"². This notwithstanding, the Respondent "*acknowledges [...] potential oversight in not inquiring about the Claimant's previous stays in the Schengen Area [...]*"³.
7. In light of the foregoing, the Player was able to stay in Lithuania until 15 December 2022 (this date would have been 28 December 2022 in case there had been no previous stay of the Player prior to his arrival in Lithuania).
8. With that in mind, since his arrival, the Claimant participated in the Club's daily routines, including trainings, matches and adjoining activities.
9. The first time the Player showed his concerns about the situation of his visa / work permit was on 28 November 2022, when he touched base with [Player's Agent] (brother of [Player's 2nd Agent]):⁴

"I am good, what about you? Just two things about the club [...] And second thing ,they haven't done anything about my papers here(work permit) and its been 2 months now since I arrived and I am only allowed to be 90 max in EU without them! This takes time to get so If you could just check with the team what's happening about that?"

¹ See para. 49 of Rejoinder dated 19 May 2023.

² See para. 59 of Rejoinder dated 19 May 2023.

³ See para. 48 of Rejoinder dated 19 May 2023.

⁴ See exhibit 7 to the Request for Arbitration.

10. Over the next days, that conversation continued, and even the Player made reference to the fact that another player of the Club was experiencing a similar situation.
11. The feedback received by the Player was that the Club was “*working on it*”.
12. On 6 December 2022, a representative of the Club replied to the Claimant as follows:⁵

“[...] I will go to the migration department tomorrow will [sic] [Player’s teammate], so I will ask about your situation, because there are long queues in the migration department. I will make a reservation and we will have to go there together. But first of all I need some information. Text me your place of birth, marital status, residence address in the country you were coming from, name of educational institution, your education, indicate the year of graduation”.

13. On 14 December 2022, the Club’s representative informed the Claimant of a change in the scheduled appointment (15 December 2022 according to Club representative’s message of 9 December 2022) as follows:⁶

“Hello, the time of the visit to migration department is changing, we will not go tomorrow, you will receive a nonfirmation [sic] code to your email, send me that code okay? I need it to fill the request of migration department”.

14. On that same date, the Player confirmed the receipt of a new appointment for 29 December 2022 at 9:30 am and he asked the Club’s representative whether there was any possibility of going any earlier. The Club’s response was as follows:⁷

“At this moment there is no possibilities, because the waiting visa is jot [sic] enough for you, you are not a citizen of the Eurooean [sic] Union, you need a temporary residence [sic] permit in a Lithuania. After submitting the apilication [sic], it turned out that you need to

⁵ See exhibit 10 to the Request for Arbitration.

⁶ See exhibit 10 to the Request for Arbitration.

⁷ See exhibit 11 to the Request for Arbitration.

provided [sic] a certificate of criminal record, that you have not [sic] been convicted for 2 years before arriving in the EU. Can you get that certificate? All documents have been submitted, only this certificate needed to migration department”

15. On 15 December 2022, this same representative from the Club contacted the Migration Department and received assurances that the Claimant would be issued a so called “waiting visa” on 29 December 2022 for a period of examination of his application for a temporary residence permit, but not more than for 5 months. This was communicated to the Claimant on the same day:⁸

“You will get waiting visa without certificate 29 of December, when we will go to migration department, I just talked with one person. You won’t be illegal, so everything is ok 😊”.

16. The explanations provided by the Club for these changes were mainly the following:⁹

“They told us to cancel the visit and register for another date for a waiting visa before obtaining a residence permit in Lithuania, the next visit was received exceptionally on December 29. Last year, it was enough just to sign that you were not convicted, and this year we have to submit a certificate. That’s why”.

17. On 16 December 2022, bearing in mind the timings provided in para. 7 above, the Claimant decided to take the first flight back home to Serbia from Riga, Latvia, the nearest airport with international flights. The Respondent affirms that the Claimant left Lithuania without informing the Respondent of his plans in advance or having its permission. However, this fact is partially contradicted by Respondent’s Answer (because it seems that the head coach of the Respondent was at least informed):¹⁰

“Although the [head coach of the Respondent] and his [assistant to the head coach of the Respondent] confirmed that the Claimant had come to their office right after the evening practice held on 16 December 2022 and told them about his apparent plans to leave. They

⁸ See exhibit 12 to the Request for Arbitration.

⁹ See exhibit 12 to the Request for Arbitration.

¹⁰ See para. 29 of Answer dated 17 March 2023.

both believed that the Claimant would not be leaving Lithuania as [head coach of the Respondent] categorically had objected to that and the Claimant had not replied to that objection in any opposing manner [...]”.

18. On 20 December 2022, the Respondent sent the Claimant the following communication:¹¹

“Vsi SSK BC PIENO ZVAIGZDES informs the agents ([Player’s 2nd Agent] and [Player’s 3rd Agent] and the player you represent Dorde Dzeletovic (born in 1993-10-09), that the club is waiting for the offending player to join the team until 28.12.2022, because he is registered in Migration Department for a visit on 29.12.2022 due to a temporary residence permit and waiting visa issuance. The player must have a certificate of innocence from his home country (Serbia) with him, which must be submitted to the Migration Department. If these conditions are not fulfilled by 30.12.2022, the club will make arrangements for termination of the agreement”.

19. In accordance with the above, the Claimant booked a flight from Belgrade to Riga for 28 December 2022. This included a return flight on 30 December 2022 just in case his administrative problem was not solved by then.
20. As per the Claimant’s allegations, he *“would have the right on the additional three days of stay in the Schengen area, which was the reason why he had bought the return ticket, while his permit and visa potentially could not be obtained right away”*¹².
21. On 27 December 2022, the Respondent sent the Claimant a further communication:

“Vsi SSK BC PIENO ZVAIGZDES reiterates that the player you represent Dorde Dzeletovic (born in 1993-10-09), has left the club voluntarily and missed two matches, which were on 2022 December 17th and 2022 December 22nd. The player also did not participate in the practices process from 2022 December 16th until today. For these violations, the club’s board will make a decision of financial penalties and other sanctions for the player. Furthermore the club notes that there is no such a point in the agreement according to which it would be mandatory to take care of the player’s temporary residence permit in

¹¹ See exhibit 16 to the Request for Arbitration.

¹² See para. 1.27 of Request for Arbitration.

Lithuania or a visa. According to the requirements of the Migration Department of the Republic of Lithuania, a foreigner must personally submit an application for a temporary residence permit in Lithuania by connecting to the Migration Department's electronic system through his e-mail.

All the documents required for the player to obtain a temporary residence permit and a waiting visa (health insurance, certificate for the provision of residential premises, mediation letter) were submitted to the migration department on time, this can be confirmed by the migration department. The club is not obliged to compensate the player's travel expenses because he left the club arbitrarily without permission, the [Player's 3rd Agent] was verbally informed about the fact that the player was forbidden to leave the club. The player did not respond to that".

22. The Claimant informed his agent about his arrival time in Riga who informed the Claimant that there would be no person from the Club to pick him up at the airport to bring him to Lithuania, a drive of some two hours. This fact and his alleged doubts on the process, made the Claimant decide not to take the flight and stay in Serbia. This decision was apparently not communicated by the Claimant to the Respondent. As such, the scheduled appointment at the Migration Department was missed.
23. After that, on 5 January 2023, the Claimant's legal counsels sent a communication to the Club, which mainly provided as follows:¹³

"[...] We have been informed by the Client that he has arrived in Lithuania on September 30th, 2022, in order to join Pieno Zvaigzdes Pasvalys („Club") and that he has demanded the Club's representatives during November and December 2022 to initiated the formal process for the obtaining of the VISA requirement for his legal stay in Lithuania.

We are also informed that the Club has scheduled the term for the December 15th, 2022, by the Migration Authorities in Lithuania, however this was canceled by the Club, as there were missing documents for the visa application procedure. At that point of time Client has reached his 90th day of stay within the Schengen area and had to return to Serbia, in order to avoid breach of Schengen rules (stay up to maximum 90 days within 180 days period). This was due to the fact that previously, during June and July 2022, the Client has already stayed in countries of Schengen area and that he has stayed in Lithuania starting from September 30th, 2022. Our Client has the written proof of this, as this is clear from his passport stamps. Since the Club has informed the Client that the term scheduled for

¹³ See exhibit 21 to the Request for Arbitration.

December 15th, 2022 has been cancelled and the new term has been appointed on December 29, 2022, the Client realized that there have been no chances at all that the necessary visa could be obtained within the deadline.

Further on, Club has sent the email to the Client dated December 19th, 2022, informing the Client that his contract is suspended and, in the email dated December 20th, 2022, that the Club expects the Client to appear to the appointed term by Migration Department on December 29, 2022. In the third email dated December 27, 2022, the Club informed the Client that it was the duty of the Client to obtain the visa by himself and about the consequences of missing the matches.

We bring your attention to the facts that the Agreement stipulated that the Club engaged the skilled basketball player, Mr. Dorde Dzeletovic, and that your club is a Lithuanian seated entity, familiar with the Lithuanian [sic] regulations, thus responsible to provide full support and documents needed for the obtaining of the visa for Mr. Dorde Dzeletovic.

Our assumptions is that due to all facts of the case, documents which we possess (which are not all here mentioned for the purposes of the eventual arbitration proceedings effective preparation), Club has acted bad faith towards our Client and has not provided necessary support for the obtaining of the visa for the Client and that has demanded from the Client to breach Schengen regulations, which was not acceptable for our Client.

Irrespective [sic] of such (mis)behaviour of the Club, the Client had the good will to adhere to the contract and he has bought the airplane ticket for December 28th, 2022, in order to appear on the scheduled term in the Migration [sic] Department on December 29th, 2022. In this regard, the Club has informed the Client via his agent that it rejects to pick-up the Client at the airport in Riga, Letonia, which was the sole reason for the Client's giving up from the return trip to Lithuania.

The omission of the Club to prepare necessary documentation and provide full support to the Client for the obtaining of the visa, had the severe consequences to our Client, having in mind that it is no longer possible for him to stay in the Schengen area, neither for tourist nor for sport reasons, including family trips from Serbia to the Schengen area. The Client had played in the previous years solely in the Schengen area countries and he had earned salaries for his engagements. Now, it is impossible for the Client to play in the Schengen area and to travel, and therefore, this is the reason for the serious limitations for our Client.

Having in mind the above mentioned, the Club has breached the Agreement with Mr. Dzeletovic and caused high damages and costs to the Client. However, Mr. Dzeletovic is still willing to settle this dispute amicable and therefore, we propose to conclude the separate Amicable Agreement on the termination of the Agreement Sportines Veiklos Sutartis dated September 27, 2022, which would include the monetary compensation to the Client in the amount [sic] of €17.500 (seventeen thousand five hundred euros), which amounts [sic] to three salaries and airplane tickets, net of taxes and similar public contributions. Please have in mind that by means of this proposal, the Client does not waive any of his rights, including the right on the full compensation of all his damages, costs and other receivables, and that this amount [sic] is proposed solely as the amicable solution to the situation at hand, in order to avoid the potential BAT proceedings. [...]"

24. On 9 January 2023, the latter communication was answered by the Respondent, by notifying the Claimant of the unilateral termination of the Agreement as follows:¹⁴

"[...] It is to be noted that the Player arbitrarily left the Club and ran away from his contractual duties under the Agreement without informing the Club and without the Club's consent as of 16 December 2022 and has not returned to the Club since then. As of 16 December 2022, the Player missed all the Club's practices and 3 (three) games of the Club, thus disrupting the Club's normal activities and competitiveness.

After the Player's unexpected and arbitral departure, the Club has contacted his agents and the Player himself requesting him to return to the Club. By the letter of 20 December 2022, the Club emphasized that the Player should return to the Club until 28 December 2022. The Player's return until this date was of the utmost importance due to the fact that the Player was registered for a visit at the Migration Department of the Republic of Lithuania on 29 December 2022 in order to have the Player granted with the visa, which would enable the Player to stay in Lithuania until the temporary residence permit is issued to him. Furthermore, the Club explicitly warned the Player that had he failed to return to the Club until 28 December 2022, the Club would terminate the Agreement unilaterally.

The Player has not returned to the Club neither until 28 December 2022, nor until the present moment, thus clearly demonstrating his negligent attitude towards his contractual duties under the Agreement, his decision to willfully abandon them and have the contractual relationship between the Club and the Player terminated. The Player's will not to return to the Club is also evinced by the letter of Mr. Ivan Todorovic sent to the Club on behalf of the Player on 05 January 2023, whereby the Club was proposed to conclude the agreement for the termination of the Agreement.

With reference to the foregoing, it is to be concluded the Player has seriously breached the Agreement and there is a just cause for the Club to unilaterally terminate the Agreement. Thus, we hereby inform the Player and his representatives that the Club has decided to terminate the Agreement unilaterally with immediate effect as of 09 January 2023.

*The Club hereby also emphasizes that it has incurred the respective costs in reliance on the Player's proper performance, which failed to amortize as result of the breach of the Agreement by that Player. These costs include EUR 460.00 for the flight ticket, CHF 250.00 for the acquirement of the letter of clearance and EUR 4,010.00 for the agency fees paid to the Player's agents. **Therefore, the Club hereby requests the Player to pay the Club a compensation for these costs not later than until 20 January 2023.***

Furthermore, it has been generally accepted in employment law that the employee owes a compensation to the employer because of his unjustified departure from his employment. A "special indemnity" or a compensation for "professional damages" has also been

¹⁴ See exhibit 22 to the Request for Arbitration.

recognized by the Basketball Arbitral Tribunal in its jurisprudence.

*It should be underlined that the departure of the Player caused complications for the Club in maintaining its competitive level and disturbed the Club's sporting activities. Thus, the Club is of the opinion that the Player is liable to pay the Club an indemnity of not less than EUR 20,000.00 in order to compensate for the inconvenience and damages caused to the Club due to the arbitral and unexpected departure of the Player in the middle of the season. However, the Club notes that it is willing to hear the Player's position on the volume of "special indemnity" and seek for an amicable agreement on its payment to the Club. **Thus, the Club invites the Player to present his position in this regard not later than until 20 January 2023.***

[emphases as in the original]

25. As a response to the Club's unilateral termination of the Agreement, the Player sent on 14 January 2023 the following letter (originally sent on 12 January but slightly amended afterwards):¹⁵

*"Our client, Mr. Dzeletovic, **strongly rejects your assertions that he had left the Club arbitrarily and ran away from his contractual duties.** Mr. Dzeletovic has insisted on numerous occasions from the Club and its representatives that his visa for the stay in Lithuania needs to be solved, i.e. that the visa should be obtained. In addition, our Client has informed the Club timely that he has a restriction of staying within the Schengen zone, as a Serbian passport holder. More concrete, Mr. Dzeletovic could not stay more than 90 days within the 180 days period and our Client has also informed the Club that priorly to his first entrance in Lithuania he had spent time in the Schengen area already. For these assertions we possess the adequate evidence.*

The Club has scheduled the first appointment by the Migration Office of Lithuania for December 15th, 2022, however, this date was cancelled by the Club as it appeared that additional documentation is needed and the Club has scheduled the new date for December 29th, 2022.

*At that point of time, our Client was in risk of staying more then [sic] 90 days within the 180 days in the Schengen zone and the Club was familiar with this fact. **Therefore, Mr. Dzeletovic did not voluntarily left the Club and Lithuania, but he had to leave the country in order not to be penalized for his overstay, contrary to the regulations for the Schengen zone.** We emphasize that Mr. Dzeletovic has played basketball in recent years mostly in the clubs with residence within the Schengen zone. **Obviously** [sic], **there is a misunderstanding** [sic] **by the Club or the Club ignores the fact of Mr. Dzeletovic urgency to leave the country due to the legal reasons.***

¹⁵ See exhibit 23 to the Request for Arbitration.

*Even though, Mr. Dzeletovic was still willing to return to Lithuania and has bought the airplane tickets Belgrade to Riga for December 28th, 2022 (arriving to Riga at scheduled time 22:15 p.m), in order to be ready to appear in the Migration Office on the scheduled term – December 29th, 2022. This was made known to the Club representatives. However, **the Club has rejected to pick-up the Client at the airport in Riga, Letonia**, which was the sole reason for the Client's giving up from the return trip to Lithuania.*

For these reasons, our assertions are the following: 1) the Club has breached the Agreement with our Client, 2) the Club should compensate the ammounts [sic] stated in our Letter dated January 5th, 2022, to our Client, 3) our Client strongly rejects your claim for indemnities to the Club, demanded by your Letter dated 09 January 2023. The Client herewith does not waive any further assetions [sic] or claims towards the Club.

*As we see no possibilities for compromise, we would initiate the BAT proceedings until **January 17th, 2023**".*

[emphases as in the original]

26. The Claimant then signed a new agreement with the club KK Vojvodina from Novi Sad, Serbia on 12 January 2023.¹⁶
27. Therefore, while the Respondent considers that the Agreement was properly terminated by it on 9 January 2023 upon the Player's absence (to be considered as a serious breach), the Claimant considers that obtaining the visa / temporary residence permit was something which should have been done by the Club and that it was the Club that breached the Agreement by not being able to "lawfully employ" the Player within the prescribed period.

3.2 The Proceedings before the BAT

28. On 30 January 2023, Claimant filed the Request for Arbitration giving rise to this proceeding. He also duly paid the non-reimbursable handling fee of EUR 1,000.00, which

¹⁶ See exhibit 26 to the Request for Arbitration.

was received by the BAT on 26 January 2023.

29. On 14 February 2023, the BAT informed the Parties that Mr. Clifford J. Hendel had been appointed as the Arbitrator in this matter, invited Respondent to submit its Answer by 7 March 2023 and fixed the advance on costs to be paid by the Parties on or before 24 February 2023 as follows:

<i>"Claimant (Mr. Dorde Dzeletovic)</i>	<i>€ 2,750.00</i>
<i>Respondent (Vsl SSK)</i>	<i>€ 2,750.00"</i>

30. By e-mail dated 28 February 2023, Respondent's counsel provided a copy of his Power of Attorney and he also took the opportunity to request a 10-day extension of the time limit to submit Respondent's Answer. By e-mail dated 1 March 2023, the BAT granted the said extension until 17 March 2023.
31. On 17 March 2023, Respondent submitted its Answer, including a Counterclaim. On that same date, Respondent duly paid the non-reimbursable handling fee of EUR 1,000.00 for the Counterclaim.
32. By Procedural Order of 17 March 2023, the BAT confirmed receipt of Respondent's Answer and also of Claimant's payment of his part of the abovementioned advance on costs on 20 February 2023. However, in light of Respondent's failure to timely pay its share, Claimant was invited to pay Respondent's share by 24 March 2023. Claimant made such payment in substitution on 21 March 2023.
33. By Procedural Order of 23 March 2023, and due to the filing of a Counterclaim, Respondent was requested to pay in accordance with Articles 9.3.1 and 9.4 an additional Advance on Costs in the amount of EUR 1,500.00 by 30 March 2023.
34. By Procedural Order of 29 March 2023, the BAT confirmed receipt of the full amount of the advance on costs and invited Claimant to comment on the Answer and the

Counterclaim by 19 April 2023.

35. On 19 April 2023, Claimant submitted his Reply.
36. On that same date, the BAT invited Respondent to file its Rejoinder by no later than 10 May 2023.
37. On 2 May 2023, Respondent's counsel e-mailed the BAT requesting a 10-day extension to file the Rejoinder, which was granted (i.e. by 10 May 2023).
38. On 25 May 2023, erroneously (as explained below), the BAT informed that Respondent had failed to file its Rejoinder and declared the exchange of documents completed in accordance with Article 12.1 of the BAT Rules and invited the Parties to indicate (by no later than 1 June 2023) how much of the applicable maximum contribution to costs should be awarded to them and why, including a detailed account of their costs and any supporting documentation in relation thereto.
39. On that same date, Respondent's counsel immediately replied to this last communication, by pointing out that Respondent had indeed filed its Rejoinder on time and attaching an e-mail dated 19 May 2023 which seemed to prove the above.
40. Therefore, the BAT decided to reopen the case for the sole purpose of accepting the Rejoinder, which, as already mentioned, appeared to have been timely sent but for technical reasons had not been received by the BAT. The time-limit for the Parties to file their cost submissions remained unchanged.
41. Both Parties filed their costs submissions on 31 May 2023.
42. While the amount in dispute in this proceeding falls below the threshold of EUR 50,000.00 established in Article 16.2 of the BAT Rules for the issuance of an award with

reasons, the BAT President has determined, pursuant to the discretion afforded to him by Article 16.3 (b) of the BAT Rules, that given the circumstances, in light of certain of the issues that the case raises and the interest of the basketball community in having a sufficient body of publicly-available awards with reasons, a reasoned award is appropriate in this case.

4. The Positions of the Parties

4.1 Claimant's Position

43. The Claimant considers that the Respondent waited too long and reacted at the last moment to make a reservation and schedule an appointment in the Migration Department regarding his lawful stay in Lithuania, despite numerous reminders by the Claimant.
44. Instead of going to the appointment scheduled on 15 December 2022 with the Claimant and applying for a visa, which in the opinion of the Claimant, would have made his stay lawful until the day of submitting a request for a temporary residence permit, the Club cancelled that appointment and scheduled a new one for 29 December 2022, on which day the Claimant would have been in breach of Schengen Area regulations, exposing himself to administrative and criminal liability in Lithuania, and endangering any future career opportunities in the EU.
45. Therefore, the Claimant asserts that the Respondent has committed a fundamental breach of its basic contractual obligation, found in Article 1 of the Agreement, which is to employ the Claimant, logically presuming such employment to be in a lawful manner and in accordance with relevant EU and Lithuanian regulations concerning immigration and employment. Such a breach was caused by the Club's inexcusable tardiness and lack of activity in obtaining a relevant visa and permits, later coupled with procedural mistakes

and provision of erroneous information to Lithuanian authorities.

46. Club's notice of termination of the Agreement is unlawful as the Club had no grounds to find fault with the Claimant or his behaviour that would in any way justify contract termination.
47. In light of the foregoing, in his Reply (as updated from what was his Request for Relief in the Request for Arbitration), the Claimant requested the following relief:

- A.** Respondent is obliged to pay to the Claimant the amount of **5,500 euro** (five thousand five hundred), for the Claimant's salary for December 1st – 31, 2022 and to submit and pay adjoining taxes and social contributions on such net amount in accordance with the Lithuanian law;*
- B.** Respondent is obliged to pay to the Claimant the amount of **1,595 euro** (one thousand five hundred ninety-five) for Claimant's salary for January 1st – 9th, 2022 and to submit and pay adjoining taxes and social contributions on such net amount in accordance with the Lithuanian law;*
- C.** Respondent is obliged to pay to the Claimant the damages occurred in the period January 10th – 12th, 2023, the amount of **354.75 euro** (three hundred fifty-four and 75/100);*
- D.** Respondent is obliged to pay to the Claimant the damages for the February 2023, in the total of **5,115 euro** (five thousand one hundred fifteen)*
- E.** Respondent is obliged to pay to the Claimant the damages for March and April 2023, in the total amount for both months of **3,000 euro** (three thousand);*
- F.** Respondent is obliged to pay to the Claimant the damages for May 2023, in the total amount of **1,464 eur** [sic] (one thousand four hundred sixty four)*
- G.** Respondent is obliged to pay to the Claimant the damages in the amount of **259.50 EUR** (two hundred fifty-nine and 50/100), for the airplane ticket for flights Riga to Vienna and from Vienna to Budapest;*
- H.** Respondent is obliged to pay to the Claimant the damages in the amount of **545.99 EUR** (five hundred forty-five and 99/100), for the airplane ticket for flight for the round trip Belgrade-Riga scheduled for 28th and 30th December, 2023;*
- I.** Respondent is obliged to pay to the Claimant the **annual interest rate of 5%** on all amounts here under points A-H, starting from January 9th, 2023, specified at the moment of this RfA but continuing to accrue until final payment;*

J. Respondent is obliged to pay the taxes and social contributions on Claimant's salaries for the period September 29th – October 31st, 2022 and the period November 1st – November 30th, 2022 and to deliver the proof thereof to the Claimant;

K. Respondent is obliged to pay to the Claimant all its legal fees, expenses and costs for the arbitration proceedings."

[emphases as in the original]

4.2 Respondent's Position

48. The Respondent, on the other hand, considers that the Agreement was terminated by the Club with just cause on 9 January 2023.
49. The said just cause is based on numerous exhibits which provide that the Player unexpectedly and without reason left Lithuania in mid-December 2022, meaning that he missed trainings from that moment and several matches too, and unreasonably and arbitrarily failed to return in time for the 29 December 2022 appointment with the immigration authorities.
50. Regarding the potential unlawful situation of the Player in Lithuania, the Respondent considers that the Claimant was not required to obtain a work permit in order to legally provide sports activities services to the Respondent under the Agreement during the visa-free short-term stay permitted by the EU. Its expert opinion concludes that, to the extent that Lithuanian law applied in this proceeding, the Club would have no obligation to procure the work permit due to the nature of the agreement as one of sports services (thus, civil) rather than being an employment agreement under Lithuanian law.
51. In this connection, the Club refers to the situation of the [Player's teammate]. The situation of this player had been previously pointed out by the Claimant himself as part of his allegations (see para. 10 above). The Club's position is that this player received his national visa, some months after his arrival in Lithuania, something which however did not preclude him from legally providing his services as part of the team before that

moment.

52. Therefore, the Respondent not only considers that the Agreement was terminated with just cause and that, as such, the Claimant is not entitled to any compensation, but it requests a so-called “*special indemnity*” based on the BAT jurisprudence and taking into account the negative effect that the Player’s departure provoked in the team and the fact that the Respondent had no other choice but to look for a replacement.

53. In light of the foregoing, in the Answer, the Respondent requested the following:

- "1) to dismiss the Claimant's requests for relief in their entirety;*
- 2) to order the Claimant to pay to the Respondent EUR 11,000 as compensation in a form of a "special indemnity" plus interest at rate of 5% per annum on this amount starting from submission of the present Answer until its payment;*
- 3) to order the Claimant to file the employment contract, which the Claimant concluded with KK Rabotnicki from Skopje, Noth Macedonia;*
- 4) To order the Claimant to pay legal fees and other expenses incurred by the Respondent in connection with the proceedings of arbitration."*

5. The jurisdiction of the BAT

54. Pursuant to Article 2.1 of the BAT Rules, “[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland”. Hence, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

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

56. The dispute is of a financial nature and is thus arbitrable within the meaning of Article

177(1) PILA¹⁷.

57. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under clause 15 of the Agreement, which reads as follows:

"[...] Any dispute arising from or related to the present contract shall be submitted to the 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 parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono. Club shall be responsible for all legal fees and expenses associated with Player and/or Agent bringing a BAT case due to Club's breach of this Contract".

58. The Agreement is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
59. 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).
60. The jurisdiction of the BAT over Claimant's claim arises from the Agreement. The wording "[a]ny dispute arising from or related to the present contract [...]" clearly covers the present dispute. Moreover, the Club has fully participated in the proceeding and has expressly accepted the jurisdiction of the BAT (even filing a counterclaim in which the BAT is also competent – within the counterclaim, the dispute is essentially the same and also based on the Agreement. As such, clause 15 is also applicable to the counterclaim).
61. For the above reasons, the Arbitrator has jurisdiction to adjudicate Claimant's claim and

¹⁷ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

Respondent's counterclaim.

6. Other Procedural Issues

62. Neither of the Parties requested a hearing. In accordance with Article 13.1 of the BAT Rules, the Arbitrator will decide the Parties' claims based on the written submissions and the evidence on record.

7. Discussion

7.1 Applicable Law – *ex aequo et bono*

63. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the Arbitrators to decide "*en équité*" instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

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

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

"15.1 The Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.

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

contents of such rules of law. If the contents of the applicable rules of law have not been established, Swiss law shall apply instead.”

65. Clause 15 of the Agreement provides that: “[t]he arbitrator shall decide the dispute *ex aequo et bono*”.
66. Consequently, the Arbitrator understands that the dispute shall be decided *ex aequo et bono*) and in accordance with BAT jurisprudence.
67. The concept of “*équité*” (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the *Concordat intercantonal sur l’arbitrage*¹⁸ (Concordat)¹⁹, 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.”*²⁰
68. This is confirmed by Article 15.1 of the BAT Rules *in fine*, according to which the Arbitrator applies “*general considerations of justice and fairness without reference to any particular national or international law*”.
69. In light of the foregoing considerations, the Arbitrator makes the findings below.

¹⁸ 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).

¹⁹ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

²⁰ JdT 1981 III, p. 93 (free translation).

7.2 Findings

7.2.1 Visa / work permit obligations and potential unlawful situation of the Player

70. The first issue under discussion is which party to the Agreement was responsible for all the necessary dealings regarding the issuance of a visa and / or a work permit for the Player, bearing in mind his Serbian nationality and the applicable restrictions in accordance with the Schengen Area regulations.
71. Genuinely, the discussion here is short, as the position is well established by the CAS jurisprudence mentioned by the parties in their exchange of submissions (CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Asid Kruja, award of 16 April 2018):

“The employer is obliged to undertake the necessary steps to provide his employee with visa and/or work permit. It is very natural and is a basic principle of any labour law that an employer must provide his employees with visa/work permit, if necessary. By not providing the employee with visa/work permit, not even after being reminded to do so, the employer in effect is forcing the employee to leave. If an employer does not undertake the necessary action to provide his employee with a visa/work permit and if this prevents him from entering the country in which he is employed and therefore start work, this could be seen as an unjustified breach of contract by the employer”.

72. Similarly, FIFA’s Commentary on the Regulations on the Status and Transfer of Players provides as follows (page 115, when analysing potential causes that would justify the early termination of an employment contract in football – and which could apply *mutatis mutandis* to the present case in basketball):

“Players who decide to terminate their contracts in the absence of a valid visa or work permit are also frequently involved in disputes. As per the established jurisprudence, it is the club’s responsibility to obtain these documents (on time). As a result, a player will be considered to have a just cause to terminate their contract if the required permits are not available in good time. However, a player is expected to cooperate in completing the processes associated with obtaining these documents. Moreover, considering the principle that terminating a contract should be a last resort, a warning should be sent to the club ahead of any move to put an end to the contractual relationship.”

73. Therefore, the Arbitrator rejects the Respondent’s allegations by virtue of which it

intended to affirm that it was not obliged to procure the visa since the Claimant was obliged to personally comply with all these requirements and that there was no contractual term in the Agreement that provided that it was the Club who was obliged to perform these duties and since (as mentioned) Lithuanian law (not applicable here) might have excused the Respondent from such obligation due to the nature of the contract at issue.

74. Notwithstanding the above, and in line with the same CAS jurisprudence mentioned in para. 71 above (and also in line with FIFA's Commentary), *"the player must cooperate in full with the efforts to obtain visa or work permit. Thus, the player must put himself at the club's disposal and supply the prospective club with all necessary information and documentation in order to facilitate these tasks"*.
75. In summary, it was the Club's obligation to provide the Player with the necessary requirements in order to provide his services in accordance with the Agreement, but the Player's obligation was to cooperate with the Club in full with the said task.

6.2.2 Termination of the Agreement

76. Having clarified the above, the central issue to be resolved is whether the Club breached the Agreement by not complying with the legal requirements which were compulsory for the Player to be able to provide his services as a basketball player, or whether it was the Player who violated his obligations due to his reluctance to return to Lithuania and continue his relationship with the Club under the Agreement at the end of 2022.
77. It is undisputed that until 15 December 2022, the Player trained and competed without any restriction. Thus, it is not true that *"there was absolutely no manner in which the Claimant could have started performing their work for the Respondent before having either a work permit, national visa or temporary residence permit issued by Lithuania"* as the Claimant alleges in his submissions.

78. The above is also confirmed by the expert opinion provided by the Respondent with its Rejoinder.
79. However, the Arbitrator cannot accept the Club's position by virtue of which it maintains that its practice is not to rush in assisting its players in immigration matters. This evidences that the delay or "last minute" nature of solving the Player's visa / work permit problems was not personal, but in any event justifies a doubtless lack of diligence in its *modus operandi*.
80. In other words, it is not only the Club's obligation to provide the Player in this case with all necessary requirements in order to provide his services without any legal problem, but also it is expected that those requirements are fulfilled in a timely manner (i.e. the required permits need to be available "*in good time*" – vid. the FIFA Commentary extract above).
81. However, noting that the Claimant apparently packed all his belongings, left the keys of the apartment that the Club provided to him and also the car in Lithuania and left the country without requesting permission from the Club, it is evident that the Claimant did not contemplate returning to Lithuania to play for the Respondent after 16 December 2022, even though he had an appointment for 29 December 2022. This behaviour was later confirmed by the fact that the Claimant actually did not take the flight back to Lithuania and so his attitude of not wanting to continue the working relationship is not contradicted at all by his letter pretending to – at least formally – oppose the termination of the Agreement promoted by the Respondent.
82. Therefore, the Arbitrator considers that the Agreement was mutually terminated by the parties based on their conduct at the end of 2022 and beginning of 2023.

7.2.3 Consequences of the parties' lack of diligence

83. As set out above, it is undisputed that both Parties lost interest in the Agreement and neither did the Claimant really act in the interest of performing his obligations towards the end of 2022, nor did the Respondent show appropriate diligence in pushing the process of obtaining all necessary documentation for the Player's legal stay in Lithuania to their limits (i.e. even though it seems unjustified that the Claimant did not travel to Lithuania on 28 December 2022 as expected, it is also difficult to understand that the Respondent did not have time to obtain all necessary documentation for the Player's legal stay in Lithuania in the three months since his arrival).
84. Had the parties shown the same rigor and diligence during their underlying course of dealings as they have in these proceedings – with hundreds of pages of submissions and exhibits, including numerous witness statements and even an expert legal opinion – surely the dispute could have been avoided or, at least, readily resolved.
85. Thus, the Arbitrator perceives a mutual lack of interest in proceeding with the parties' relation from on or about the end of 2022. This lack of interest is evidenced in that the Club was not sufficiently interested in getting all the necessary paperwork for the Player with enough anticipation and the Player was not having a relevant amount of playtime, and the Player also did not show sufficient diligence by unilaterally deciding not to travel to Lithuania, only because the Club did not confirm that someone from the Club was picking him up, and without alerting in advance any representative of the Club of this decision.
86. For these reasons, the Arbitrator concludes that neither party merits any compensation taking into account the present circumstances.

7.2.4 December Salary and tax certificate

87. However, even though the Respondent's counterclaim is fully rejected, the Claimant's claim is partially upheld as part of his request for relief refers to the amounts to which he was entitled during December 2022 (letter A of the Claimant's updated Request for Relief) and to the Respondent's obligation to provide the Player with a tax certificate verifying the Club's full payment of the taxes required (letter J of the Claimant's updated Request for Relief).
88. In this regard, due to the fact that it is not disputed that the Agreement was fulfilled by the Player until 15 December 2022, 50% of the amounts corresponding to the December salary are due and outstanding (i.e. the Respondent shall pay the Claimant EUR 2,750.00 net of Lithuanian taxes for this concept). As such, following BAT jurisprudence, the 5%-interest request over these amounts is also accepted, such interest accruing from 9 January 2023 (the date mentioned by the Claimant in the Request for Arbitration and which in any case is after December 2022 – when these amounts effectively accrued).
89. In addition to the above and in accordance with clause 3 of the Agreement, the Respondent is obliged to provide evidence of full payment of the taxes required in Lithuania for the period in which the Agreement was performed by the Parties.

8. Costs

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

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

91. On 21 October 2023, the BAT President determined the arbitration costs in the present matter to be EUR 9,250.00.
92. Moreover, in accordance with Article 18.2 of the BAT Rules, a contribution of EUR 3,000.00 is paid from the BAT Fund towards the costs of the arbitration. Accordingly, the portion of the arbitration costs to be borne by the Parties is EUR 6,250.00.
93. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 of the BAT Rules provides as follows:
- “The award shall determine which party shall bear the arbitration costs and in which proportion. [...] When deciding on the arbitration costs [...], the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.”*
94. In relation to the Parties’ legal fees and expenses, Article 17.3 of the BAT Rules provides that
- “as a general rule, the award shall grant the prevailing party a contribution towards any reasonable legal fees and other expenses incurred in connection with the proceedings (including any reasonable costs of witnesses and interpreters). When deciding [...] on the amount of any contribution to the parties’ reasonable legal fees and expenses, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.”*
95. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses. By submission dated 31 May 2023, both Parties have claimed legal fees and expenses.
96. Considering that the Claimant’s claim has been only very partially upheld and that the Respondent’s counterclaim has been rejected in full, it is consistent with the provisions of the BAT Rules that the costs of the arbitration to be borne by the Parties be shared Claimant 40% - Respondent 60% and that each party shall bear its own legal fees and

expenses.

97. Given that Claimant paid advances on costs of EUR 5,500.00 and the Respondent only EUR 1,500.00, the Arbitrator decides that in application of Article 17.3 of the BAT Rules:
- (i) The Respondent shall pay EUR 2,250.00 to the Claimant, being the difference between the costs advanced by the Respondent and 60% of the arbitration costs to be borne by the Parties;
 - (ii) The BAT will reimburse EUR 750.00 to the Claimant, being the difference between the costs advanced by the Claimant, the Respondent's reimbursement of EUR 2,250.00 and 40% of the arbitration costs to be borne by the Parties.
 - (iii) Each party shall bear its own legal fees and other expenses.

9. AWARD

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

- 1. Mr. Dorde Dzeletovic's claim is partially upheld.**
- 2. Vsl SSK's (BC Pieno Zvaigzdes) shall pay Mr. Dorde Dzeletovic a total amount of EUR 2,750.00 net of Lithuanian taxes for the first half of December 2022 plus interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 9 January 2023 until payment in full.**
- 3. Vsl SSK's (BC Pieno Zvaigzdes) shall provide Mr. Dorde Dzeletovic with a tax certificate stating that all required income tax due in Lithuania has been paid by the Club on his behalf for the period until 15 December 2022.**
- 4. Vsl SSK's (BC Pieno Zvaigzdes) counterclaim is fully dismissed.**
- 5. Vsl SSK's (BC Pieno Zvaigzdes) shall pay Mr. Dorde Dzeletovic EUR 2.250,00 as reimbursement for the arbitration costs.**
- 6. Each party shall bear its own legal fees and other expenses.**
- 7. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 26 October 2023

Clifford J. Hendel
(Arbitrator)