

**ARBITRAL AWARD**

(BAT 2039/23)

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Benny Lo**

in the arbitration proceedings between

**Mr. James Andrisevic**

**- Claimant -**

represented by Messrs. Juan de Dios Crespo Pérez and Alessandro Mosca, attorneys at law

vs.

**Ibaraki Robots Sports Entertainment Inc. - "Ibaraki Robots"**

2084-2 Ibaraki Hosono Building 2<sup>nd</sup> floor, Senba-machi, Mito-shi, Ibaraki, Japan, 310-0851

**- Respondent -**

represented by Mr. Kentaro Takeda, attorney at law

## 1. The Parties

### 1.1. The Claimant

1. Mr. James Andrisevic (“**Coach**” or “**Claimant**”) is a US American professional basketball coach.

### 1.2. The Respondent

2. Ibaraki Robots Sports Entertainment Inc. - “Ibaraki Robots” (“**Club**” or “**Respondent**”) is a Japanese professional basketball club.

## 2. The Arbitrator

3. On 10 November 2023, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (“**BAT**”), appointed Mr. Benny Lo as the arbitrator (“**Arbitrator**”) pursuant to Articles 0.4 and 8.1 of the Arbitration Rules of the Basketball Arbitral Tribunal in force as from 1 January 2022 (“**BAT Rules**”). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

## 3. Facts and Proceedings

### 3.1. Summary of the Dispute

4. On 30 March 2023, the Club and the Coach entered into a written agreement entitled “**AGREEMENT**” providing for the Club’s employment of the Coach for the 2023-2024 and 2024-2025 seasons (“**Agreement**”).<sup>1</sup>
5. As stated in the preamble of the Agreement, the Club “*runs professional basketball team “Ibaraki Robots” (hereinafter “the Team”)*” and the Club “*wishes to engage the*

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<sup>1</sup> RfA, Annex 1.

*Coach to coach the Team*". Under article 1 of the Agreement, the Coach "*shall be assigned to the Team and be a member of the basketball club*".

6. The Coach's "*Performance Obligation*" is set forth in article 3.1 of the Agreement below:

*"The Coach is obligated to perform the following activities (hereinafter "the Activities"):*

*(1) Attendance at all games specified by the Team.*

*(2) Participation in all practices, training sessions, camps, and study sessions specified by the Team.*

*(3) Participation in meetings and other events required as preparation for games, as specified by the Team.*

*[...]*

*(7) Other activities considered necessary by ISE."*

7. Under articles 5.1 and 19 of the Agreement, the term of the employment runs from 1 August 2023 to 31 May 2025.

8. As to the Coach's base salary, it is "*FULLY GUARANTEED*" under article 5.1 of the Agreement in the respective amounts of USD 100,000.00 and USD 150,000.00 for the 2023-2024 and 2024-2025 seasons payable pursuant to the schedule therein. Article 5.1 also provides that "*All tax within Japan will be paid by ISE*".

9. In addition to base salary, article 5.2 provides for "*Bonus*" of 3 kinds, including:

*"2.1 League Bonus*

*50% of all bonuses paid by the B league, divided by number of all players and staff on team*

*2.2 For completing the 2023-2024 season*

*For completing the season as a head coach: USD 20000 (NET)"*

10. The Coach's further benefits are laid down in article 6 of the Agreement ("*Expenses*"), which include "*3 round trip premium economy class tickets per season for the Coach and family*".

11. Pursuant to article 20.1 of the Agreement, *“All amendments to this contract shall be in writing and shall be duly signed by a representative of ISE and The Coach. No verbal amendments shall have binding force.”*
12. On 25 May 2023, the Club made a public announcement entitled *“Report on appointment of James Andrišević as supervising head coach and agreement on contract with Chris Holm as head coach”* on its website, as quoted below (**“Appointment Announcement”**):<sup>2</sup>

*“Thank you for your continued support of Ibaraki Robots.*

*We would like to inform you that the Ibaraki Robots have appointed James Andrišević as the supervising head coach for the B.LEAGUE 2023-2024 season, and have reached a contract agreement with head coach Chris Holm.*

*The actual direction will be taken by James Andrišević SVHC, and coach Chris Holm will assist James Andrišević SVHC.*

[...]

*Andrišević SVHC Comment*

*Hello Robots Boosters! I'm very excited to be the Robots' new coach. I look forward to arriving in Mito soon and meeting everyone. We will all work together to make it a great season. Thank you for your continued support. GO Robots!*

*“Hi Robots fans! I'm so happy and excited to be the Robots head coach next season. I am looking forward to getting to Mito and meeting all of the wonderful boosters and fans. We will do our best to have a great season. Thank you for your support and go Robots”*

[...]

*✧ The Supervising Head Coach (SVHC) is*

*in charge of the entire team, works with the head coach to develop strategies and tactics in accordance with the team philosophy and executes them. The role of the director who has the final decision-making authority.”*

13. Thereafter, the Coach regularly performed his professional services for the Club during

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<sup>2</sup> RfA, Annex 6.

the pre-season and the beginning of the 2023-2024 season.

14. Without prior notice, the Club sent the Coach and his agent the following email (“**Subject: NOTICE OF ROLE CHANGE: Ibaraki Robots**”) on 30 October 2023 (“**Role Change Email**”):<sup>3</sup>

*“We are notifying you that your role within the Ibaraki Robots will change as of today. Per attached Notice, you are assigned as a coach of the youth team. Your service with the top team is no longer necessary. Please refrain from participating in any top team activities moving forward.*

*Please confirm the details of the attached notice regarding the assignment.”*

15. Attached to the Role Change Email is a “**NOTICE OF ROLE CHANGE**” dated 30 October 2023 (“**Role Change Notice**”), which states:<sup>4</sup>

*“This NOTICE OF ROLE CHANGE (hereinafter “this Notice”) is made by Ibaraki Robots Sports Entertainment Inc. (hereinafter “IRSE”) to James Andrisevic (hereinafter “Coach”) as follows, incidental to the Agreement (hereinafter “Agreement”) which was separately executed.*

*Article 1: [ Assignment to the youth team ]*

*IRSE will assign the coach to a role on the youth team as specified by the club. The terms of the coaching agreement will be honored in full (Base Salary, Housing, Etc.). The requirements of the coach in article 3 of the agreement will be honored by the coach upon joining the youth team. The bonus stated in 2.2. of the agreement will not be paid due to the coach’s change in the role within IRSE>*

*Article 3: (Contract Termination by the Coach)*

*Contrary to article 17 in the agreement, in the case the coach terminates the contract IRSE will compensate ALL base salaries for the 2023-2024 season. In this case, the coach must notify IRSE by 15:00 (3PM) Japan standard time October 31st, 2023 for the said payment from IRSE to proceed.”*

16. On 31 October 2023, the Coach through his counsel relied, *inter alia*, that:<sup>5</sup>

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<sup>3</sup> RfA, Annex 9.

<sup>4</sup> RfA, Annex 9a.

<sup>5</sup> RfA, Annex 10.

*“The above notice is a Club’s vague and unilateral decision that represents a fundamental breach of the Contract. Moreover, as confirmed by the longstanding BAT jurisprudence, clubs’ unilateral decision to downgrade or demote coaches is considered to be tantamount to unlawful unilateral termination of employment relationships.*

*Moreover, the Club’s decision not to pay the bonus stated in article 5.2.2 of the Contract “due to the coach’s change in the role with IRSE” has the only effect to further demonstrate what is the agreed role of the Coach in the Contract, which cannot be unilaterally amended by the Club.*

*In light of the above, the Coach strongly and entirely rejects the Club’s notice dated 30 October 2023 and he hereby grants the Club an opportunity to rectify its fundamental breach of Contract. In this regard, the Club is kindly requested to revoke in written such unjustified and unilateral demotion, so to reinstate the Coach in his position by 31 October 2023, 11:59pm Japan standard time.”*

17. Later on the same day, the Club sent the Coach’s agent the following email to revoke the Role Change Notice (“**Revocation Email**”):<sup>6</sup>

*“We would like to revoke our notice and reinstate James as the head coach.*

*After doing so, we would like to terminate his contract. We are willing to pay one full year compensation to James for just 3 months of services.*

*If we are to pay 2 year full guarantee at the termination, we would seriously consider retaining James for 2 full years as an Assistant Coach under a new head coach that we may hire.*

*Please let us know of your preference.”*

18. By an email of 31 October 2023, the Coach’s counsel acknowledged that the Club had revoked the Role Change Notice and reinstated the Coach as the head coach. The Coach also requested a meeting with the Club to agree on the next steps for him to perform his contractual obligations.<sup>7</sup>
19. On 1 November 2023, the Club accepted the Coach’s proposal and held a meeting during which it notified the Coach that he would be demoted to an assistant coach

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<sup>6</sup> RfA, Annex 11.

<sup>7</sup> RfA, Annex 12.

unless he accepted a mutual termination. After the meeting, the Coach through an email of even date rejected the demotion and requested the Club to reinstate him in his head coach position within 24 hours.<sup>8</sup>

20. Shortly thereafter, the Club replied with the following email of 1 November 2023:<sup>9</sup>

*“[...] Our club will remove Mr. Andrisevic from the Supervising Head Coach position, and upon the termination of the contract, the club is willing to pay one season’s base salary of 2023-2024.*

*If Mr. Andrisevic does not accept, we will seriously consider retaining him as assistant coach for 2 seasons until the remainder of his contract.*

*We hope we will get your response by Nov. 2nd 18:00 Japan time. Even if we do not get any responses from you, we will need to publicly announce his removal from the Supervising Head Coach position on November 3rd Friday Japan standard time, as whichever the outcome, termination or retention as assistant coach, the removal from Supervising Head Coach position would not be changed.”*

21. On 2 November 2023, the Coach through his counsel replied that he did not accept mutual termination or demotion to an assistant coach, and requested the Club to revoke his removal and refrain from making any public announcement about it.<sup>10</sup>

22. Next day on 3 November 2023, the Club replied that, as it had heard no response from the Coach, it would remove him “*from the Supervising Head Coach position*” and publicly announce this removal.<sup>11</sup>

23. Later on the same day, the Club made a public announcement entitled “*Report on the dismissal of Mr. James Andrisevic from the position of supervising head coach*” (“**Dismissal Announcement**”):<sup>12</sup>

*“[...] We would like to inform you that Mr. James Andrisevic has been relieved of his position as Supervising Head Coach. Head coach Chris Holm will be in charge*

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<sup>8</sup> RfA, Annex 14.

<sup>9</sup> RfA, Annex 15.

<sup>10</sup> RfA, Annex 16.

<sup>11</sup> RfA, Annex 17.

<sup>12</sup> RfA, Annex 18.

*of the team from the match against Nagasaki on Saturday, November 4th.*

*[...] We apologise for the inconvenience this may have caused to everyone due to the change of coach midway through the season, and we sincerely apologize for the fact that we have not been able to deliver victory.*

*We valued Mr. Andrisevic's coaching experience in the NBA and asked him to lead the team starting this season. Although we entered this season with high expectations, the current situation is extremely difficult. This season is the final season for the B.LEAGUE PREMIER entrance examination, and it is a season that the Robots cannot afford to compromise on. Although we had the misfortune of having key players sidelined one after another due to injuries, we have made the decision to dismiss him in order to change the current situation, which has been at the bottom of the league with nine consecutive losses without any results since the start. [...]"*

24. Shortly afterwards, the Coach through his counsel reiterated that he rejected his dismissal, any termination and any demotion to an assistant coach. He again warned the Club that such dismissal represented a fundamental breach of the Agreement and requested rectification by 4 November 2023.<sup>13</sup>
25. By email of 4 November 2023, the Club chased the Coach for his response in relation to the proposed termination and demotion to an assistant coach.<sup>14</sup>
26. In a reply email of same date, the Coach's counsel, *inter alia*, summarised the events leading up to the Club's Dismissal Announcement, reiterated his rejection of mutual termination and demotion, and gave the Club a last and final opportunity to reinstate the Coach's position, failing which "*the Coach will deemed [sic] the Contract to be terminated by the Club without just cause*".<sup>15</sup>
27. Nevertheless, the Club by email of 4 November 2023 chased again for the Coach's response to the proposed termination and demotion.<sup>16</sup>

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<sup>13</sup> RfA, Annex 19.

<sup>14</sup> RfA, Annex 20.

<sup>15</sup> RfA, Annex 21.

<sup>16</sup> RfA, Annex 22.

28. Eventually on 5 November 2023, the Coach noted the Club's failure to reinstate his position and hence informed the Club that it "*terminated the Contract without just cause*".<sup>17</sup>
29. Against the above background, the Coach contends that he was engaged as the head coach and the Club was not entitled to remove him from that position. The Coach submits that his removal and reassignment by the Club to the new role as a youth team coach or assistant coach constitutes a constructive dismissal, and hence a repudiatory breach and termination of the Agreement without just cause. Having received USD 30,000.00 from the Club, the Coach claims that the Club is liable to pay his remaining salary in the amount of USD 220,000.00 net by way of acceleration, plus interest. The Coach also seeks tax certificates and reimbursement for his flight tickets in the amount of USD 2,127.10.
30. On the other hand, it is the Club's case that the Coach was never offered or employed as a head coach because he was not qualified under local rules to be a head coach in the B League. The Club contends that the Coach was engaged merely as a coach and officially registered as an assistant coach. As to assigning the Coach to a youth team coach or assistant coach, the Club contends that it was contractually entitled to do so and thus committed no breach. The Club denies having terminated the Agreement and claims that the Coach breached the contract by his sudden departure without its permission. The Club thus submits that the Coach's claims have no basis and it is not obliged to pay compensation for the period when he is not fulfilling his obligations.
31. Accordingly, the issues in dispute relate to whether the Club employed the Coach as a head coach and breached the Agreement by demoting him from that position to another, and whether and to what extent the Club is obliged under the Agreement to pay the Coach his remaining salary and reimburse him for his flight expenses.

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<sup>17</sup> RfA, Annex 23.

### 3.2. The Proceedings before the BAT

32. On 7 November 2023, the Coach filed his Request for Arbitration (“**RfA**”) in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 6,000.00 on 8 November 2023.

33. On 14 November 2023, the BAT informed the Parties that Mr. Benny Lo had been appointed as the Arbitrator in this case, invited the Club to file its Answer to the RfA by 5 December 2023, and fixed the advance on costs to be paid by the Parties by 24 November 2023 as follows:

<i>“Claimant (Mr. James Andrisevic)”</i>	<i>EUR 6,000.00</i>
<i>Respondent (Ibaraki Robots)”</i>	<i>EUR 6,000.00”</i>

34. On 24 November 2023, the BAT received the Coach’s share of the advance on costs paid by him in the amount of EUR 6,000.00.

35. On 20 December 2023, the Club filed its Answer (“**Answer**”) pursuant to an extension of time previously granted by the BAT on 6 December 2023.

36. Later on the same day, the BAT noted the Club’s failure to pay its share of the advance on costs and invited the Coach to substitute for it by 9 January 2024.

37. On 21 December 2023, the BAT received the Club’s share of the advance on costs paid by the Coach in the amount of EUR 6,000.00.

38. On 5 January 2024, the BAT invited the Coach to reply to the Answer by 19 January 2024 and to file further submissions on his effort to mitigate his alleged loss.

39. On 19 January 2024, the Coach filed his Reply to the Answer (“**Reply**”).

40. Later on the same day, the BAT invited the Club to comment on the Reply by 2 February 2023.

41. On 2 February 2024, the Club filed its reply to the Coach’s Reply (“**Rejoinder**”).
42. On 5 February 2024, the BAT declared that the exchange of submissions was completed and directed the Parties to file their respective costs submissions by 12 February 2024, including a detailed account of their costs and any supporting documentation in relation thereto.
43. On 12 February 2024, the Coach filed his costs submissions. The Club did not do so.
44. On the same day, the Coach filed unsolicited submissions on the issue of mitigation.
45. On 14 February 2024, the BAT informed the Parties that the Arbitrator had decided to admit the Coach’s said unsolicited submissions and to re-open the proceedings, and invited the Club to comment on those submissions by 21 February 2024.
46. On 21 February 2024, the Club filed its reply to the Coach’s submissions of 12 February 2024.
47. On 22 February 2024, the BAT informed the Parties that the proceedings were conclusively closed and directed the Parties to file a detailed (updated) account of costs and any supporting documentation.
48. On 28 February 2024, the Coach filed his updated costs submissions. The Club did not file any costs submissions.

#### **4. The Positions of the Parties**

49. The Arbitrator has fully considered all of the Parties’ arguments as set out in their written submissions. To keep the length of this Award manageable, only the key points of the Parties’ cases are highlighted below.

##### **4.1. The Coach’s Position**

50. On the Coach's case, he was engaged by the Club as its head coach. This view is, the Coach submits, supported not only by the language of the Agreement (e.g. articles 5.2.2, 7, 11.1), but also "*by the Parties' conducts before, during, and after the execution of the employment relationship*".<sup>18</sup>
51. In light of those conducts, the Coach also submits that the Club "*ought to be estopped from making any opposite claims that the Coach had not been hired as its head-leading coach, regardless of the label given to his position*".<sup>19</sup>
52. Given the term of the Agreement up to 31 May 2025, the Coach adds that his position as the head coach was intended to maintain until that date.<sup>20</sup>
53. As article 20 of the Agreement requires all amendments to be in writing and signed by both Parties, the Coach contends that the Club was not legally entitled to unilaterally remove him from his head coach position and assign him to the role as a youth team coach or assistant coach, which are "*two very different positions*". In this regard, the Coach draws further support from BAT 0383/13 and 0785/15.<sup>21</sup>
54. The Coach submits that his "*his dismissal was not a temporary suspension, but rather a permanent removal*", because the Club "*confirmed on several occasions that the Coach would not be reinstated in his position and that his removal would not be reconsidered by the Club*" despite his repeated warnings.<sup>22</sup>
55. Accordingly, the Coach submits that the Club has, by its unilateral and final decision to remove him from his head coach position, forced him to leave, which constituted a constructive dismissal and hence a repudiatory breach and a termination of the

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<sup>18</sup> RfA, paras. 73-87.

<sup>19</sup> RfA, paras. 88-94.

<sup>20</sup> RfA, para. 95.

<sup>21</sup> RfA, paras. 96-105.

<sup>22</sup> RfA, para. 107.

Agreement without just cause.<sup>23</sup>

56. It is the Coach's case that the Agreement was unlawfully terminated by the Club on 4 November 2023 as it failed to rectify the breach by 11:59 pm on that day, which was the final deadline given by the Coach after his repeated formal demands.<sup>24</sup>
57. In reliance of article 16 and the cases of BAT 0155/11 and 0502/14, the Coach therefore claims his remaining salaries in the total amount of USD 220,000.00 net by way of acceleration and requests to be provided with the relevant tax certificates.<sup>25</sup> To that end, the Coach submits that he has duly complied with his duty to mitigate damages as he has tried but was unable to find a new employment.<sup>26</sup>
58. The Coach further claims to have incurred USD 2,127.10 to buy flight tickets to travel back to the USA for his family and himself. The Coach requests reimbursement of that amount based on article 6.2 of the Agreement.<sup>27</sup>
59. In the RfA, the Coach seeks the following relief:
- a. To accept this claim.*
  - b. To decide that the Respondent shall pay the Claimant USD 220,000.00 net of taxes as compensation due to the Respondent's termination of the Contract without just cause, plus 5% per annum interest rate from 5 November 2023 until its effective and entire payment.*
  - c. To decide that the Respondent shall provide the Claimant with the relevant tax certificates demonstrating that the Respondent paid all applicable taxes within Japan due in relation to the Claimant's base salary and compensation in the amount of USD 250,000.00 and its relevant default interests.*
  - d. To decide that the Respondent shall pay the Claimant USD 2,127.10 as reimbursement of the flight ticket, plus 5% per annum interest rate from 5 November 2023 until its effective and entire payment.*
  - e. Further to article 17.3 of the BAT Arbitration Rules to decide that the Respondent shall*

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<sup>23</sup> RfA, paras. 109-133.

<sup>24</sup> RfA, paras. 142-149.

<sup>25</sup> RfA, paras. 134-156.

<sup>26</sup> RfA, paras. 165-171; Reply, paras. 47-49.

<sup>27</sup> RfA, paras. 172-174; RfA, Annex 33.

*bear the entirety of the costs of this arbitration.*

*f. Further to article 17.4 of the BAT Arbitration Rules to decide, besides the payment of the non-reimbursable handling fee in the amount of EUR 6,000.00, that the Respondent shall pay the legal fees of the Claimant with respect to this procedure in the total amount of the EUR 15,000.00.”*

#### **4.2. The Club’s Position**

60. On the other hand, the Club’s case is that the Coach “*was only allowed a JBA/A class license due to the JBA license conversion rules based on the claimant’s coaching career, and did not have a license to become the head coach of a top team in the B League*”. Hence, there was no way the Coach “*could conclude a contract as the head coach of the club*”, and he was not employed as the head coach of the first team.<sup>28</sup>
61. The Club adds that “*it is impossible for the respondent to make an offer to the claimant as a head coach*” as it would violate the regulations,<sup>29</sup> and “*there is no language in the contract that limits the claimants’ position to that of head/leading coach*”.<sup>30</sup>
62. Further, the Club denies having ever dismissed the Coach or terminated the Agreement. Rather, the Club merely requested the Coach to coach its youth team on the basis of article 3.1.(7) of the Agreement. Since the Coach refused to do so, the Club instructed him to work as an assistant coach of the first team. However, the Coach disobeyed the Club’s instructions, returned to the USA without its permissions and abandoned his duties. The Coach was thus in breach of the Agreement. In the circumstances, the Club submits that article 16.1.(2) of the Agreement does not apply and it is not obliged to compensate the Coach.<sup>31</sup>
63. While the Club admits that the Coach was “*in a central position as a coach*” and “*in*

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<sup>28</sup> Answer, para. 1; Answer, Annex 35.

<sup>29</sup> Answer, para. 28.

<sup>30</sup> Answer, para. 24.

<sup>31</sup> Answer, para. 2.

*charge*” of its first team,<sup>32</sup> the Club contends that “*the claimants entered into the contract with the knowledge that the claimant’s position could be changed to another position*”,<sup>33</sup> and “*changing the position of the claimant to youth team coach or assistant coach was not a breach of contract*”.<sup>34</sup>

64. As to the term of the Agreement, the Club submits that, although article 5.1 states “*Term of office: August 1, 2023 to May 31, 2025*”, “*under no circumstances is this contract a complete guarantee that his term as coach will end on May 31, 2025*”.<sup>35</sup>
65. In response to the Coach’s claim that the Club is estopped from denying that he was employed as its head coach, the Club submits that “[*t*]he decision should be made based on the contents of the contract. Otherwise, the contract would be invalidated and would not be valid”, and “*there is not a single fact against the respondent that violates the principle of estoppel*”.<sup>36</sup>
66. As regards the Dismissal Announcement, the Club submits that “[*a*]lthough it is true that the dismissal was based on poor performance, the respondent did not terminate the contract with the claimant”.<sup>37</sup> In response to the Coach’s allegation that he faced difficulty in finding an alternative employment, the Club maintains that he was not fired but abandoned his duties and adds that it has no knowledge as to whether the Coach has exercised any effort in looking for a new employment.<sup>38</sup>
67. In relation to the Coach’s claim for reimbursement of his return flight expenses, the Club submits that “[*a*]rticle 6.2 of the contract does not apply as the return was made without the respondent’s permission and the ticket was not related to the team

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<sup>32</sup> Answer, paras. 76, 80-81, 83-85.

<sup>33</sup> Answer, para. 67.

<sup>34</sup> Answer, paras. 83-85, 87.

<sup>35</sup> Answer, para. 1.

<sup>36</sup> Answer, paras. 88-94.

<sup>37</sup> Answer, para. 113.

<sup>38</sup> Answer, paras. 163, 166-167; Rejoinder, para. 47; Club’s submissions of 21 February 2024.

activities”.<sup>39</sup>

## 5. The Jurisdiction of the BAT

68. Pursuant to Article 2.1 of the BAT Rules, “[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland, even if hearings, if any, are held in another place”. Hence, the BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

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

70. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.<sup>40</sup>

71. To establish the jurisdiction of the BAT, the Coach relies on the arbitration agreement contained under article 22 of the Agreement (“*Settlement and dispute*”), which reads as follows:

*“Any dispute arising 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, irrespective of the parties’ domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.”*

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

73. 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

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<sup>39</sup> Answer, para. 173.

<sup>40</sup> Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

Law (referred to by Article 178(2) PILA). And the Club has not disputed the jurisdiction of the BAT in this arbitration.

74. For the above reasons, the Arbitrator rules and finds, pursuant to Article 1.3 of the BAT Rules, that he has jurisdiction to finally decide and rule upon the Coach's claims.

## **6. Other Procedural Issues**

75. Neither of the Parties has requested a hearing to be held, nor does the Arbitrator consider a hearing necessary. The Arbitrator will therefore decide the Coach's claims based on the written submissions and the evidence on record.

## **7. Discussion**

### **7.1 Applicable Law – *ex aequo et bono***

76. 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".*

77. 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.”*

78. Article 22 of the Agreement expressly provides that the Arbitrator shall decide the dispute *ex aequo et bono*.

79. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in these proceedings, without references to any particular national or international law.

80. 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*<sup>41</sup> (Concordat),<sup>42</sup> 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.”*<sup>43</sup>

81. 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*”.

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

## 7.2 Findings

83. As the Coach’s claims are to enforce contractual payment obligations, the doctrine of *pacta sunt servanda* (which provides that parties who make a bargain are expected to

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<sup>41</sup> 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).

<sup>42</sup> P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

<sup>43</sup> JdT 1981 III, p. 93 (free translation).

stick to that bargain) is the principle by which the Arbitrator will examine their merits.

84. In the Arbitrator's view, the factual and legal issues presented by the Parties outlined under Section 4 above give rise to three broad issues for consideration, namely:
- (a) First, was it the Parties' agreement that the Coach shall be employed as the head coach of its first team?
  - (b) Second, did the Club breach the Agreement by demoting the Coach to a youth team or assistance coach?
  - (c) Third, what if any relief should be awarded in the Coach's claims?

**7.2.1. Was it the Parties' agreement that the Coach shall be employed as the head coach of its first team?**

85. It is the Coach's case that, pursuant to the express language of the Agreement, he was employed by the Club as the head coach of its first team. The Coach also draws support from the Parties' pre- and post-contractual conducts. In reliance of those conducts, the Coach further submits that the Club is estopped from denying his employment in the head coach position. The Coach's removal by the Club from that position, the Coach says, amounts to a constructive dismissal, and hence a repudiatory breach and a termination of the Agreement without just cause.
86. On the other hand, the Club submits that it was impossible to employ the Coach as its head coach, because he did not have the requisite license to be the head coach of a top team under the local rules. The Agreement does not limit the Coach's position to a head coach and hence changing his position to a youth team coach or assistant coach

was not a breach of contract. The Club also denies the application of the estoppel principle against it.

87. In the Arbitrator's view, the answer to Issue 1 turns on the interpretation of the Agreement and its application to the relevant facts.
88. The exercise of interpretation in the context of a BAT arbitration requires an arbitrator to look at all of the contractual language chosen by the parties through the eyes of a reasonable reader to see what the ordinary and natural meaning of the words used is. In so doing, the arbitrator is not free to completely disregard the words used by parties in their contractual documentation. In general, it is not the function of the arbitrator when interpreting an agreement to relieve a party from the consequences of his or her imprudence or poor advice. See para. 59 of BAT 0756/15.
89. All individual circumstances pertaining to the parties' declarations of intent may be relevant for the purpose of contractual interpretation. They include (i) the purpose of contract; (ii) overall conduct of the parties, prior negotiating history and post-signing conduct; and (iii) systematic structure of the contract. See paras. 100-101 of BAT 0641/15.
90. In the present case, the preamble of the Agreement provides that the Club "*runs professional basketball team "Ibaraki Robots" (hereinafter "the Team")*" and the Club "*wishes to engage the Coach to coach the Team*". By article 1, the Coach "*shall be assigned to the Team*". Article 3 sets out the Coach's obligations, which include "*Attendance at all games specified by the Team*"; "*Participation in all practices, training sessions, camps, and study sessions specified by the Team*"; and "*Participation in meetings and other events requires as preparation for games, as specified by the Team*". (emphasis added)
91. Under Article 2.1 of the Agreement, the Club agreed to reward the Coach "*50% of all bonuses paid by the B league*". Article 9 grants "*B. LEAGUE and ISE*" the right to use the Coach's likeness or images "*for the team and the league promotions, reporting,*

*broadcasting and public relation*". Article 14.1.(3) obliges the Coach to pay the fine imposed by "the B. LEAGUE" on him. Article 17.1.(2) allows the Coach to cancel the Agreement "[i]f ISE's basketball team has been demoted from B. LEAGUE". (emphasis)

92. Given these interacted references to "*the Team*" and "*B League*", it is abundantly clear that the Coach was employed to coach the Club's professional team which competes in the B League (i.e. its first team "*Ibaraki Robots*"), as opposed to its youth team. The Club's argument in para. 39 of its Answer that "[t]here is no mention in the contract that the team is limited to the professional basketball team "*Ibaraki Robots*" is to be rejected.
93. The next question is whether the Coach was engaged as the head coach as he alleges, or "*merely as a "coach" and not as the head coach of the first team*" as the Club alleges.<sup>44</sup>
94. Again, the starting point must be the language of the Agreement itself. The Arbitrator notes that the Agreement does not explicitly describe the Coach's position. However, a number of express provisions do tend to indicate that the Coach was employed in the head coach position.
95. For example, as the Coach points out,<sup>45</sup> article 5.2.2 provides for bonus in the amount of USD 20,000.00 net for "*completing the season as a head coach*" for the 2023-2024 season (emphasis added). Had the Coach not been employed in the head coach position, article 5.2.2 would be meaningless.
96. In this regard, the Coach adds that after he accepted the Club's second offer, he was informed by the Club that "*for registration purposes, his head/leading coach would be labelled before the B. League as "Supervising Head Coach"*", and when the Club drafted the Agreement, "*it forgot to take out the wording "head coach" from article 5.2.2*".<sup>46</sup> The Club admits this and asserts that it "*simply forgot to delete it* [i.e. the

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<sup>44</sup> Answer, para. 63.

<sup>45</sup> RfA, para. 78a.

<sup>46</sup> RfA, paras. 29, 31.

reference to “*head coach*” in article 5.2.2] *and it is a typo*”.<sup>47</sup>

97. As noted above, the Arbitrator when interpreting the Agreement is not free to disregard the contractual language chosen by the Parties. However, given the Parties’ consensus not to label the Coach as a head coach, and that the Club “*forgot to delete [such] wording*”, this residual reference to “*head coach*” in article 5.2.2 alone cannot be a reliable basis to evince or infer their contractual intention as to the Coach’s position.
98. Nevertheless, the Arbitrator is satisfied and finds that the Club did employ the Coach as the head coach under the Agreement, after taking into account other provisions of the Agreement and the Parties’ pre- and post-contractual conducts, which are relevant for the purpose of contractual interpretation: see para. 89 above, as explained below.
99. First, if the Coach had not been employed as the Club’s highest-ranking coach responsible for overseeing all aspects of its first team, such as coordinating the players’ practice planning and skill development, it begs the question why article 11.1 would specifically provide that the Coach “*must allow the General Manager to take part in the skill development of the players. The GM must report to the coach about its contents and purposes of all workouts at all times*”.
100. Similarly, as the Coach argues,<sup>48</sup> article 7 forbids him from making any disclosure about the Agreement “*until ONE WEEK after the current head coach is notified of his contract renewal status for the 2023-2024 season by the team*”, and in case of breach, the Coach “*will forfeit ONE MONTH’s salary for the 2023-2024 season*”. Plainly, article 7 serves to avoid some sort of troubles or embarrassment for the Club in relation to its then head coach who was to be replaced by the Coach in the same position.
101. The Arbitrator does not accept the Club’s argument that “*the wording “head coach” remained in some parts because the contract form used by the claimant when*

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<sup>47</sup> Answer, paras. 29, 31.

<sup>48</sup> RfA, para. 78.

*contracting with a previous head coach was used. There is only one part where he forgot to delete the wording, and the fact that the wording remained in the contract cannot be the basis for having signed a contract as a head coach*".<sup>49</sup> Again, as already noted, an arbitrator deciding *ex aequo et bono* is bound to consider and in principle to give effect to all contractual terms used by parties once properly interpreted.

102. Second, the Parties' prior negotiating history also sheds light on their consistent mutual intention to employ the Coach as the head coach. Indeed, the Club's two offers made to the Coach on 8 and 16 March 2023 respectively were both entitled "*Offer Sheet for Head Coach – 2023-2025 Season*" and contained a "*Job Description*" as follows:<sup>50</sup>

- Being in charge of all items related to the basketball team (strategies and tactics, team management, communication with all staff during games and practices, and so forth)*
- Developing a winning team culture*
- Any other work necessary for an [sic] Head Coach in the B League*" (emphasis added)

103. Third, as will be elaborated below, the Parties' post-signing conducts further make it beyond doubt that the Coach had all along been employed as the Club's head coach and performing his services in such position.

104. Indeed, the Club does not deny that, after signing the Agreement, the Coach immediately started performing duties which he alleges to be exclusively attributable to a head coach position, such as being in charge of the team schedule for August 2023.<sup>51</sup>

105. Thereafter, on 1 July 2023 via WhatsApp, the Club acknowledged the Coach's decision regarding three foreign players' schedules to return to Japan for the 2023-2024

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<sup>49</sup> Answer, para. 78.

<sup>50</sup> RfA, Annexes 4 and 5.

<sup>51</sup> RfA; para. 75; RfA, Annexes 24 and 25; Answer, para. 75.

season.<sup>52</sup> The Coach submits that such decision can only be taken by the head coach.<sup>53</sup> The Club does not deny this either and even admits that the Coach “*was in a central position as a coach*”.<sup>54</sup>

106. The Club further admits that the “*Ibaraki Robots Staff Handbook*” designed by the Coach contains the following statement:<sup>55</sup> (emphasis added)

*“Welcome to the 2023-2024 season of the Ibaraki Robots! I am excited to work with each one of you as we work together towards a great season. This handbook is designed to be an introduction of who we are, what each our responsibilities are, and a general overview of how we’re going to play. This will also serve as a reference for you throughout the season as we all work together for the first time.*”

*2023-2024 Ibaraki Robots Team Staff*

<i>General Manager/Director of Player Development</i>	<i>Mark Kaijima</i>
<i><u>Head Coach</u></i>	<i><u>James Andrisevic</u></i>
<i>Assistant Coach</i>	<i>Chris Holm</i>
<i>Assistant Coach</i>	<i>Sho Higashijima</i>
<i>Strength and Conditioning Coach</i>	<i>Hengo Ostuka</i>
<i>Head Trainer</i>	<i>Yui Hayashi</i>
<i>Athletic Trainer</i>	<i>Narihito Kambe</i>
<i>Head Manager</i>	<i>Yamato Kunori</i>
<i>Assistant Manager</i>	<i>Miu Hasegawa”</i>

107. Nor does the Club deny the Coach’s allegations that:

(a) the Coach had been leading the whole coaching team by, for example, giving instructions to the coaching team at the beginning of the season, organising the first

<sup>52</sup> RfA, Annex 26.

<sup>53</sup> RfA; para. 76.

<sup>54</sup> Answer, para. 76.

<sup>55</sup> RfA, Annex 27; Answer, para. 77.

meeting and cancelling a practice session;<sup>56</sup>

- (b) on 6 September 2023 through a WhatsApp group chat, the Club's General Manager, Mr. Mark Kaijima, introduced the Coach as "*our new head coach James*" to the team's new assistant coach, Mr. Kento Hori, who was in charge of analytics;<sup>57</sup>
- (c) on 10 September 2023 on its website, the Club published that "*This season, based on the Ideas of SVHC James Andrisevic, the players discussed the following and set the following team goals*", and thereafter further published the Coach's post-match comments after every game of the B. League and the Emperor's Cup;<sup>58</sup> and
- (d) the Coach had been directly involved in recruiting players and talking to agents, and the Club requested his opinions when evaluating possible new signings.<sup>59</sup>

108. Apart from its admission herein that the Coach was "*in charge*" and "*in a central position as a coach*", the Club also made the Appointment Announcement back in May 2023 (see para. 12 above), announcing that the Club had appointed the Coach "*as the supervising head coach for the B.LEAGUE*", and the "*actual direction will be taken by James Andrisevic SVHC*". The Announcement describes the role of Supervising Head Coach as "*in charge of the entire team, work[ing] with the head coach to develop strategies and tactics in accordance with the team philosophy and executes them*".

109. Further, when the Club sought to revoke its Role Change Notice demoting the Coach to youth team coach (see para. 15 above), it was stated in the Club's Revocation Email (see para. 17 above) that "*We would like to revoke our notice and reinstate James as the head coach*". (emphasis added) How could the Club reinstate the Coach as the head coach if he had not been employed in that position in the first place?

110. As to the Club's argument that the Coach could not hold the position of its head coach

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<sup>56</sup> RfA, Annexes 28 and 29; Answer, para. 80.

<sup>57</sup> RfA, Annex 30; Answer, para. 81.

<sup>58</sup> RfA, Annexes 7, 8 and 8A; Answer, para. 84.

<sup>59</sup> RfA, Annexes, 31 and 32; Answer, para. 85.

for lack of a requisite license under local rules, the Coach denies it and submits in paras. 8-14 of his Reply, *inter alia*, that:

- (a) It was the Club which agreed to hire the Coach as head coach and to that end “orchestrated a strategy to register him and avoid regulatory issues, circumventing the system, and naming the Coach as “Supervising Head Coach””;
- (b) Not only did the Club offer the Coach the head coach position, it also “decided to avoid regulatory issues and circumvent the system by naming him as “Supervising Head Coach””;
- (c) Thus, the Club’s “argument runs against basic notions of legal certainty and good faith, where it hired the Claimant as head/leading coach, naming him as “Supervising Head Coach” to avoid regulatory issues and, only after his dismissal as head/leading coach, argued that he could not be hired as head coach since he did not have the relevant license”;
- (d) “This is a blatant excuse brought in bad faith, even more if we consider that the Respondent enjoyed the Claimant’s services as head/leading coach, but then denied it only after dismissing him”; and
- (e) “The truth is that the Respondent hired the Claimant as head/leading coach, and it shall be held accountable both for the positive and negative sides. It cannot only enjoy the positive effects and refuse the negative ones”.

111. In response, the Club submits in paras. 8-14 of its Rejoinder, *inter alia*, that:

- (a) If the Coach had been employed as a head coach, the Club would have hired a person who did not hold a license, and thus “be at risk of being disqualified from playing the B League. There’s no way they’ll hire me [sic]”;
- (b) “As long as you belong to the B League, of course you have to follow the rules of the B League. According to the regulations, the license that the petitioner holds

*does not allow him to be employed as a head coach. Beyond that, there is no evidence that Complainant was not the head coach. None of Petitioner's arguments can overturn such objective evidence”;*

(c) *“Respondent could never hire Complainant as a head coach. Additionally, the respondent is responding in accordance with B League rules”;*

(d) *“There is no malice on the part of the respondent. After all, he only makes claims based on objective facts and evidence”;* and

(e) *“To reiterate, respondent employed petitioner as an assistant coach, and that is all there is to it”.*

112. As already noted, the Arbitrator is mandated to decide *ex aequo et bono* without making references to or being bound by any particular set of national legal rules. Thus, even if the Coach was unqualified to hold the head coach position under local rules, it does not necessarily follow that the Agreement would be invalidated for impossibility under local rules. After all, it is beyond the Arbitrator’s mandate to give effect to local rules.

113. Nevertheless, it is permissible and indeed necessary to consider the alleged local rules as part of the background context against which the Parties entered into the Agreement. In view of the alleged risk of disqualification from the B League, the Arbitrator cannot rule out the possibility that the Club genuinely did not intend to offer or employ the Coach in the head coach position.

114. However, on the balance of probability, the Arbitrator finds it proven that the Coach has in fact been employed and assumed the head coach position. Externally, the Coach’s position may well be labelled as *“Supervising Head Coach”* or other names to avoid violation of local rules or for other purposes. But internally between the Parties, the objective evidence points to the only conclusion that the Coach has all long been acting and treated as the *de facto* head coach of the Club’s first team.

115. For the above reasons, the Arbitrator is satisfied and finds that, as a matter of contractual interpretation, the Club did employ the Coach as the head coach of its first team under the Agreement. In light of the Parties' overall conduct as aforesaid, the Club is in any event estopped from denying that it has employed the Coach in that position.

**7.2.2. Did the Club breach the Agreement by demoting the Coach to a youth team or assistant coach?**

116. The next question is whether the Club breached the Agreement by demoting the Coach to a different position, namely a youth team coach or an assistant coach.

117. In reliance upon BAT 0383/13, 0758/15, 0785/15, 1610/20 and 1715/21, the Coach submits that his demotion by the Club from the head coach position to another amounted to a repudiatory breach of the Agreement, a constructive dismissal, and unlawful unilateral termination of the Agreement.

118. Apart from denying the Coach's employment as the head coach, the Club argues that it is entitled under article 3.1.(7) of the Agreement to change the Coach to another position. The Club does not argue against the BAT jurisprudence relied on by the Coach as referred to in the preceding paragraph, but seeks to distinguish them solely on the ground that the Coach was not employed as the head coach in the first place.

119. The Arbitrator does not accept the Club's argument, and agrees with the Coach that article 3.1.(7) "*is a residual clause that would allow the Respondent to request the Claimant to perform other activities, but such activities shall be intrinsically connected and related to the Claimant's engagement as head/leading coach, like the other specific activities established by the previous paragraphs*".<sup>60</sup>

120. Further, the rights vested in and the responsibilities assumed by a head coach of a professional team is clearly different from those of an assistant coach or a youth team

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<sup>60</sup> Reply, para. 30.

coach. For example, as the head coach, the Coach is entitled to “*League Bonus*” and bonus for completing the 2023-2024 season under article 2. To demote the Coach from a head coach to a different position would deprive him of such benefits.

121. Following the Club’s demotion, the Coach would clearly suffer a loss of prestige enjoyed by him as a head coach which is different from that accorded to the position of a youth team coach or an assistant coach. According to the Coach, he was building a name, reputation and career in Japan. Such career progression plan would obviously be adversely affected by the demotion.
122. Importantly, it is indisputable that the Coach never consented to his removal and demotion by the Club. Pursuant to article 30.1, all amendments, let alone material change of this kind, requires a written amendment signed by both Parties.
123. In the premises, the Arbitrator finds that the Club had no right to demote the Coach from his head coach position to the position of a youth team or assistant coach, and the Coach was fully entitled to insist on keeping his employment as the team’s head coach. The Club committed a fundamental breach of the Agreement by removing the Coach from the head coach position and threatening to demote him to an assistant coach should he not accept its proposed mutual termination. The Coach was indeed forced to leave in such circumstances.
124. Accordingly, the Arbitrator considers that the Agreement was terminated by the Club without just cause on 4 November 2023, i.e. the last day when the Club was allowed by the Coach to reinstate his position as the head coach.

**7.2.3. What if any relief should be awarded in the Coach’s claims?**

125. The Coach claims (i) his remaining salary of USD 220,000.00 net; (ii) flight expenses of 2,127.10 net; and (iii) interest on the foregoing amounts. The Coach also requests to be provided with the relevant tax certificates.

Salary

126. Starting with the claim for salary, the Coach submits that the Club now owes him USD 220,000.00 net by way of acceleration, after taking into account the Club's payment of USD 30,000.00 as aforesaid.
127. The Club contends that it did not terminate the Agreement and claims that the Coach was in breach by abandoning his duties and returned to the USA without its permission. The Club does not deny that it has paid the Coach USD 30,000.00 so far.
128. It is well established that, when the employment contract was terminated through a breach by the employer club, the employee coach's original claim for remuneration turned into a claim for damages due on the date when the contract was unlawfully terminated. It aims to compensate the coach for what would have been earned had there been no termination and the coach continued to perform thereunder. See para. 106 of BAT 0502/14.
129. Given the Arbitrator's finding that the Agreement was unlawfully terminated by the Club on 4 November 2023, the Club is *prima facie* liable to pay the Coach his remaining salary of USD 220,000.00 net. This is particularly the case when the Coach's salary for two seasons is "*FULLY GUARANTEED*" as per article 5.1 of the Agreement.
130. On the issue of mitigation, the Coach submits in paras. 165-171 of the RfA, *inter alia*, that (i) his salary was fully guaranteed for two seasons; (ii) the Club's termination gravely jeopardized his future opportunities in Japan where he was building his name, reputation and career; (iii) he was forced to promptly leave Japan as he was scared about the Club's threats to start a litigation there; (iv) no club was looking for a new coach at the time when he was dismissed in the middle of the 2023-2024 season; (v) his dismissal by the Club had a direct influence on his ability to find any new employment; (vi) as shown in BAT 0383/13, damage mitigation is much more difficult for a coach than player, because a team needs many players but only one head coach; and (vii) "*any excess or disproportion in the mitigation exercise could deprive in leaving*

*the Coach in a worse position than if he had accepted the Club's actions by mutually terminating or consenting to his new role for the same remuneration".*

131. In this regard, the Club submits in para. 163 of the Answer that whether or not the Coach made his best effort and found any new employment "*is a private matter of the claimant and cannot be known by the respondent*". At paras. 166-167 of the Answer, the Club adds that "[a]*lthough it is not known whether other teams will employ the claimant, the respondent has not made any threats or acted in a manner that would cause the claimant to feel fear*", and "[t]*here is no way for the respondent to know about this, as it is an employment issue for another team*".
132. In his Reply at paras. 47-49, the Coach adds that immediately after the Club's termination, he has been looking for new jobs in different markets around the world in November 2023, December 2023 and January 2024, but in vain. The Coach says he "*was put in a difficult position as far as finding alternative employment, when the season was well underway*". As such, the Coach submits that he has duly complied with his duty to mitigate damages.
133. In support, the Coach filed copies of his WhatsApp communications with various agents about coaching openings in Annexes 39-39C, 40-40b; 41-41b to his Reply and supplemented more copies in his unsolicited submissions of 12 February 2024.
134. In its Rejoinder and submissions of 21 February 2024, the Club does not specifically dispute the difficulty allegedly faced by the Coach in finding an alternative employment, but maintains that he was not fired but abandoned his duties.
135. The difficulty for coaches to find a new employment after being terminated mid-season is well recognised under established BAT jurisprudence: BAT 0383/13. The Arbitrator sees no reason to depart from such approach and would adopt the same in this case.
136. Thus, insofar as the 2023-2024 season is concerned, the Arbitrator accepts the Coach's submissions that he was unable to find alternative employment despite his

effort and has thus sufficiently discharged his duty to mitigate.

137. As regards the 2024-2025 season, however, since the termination took place in November 2023 and the new season would not start until around September 2024, there should be sufficient time for the Coach to find alternative employment in another club or institution whether in or outside Japan. Based on the available evidence, the Arbitrator is unable to rule out the possibility that the Coach would be able to secure new employment for the 2024-2025 season, which seems likely given his experience.
138. In the premises, the Arbitrator finds that no reduction should be made to the Coach's claims for the remaining salaries for the 2023-2024 season under the Agreement. As to the salary for the 2024-2025 season, the Arbitrator considers it fair and just to reduce it by half, taking into account all circumstances of the case including the Coach's likely salary level, his reputation loss suffered as a result of the Club's behaviour and some uncertainty about his future employment as a result. Deciding *ex aequo et bono*, the Coach is entitled to his claim for remaining salary in the amount of **USD 145,000.00 net**, being USD 70,000.00 net (for 2023-2024) plus USD 75,000.00 net (for 2024-2025).

#### Flight Expenses

139. Relying on article 6.2 of the Agreement, the Coach claims reimbursement of the amount of USD 2,127.10 he allegedly incurred to buy flight tickets back to the USA for his family and himself.
140. The Club disputes its obligation to reimburse the Coach's flight expenses solely on the ground that "[a]rticle 6.2 of the contract does not apply as the return was made without the respondent's permission and the ticket was not related to the team activities".<sup>61</sup>
141. The Arbitrator rejects the Club's argument. Under article 6.2, the Club expressly agreed to provide "3 round trip premium economy class tickets per season for the Coach and

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<sup>61</sup> Answer, para. 173.

*family*". Nothing suggests that those tickets must relate to the team activities. Rather, they are clearly intended to cover the Coach's and his family's in-bound and out-bound flights during the two seasons. Although the Club did not specifically permit the Coach to return, it has forced the Coach to leave by removing and threatening to demote him as aforesaid. In the circumstances, the Coach is hardly required to obtain the Club's permission to book the flight tickets and return to his home country.

142. On the basis of the evidence on record, the Arbitrator finds that the Coach has incurred **USD 2,127.10** for the flight expenses as claimed and the Club is liable to reimburse him that amount.

#### Interest

143. As to interest, the Coach claims interest at 5% per annum.
144. The Arbitrator is prepared to accept the usual rate of 5% per annum under well-established BAT jurisprudence from the 5 November 2023, i.e. from the day after the termination of the Agreement.

#### Tax Certificate

145. Turning to the Coach's request for tax certificates for his salary, the Club does not dispute its obligation to provide the same. The Club admits that the Coach's salary should be net of tax within Japan pursuant to article 5 of the Agreement. Accordingly, the Arbitrator will allow this request by the Coach.

#### **7.2.4. Conclusion on Liability**

146. In conclusion, deciding the case *ex aequo et bono*, the Arbitrator is satisfied and finds that the Club is liable to pay the Coach the amounts of **USD 145,000.00 net** and **USD 2,127.10**.
147. In line with established jurisprudence of the BAT, the Arbitrator also finds it fair and

reasonable to award the interest on the foregoing amounts at the rate of 5% per annum from 5 November 2023.

## 8. Costs

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

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

149. On 4 April 2024, the BAT Vice-President determined the arbitration costs in the present matter to be EUR 12,000.00.

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

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

151. The Coach has been successful by around 66% in his claims against the Club. As the Coach has paid the entirety of the advance on costs for this arbitration, the Club shall reimburse the Coach the amount of **EUR 7,920.00** as the costs of arbitration.

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

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

153. Article 17.4 of the BAT Rules provides for the maximum amounts a party can receive as a contribution towards its reasonable legal fees and other expenses (excluding the non-reimbursable handling fee). Considering the aggregate amount of USD 222,187.96 as claimed by the Coach in this arbitration, the maximum amount of contribution payable to the Coach's reasonable legal fees and other expenses is EUR 15,000.00.
154. In his costs submissions dated 28 February 2024 (which remain unchanged from his cost submissions dated 12 February 2024), the Coach claims legal fees and expenses of EUR 15,000.00. This is within the said maximum amount. Considering the relative complexity of the matter and the value in dispute, and that the Coach is largely successful, the Arbitrator determines that it is fair and reasonable that the Coach is entitled to a contribution to his legal fees and expenses in the amount of **EUR 8,250.00**.
155. Finally, given the above, the Arbitrator further finds that the Coach is entitled to be reimbursed the non-reimbursable fee in the amount of **EUR 6,000.00**.

## **9. AWARD**

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

- 1. Ibaraki Robots Sports Entertainment Inc. - “Ibaraki Robots” shall pay Mr. James Andrišević the amount of USD 145,000.00 net together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 5 November 2023 until payment in full.**
- 2. Ibaraki Robots Sports Entertainment Inc. - “Ibaraki Robots” shall provide Mr. James Andrišević with the relevant tax certificates demonstrating that it has paid all applicable taxes within Japan due in relation to Mr. James Andrišević’s salary and compensation in the total amount of USD 175,000.00 and its default interest.**
- 3. Ibaraki Robots Sports Entertainment Inc. - “Ibaraki Robots” shall pay Mr. James Andrišević the amount of USD 2,127.10 net together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 5 November 2023 until payment in full.**
- 4. The costs of this arbitration until the present Award, which were determined by the Vice-President of the BAT to be in the amount of EUR 12,000.00, shall be borne by Ibaraki Robots Sports Entertainment Inc. - “Ibaraki Robots” as to 66% and by Mr. James Andrišević as to 34%. Accordingly, Ibaraki Robots Sports Entertainment Inc. - “Ibaraki Robots” shall reimburse the amount of EUR 7,920.00 to Mr. James Andrišević as the costs of arbitration.**
- 5. Ibaraki Robots Sports Entertainment Inc. - “Ibaraki Robots” shall pay Mr. James Andrišević the further amount of EUR 14,250.00 as a contribution towards his legal fees and expenses.**
- 6. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 8 April 2024



**BASKETBALL**  
ARBITRAL TRIBUNAL

Benny Lo  
(Arbitrator)