

ARBITRAL AWARD

(BAT 2000/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Evgeny Damirovich Valiev

- Claimant -

represented by Ms. Anastasiia Aleksandrovna Kashaeva, attorney at law,

vs.

BC KHIMKI

Kirova street, bld. 27, 3rd floor, Khimki, Moscow region, 141402 Russian Federation

- Respondent -

represented by the Club's general director Mr. Pavel Vladimirovich Astakhov

1. The Parties

1. Mr. Evgeny Damirovich Valiev (hereinafter referred to as the "Player" or "Claimant") is a Russian professional basketball player.
2. Basketball Club "KHIMKI" (hereinafter referred to as the "Club" or "Respondent") is a professional basketball club participating in the VTP United League, i.e. a professional basketball league currently run by the basketball federations of Russia, Belarus and Kazakhstan.

2. The Arbitrator

3. On 30 July 2023, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal (hereinafter referred to as the "BAT"), appointed Mr. Stephan Netzle as an arbitrator (hereinafter referred to as the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter referred to as the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

4. The following constitutes a summary of the case based on the facts presented by the Parties which appear to be undisputed.

a. The Agreements

5. On 24 June 2019, the Player and the Club signed an agreement (Agreement No. 9/2019) for the 2019/2020 and the 2020/2021 seasons (hereinafter referred to as the "Agreement 9/2019"). The Agreement 9/2019 provided for annual salaries of RUB 35,000,000.00 net of all taxes, payable in 10 equal monthly instalments of RUB 3,500,000.00. In addition, the Player was entitled to bonuses in case the team would win the VTB United League championship title and/or the Euroleague championship title. The "Internal Regulations of the Team of the Basketball Club 'Khimki'" signed by both parties were added as Appendix 1 to the Agreement 9/2019.
6. One day later, on 25 June 2019, the Player and the Club signed a second agreement (Agreement No. 18/19; "Labor Contract with a Sportsman"), (hereinafter referred to as the "Labor Contract"). For the Player's salary, Article 3.1 of the Labor Contract referred to a separate agreement.
7. On 6 August 2019, the Parties allegedly signed a separate agreement to the Labor Contract (Addendum W/N to Employment Contract No. 18/19, hereinafter referred to as the "Additional Agreement"), by which the Player's function was changed to that of an "*athlete-instructor for the First Team*". The main obligation of the Player was extended to "*the preparation [of the First Team] for and participation in basketball competitions.*" The Additional Agreement bears signatures of both parties, but the Player disputes that his signature was genuine.
8. On 16 September 2019, the Labor Contract was registered by the Russian Basketball Federation under the number 32929.
9. On 29 November 2019, the Club and the Player signed another Addendum to the Agreement 9/2019. The Player had been loaned to "Parma Basketball Club", from 2 December 2019 to the end of the 2019/2020 season, and the parties agreed to reduce "*the price of the Contract for the season 2019/2020*" to RUB 30,200,000.00 after tax.

10. On 14 May 2020, as a consequence of the Covid-19 pandemic, the 2019/2020 VTB season ended prematurely. The parties therefore signed a further Addendum to the Agreement 9/2019 (Addendum to the Contract between the Club and the Player concerning the 2019-20 season due to the Covid-19 Pandemic), by which the salary of the Player for the season 2019/2020 was reduced by 20%. Undisputedly, the Club met all financial obligations stipulated by the Agreement 9/2019 for the 2019/2020 season.

b. The Medical Examinations: suspension and re-admission of the Player

11. Between 14 and 18 August 2020, the Player underwent a medical examination prior to the start of the 2020/2021 season, as required by clause 1.3 of the Agreement 9/2019.
12. On 19 August 2020, the Club notified the Player of the "*unsatisfactory results*" of the medical examination as shown in the medical report of 19 August 2020, and added a notice of termination of the Agreement 9/2019, in which the Club also stated that it no longer had any financial obligations towards the Player.
13. By orders of 20 and 27 August 2020 (under No. 59-k and No. 61-k), the Club suspended the Player from work as an "*athlete-instructor*" for a period of three months due to the unsatisfactory results of the mandatory medical examination prior to the start of the new season.
14. On 28 August 2020, the Club sent the Player a second notice of termination of Agreement 9/2019, in which it which stated that in the 2020/2021 season, i.e. from 19 August 2020 on, "*the Club cannot be held liable for the financial liabilities of the Player under the terms of the Contract*" and that the Player was free to conclude a contract with any other basketball club, whether in Russia or elsewhere, at any time.
15. Between 7 and 10 September 2020, the Player underwent a medical _____ examination on his own initiative. According to the medical report, the Player was diagnosed with "_____". His general condition was judged "satisfactory". The report showed

no evidence of _____ but concluded that “*at the moment there are no contraindications for professional training and competitive activities caused by _____*”.

16. By email of 13 September 2020, the Player requested the Club to readmit him to work based on the results of his own _____ examination, and to cancel the suspension orders.
17. By email of 5 October 2020, the Club replied that it could not take the results of the Player's new _____ examination into account because this had “*no legal grounds*”. In particular, the Club argued that the medical examination had not been carried out by a specialised sports doctor.
18. Between 12 and 21 October 2020, the Player underwent a medical examination at the “Federal Scientific and Clinical Center for Specialised Types of Medical Care and Medical Technologies of the Federal Medical and Biologic Agency” (FMBA) as an athlete of the national basketball team of the Russian Basketball Federation (RBF). Based on the medical results, the Player was “*admitted to training and competitive activities*” as a member of the national team.
19. On 23 October 2020, the RBF sent a notice to the Club and summoned the Player to participate in training events of the national team and the national team's qualification games for the European Basketball Championships 2022 (“EuroBasket 2022”)¹.
20. On 26 October 2020, the Player notified the Club of the FMBA test results and requested to be re-admitted to the Club's training and competitive activities.

¹ The EuroBasket 2022 was postponed from 2021 to 2022 due to the Covid-19 pandemic. The Russian National Team was eventually excluded as a consequence of the Russian invasion in Ukraine.

21. In response, the Club requested the Player to undergo a follow-up medical examination on 23 November 2020 as announced in the order No. 61-k of 27 August 2020². The Player asked for a postponement of the medical examination because he was then expected to play with the Russian national team. On 20 November 2020, the Club postponed the Player's medical examination to 3 December 2020.
22. Between 22 November 2020 and 1 December 2020, the Player participated in training activities and qualifying games for the EuroBasket 2022 of the Russian national team.
23. By letter of 2 December 2020, the Club notified the Player that "*due to a change in the working hours of ANO 'Sports Medicine Clinic'*", the Player's medical examination was postponed to 8 December 2020.
24. Eventually, the follow-up medical examination of the Player initiated by the Club took place between 8 and 10 December 2020. A medical report was issued on 11 December 2020. No significant medical irregularities were found in the Player that would prevent high-intensity sporting activities.
25. Based on the medical report of 11 December 2020, the Club re-admitted the Player to work on 14 December 2020. The Player participated in training and competitive activities of the Club until 30 June 2021. During the remaining season 2021/2022, the Club's team played in several games in the Euroleague and the VTB United League. The Club paid the Player a salary of EUR 300,000.00 per month, as provided by the Additional Agreement to the Labor Contract. These payments amounted to RUB 2,084,631.97 (i.e. RUB 1,813,629.81 after deduction of personal income tax).

² See para. 13 above.

c. The Player's legal steps

26. On 10 November 2020, the Player filed a claim with the Primorsky District Court of St. Petersburg against the Club and requested that his suspension from training and competing activities be declared unlawful and that the Club had to pay lost earnings for the time of the illegal suspension, the average earnings for the time of medical examination and his participation in games of the Russian national team (RUB 20,5503, 951), his entire contractual salary from 14 December 2020 to 30 July 2021 (RUB 17,899,877.10), and compensation for moral harm (RUB 1,000,000.00).
27. By ruling of 10 June 2021, the Primorsky District Court of St. Petersburg denied its jurisdiction after the Club had raised an objection to this effect. The Primorsky District Court found that *"there is a valid arbitration agreement between the parties on consideration of the said dispute by the arbitration court"*.
28. Upon appeal of the Player dated 5 October 2021, the St. Petersburg City Court cancelled the decision of the Primorsky District Court and held that the Primorsky District Court had indeed jurisdiction to accept and decide the Player's claim on the merits.
29. By decision of 8 December 2021 the Primorsky District Court found that *"in the case records, there is no evidence of a violation of the law, both when giving medical opinions on the status of an athlete's admission based on the results of a regular medical examination, and when issuing, on the basis of the above opinions [that the provisions of the Labour Code of the Russian Federation do not provide for the possibility to prescribe the status of "conditionally admitted" to an athlete], the defendant's order to suspend the plaintiff from work."* It ruled that it had no grounds to hold such orders invalid and to recover lost earnings during the suspension from work. The Player was however awarded salary payments in arrears in the amount of RUB 2,488,173.22 and a compensation for moral harm in the amount of RUB 50,000.00. All further claims were dismissed.

30. The Player appealed to the St. Petersburg City Court. His appeal was however dismissed by decision of 30 August 2022.
31. On 1 March 2023, the Third General Jurisdiction Court of Cassation, after having considered the Player's cassation appeal against the appellate ruling dated 30 August 2022, agreed with the conclusions of the St. Petersburg City Court and confirmed the judgment of the Primorsky District Court of 8 December 2021.
32. On 29 June 2022, the Player also applied to the Khimki City Court of the Moscow Region with a request to recover compensation for unused holiday leave for the entire period of work from the Club (seasons 2019/2020 and 2020/2021), as well as interest for delayed payment for the period between 30 June 2021 to 29 June 2022, and compensation for moral damage. In its decision dated 19 December 2022, the Khimki City Court repeated the circumstances established by the decision of the Primorsky District Court of St. Petersburg of 8 December 2021 that entered into force. The claim was dismissed for the reason that the Claimant had already received the amount due for the 2019/2020 season under the Labor Contract.
33. Upon appeal, on 10 May 2023, the Moscow Regional Court upheld the Decision of Khimki City Court of 19 December 2022.

d. Amount claimed in this arbitration

34. By letter of 15 May 2023, the Player requested the Club to make the due payments within 10 days, namely the agreed salary under the Agreement 9/2019 (RUB 35,000,000.00) from which the payments received by the Player in the 2020/2021 season (RUB 1,813,629.47) and the amount awarded by decision of the Primorsky District Court dated 8 December 2021 (RUB 1,164,710.07) had to be deducted, resulting in an amount of RUB 31,021,659.50. This is the principal amount claimed in this arbitration.
35. By letter of 26 May 2023, the Club denied the Player's claims.

3.2 The Proceedings before the BAT

36. On 15 June 2023, the Player filed a Request for Arbitration against the Club in accordance with the BAT Rules and paid the non-reimbursable handling fee of EUR 5,946.73 (received in the BAT bank account on 20 July 2023).³

37. On 31 July 2023, the BAT informed the Parties that Mr. Stephan Netzle had been appointed as the Arbitrator, 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 21 August 2023 and fixed the Advance on Costs to be paid by the Parties by 10 August 2023 as follows:

<i>"Claimant (Mr. Evgeny Valiev)</i>	<i>EUR 6,500.00</i>
<i>Respondent (BC Khimki)</i>	<i>EUR 6,500.00"</i>

38. On 1 August 2023, the Respondent asked for an extension of the deadline for providing the Answer to the Request for Arbitration until 4 September 2023, which was granted by the BAT.

39. On 10 August 2023, the Respondent informed the BAT that it was *"unable to fulfil the Procedural Order of the Honourable Arbitrator dated 31 July 2023 on the transfer of an advance on costs in the amount of 6 500 EUR to the account of FIBA (Basketball Arbitral Tribunal), due to the restrictions currently in force in the Russian Federation in regards to foreign currency payments made by legal entities to the accounts of legal entities, open outside of the Russian Federation"*.

40. On 17 August 2023, also the Claimant's legal counsel informed the BAT about the Claimant's difficulties in paying the Advance on Costs due to the restrictions imposed on the

³ The applicable handling fee in this matter is EUR 6,000.00 pursuant to Article 17.1 of the BAT Arbitration Rules. The outstanding amount of EUR 53.27 for the Claimant has been added to the Advance on Costs of the Claimant on 31 July 2023.

banking sector in the Russian Federation related with sanctions on international payments and consequently, requested a deferral of payment of the Advance on Costs. On 21 August 2023, the Claimant specified the deferral of payment of the Advance on Costs until 4 September 2023, which the BAT granted until 4 September 2023.

41. On 28 August 2023, the BAT received the Claimant's share of the Advance on Costs.
42. On 5 September 2023, the Respondent submitted its Answer to the Request for Arbitration.
43. On 8 September 2023, the BAT acknowledged receipt of the Claimant's share of the Advance on Costs. It noted that the Respondent failed to pay its share of the Advance on Costs and informed the Claimant about the possibility to substitute for the Respondent's share of the Advance on Costs until 15 September 2023.
44. On 14 September 2023, the Claimant paid the outstanding share of the Advance on Costs on behalf of the Respondent.
45. On 3 October 2023, the Claimant asked for clarification on when to expect an Answer to the Request for Arbitration from the Respondent.
46. On October 18, 2023, the BAT issued a Procedural Order, confirming receipt of the entire Advance on Costs. The Claimant was also provided with the Respondent's Answer to the Request for Arbitration and invited to submit comments on the Respondent's Answer. Additionally, the BAT requested the Claimant to respond to specific questions by 2 November 2023. Upon Claimant's request, the BAT extended this deadline until 13 November 2023.
47. On 13 November 2023, the Claimant submitted his comments on the Answer to the RfA and the answers to the BAT's questions. On the same day, the Claimant's comments

and answers were forwarded to the Respondent which was invited to provide its comments within 14 days. Upon the Respondent's request, the BAT extended this deadline until 7 December 2023.

48. On 7 December 2023, the Respondent submitted his comments to the BAT.
49. On 8 December 2023, the Respondent sent an updated document, containing an indication of pages of the exhibits. No further changes were made.
50. On 9 January 2024, the BAT informed the Parties that the Arbitrator had declared the exchange of submissions complete and that the final award would be rendered as soon as possible. Finally, the BAT granted the Parties a deadline until 16 January 2023 to provide a detailed account of their legal costs.
51. On 10 January 2024, the BAT reverted to the Parties and asked for submission of translated copies of the court ruling of the Primorsky District Court of St. Petersburg dated 10 June 2021 and the appellate ruling of the St. Petersburg City Court dated 5 October 2021. The requested documents were provided on 10 and 16 January 2024.
52. On 16 January 2023, the Parties submitted their cost statements.

4. The Positions of the Parties

4.1 The Claimant's position

a. On the jurisdiction of the BAT and the admissibility of the claim

53. The Player is and was aware of the arbitration agreement in favour of the BAT in clause 6.1 of the Agreement 9/2019. He nevertheless applied to the Russian ordinary courts because Russian law allows labour disputes to be heard by Russian courts, as set out

in Article 248.13 of the Labour Code of the Russian Federation. Such proceedings are, other than BAT proceedings, free of charge for the employee.

54. Moreover, the Player expected that proceedings before an ordinary court in Russia would have resulted in a faster result, both with regard to the annulment of the suspension from work and the enforcement of the salary claim, compared to arbitration with the BAT. The Player needed a fast decision to terminate his ongoing suspension from work which seemed only feasible by invoking an ordinary court in Russia.
55. In addition, the Player's counsel at the time did not have sufficient experience to proceed with the BAT. On the other hand, she was familiar with the proceedings before the ordinary courts in Russia and knew before which court an action to protect the Player's interest as an employee had to be brought.
56. The proceedings before the ordinary Russian courts did not prevent the Player from arbitration under the BAT Rules. The ordinary Russian courts only dealt with the Labor Contract and not with the Agreement 9/2019, which contains an agreement for arbitration with the BAT in Article 6.1. When it became apparent that the Russian courts would not take the Agreement 9/2019 into consideration the Player was still free to proceed with arbitration.
57. Since the Russian courts did not deal with the contractual specificities of Agreement 9/2019 and only focused on the Labor Contract, the Player would be left without any remedies against the Club's breach of Agreement 9/2019. In addition, the BAT Rules do not contain a reservation of exclusivity of arbitration. They do not exclude the possibility to raise a claim before the BAT, even if a same or similar dispute was filed with another tribunal or court. Article 10.4 BAT Rules does not provide for any consequences, including the refusal to consider a dispute, if the parties apply to a state court.
58. On the other hand, as a citizen of the Russian Federation, the Player did not lose the right to appeal to a court of general jurisdiction in order to resolve a labour dispute under

Russian law, when he signed an agreement with a Russian club containing an arbitration clause on the transfer of all disputes to the BAT.

59. Addressing *res judicata*, the Player asserts that the dispute before the Russian court was not identical and did not concern the same subject matter as the claim now submitted to the BAT. While the present claim is based on the Agreement 9/2019, the Russian courts dealt only with the Labor Contract. Before the Russian ordinary courts, the Player demanded a declaration for the illegality of his suspension from work and requested the recovery of his salary plus compensation for moral damages. In contrast, in this arbitration, he asks for a declaration of unlawful termination of Agreement 9/2019, meaning that the Club must recover all amounts due under the Agreement 9/2019. Hence, the definition of *res judicata* has not been met when comparing the Player's claim before the ordinary courts and the Request for Arbitration with the BAT.

b. On the merits of the claim

60. The subject of the dispute between the Player and the Club pertains to the Player's assertion that the Agreement 09/2019 was unlawfully terminated. Consequently, he contends that he had been wrongfully deprived of the funds specified in clause 2.3 of the Agreement 09/2019 for the 2020/2021 season, after deducting the payments already made.
61. The Club justified the termination of the Agreement 9/2019 with the "*unsatisfactory results of the medical examination*" which was carried out in compliance with clause 1.3 of the Agreement 9/2019 prior to the start of the season 2020/2021 as documented by the medical report of 19 August 2020. On the following day, the Club terminated the Agreement 9/2019. This was not acceptable, because clause 1.3 of the Agreement 9/2019 does not define what constitutes a "*negative result of medical testing*" and the Parties have never agreed on the relevant criteria and applicable standards. Para. 5 of clause

1.4 of the Agreement 9/2019 is therefore overly broad and unspecific, as a similar provision has been judged in BAT 0993/17, Hairston v. AEK Athens.

62. The Club used the "*unsatisfactory results of the medical examination*" to terminate the Agreement 9/2019 but, at the same time and based on the same medical results, suspended the Player only temporarily under the Labor Contract with the consequence that the Player could resume to participate in training and competition between 14 December 2020 and 30 June 2021. While Agreement 9/2019 by which a substantially higher compensation of the Player had been agreed, was terminated, the Labor Contract with a much lower basic salary remained in place. This makes clear that the Club's goal was not to care about the Player's health but only to save money on the Player's salary.
63. In the absence of relevant parameters and standards for medical examinations, the Club claims excessive discretionary power to terminate the Agreement 9/2019. According to the principle of '*contra proferentem*' any ambiguity in the Agreement 9/2019 must be construed against the party that prepared the Agreement 9/2019, i.e. the Club.
64. By occasion of the medical examination between 14 and 18 August 2020, the Player was diagnosed with _____. This does not disable an athlete from sporting activities. To the contrary: The European Society of _____ recommends that all competitive and leisure-time sports activities are permitted, with periodic re-evaluation of individuals without familial or structural underlying diseases. Also, the FMBA-approved guidelines "Criteria for Admission of Adults to Sports (Training and Sports Competitions) according to Sport. _____" provide for a specific controlling of athletes with _____ and appropriate measures depending on the characteristics and frequency of _____, ranging from further observation and tests while continuing sports activities and temporary pauses in case of persistence of or increase of the frequency of _____, and exclusion from sport only when frequent or complex _____ are combined with the presence of _____ or _____. No MRI was performed on the Player. Nor was the Player examined by an _____ or _____ which would have been necessary procedures to accurately assess his health.

65. In the absence of defined criteria for any decisions based on the medical results, the Player's three-months suspension was unreasonable, especially as subsequent independent medical examinations revealed no _____, why the Player was found fit for training and competitive activities.
66. If the Club's unilateral termination of the Agreement 09/2019 due to unsatisfactory medical results is deemed legal, clause 1.4 para. 3 of the Agreement 9/2019 stipulating the Club's ongoing financial liability despite termination due to illness or injury, must apply.
67. The Player asserts that the Labor Contract was signed solely for compliance with the VTB United League Regulations. The Club's financial obligations were comprehensively addressed in the Agreement 9/2019. The Russian courts were therefore wrong to consider the Labor Contract as the primary agreement governing the employment relationship between the Parties.
68. The Parties complied with the Agreement 9/2019 in the 2019/2020 season and amended it when the Player was loaned to Parma BC. This shows that the Parties considered the Agreement 9/2019 as the primary and relevant agreement. In accordance with the terms of the additional Agreement, the Club had the obligation to pay the Player RUB 30,200,000.00 (minus the sum to be deducted regarding the Agreement due to the premature ending of the season caused by the Covid-19 pandemic).
69. The Player disputes having ever signed the Additional Agreement to the Labor Contract, which determined his salary between 14 December 2020 and 30 June 2021, on grounds that remain contested. The terms therein stipulate a base salary of RUB 300,000.00 per month for participation in training and competitive activities. The RUB 300,000.00 per month as a base salary do not even correspond to the average salary level of a VTB United League basketball player and member of the Russian national team. The Player states that his current salary at MBA Moscow amounts to RUB 1,000,000.00 per month.

c. Request for Relief

70. In his Request for Arbitration dated 15 June 2023, the Player requested the following relief:

*“To uphold the present Claim (Request for Arbitration)
and render an award, declaring that:*

1. *Agreement No. 09/2019 concluded on June 24 2019 between Evgeny Damirovich Valiev and the Association “Basketball Club “Khimki” was unilaterally and illegally terminated by Association “Basketball Club “Khimki”;*
2. *To condemn Association “Basketball Club “Khimki” to pay Evgeny Damirovich:*
 - *Salary (compensation) for the season 2020/2021 in the amount of 31,021,659.50 Russian rubles (after payment personal income tax);*
 - *Interest for the unjustified termination of Agreement No. 09/2019 dated June 24, 2019 calculated for the period from August 20, 2020 to June 15, 2023 at the rate of 5% per annum in the amount of 4,375,472.83 Russian rubles (after payment personal income tax);*
 - *Interest for the unjustified termination of Agreement No. 09/2019 dated June 24, 2019 at the rate of 5% per annum from June 16, 2023 to the date of payment of the Association “Basketball Club “Khimki”’s outstanding amounts for the season 2020/2021, based on the amount of the debt is 31,021,659.50 Russian rubles (after payment personal income tax).*

Total amount in dispute: *35,397,132.33 Russian rubles (after payment personal income tax).”*

4.2 The Club's Position

a. *On the jurisdiction of the BAT and the admissibility of the claim*

71. The Club does not explicitly object to the jurisdiction of the BAT but argues that the matter must be considered as *res judicata*, since the ordinary Russian courts (i.e. the Primorsky District Court of St. Petersburg as first instance, the St. Petersburg City Court as first appellate instance, and the Third General Jurisdiction Court of Cassation as final appellate instance) had already decided on the merits of the claim which is identical to the one the Player has now submitted to the BAT. Thus, the Player's claim before the BAT is not admissible.
72. Contrary to the Players statements, both agreements (i.e. the Agreement 9/2019 and the Labor Contract) were considered by the ordinary Russian courts.
73. In particular, the ordinary Russian courts explicitly confirmed the legality of the termination of the Agreement 9/2019 and rejected the Player's claim for payment of a compensation for the lost salaries which he would have earned under the Agreement 9/2019 in the 2021/2022 season.
74. The Club insists that all requirements to consider the decisions of the ordinary Russian courts as *res judicata* have been met; namely the identity of the parties (i.e. the Player and the Club), the identity of the subject-matter of the dispute (i.e. the question whether the Agreement 9/2019 was terminated in August 2020 for cause), and the identity of claims (i.e. the claims for the salaries for the 2021-2022 season under the Agreement 9/2019).
75. When the Player filed his claim for compensation because of the allegedly wrongful termination of the Agreement 9/2019 with the Primorsky District Court, the Club indeed raised the objection to jurisdiction. The Club did not request that the claim should be decided by the BAT but referred to the Sports Arbitration Chamber (SAC) of the National

Center for Sports Arbitration (NCSA), as provided for by Article 7.1 of the "new version" of the Labor Contract registered with the Russian Basketball Federation. The Club's objection was accepted by the Primorsky District Court by ruling of 10 June 2021. On appeal, the City Court of St. Petersburg overturned the decision of the first instance and decided that the Player's claim must be decided on the merits by the Primorsky District Court, as initially seized by the Player.

76. The Club points to the fact that the Claimant intentionally chose to file his claim with the ordinary Russian courts and not with the BAT. In its appeal against the first decision of the Primorsky District Court of 10 June 2021, the Player insisted that he was entitled by law to have his claim adjudicated by the ordinary Russian courts and not by arbitration, irrespective of whether the dispute was of labour or civil law nature. Hence, the Player waived his right to appeal to courts of general jurisdiction to resolve any dispute with the Club.
77. Under the laws of the Russian Federation, an athlete who is a Russian citizen and who has signed an agreement with a Russian club containing an arbitration clause on the transfer of all disputes to the BAT, which, in the understanding of Russian law, is a foreign arbitration institution, does not lose the right to appeal to an ordinary Russian court to resolve the dispute, irrespective of the Club's objection to jurisdiction.

b. On the merits of the claim

78. Under the terms of the Agreement 9/2019, the financial obligations of the Club depended solely on one condition, namely the successful completion of the routine medical examination before the start of the season (clause 1.3 and 1.4 of the Agreement 9/2019). The condition for the Player to undergo such medical examination upon order of the Club at least once a year is stipulated also in clause 5.1.10 of the Labor Contract and Russian labour law.

79. The Claimant did not raise any objections or asked for clarifications in regards to the terms of the medical examination and possible consequences if he would fail to fulfil the medical requirements.
80. The Club accepts that the Parties actually signed two agreements, namely the Agreement 9/2019 and the Labor Contract. The purpose of the Labor Contract was to complete the missing conditions required by Russian labour law and to ensure fulfilment of the terms of the Agreement 9/2019 in accordance with Russian legislation. It also served the purpose of registering the relations between the Club and the Player with the RBF so that the Player could be admitted to competitions as a member of the Club's team.
81. Concerning the Additional Agreement to the Labor Contract, the Respondent maintains its position that both parties agreed on the legally binding condition of Article 129 and 132 of the Labour Code of the Russian Federation (in accordance with clauses 4.1 and 4.2.2 of the Additional Agreement to the Employment Contract) to include an official base salary of RUB 300,000.00, as well as the determination of a procedure for paying bonuses, allowances and additional payments in accordance with the remuneration policy of the Club. Contrary to the Player's position, the Club insists on the fact that the Addendum, which contains the amounts of the compensation payable by the Club, was validly signed by the Player.
82. The Labor Contract further stipulates additional rights of the Claimant as an employee, which were not provided for by the Agreement 9/2019, but which are guaranteed to him by Russian labour legislation. In particular, the Labor Contract entitled the Player with annual holiday leave (clause 4.3.2), insurance of his life and health (clause 5.1.9), preservation of his work place and average earnings in certain cases provided for by law (clause 5.1.10), as well as payment of sick leave (clause 5.1.12).
83. The Club emphasizes that since the Labor Contract was signed in pursuance of the Agreement 9/2019, it did not contain the Respondent's obligations on the payment of monetary means in addition to those stipulated in the Agreement 9/2019, but it enshrined

a mechanism for fulfilling the Respondent's financial obligations by monthly salary payments and not in 10 equal instalments, as it was specified in the Agreement 9/2019.

84. The reason why the financial obligations of the Respondent as set out in the Agreement 9/2019 did no longer exist was the fact that the Player failed to pass the medical examination in August 2020, which entitled the Club to terminate the Agreement 9/2019. Since the Labor Contract was not terminated, the Player still benefitted from the salary payments as agreed under the Labor Contract. The ordinary Russian courts confirmed that the Club was entitled to suspend the Player from work and to legally terminate the Agreement 9/2019 after he had failed to pass the medical examination.
85. The Player did not challenge the legality of the Club's termination of the Agreement 9/2019 or the validity of clauses 1.3 and 1.4 and also discontinued complying with his obligations under the Agreement 9/2019, since he did not attend the practices, games and other activities of the Club, nor did he support the team (as stipulated by part 3, section 6 of the Internal Regulations of the Club). Therefore, it was the Player himself who stopped fulfilling his duties under the Agreement 9/2019. The Club did not impose fines as it would have been entitled by its internal regulations for violations under the Labor Contract (clauses 2.1, 2.3 Applications to the Internal Regulations).
86. Regarding the medical examination, the Club relies on the mandatory laws of the Russian Federation, which regulate the execution of such exams exhaustively and with mandatory effect. There was no need or room for the Parties to specify the details of the medical examination.
87. The termination of the Agreement 9/2019 and the discontinuation of the Club's financial obligations thereunder did not affect the ongoing effectiveness of the Parties' financial or other obligations under the Labor Contract. The Labor Contract was, and remained a valid labour agreement which contained all elements required by mandatory Russian labour law.

88. The Club did not accept the results of medical examination the Player underwent on his own initiative. The medical examination of employed athletes is regulated by the “Order of the Ministry of Health No. 134n” which require that the examiner must hold an appropriate licence and that the examination shall be organized by the employer (Article 348.3 Russian Labour Code). The medical examination of athletes who are candidates for a sports team of the RBF is carried out in accordance with another Order of the Ministry of Health. Therefore, the results from the Player's private medical examination and the examination ordered by the RBF for the members of the Russian national Team were not relevant in the context of the Labor Contract.
89. The reason for the repeated postponement of a new date for a medical examination was the Player's participation in the Russian national team as well as reduced hours of operation of the responsible medical institution due to Covid-19. The Club therefore asserts that it appointed the earliest date possible.
90. In its Answer dated 5 September 2023 (page 32), the Club requests the following relief:

“Based on the above, I ask the Honourable Arbitrator not to consider Mr. Valiev's claims on the merits, and in the event of consideration on the merits, to refuse to satisfy his claims.”

5. Jurisdiction of the BAT

91. 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).
92. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

93. 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.⁴
94. Clause 6.1 of the Agreement No. 9/2019 contains the following arbitration clause, according to which any dispute from or related to the Agreement 9/2019 shall be submitted to the BAT:
- “Any dispute arising from or related to this Agreement shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties’ domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.”*
95. The dispute resolution clause is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
96. With respect to the substantive validity, the Arbitrator considers that the jurisdiction of BAT over the Claimant's claims arises from the Agreement 9/2019. The wording "[a]ny dispute arising from or related to the present Agreement [...]" clearly covers the Claimant's claims.
97. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimant's claims.

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

6. Admissibility

98. The Respondent raises the defence of *res judicata*, because the Claimant's claims had already been adjudicated by ordinary Russian courts, namely the Primorsky District Court in St. Petersburg as the first instance, the St. Petersburg City Court as first appellate instance and finally, the Third Court General Jurisdiction of Cassation in St. Petersburg. Both appellate courts confirmed the judgment of the Primorsky District Court, that became enforceable, which was not disputed in this arbitration.⁵
99. Whether the requirements for *res judicata* are met in a specific case is to be assessed according to the *lex fori*.⁶ From a Swiss law perspective, the concept of *res judicata* means that any attempt by a party to reassert a claim that was decided by a previous proceeding (by a court or arbitral tribunal) is barred by the preclusive effect of the previous judgment or award.⁷ Under Swiss law, the *res judicata* effect is limited to the dispositive part of a judgment. The reasons for the decisions have no preclusive effect but are open for review and re-examination in subsequent proceedings. It is recognised that the reasoning is relevant in that it is sometimes necessary to determine the precise meaning, nature and scope of the dispositive part,⁸ in particular in the present case, where the judgments state that the claims are "dismissed". This does not indicate whether this was a consequence of procedural or substantial considerations.⁹
100. If an arbitral tribunal seated in Switzerland is seized of an identical claim between the same parties that has already been decided by a state court outside of Switzerland, it

⁵ For the sake of clarity and completeness, the Arbitrator notes that the claim which the Claimant raised before the Khimki City Court of the Moscow Region as mentioned in para. 32 above is not subject of this arbitration proceeding.

⁶ SFT 140 III 278 E.3.2.

⁷ Berger/Kellerhals, International and domestic arbitration in Switzerland, 4th ed., N 1638.

⁸ Berger/Kellerhals, op. cit. N 1654, with further references, esp. SFT 136 III 345 E.2.1.

⁹ A dismissal for procedural reasons (e.g. lack of jurisdiction) does not have a preclusive effect for later proceedings on identical claims.

must declare that claim inadmissible if the foreign judgment is capable of being recognised in Switzerland.¹⁰ The foreign judgment concerned is the decision of the Third Court General Jurisdiction of Cassation in St. Petersburg, which explicitly confirmed the judgments of the Primorsky District Court in St. Petersburg as the first instance and the judgment of the St. Petersburg City Court as first appellate instance.

101. Hence, the questions for the Arbitrator to answer are, whether the requirements for the *res judicata* effect of the Russian judgments on the proceedings before the BAT are met, namely, whether there is identity of the parties and identity of the subject matter of the dispute before the Russian courts and these arbitral proceedings¹¹, and if so, whether the judgments of the Russian courts are capable of being recognised in Switzerland.
102. The parties before the ordinary Russian courts and in this arbitration proceeding are the same, namely the Player as the Claimant and the Club as the Respondent.
103. To determine whether there is identity of the subject-matter of the dispute, the Swiss Federal Tribunal uses several approaches. It found, e.g. that *"the subject-matter of the dispute is determined by the individualised claims and by the facts invoked in support of it, i.e. by the complex of facts of which the claims are based."*¹² On the other hand, the legal basis of the claim (*cause juridique, Rechtsgrund*) is not a relevant criterion to assess the identity of the subject matter of the dispute.¹³ Nor does it matter whether the earlier decision was wrong on the merits, whether in the assessment of the relevant facts

¹⁰ Berger/Kellerhals, op. cit. N 1661, referring to SFT 127 III 279, E.2c/bb.

¹¹ See also CAS 2020/A/6912, *Cristian Nasuti v. AEK Athens FC & Fédération Internationale de Football Association (FIFA)*, award of 22 February 2021, referring to the "triple identity test", namely (1) an identical claim from a substantive point of view, (2) the same parties were involved in the proceedings, and (3) the matter was solved based on the same facts and evidence at the time of the first judgment.

¹² Berger/Kellerhals, op. cit. N 1649, referring to SFT 136 III 123, E.4.3.1.

¹³ Berger/Kellerhals, op. cit. N 1649 and fn 22, referring to SFT 139 III 126, E.3.2 and BGE 140 III 278, E.3.3. *"Under Swiss law, it is irrelevant for the purposes of determining the res judicata effect of a decision to examine what legal arguments were indeed raised in the first proceeding."*

or rules of law. Accordingly, under Swiss law, identity of the subject matter of the dispute only requires both identity of claims and identity of facts.¹⁴

104. Identity of claims must be understood from a material, not grammatical standpoint.¹⁵ This means that a new claim, however formulated in the requests for relief, includes the same subject matter as a claim already decided.¹⁶

105. Identity of facts is determined by the complex of facts and circumstances ("Lebensvorgang") on which the relief sought is based.¹⁷ The test requires a comparison of the facts pleaded in the earlier proceeding with the facts pleaded in the later proceeding. The condition of identity of facts is met if the complex of facts in the later proceedings is the same complex of facts that existed at the time of the decision in the first proceeding.¹⁸

106. In his Statement of Claim before the Primorsky District Court of 8 December 2021, the Claimant requested the following:

"IT IS REQUESTED THAT THE COURT:

- 1. Recognizes the suspension from work of Yevgeniy Damirovich Valiyev from August 20, 2021 to December 13, 2020 on the basis of orders of BC Khimki on the non-admission to work No. 59-K dated August 20, 2020, No. 61-k dated August 27, 2020 to be illegal.*
- 2. Collects from BC Khimki in favor of Yevgeniy Damirovich Valiyev the lost earnings in the amount of the average earnings during the illegal suspension from*

¹⁴ Berger/Kellerhals, N 1649, *in fine*.

¹⁵ SFT 123 III 16 E.2.a.

¹⁶ SFT 140 III 278, E.3.3; SFT 4A_538/218 (16.3.2020), E.3.1.1: "L'identité de la prétention s'entend au sens matériel; il n'est pas nécessaire, ni déterminant que les conclusions soient formulées de manière identique dans les deux procès. Il suffit que la nouvelle prétention nouvellement émise soit contenue dans celle déjà jugée."

¹⁷ SFT 140 III 278 E.3.3.

¹⁸ Berger/ Kellerhals, op. cit. N 1651.

*work, the average earnings during the medical examination, the average earnings during the time spent in the Russian national basketball team, and in total for the period from August 14, 2020 to December 13, 2020 in the amount of **20,503,951.00 rubles.***

3. *Collects from BC Khimki in favor of Yevgeniy Damirovich Valiyev wages for the period from December 14, 2020 to April 30, 2021 in the amount of **17,899,871.1 rubles.***
4. *Collects from BC Khimki in favor of Yevgeniy Damirovich Valiyev an amount of money to redress for the non-pecuniary damage in the amount of **1,000,000 rubles.**"*

107. The Player later reduced the claim for wages for the period from 14 December 2020 to 30 April 2021 to RUB 14,537,227.10, leading to a total amount claimed of RUB 36,041,178.10.
108. The Player argued before the Primorsky District Court that the Club had unlawfully terminated the Agreement 9/2019 based on allegedly unsatisfactory results of a medical examination between 14 and 18 August 2020. In another medical examination of athletes of the Russian national team, the Player was admitted to training and competitive activities. Since the Club's termination of the Agreement 9/2019 was unjustified, the Player was entitled to a compensation for the lost earnings and the time spent in the Russian national team, plus a compensation for the non-pecuniary damage in the amount of RUB 1 Mio.
109. The Primorsky District Court upheld the Player's claim in the amount of RUB 2,538,173.22, which included redress of non-pecuniary damage of RUB 50,000.00 and dismissed the rest of the claims, amounting to RUB 33,503,004.90.
110. In this arbitration, the Claimant requested a salary compensation for the season 2020/2021 in the amount of RUB 31,021,659.50 plus interest, leading to a total amount of RUB 35,397,132.33.

111. While the amounts claimed are not exactly the same, the following claims and facts on which the Player relied his claims before the ordinary Russian courts and the BAT are identical:

1. The Player's salary for the 2019/2020 season and the 2020/2021 season was defined by the Agreement 9/2019 while the Labor Contract was signed to comply with the requirements of RBF. The salary for the 2019/2020 season was paid in accordance with Agreement 9/2019.
2. The Club terminated the Agreement 9/2019 by its Orders No. 59-K dated 20 August 2020 and No. 61-K dated 27 August 2020 and justified the termination of Agreement 9/2019 with the unsatisfactory results of the medical examination ordered by the Club, which took place between 14 and 18 August 2020.
3. The Player disputes that the Club was entitled to terminate the Agreement 9/2019 because there were no medical criteria for what constituted a "negative result of medical testing" which entitled the Club to terminate the employment according to Clause 1.3, para. 5 of the Agreement 9/2019.
4. Between 7 and 10 September 2020, the Player underwent a medical examination on his own initiative, which did not confirm the results of the examination carried out between 14 and 18 August 2020. Between 12 and 21 October 2020, another medical examination was performed on the Player as a member of the Russian national team at the Russian FMBA. According to the results of this examination, the Player was admitted to training and competitive activities.
5. Since the Agreement 9/2019 was unlawfully terminated by the Club, the Player was entitled to the entire salary which he would have earned in the season 2020/2021.

112. The difference in the amounts claimed is due to the deduction of a partial amount awarded by the Primorsky District Court, the exclusion of a claim for non-pecuniary damage, the inclusion of certain tax consequences and a claim for default interest on the claimed amounts.
113. The Player submits that the decisions of the ordinary Russian courts did not prevent him from initiating proceedings before the BAT, because the Agreement 9/2019 was not subject to the dispute before the Russian courts. These courts had only dealt with the Labor Contract and not referred to the provisions of the Agreement 9/2019. The Russian courts rather distinguished between labour disputes governed by the Labor Contract and civil law disputes governed by Agreement 9/2019. Only the first kind of disputes could be adjudicated in the proceedings which the Player initiated in Russia. In addition, the Russian courts did not address several crucial questions concerning the relationship between the Player and the Club, such as, e.g., the question why the Club terminated only the Agreement 9/2019 but not the Labor Contract, with the consequence that the Player remained employed by the Club but provided his services for a much lower salary. Finally, the BAT Rules do not exclude the possibility to initiate an arbitration proceeding with the BAT even if a same or similar dispute had been reviewed by other courts before.
114. The Player's argument could be understood to mean that the Russian courts rejected the claims based on the Agreement 9/2019 due to a lack of subject matter jurisdiction (*ratione materiae*). If this were the case, the dismissal of the claims based on the Agreement 9/2019 would not have preclusive effect in this arbitration.¹⁹
115. The Arbitrator disagrees. First, the seized Russian courts were courts of general jurisdiction and not labour courts. Second, nowhere have the Russian courts stated that they had no jurisdiction *ratione materiae* to judge the Player's complaints. Third, the Russian courts rejected the claims based on the Agreement 9/2019 because they found that the

¹⁹ See Berger/Kellerhals, op. cit., N 164.

only condition for the payment of the amounts under the Agreement 9/2019 was passing the medical examination before the beginning of the next season. This condition was not met. Hence, the Russian courts indeed rejected the Player's claim on the merits and not because of lack of jurisdiction or another condition of admissibility.

116. As stated before, the considerations of the court seized in the first place are not relevant for the determination of whether its decision has *res judicata* effects. What is however relevant is the Claimant's claim and the facts which the Claimant had presented in the first proceedings. The decision of the court may constitute *res judicata* even if that decision is manifestly wrong. It is indeed debatable whether the Russian ordinary courts were correct to separate the Agreement 9/2019 from the Labour Contract although Article 8.3 of the Agreement 9/2019 says that "[i]n the event that there is any type of conflict between this Agreement and such uniform contracts, the provisions of this Agreement will control and be honoured".
117. In the present matter, the ordinary Russian courts have yet focused on the Labor Contract but also addressed the Agreement 9/2019. The St. Petersburg City Court found²⁰:

"[...] Under the terms of the Contract [i.e. the Agreement 9/2019], the obligation of the Club to pay money to the athlete in the corresponding season is not counter to the athlete's performance of his labor function, but depends only on one thing - the fact of successful completion of a medical examination before the start of the corresponding season, that is, it is based solely on the terms of the Contract (clauses 1.3, 1.4, 2.5) and, as a result, has a civil law nature, which is permissible (clause 6 of Resolution of the Plenum of the Supreme Court of the Russian Federation "On the application by courts of legislation regulating the work of athletes and coaches" No. 52 dated November 24, 2015).

²⁰ See p. 18 et seq. of Respondent's Exhibit 29 (English translation of Russian original).

[...]

"The financial obligations of the defendant provided for by the Contract did not come into force in season 2020/2021 (clauses 1.3, 1.4 of the Contract), as the circumstance with which the parties associated the emergence of the corresponding obligation of the defendant - the successful completion of the medical examination by the plaintiff before the start of the 2020/2021 season - did not occur, and the defendant notified the plaintiff thereof by letters dated August 19, 2020 and August 29, 2020. By a letter dated August 19, 2020, the Contract was terminated with the plaintiff, and, therefore, the legal relations of the parties were regulated exclusively by the Employment Contract.

[...]

The plaintiff, in support of his claims for the payment of wages to him for the period from December 14, 2020 to June 30, 2021 in the amount of RUB 17,899,871.10, uses the amount of RUB 3,500,000 as a basis for his official salary (a part of wages that depends solely on actually worked time in the pay period), which contradicts the documents available in the case records, and misunderstands the terms of the contract, since the defendant's financial obligations under the contract become effective from a successful medical examination of the plaintiff in August, before the start of each sports season (clause 1.3), the successful completion of the medical examination before the start of the season is a condition for the defendant's financial obligations to come into force in that season (clause 1.4)."

118. The fact that the ordinary Russian courts did not address certain questions raised by the Player in the present arbitration proceedings does not prevent their decisions becoming *res judicata*. Again, it is all about the Player's claims before the Russian ordinary courts and the BAT, and not the content of the decisions of the Russian ordinary courts.

119. The Arbitrator therefore finds that the decisions of the ordinary Russian courts decided a claim which was identical with the one the Player now brought before the BAT. The Russian decisions must be considered as *res judicata* and prohibit the BAT to initiate an arbitration procedure on the same claim based on the same facts between the same parties.
120. Remains the question whether the Player may bring the identical claim a second time before an arbitral tribunal seated in Switzerland (i.e. the BAT) based on the argument that the Russian judgment cannot be recognised because it was rendered in breach of a valid arbitration agreement providing for arbitration with the BAT. This question must be answered in the negative because of the following:
- a. The Player did not raise an arbitration defence (*exception arbitri*) before the ordinary courts in Russia. To the contrary: It was the Player who commenced litigation with the ordinary courts in Russia in the first place. By proceeding his case through three ordinary court instances (and even opening a second line of procedure before another ordinary court in Khimki) without ever raising the arbitration defence, the Player is estopped from submitting his claim to arbitration after the outcome of the ordinary proceedings in Russia did not lead to the desired result.
 - b. Both parties argued that a Russian athlete or coach would always have the right to seize an ordinary Russian court for a claim based on labour law even if he had accepted dispute resolution with a (foreign) arbitral institution. While this may be true, it is a right to choose to proceed either before an ordinary court or an arbitral tribunal, and not an entitlement to an additional instance. The BAT is no court of appeal.
 - c. The Player's reference to Article 10.4 of the BAT Rules does not support his view either: This provision deals with the question whether provisional measures can be requested from an ordinary court even if the parties have

concluded an arbitration agreement. This is excluded by the BAT rules. In addition, nowhere does the Player claim that he only sued for provisional measures before the ordinary Russian courts.

- d. The Player opted for the ordinary courts in Russia because Russian labour law provided for a fast and free procedure before the domestic courts. In addition, he felt unfamiliar with proceedings before the BAT. The Player was under no obligation or pressure to prefer the Russian ordinary courts over the BAT, especially since it was the Respondent who raised the *exception arbitri* (without, however, referring to the BAT). The Player's conscious choice to bring his salary claim before the Russian state courts without any reservation must be considered as a waiver of his rights under the arbitration clause.
- e. When the Primorsky District Court declined jurisdiction, the Player filed an appeal against this decision and explained in detail why ordinary courts of general jurisdiction and not the BAT should decide the present matter. He cannot, now, claim the opposite.
- f. The Claimant opted for proceeding with the ordinary Russian courts which would have been competent to decide this matter also in the absence of an arbitration clause. The Arbitrator therefore concludes that the decision of the Russian courts is recognizable in Switzerland according to Article 27 PILA.

7. Findings

121. The Arbitrator finds that the Russian courts have already dealt with the substance of the Player's claim, which is now before the BAT. The decision of the Third Court General Jurisdiction of Cassation in St. Petersburg, which confirmed the judgments of the Primorsky District Court and the St. Petersburg City Court has become enforceable and

must be considered *res judicata*, which precludes another identical claim before the BAT. The Player's claim before the BAT is therefore inadmissible.

8. Costs

122. In respect of determining the arbitration costs, Article 17.2 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). [...]"

123. On 4. February 2024, the BAT President determined the arbitration costs in the present matter to be EUR 12,914.25.

124. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 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."

125. The Arbitrator notes that he is barred from reviewing the merits of the Player's claim based on the Player's own decision to proceed with the ordinary Russian courts instead of submitting his claim to the BAT, as provided by the arbitration clause. On the other hand, he can't help but get the impression that the Club benefitted from the ordinary Russian courts difficult-to-understand focus on the Labor Contract despite that the Club had explicitly accepted that both agreements are complimentary and not mutually exclusive to each other.
126. Considering the outcome of this arbitration and in application of Article 17.3 BAT Rules, the Arbitrator finds that the Claimant shall bear two-thirds and the Respondent one-third

of the arbitration costs. As the Claimant paid the full advance on costs in the amount of EUR 12,914.25, the Respondent shall reimburse EUR 4,304.74 to the Claimant.

127. In relation to the Parties' legal fees and expenses, Article 17.3 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."

128. Moreover, Article 17.4 BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses. The maximum contribution for an amount in dispute from EUR 200,001.00 to EUR 500,000.00 (*in casu* RUB 35,397,132.33, which is approx. EUR 368,944.15) is EUR 15,000.00.

129. The Player claims legal fees in the amount of EUR 14,500.00. The Club requests a compensation for legal fees of EUR 10,900.00.

130. Taking into account the factors required by Article 17.3 BAT Rules, the maximum awardable amount prescribed under Article 17.4 BAT Rules, the outcome of the case and the fact that the Club was represented by its in-house counsel, the Arbitrator finds it just and fair that both Parties bear their own legal costs and fees.

9. AWARD

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

- 1. The claim of Evgeny Damirovich Valiev is rejected.**
- 2. BC KHIMKI shall pay to Evgeny Damirovich Valiev an amount of EUR 4,304.74 as reimbursement for his arbitration costs.**
- 3. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 12 February 2024

Stephan Netzle
(Arbitrator)