ARBITRAL AWARD

(BAT 1935/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Amani Khalifa

in the arbitration proceedings between

Mr. Ivan Zoroski

- Claimant -

represented by Mr. Branko Pavlovic, attorney at law,

vs.

Mr. Trenton Jamar Frazier

- Respondent -

represented by Mr. Blaz Tomažin Bolcar, attorney at law,

1. The Parties

1.1 The Claimant

1. Mr. Ivan Zoroski (hereinafter also referred to as "the Claimant") is a Serbian FIBA-licensed basketball agent.

1.2 The Respondent

2. Mr. Trenton Jamar Frazier (hereinafter also referred to as “the Respondent”, together with the Claimant, “the Parties”) is an US-American professional basketball player.

2. The Arbitrator

3. On 19 March 2023, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal (the "BAT"), appointed Ms. Amani Khalifa as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal in force as from 1 January 2022 (hereinafter the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

4. The relevant facts and allegations presented in the written submissions and evidence are summarised below. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.

5. Although the Arbitrator has considered all the facts, allegations and evidence submitted in the present proceedings, she refers in this Award only to those necessary to explain its reasoning.

6. On 7 April 2022, the Claimant and the Respondent entered into an agreement whereby the former agreed to represent the latter as his agent for a two-year period (the “Agreement”).

7. Paragraph 2 of the Agreement provides that:

"Player is aware of and agrees to the Agent receiving from Clubs a fee for his contract services rendered on behalf of Player. This fee shall be in the amount of ten percent (10%) of the compensation earned by the Player under any contract(s) executed between the Player and any club(s) during the term of this Agreement. In the case that any contract executed between the Player and any club during the term of this Agreement shall be renewed, renegotiated, extended, or any other way so altered, the Player shall also be responsible for a fee in the amount of ten percent from the Club."

8. Paragraph 3 of the Agreement provides that:

"Provided the Agent is entitled to a fee from Player, the Agent shall not be entitled to receive any fee pursuant to this Agreement until the Player receives the compensation upon which the fee is based, as long as the Player has not violated any provision of this Agreement, specifically improper or premature termination."

9. Paragraph 4 of the Agreement provides that:

"In the event this Agreement is terminated by Player prior to the expiration of the term hereof, the Player shall owe to Agent the applicable fee for each and every season that Player is employed by a club procured for him by Agent. Moreover, if during the term of this Agreement, Player or anyone else on his behalf, negotiated a Contract for the Player, Player shall also owe Agent full and immediate compensation as though Agent had negotiated said Contract. Such compensation shall amount to ten percent (10%) of the total value of the Contract Player or any third party on his behalf has negotiated with any club. Player shall pay Agent this fee within 10 days of Player signing a contract with a club."

10. On 11 January 2023, the Respondent sent a letter dated 6 January 2023 by email to the Claimant terminating the Agreement (the "Termination Letter").

11. The Claimant responded to the Termination Letter via WhatsApp on 12 January 2023. In the WhatsApp message, the Claimant set out Paragraph 4 of the Agreement for the Respondent and detailed the work undertaken by the Claimant on behalf of the Respondent to date. The Claimant put the Respondent on notice that he would bring BAT proceedings if the Respondent failed to honour his obligations under the Agreement.

12. On 1 February 2023, the Respondent entered into an agreement with Russian Basketball Club Zenit ("BC Zenit") for the period 1 June 2023 to 30 June 2024, the 2023/24 season, (the "First Zenit Agreement"). On the same date, the Respondent also entered into an Appendix to the Zenit Agreement (the "First Zenit Appendix"). By way of the Zenit Appendix the Respondent agreed to play for BC Zenit from 1 February 2023 to 30 June 2024.

13. Section 3 of the Zenit Appendix sets out the Respondent's salary:

> *"The Club pays the Athlete a monthly salary for the period specified in Section 2 of the Contract, including the official salary specified in clause 3.1. of the Contract as well as a bonus:*
>
> *in the 2022/2023 season (the period from February 01, 2023 to June 15, 2023) – 29 018 (twenty-nine thousand eighteen) dollars after tax. At the same time, the official salary will be 20 000 (twenty thousand) dollars after taxation, and the bonus will be 9 018 (nine thousand eighteen) dollars after taxation in rubles at the official exchange rate set by the Central Bank of the Russian Federation on the date of payment;*
>
> *in the 2023/24 season (the period from June 16, 2023 to June 30, 2024) – 40 000 (forty thousand) dollars after tax. At the same time, the official salary will be 30 000 (thirty thousand) dollars after taxation in rubles at the official exchange rate set by the Central Bank of the Russian Federation on the date of payment."*

14. The Zenit Appendix included at section 17.1 a provision that allowed BC Zenit to unilaterally terminate the First Zenit Agreement between 1 June and 15 June 2023 as follows:

> *"from June 01, 2023 to June 15, 2023 the Club has the right to terminate the Contract by notifying the Sportsman of its desire to terminate the Contract in writing until June 15, 2023. The Agreement shall be terminated on June 15, 2023. In this case, the Club will pay the Sportsman compensation for termination of the Contract in the amount of 30 000 (thirty thousand) dollars net up to June 30, 2023. The Club issues a letter of clearance to the Sportsman. The Parties undertake to conclude an agreement on early termination of the Contract within 1 (one) calendar day from the date of notification of the Sportsman by the Club."*

15. The Respondent was presented as a player for BC Zenit via their website and social

media channels on 2 February 2023.

16. The Claimant's legal representative wrote to the Respondent on 5 February 2023 (the "Agent's Notice") on the basis that under paragraph 4 of the Agreement the Claimant was entitled to 10% of the Respondent's salary in connection with his agreements with BC Zenit. The Agent's Notice referenced data it had obtained that the Respondent's salary for the 2022/23 season was USD 160,000.00 and USD 500,000.00 for the 2023/24 season. Accordingly, the Agent's Notice invited the Respondent to pay the Claimant USD 66,000.00 within 15 days of receipt. The Respondent was also put on notice that if he did not pay the USD 66,000.00 proceedings would be brought before the BAT.

17. The Claimant did not receive a response to the Agent's Notice from the Respondent.

18. On 7 June 2023, BC Zenit sent a notification of termination to the Respondent, terminating the First Zenit Agreement effective 15 June 2023 (the "Zenit Termination").

19. On 16 June 2023, the Respondent entered into a new agreement with BC Zenit for the 2023/24 season (the "Second Zenit Agreement" together with the First Zenit Agreement and the Zenit Appendix the "Zenit Agreements"). Paragraph 3.1 of the Second Zenit Agreement sets out that the Respondent will be paid:

> *"For the performance of labor duties the official salary of* ***250 000 (Two hundred fifty thousand) rubles per month*** *is fixed to the Sportsman."* (emphases in the original)

3.2 The Proceedings before the BAT

20. On 5 March 2023, the Claimant filed a Request for Arbitration in accordance with the BAT Rules and the non-reimbursable handling fee in the amount of EUR 4,000.00 was received in the BAT bank account on 6 March 2023.

21. By letter dated 21 March 2023, the BAT: (a) informed the parties that Ms. Amani Khalifa had been appointed as the Arbitrator in this matter (b) invited the Respondent to file its

Answer to the Request for Arbitration in accordance with Article 11.4 of the BAT Rules by no later than 11 April 2023 and (c) fixed the advance on costs to be paid by the Parties by no later than 31 March 2023 as follows:

"Claimant (Mr. Ivan Zoroski)	*€ 3,500.00*
Respondent (Mr. Trenton Jamar Frazier)	*€ 3,500.00"*

22. By letter dated 13 April 2023, the BAT: (a) acknowledged receipt of the Claimant's share of the advance on costs, received into the BAT bank account on 27 March 2023 (b) noted that the Respondent failed to submit an Answer to the Request for Arbitration and to pay his share of the Advance on Costs; and (c) provided the Respondent with an opportunity to do both by 20 April 2023.

23. On 27 April 2023, the BAT wrote to the Claimant to enquire about the Respondent's current address to ensure that the BAT letters of 21 March and 13 April were actually received by the Respondent.[1]

24. On 28 April 2023, Claimant's counsel suggested that the BAT effect service through the Respondent's club, BC Zenit.

25. On 13 June 2023, the BAT wrote to BC Zenit requesting confirmation of delivery of the relevant correspondence to the Respondent.

26. On 14 June 2023, BC Zenit responded to the BAT confirming receipt by the Respondent of the correspondence and providing an up-to-date email address for both the

[1] Both letters had been delivered by courier to the Respondent's address provided by the Claimant in the Request for Arbitration (6116 Seven Springs Boulevard, Greenacres, USA, 33463, Florida) but these letters were not signed for.

Respondent and his agent.

27. On 27 June 2023, the BAT sent all the correspondence including the RFA to the email addresses provided by BC Zenit.

28. By letter dated 6 July 2023, the Respondent wrote to the BAT and requested an extension of time to submit his Answer to the Request for Arbitration.

29. By email dated 12 July 2023, the BAT granted an extension of time for the Respondent to file its Answer by 14 July 2023.

30. On 14 July 2023, the Respondent submitted his Answer to the Request for Arbitration.

31. By letter dated 19 July 2023, the BAT (a) invited the Respondent to pay the non-reimbursable handling fee of EUR 1,000.00 in respect of his Counterclaim in accordance with Article 17.1 of the BAT Rules by no later than 26 July 2023 (b) noted that the Respondent had failed to pay his share of the Advance on Costs; and (c) provided the Respondent with a final opportunity to do so by 26 July 2023.

32. By letter dated 22 August 2023 the BAT (a) invited the Claimant to comment on the Respondent's Answer by 12 September 2023 and (b) acknowledged receipt of the following payments:

Date	**Amount**	**Received from**	**Description**
27.03.2023	3,500.00 €	Ivan Zoroski Triple Double Sports Management	Claimant's Share of Advance on Costs
25.07.2023	3,500,00 €	247 Group, LLC	Respondent's Share of Advance on Costs
25.07.2023	1.000,00 €	247 Group, LLC	Counterclaim Non-Reimbursable Handling Fee

33. On 11 September 2023, the Claimant submitted his Reply.

34. By email dated 12 September 2023, the BAT invited the Respondent to comment on the Claimant's Reply by 4 October 2023.

35. By email dated 5 October 2023, the BAT reminded the Respondent to file his comments on the Claimant's Reply and granted the Respondent an extension until 9 October 2023 to do so.

36. By letter dated 9 October 2023, the Respondent requested an extension of time to submit the Rejoinder until 13 October 2023 on the basis that although the BAT's correspondence dated 12 September 2023 was received by the law office's server it was not actually delivered to the representatives' inbox.

37. By email dated 13 October 2023, the Respondent requested a further extension of time to file the Rejoinder until 20 October 2023 on the basis that one of the Respondent's witnesses had been unwell and therefore unable to provide documents necessary to support the Rejoinder.

38. By email dated 15 October 2023, the BAT confirmed that the Arbitrator had granted the Respondent an extension until 20 October 2023 to file his Rejoinder.

39. On 20 October 2023, the Respondent submitted his Rejoinder.

40. By letter dated 3 November 2023, the BAT (a) acknowledged receipt of the Respondent's Rejoinder, (b) declared that the exchange of submissions was completed in accordance with Article 12.1 of the BAT Rules and (c) invited to the Parties to set out (by no later than 10 November 2023) how much of the applicable maximum contribution to costs should be awarded to them and why under Articles 17.3 and 17.4 of the BAT Rules. The Parties were also directed to include a detailed account of their costs, including any

supporting documentation in relation thereto.

41. The Respondent filed his costs submission on 7 November 2023. The Claimant filed his costs submission on 9 November 2023.

42. By letter dated 15 January 2024, the BAT notified the Parties that the Arbitrator had decided to re-open proceedings and invited the Claimant to provide its comments, by 18 January 2024, on his request for relief (as set out at paragraph 55 below), as follows:

> *"Th [sic] Arbitrator believe that the above request may contain the following typographical errors:*
>
> *1. Exibits should read Exhibits*
>
> *2. Sixty-six should read sixty-three*
>
> *3. And fo relief should read for relief*
>
> *Moreover, the Arbitrator wishes to confirm her understanding that the Claimant is seeking compensation valued at USD 63,000 and not necessarily payment of this sum in US dollar currency."*

43. The Claimant provided his comments on his request for relief on 16 January 2024. On the same day the BAT (a) acknowledged receipt of the Claimant's comments and sent them to the Respondent and (b) invited the Respondent to submit his comments in response by no later than 19 January 2024.

44. On 19 January 2024 the Respondent provided his comments.

45. By email dated 23 January 2024, the BAT (a) acknowledged receipt of the Respondent's submission and forwarded them to the Claimant (b) declared that the proceedings were closed and (c) invited to the Parties to submit (by no later than 26 January 2024) an updated detailed account of their costs, including any supporting documentation in relation thereto.

4. The Positions of the Parties

4.1 The Claimant's Position

46. The Claimant finally claims USD 63,000.00 under the Agreement on the basis that the Respondent terminated the Agreement on 11 January 2023 and, pursuant to paragraph 4 of the Agreement, he is entitled to compensation equal to 10% of the total value of any contract the Respondent signed during the original term of the Agreement.

4.1.1 Request for Arbitration

47. The Claimant initially estimated his entitlement under paragraph 4 of the Agreement as USD 66,000.00 based on its knowledge that the Respondent had concluded an agreement with BC Zenit with the following salary:

Season	**Salary**	**Amount claimed by Claimant**
2022/23	USD 160,000.00	USD 16,000.00
2023/24	USD 500,000.00	USD 50,000.00
TOTAL	**USD 660,000.00**	**USD 66,000.00**

48. In his Request for Arbitration dated 5 March 2023, the Claimant requested the following relief:

> *"The Respondent is obligated to pay to the Claimant for the Agent's fee total amount of 66,000 USD (sixty-six thousand US dolars*[sic]*) net of all taxes, plus interests at 5% per annum, from date of submitting RfA until final payment, costs of BAT arbitration and legal fees according to the BAT Award which will resolve this dispute."*

4.1.2 Reply to Respondent's Answer

49. Following receipt of the Respondent's Answer, the Claimant averred that the termination of the First Zenit Agreement and entering into the subsequent Second Zenit Agreement

was a scenario fabricated by the Respondent in an attempt to avoid paying the compensation due to the Claimant under the Agreement.

50. The Claimant provided evidence of media activity by BC Zenit during the period from 8 June 2023 to September 2023 to demonstrate that the Respondent remained a BC Zenit player without interruption.

51. The Claimant also submits that if the First Zenit Agreement and Zenit Appendix were properly terminated then provision would have been made in the Second Zenit Agreement for the USD 30,000.00 compensation received by the Respondent as a result of the termination of the First Zenit Agreement. As no evidence of this has been provided by the Respondent, the Claimant argues that the termination was fabricated.

52. Notwithstanding the Claimant's position that the termination of the First Zenit Agreement was fabricated, he maintains that he is still entitled to compensation in respect of the Second Zenit Agreement as it was signed before the expiration of the term of the Agreement as set out in paragraph 4 of the Agreement.

53. The Claimant accepts that the compensation due to him by the Respondent in respect of the 2022/23 should be reduced to reflect the amount actually paid to the Respondent under the Zenit Appendix. Accordingly, he submits that he is willing to reduce the amount claimed for the 2022/23 season from USD 16,000.00 to USD 13,000.00 on the basis that Article 3 of the Appendix stipulated that the Respondent would receive USD 29,018.00 monthly and the Respondent was employed under the Zenit Appendix for the period from 1 February 2023 until 15 June 2023. Therefore, he is entitled to 10% of the USD 130,581.00 due to the Respondent for 4.5 months of the 2022/23 season.

54. The Claimant argues that even though the First Zenit Agreement and Zenit Appendix stated that the Respondent shall receive part of his salary in Rubles he is entitled to 10% of the total amount paid to the Respondent.

55. In his Reply to the Respondent's Answer dated 11 September 2023, the Claimant updated his request for relief as follows:

> *"Claimant's total claim is 63,000 USD (13,000 + 50,000).*
>
> *Assuming that valid contracts will support the amounts contained in the exibits* [sic] *provided by the Respondent as Exhibit R2 (Appendix) Claimant reduces its claim by 3,000 USD and proposes that BAT adopt the following Request for Relief:*
>
> *The Respondent is obligated to pay to the Claimant for the Agent's fee total amount of 63,000 USD (sixty-six*[sic] *thousand US dollars) net of all taxes, plus interests at 5% per annum, from date of submitting RfA until final payment, costs of BAT arbitration and legal fees according to the BAT Award which will resolve this dispute.*
>
> ***Otherwise, the Claimant reserves the right to subsequently specify his Request fo* [sic] *Relief.***
>
> *Claimant proposes that the Arbitrator dismiss the Respondent's Request for Relief."*

4.1.3 Claimant's further submissions on his request for relief

56. The Claimant confirmed that the errors set out in the BAT's letter dated 15 January 2024 (set out at paragraph 42 above) were typographical errors and the Arbitrator's understanding was correct.

57. Regarding the currency of the request for relief, the Claimant confirmed that his claim is denominated in US Dollars as follows:

> "*As far as the currency of the payment is concerned, that is an issue that will be resolved in the eventual procedure for the enforcement of the Award. For the Claimant, it is indisputable that he is obliged to receive any currency deposited into his account as payment of the debt, recalculating the payments at the USD exchange rate on the day the payment is received.*"

4.2 Respondent's Position

58. The Respondent submits that he validly terminated the Agreement and accordingly he is not bound by any obligations therein from 11 February 2023, being 30 days after the

service of the Termination Letter. The Respondent accepts that he is liable to pay the Claimant 10% of the value of any contracts signed before 11 February 2023.

59. It is the Respondent's position that the Claimant is bound by the FIBA International Regulations that were in force when the Agreement was entered into ("FIBA IR"). Paragraph 317 g. of Book 3 of the FIBA IR requires agents:

> *"g. To inform each client about the provisions of the FIBA Internal Regulations, particularly those which refer to the eligibility of players, national status of players, international transfer of players, agents, anti-doping, and the risks of match-fixing."*

60. Further, the Respondent submits that the Claimant is in breach of paragraph 320 of Book 3 of the FIBA IR as follows:

> *"The duration of an Agent Contract shall not exceed a period of two (2) years, but it may be renewed through a new written contract of the parties. Every Agent Contract shall provide that each party shall have the right to terminate at will with thirty (30) days' written notice."*

61. The Respondent claims he was not informed by the Claimant about the existence of the FIBA IR, or more specifically the requirements for the terms of the Agreement. Accordingly, he says that he did not understand the extent of the rights he was waiving in accepting the terms of the Agreement and therefore, on the basis of *ex aequo et bono*, the Arbitrator should find that he was entitled to terminate the Agreement on 30 days' notice as allowed for in the FIBA IR.

62. The Respondent argues that BAT 0901/06, which concluded that violations of the FIBA IR by an agent do not invalidate contractual provisions, should not be applied in the present case. The Respondent clarifies it is not his position that the Agreement, or any part thereof, should be determined to be invalid by virtue of the fact it breaches the FIBA IR, but instead that he should not be bound by its terms as the extent of his waiver of rights was not properly explained to him.

63. The Respondent instead seeks to rely on BAT 0615/14 and BAT 1457/19, cases where the BAT found that a clause which expressly excluded a parties' obligation to mitigate their losses should only be upheld where to do so would not result in a manifestly unfair and unjust result. In these cases, the BAT held the principle of *ex aequo et bono* superseded the principle of *pucta sunt servanda* and the Respondent invited the Arbitrator to depart from the strict wording of the Agreement on the basis that the rights the Respondent waived in signing the Agreement were not properly explained to him.

64. The Respondent accepts that based on his argument the Agreement should be treated as terminated from 11 February 2023 and therefore he owes compensation to the Claimant in respect of the Zenit Appendix in accordance with paragraph 2 of the Agreement. The Respondent confirmed that he received RUB 1,000,000.00 in salary payments and USD 30,000.00 as compensation for termination of the Zenit Agreement. Therefore, his position is that he owes the Claimant RUB 100,000.00 and USD 3,000.00. The Respondent claims the reason he had not made this payment earlier was because he had not been provided with the Claimant's bank details.

65. In addition, the Respondent argues that such payment is only due once the Respondent has actually received his compensation in accordance with paragraph 3 of the Agreement:

> *"Provided the Agent is entitled to a fee from Player, the Agent shall not be entitled to receive any fee pursuant to this Agreement until the Player receives the compensation upon which the fee is based, as long as the Player has not violated any provision of this Agreement, specifically improper or premature termination."*

66. The First Zenit Agreement and Zenit Appendix were terminated by BC Zenit on 7 June 2023 due to the bad behaviour of the Respondent. The Respondent denies any suggestion by the Claimant that the termination was fabricated in order to avoid his obligations under the Agreement.

67. The Respondent submits that, following the Zenit Termination, his new agent resolved the issues between the Respondent and the club and negotiated the Second Zenit Agreement.

68. The Respondent's position is that there is no legal basis for the Claimant's claim that he is entitled to any compensation under the Second Zenit Agreement. The Respondent avers that in order for the Claimant to be entitled to compensation for contracts signed after the termination of the Agreement, two criteria must be met:

> *"a. The continuance of employment of the Respondent by the club under a contract that was procured by the Claimant; and*
>
> *b. The Respondent should have received the compensation from the club."*

69. The Respondent relies on paragraph 3 of the Agreement set out above and the following section of paragraph 4 to support his position:

> *"the Player shall owe to Agent the applicable fee for each and every season that Player is employed by a club procured for him by Agent."*

70. The Respondent claims that as the Claimant did not provide any services in respect of the Second Zenit Agreement and it was concluded after the Agreement was terminated, the Claimant is not entitled to any compensation.

71. Finally, the Respondent submits that the Agreement does not specify what currency the agent must be paid his compensation. Therefore, there is no basis for the Claimant's claim that any compensation should be paid in US Dollars (USD) and in fact it would be unfair in circumstances where the Respondent has been paid in Russian Rubels (RUB).

72. In his Answer dated 14 July 2023, the Respondent requested the following relief:

> *"a) The Exclusive Player/Agent contract dated 7 April 2022 was legally terminated on 11 February 2023.*
>
> *b) All costs related to the Counter Claim shall be borne by the Claimant.*

c) The Claimant shall pay all legal fees and expenses related to the Counter Claim"

73. In the Rejoinder the Respondent repeated its requests for relief and additionally requested that:

"any commission granted to the Claimant (if any) should be in Russian Rubles."

4.2.1 Respondent's further submissions on Claimant's request for relief

74. In his submission dated 19 January 2024 regarding the Claimant's comments on his request for relief, the Respondent maintained that the Claimant should only receive 10% of the amount actually received by him under the First Zenit Agreement.

75. The Respondent argues that the Agreement does not specify the currency for payment of any commission due to the Claimant, it only states that he shall be entitled to 10% of the Respondent's salary. Therefore, there is no legal basis for the Claimant to request payment in US Dollars. The Respondent submits that if he was ordered to pay 10% of his salary to the Claimant in US dollars (calculated on the date of payment) this would lead to the Claimant being placed in a better position than he was entitled to be in under the Agreement.

76. Further, the Agreement was drafted by the Claimant. The Representation Agreement does not provide for payment in a specific currency. In accordance with the principle of *contra proferentem* this ambiguity should be interpreted in favour of the Respondent as the party who did not draft the contract.

5. The jurisdiction of the BAT

77. 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).

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

79. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA[2].

80. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under paragraph 10 of the Agreement, which 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 parties' domicile. The language of the arbitration shall be English. The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono."*

81. The Agreement is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.

82. 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).

83. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimant's claim.

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

BASKETBALL
ARBITRAL TRIBUNAL

6. Discussion

6.1 Applicable Law – ex aequo et bono

84. 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”.*

85. 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.”*

86. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to her in this proceeding.

87. 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[3] (Concordat)[4], 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."*[5]

88. 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".

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

6.2 Findings

90. The Claimant claims USD 13,000.00 for compensation due under the Zenit Appendix and USD 50,000.00 for compensation due under the Second Zenit Agreement. The Claimant claims that the compensation should be valued in US Dollars, applying the exchange rate at the date the payment is received to be applied.

91. The Respondent accepts that the Claimant is entitled to compensation of RUB 100,000.00 and USD 3,000.00 due in respect of the Zenit Appendix and its termination but denies that the Claimant is entitled to any compensation in respect of the Second

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[3] 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).

[4] P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

[5] JdT 1981 III, p. 93 (free translation).

Zenit Agreement. The Respondent submits that as he received payment under the Zenit Agreements in Rubles there is no legal basis for the Claimant to request payment in respect of those agreements in US Dollars.

92. The Claimant accepts that the Respondent terminated the Agreement but argues that he is still entitled to compensation for any contract signed before 7 April 2024 on the basis of the early termination clause at paragraph 4 of the Agreement.

93. The Respondent submits that in deciding the dispute *ex aequo et bono* the Arbitrator should find that because the Claimant breached the FIBA IR and did not notify him (a) that the regulations existed and (b) that they afforded him the right to terminate an agreement with the Claimant on 30 days' notice, the Respondent should be entitled to terminate the Agreement on 30 days' notice with no further obligations to pay the Claimant compensation.

94. It is a settled principle of BAT case law that an agreement which breaches FIBA IR is not deemed invalid (BAT 1585/20, BAT 1662/21) and that the imposition of sanctions for breach of FIBA Regulations falls outside a BAT arbitrator's remit. In other words, the terms of the agreement prevail notwithstanding any inconsistency with FIBA IR.

95. The Arbitrator has considered the Respondent's arguments in respect of BAT 0615/14 and BAT 1457/19. The Arbitrator does not accept the Respondent's argument that the position adopted in those cases is analogous to the current case. She is not satisfied that the fact that the Respondent was not advised by the Claimant about the FIBA IR is equivalent to a failure to explain a clause expressly excluding the duty of a party to mitigate their losses. This is because, in the cited cases, the 'no duty to mitigate' clause was a provision of the contract subject of the dispute whereas, by contrast, the FIBA IR exist as a separate regulatory framework the breach of which is a matter for FIBA, not arbitrators appointed under the contract. As a professional basketball player, the Respondent is independently bound by the internal regulations, and he has not identified

any duty on the Claimant to explain the content of the IR to him. Moreover, the Respondent has failed to identify the source of any obligation on the Claimant to inform him about the content of the IR.

96. The Arbitrator does not accept the Respondent's argument that paragraph 4 of the Agreement requires that the Claimant must have provided services in connection with the negotiation of the Second Zenit Agreement in order to be entitled to compensation. The Respondent relies only on the first sentence of that paragraph but fails to consider the remainder of the paragraph which is clear that in the event the Agreement is terminated by the player the Claimant is entitled to "*immediate compensation as though Agent had negotiated said Contract*" if any party other than the Claimant negotiates a contract for the player. Further, paragraph 4 of the Agreement is clear that the Claimant is immediately entitled to full payment of 10% of the value of the contract, payable within 10 days. Whilst the second sentence of paragraph 4 refers to negotiation by another on the Respondent's behalf 'during the term of this Agreement', the Arbitrator does not consider that this should be read as meaning 'while the contract is in force' but rather, that the parties clearly intended it to mean during the intended or natural term of the agreement until 7 April 2024. Otherwise, the Respondent could evade his obligation to compensate the Claimant by unilaterally terminating the contract which cannot have been intended.

97. The Arbitrator finds that the Claimant accepted the Respondent's termination and there is no basis for the Respondent to claim that he is no longer bound by paragraph 4 of the Agreement which deals specifically with the event of early termination of the Agreement by the Player.

98. On this basis, the Arbitrator concludes that the Claimant may claim compensation for any contract entered into by the Respondent before 7 April 2024. However, she is strictly

limited in her power to grant relief by the claims pleaded by the parties. As the Representation Agreement is silent on the matter of the currency in which compensation should be paid, the Arbitrator accepts the Respondent's argument that compensation can only be payable in the currency that the Respondent received the relevant contractual payments, i.e. in Roubles.

99. However, the Claimant's entire claim is denominated in US Dollars. The fact that the Claimant is claiming a dollar amount rather than a dollar value that could be paid in another currency was made clear by the Claimant in his clarification on the relief requested and in particular according to his statement that the claim is made *"recalculating the payments at the USD exchange rate on the day the payment is received"*. Although it is true that the Claimant accepts that payments could be made in any currency, his submission that the payments should be recalculated *"at the USD exchange rate on the day the payment is received"* means that the claim is denominated in USD, because the Claimant's claim is based on the USD value. As noted above, the Arbitrator is prohibited from making an award of compensation in dollars because there is no entitlement to payment in dollars.

100. Moreover, the Arbitrator cannot order compensation to be paid in the equivalent amount in Roubles because this would go beyond the relief requested by the Claimant. The Arbitrator has, in particular, considered the decision by the Swiss Federal Tribunal in the case BGer 4A_503/2021 which confirms that whilst it is a matter of substantive law as to what currency the disputed obligation is due, it is a matter for Swiss law, as the *lex fori*, to determine whether or not an award may be ordered in a currency other than that requested by the Claimant in his submissions. In that case it was held that Swiss law prohibits an arbitrator awarding claim in a currency other than that claimed. Therefore, in accordance with Swiss case law and to avoid ruling *ultra petita* the Arbitrator must only accept the Claimant's claims in respect of payments made to the Respondent in US Dollars and dismiss the Claimant's claim for payments received by the Respondent in

Roubles.

101. Accordingly, the Arbitrator finds that the Claimant is entitled to compensation of USD 3,000.00 in respect of the Zenit Termination.

102. The Claimant requests such compensation to be paid "*net of all taxes*". Section 3 of the Zenit Appendix sets out the Respondent's compensation in the seasons 2022/2023 and 2023/24 to be "*dollars after tax*" and "*dollars after taxation"*. However, paragraph 2 of the Agreement just stipulates that the agent fee "*shall be in the amount of ten percent (10%) of the compensation earned by the Player*". Therefore, and since there is no basis for awarding the agent fee net of taxes, the amount should be awarded gross.

6.2.1 Interest

103. It has been consistently held in previous BAT cases that interest on unpaid sums at a rate of 5% per annum can be imposed starting from the date of the filing of the Request for Arbitration until the date of full payment if requested by the Claimant.

104. Consequently, the Claimant´s request for "*interest at 5% per annum, from date of submitting RfA until final payment*" is fully awarded.

7. Costs

105. 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).* […]"

106. On 31 December 2023, the BAT President determined the arbitration costs in the present matter to be EUR 7.000.00.

107. 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."*

108. Although the Claimant was only successful in a small proportion of his claim, the Respondent accepted in his submissions that monies were due to the Claimant and that the claims brought were reasonable.

109. The Arbitrator therefore finds the costs of the present proceedings should be borne equally between the Parties. On the basis that each Party paid EUR 3,500.00 in respect of the Advance on Costs the Arbitrator makes no further order as to costs.

110. 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."*

111. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses. In this case, the maximum amounts that the Claimant can claim (excluding the non-reimbursable handling fee) is EUR 7,500.00.

112. The Claimant claims legal fees in the amount of EUR 3,450.00 and the expense of the non-reimbursable handling fee of EUR 4,000.00. The Respondent claims legal fees in the amount of EUR 2,750.00 and the expense of the additional non-reimbursable

handling fee of EUR 1,000.00.

113. Taking into account the factors required by Article 17.3 of the BAT Rules, the maximum awardable amount prescribed under Article 17.4 of the BAT Rules (in this case, EUR 7,500.00), conduct of the parties throughout proceedings, the fact that the Claimant has been successful in only a small proportion of his claims, the Arbitrator holds that each Party shall be responsible for their own costs.

8. AWARD

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

1. **Mr. Trenton Jamar Frazier shall pay Mr. Ivan Zoroski USD 3,000.00 as compensation for unpaid commission, plus interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 5 March 2023 until payment in full.**

2. **The arbitration costs shall be borne equally by Mr. Ivan Zoroski and Mr. Trenton Jamar Frazier.**

3. **The Parties shall bear their own legal fees and expenses.**

4. **Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 20 February 2024

Amani Khalifa (Arbitrator)