ARBITRAL AWARD

(BAT 2352/25)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Hapoel Jerusalem BC
1 Derech Brodetski, Cossel Sports Center - Givat Ram,
PO Box 39236, 9139102 Jerusalem, Israel

- Claimant -

represented by Mr. Sébastien Ledure, Mr. Wouter Janssens and
Mr. Quinten Van den Bergen, attorneys at law,

vs.

Mr. Zachary Scott Hankins

- Respondent -

represented by Mr. Sofoklis Pilavios and Ms. Christina Syrengela,
attorneys at law,

1. The Parties

1.1. The Claimant

1. Hapoel Jerusalem BC (the "**Club**" or the "**Claimant**") is a professional basketball club competing in the Israeli professional basketball league.

1.2. The Respondent

2. Ms. Zachary Scott Hankins (the "**Player**" or the "**Respondent**") is a professional basketball player of U.S. nationality.

3. The Claimant and the Respondent are hereinafter referred to as the "**Parties**".

2. The Arbitrator

4. On 9 September 2025, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (the "**BAT**"), appointed Ms. Annett Rombach as arbitrator (the "**Arbitrator**") pursuant to Articles 0.4 and 8.1 of the Rules of the Basketball Arbitral Tribunal in force as of 1 February 2025 (the "**BAT Rules**"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3. Facts and Proceedings

3.1. Summary of the Dispute

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

6. On 11 August 2022, the Player and the Club entered into an agreement pursuant to which the Club engaged the Player as a professional basketball player for the 2022–23 season.

7. On 21 August 2023, the Player and the Club entered into a new agreement pursuant to which the Club engaged the Player for the two subsequent seasons of 2023-24 and 2024-25 (the "**Player Contract**"). The Player Contract was based on the standard league contract provided by the Israeli Basketball Association. It incorporated, in its Chapter 8, certain "[c]*omplementary provisions*" agreed between the Parties "[i]*n addition to all the provision set forth above*".

8. Clause 8.A.1 of the Player Contract provided that

> "*Player will be an employee of Club, as a professional Basketball Player, for the period of the 2023/24 season* […] *and 2024/25 season* […]. *The player will arrive to Israel before each of the said seasons – no later than August 13th, 2023 and 2024 (if applicable) respectively.* […]*"*

9. Clause 8.C of the Player Contract addressed the Player's salary as follows:

> "*All monies paid to Player by Club will be linked to the USD rate of exchange. Basic rate: 3.6 NIS= $1UASD. The payments will be made in USD or in NIS according to the exchange rate of the bank of Israel. Tax will be deducted from all payments* [sic]

Club shall pay a total of 1,560,000 NIS GROSS to the Player for the first season.

Club shall pay a total of 1,800,000 NIS GROSS to the Player for the second season – if applicable."

10. Clause 8.A.5 of the Player Contract provided for the Player's entitlement to terminate it for the 2024-25 season by joining a non-Israeli Euroleague club (the "**Euroleague Option**") as follows:

"*Player has the right and option to terminate the agreement for the Third Season (during the recess between the Second Season and the Third Season) subject to the following terms:*

*5.1 Player shall provide Club with a written termination notice ("**Player's Notice**"), by Email:* [the Club's email address] *given no later than 14 days after last official game of the Club for the 2023/24 season.*

5.2 Player shall pay or cause a third party to pay to the Club a buy-out fee of 125,000 USD to be paid in full by no later than the provision of the Player's Notice […]"

5.3 Player shall provide the Club […] *a legally binding and executed agreement between the Player and a Euroleague club, which is not an Israeli club, valid at least for the entire 2024/25 basketball season ("**Euroleague Contract**").* […]" (emphasis original)

11. Clause 8.A.6 of the Player Contract provided for the Player's entitlement to terminate the Player Contract for the 2024-25 season by joining an NBA club (the "**NBA Option**", and collectively with the Euroleague Option the "**Exit Options**") as follows:

"*Player has the right and option to terminate the agreement in the recess between the Second Season and the Third Season), in the event a binding agreement is executed between the Player and an NBA club. Such right is subject to the following terms and conditions:*

6.1 Player providing a written notice to the Club, by Email: [the Club's email address] *and by Fax (*[the Club's fax] *given no earlier than the Club's last official game in the 2023-24 Season and no later than July 8th 2024.*

> *6.2 The Player providing the Club, within the timeframe mentioned in Section 6.1 above, with an official copy of a guaranteed contract with an NBA team.*
>
> *6.3 Club receives a buy-out fee of USD 825,000, to be paid in full by no later than July 15th 2024."*

12. Clause 8.A of the Player Contract granted the Club an option to terminate (the "**Club Option**"), as follows:

> "*The Club has the right and option to terminate the agreement for the Third Season (during the recess between the Second Season and the Third Season), upon Club's sole discretion, by providing the Player with a written notice to be given no later than 7 days after last date in which the Player has to provide the Club with the Player's Notice and subject to payment of a buy-out fee of USD 15,000, to be paid to the Player concurrently with the provision of Club's buy-out notification."*

13. Clause 3.e of the Player Contract prohibited the Player from engaging in negotiations with third clubs without the Club's written consent:

> "*Not to negotiate with another team in Israel or abroad during the agreement period, unless he has advanced and written approval from the Team.* […]*"*

14. On 7 October 2023, Israel faced terroristic attacks from the Gaza Strip into the Gaza envelope of southern Israel, carried out by the Hamas and other Palestinian militant groups. These attacks marked the outbreak of a military conflict (the "**Israel-Gaza-Conflict**").

15. On 9 October 2023, FIBA Europe announced the suspension of all games involving Israeli clubs in its competitions (such as the FIBA Europe Cup and EuroCup Women) as the teams were unable to host home games due to the security situation caused by the Israel-Gaza-Conflict.

16. It is not disputed in these proceedings that during the period as from the signing of the Player Contract until 13 April 2024, the Player Contract was duly performed by both

Parties.

17. On 14 April 2024, following the military escalation of the Israel-Gaza-Conflict by the intervention of Iran, the Player expressed concerns regarding the prevailing security situation and requested authorization to leave the country for safety reasons. His WhatsApp chat with the Club's then General Manager, [the Club's then General Manager], reads as follows:

> ***[14/04/2024 18:52] Respondent:*** *I was too soft in our conversation. For me the decision is made. We would like to contact the agent* [the Agent] *to get a flight out. So many flights are booked up in the next week, we don't want it to be pushed back even further. I appreciate you and this club more than I can describe, but I need you to understand I won't accept any push back right now on this decision. If you say you're with me, then help me to feel safe.*
> ***[14/04/2024 18:53]*** **[the Club's then General Manager]*:*** *When you want to book the flight to?*
> ***[14/04/2024 18:54] Respondent:*** *Where? Wherever we can go. Flights are crazy booked up right now. We would prefer Athens, but Cyprus is fine, wherever in the region that's close and we can take time to see what's up.*
> ***[14/04/2024 18:55]*** **[the Club's then General Manager]*:*** *I mean when*
> ***[14/04/2024 18:55] Respondent:*** *Tomorrow or Tuesday if that's possible*
> ***[14/04/2024 18:56]*** **[the Club's then General Manager]*:*** *I'll tell* [the person booking the flight] *to take care of it*
> ***[14/04/2024 18:56] Respondent:*** *Thank you. I really appreciate it.*

18. On the same date, the Club provided flight tickets for the Player and his wife to Cyprus. The Player subsequently departed Israel.

19. Between 19 and 22 April 2024, the Player's agent ([the Player's Agent]) and the Club (through [the Club's then General Manager]) exchanged several messages regarding the Player's situation and his potential return to Israel:

> ***[18/04/2024 20:28]*** **[the Player's Agent]*:*** *When you have a minute we should talk about Zach's status*
> ***[18/04/2024 21:12]*** **[the Club's then General Manager]*:*** *Call*

[19/04/2024 7:55] **[the Club's then General Manager]*:*** *Hi. So there was a retaliation. It's over…*
[19/04/2024] **[the Player's Agent]*:*** *Yes we saw… In the American media, they are focused on the Iranian reaction, which for now seems generally muted. Let's see how Zach feels today after the news is digested. Remember, his state of mind not good. It's like he has _____ or something.*
[20/04/2024 16:09] **[the Club's then General Manager]*:*** *Hi. Everything is really quiet here. Is there some rumors in the states about something that going on here? I think it's really sage for him to come back.*
[20/04/2024 16:12] **[the Player's Agent]*:*** *There aren't really any rumors here. Initially there was more fear of escalation. The issue with Zach is still concern over the unknown, but moreso about the lingering effects and if/how he copes. He looks defeated to me.*
[20/04/2024 16:19] **[the Player's Agent]*:*** *Have you tried asking his teammates to help convince him?*
[20/04/2024 16:19] **[the Club's then General Manager]*:*** *Yes I'm working on it*
[21/04/2024 23:43] **[the Player's Agent]*:*** *Hey* [the Club's then General Manager]. *Good win today. A couple days ago,* [a Teammate] *and Zach spoke. It was cordial, but I don't know that Zach was not persuaded to return. I don't even think it's a matter of what military action will happen next. I really do think Zach has some sort of lingering _____ of living under the continuous threats of war. I don't know if time will rescue us here. Zach looks like a zombie.*
[22/04/2024 21:29] **[the Player's Agent]*:*** *Hey* [the Club's then General Manager]. *Maybe you're having Seder now. Zach just sent me a message saying he's still in Cyprus but really thinking about heading home asp. We should figure out what to do.*
[22/04/2024 21:32] **[the Club's then General Manager]*:*** *Let's talk tomorrow if it's ok with you*
[22/04/2024 21:32] [the Player's Agent]*:* *Yes. I understand. No problem*

20. On 20 April 2024, the Club (through its co-owner, [the Club's Co-owner]) and the Player exchanged the following WhatsApp messages:

[20/04/2024 16:02] **[the Club's Co-owner]*:*** *What's going on man? Checking in*
[20/04/2024 14:35] Respondent: *Doing okay. Feeling comfortable here, but difficult following the situation still. My agent has talked to* [the Club's then General Manager] *about is as well.*
[20/04/2024 16:23] **[the Club's Co-owner]*:*** *What's difficult for you?*
[20/04/2024 16:23] **[the Club's Co-owner]*:*** *Things have been super normal here all week*
[20/04/2024 16:53] Respondent: *Seeing Israel carrying out strikes against Iran. That's been the worry, escalation*
[20/04/2024 16:57] **[the Club's Co-owner]*:*** *You have time to chat over the phone tonight?*
[20/04/2024 21:00] Respondent: *Yeah we can do that*
[20/04/2024 21:21] **[the Club's Co-owner]*:*** *I can call in about 10/15 minutes if that works*

[20/04/2024 21:21] Respondent: *Yes that works*

21. On 23 May 2024, the Player's agent informed the Club that the Player was scheduled to undergo surgery for _____ in the following days in Chicago, USA.

22. On 7 June 2024, the Club played its last official game of the 2023-24 season.

23. On 17 June 2024, the Club reminded the Player's agent via WhatsApp of the deadlines of the Exit Options:

[17/06/2024 18:18] **[the Club's then General Manager]*:*** *Hi you aware about the time of the option on Zach's contract?*
[17/06/2024 18:29] **[the Player's Agent]*:*** *Yes. We are tracking the dates. There just hasn't been much interest as we hoped.*

24. On 26 June 2024, the Club contacted the Player's agent to inquire whether the Player would return to Israel in August 2024 for the preparation of the forthcoming season:

[26/06/2024 11:59] **[the Club's then General Manager]*:*** *Hi* [the Player's Agent]. *Hope everything is ok, is there any news about Zach? Did you find a new team? I'm assuming that after what you told me I should look for a player at the 5.*
[26/06/2024 17:39] **[the Club's then General Manager]*:*** *?*
[26/06/2024 17:46] **[the Player's Agent]*:*** *We have been looking for teams, but we haven't had any luck at all in European leagues and Zach doesn't want Asian leagues. Selfishly, I wish he would just return to Jerusalem since the money is so much better than the rest of the market. He's like Tom Hanks in the movie terminal.*
[26/06/2024 18:36] **[the Club's then General Manager]*:*** *Ok. We is he coming back on august?*
[26/06/2024 18:40] **[the Player's Agent]*:*** *It doesn't appear that his outlook on the war has changed.*
[26/06/2024 18:40] **[the Club's then General Manager]*:*** *Ok. Thanks.*

25. On 30 June 2024, the Club addressed a letter to the Player in which it alleged that the Player was in breach of the Player Contract (the "**Notice of Breach**"). The Notice of Breach reads as follows:

> *"Reference is made to your employment agreement with Hapoel Jerusalem - Management Company Ltd. (the "Company"), pursuant to which you are obligated to play for Hapoel Jerusalem basketball club (the "Club") for the 2023/2024 (the "Second season") and the 2024/2025 (the "Third season") basketball seasons (the "Employment Agreement").*
>
> *On April 15, 2024 you left Israel, and from that time you did not participate in any Club activities, including practices and games.*
>
> *In the conversations held with you and your agent during April 2024, you announced us that you have no intention to return to Israel at any time during the Second season. Your breach of the Employment Agreement caused the Club damage and left it with a missing player for your position. Without derogating from any right or entitlement of the Company regarding your breach, the Club treated your absence commencing April 15, 2024 as an unpaid leave of absence.*
>
> *In preparation for the Third Season, the Club reached out to your agent and inquired whether you intend to fulfill your obligations under your Employment Agreement and return to Israel for the Third Season. Your agent responded you are now looking for teams in Europe and that your outlook on playing in Israel has not changed.*
>
> *The Club can no longer wait without a player for the position that you were supposed to play. In order to mitigate the Club's damages from your continued breach of the Employment Agreement, the Club intends to sign a player for the position that you were supposed to play, all without derogating from any of the Club's rights under the Employment Agreement."*

26. On the same day, the Player's agent replied to the Club denying any breach of the Player Contract on the Player's part and proposing an amicable resolution of the dispute by way of termination (the "**First Termination Proposal**") as follows:

> *"I acknowledge receipt of your letter dated June 30, 2024, alleging a breach of the employment agreement between Zach Hankins and Hapoel Jerusalem - Management Company Ltd.*
>
> *Context, Clarifications,* [sic] *and Solutions*
>
> *1. Absence from Israel:*
>
> *On April 13, 2024, the Islamic Revolutionary Guards Corps, a branch of the Iranian Armed Forces, in collaboration with the Islamic Resistance in Iraq, Lebanese militant group*

Hezbollah, and the Houthis, launched retaliatory attacks against Israel, sending around 170 drones, over 30 cruise missiles, and more than 120 ballistic missiles toward Israel. On April 14, The Us Embassy issued a security alert stating 'As a result of incoming UAVs and missiles from Iran and Iranian proxies, the U.S. Embassy has directed all U.S. government employees and their family members to shelter in place until further notice.' The embassy further reminded U.S. citizens 'of the continued need for caution and increased personal security awareness as security incidents often take place without warning. The security environment remains complex and can change quickly depending on the political situation and recent events.'

On April 15, 2024, Zach left Israel due to the abovementioned, circumstances which were beyond his control. His departure was promptly communicated to the Club.

His absence was necessitated by safety concerns, which were discussed with the Club's management and Zach's agents.

In days to follow the US Department of State issued travel advisories telling US citizens to reconsider travel to Israel due to terrorism and civil unrest.

'Country Summary: Terrorist groups, lone-actor terrorists and other violent extremists continue plotting possible attacks in Israel, the West Bank, and Gaza. Terrorists and violent extremists may attack with little or no warning, targeting tourist locations, transportation hubs, markets/shopping malls, and local government facilities. Violence can occur in Israel, the West Bank, and Gaza without warning.' Further adding 'Avoid all demonstrations and large gatherings.'

2. Communication with the Club:

During conversations in April 2024, Agents and Zach clarified that the security situation required Zach's temporary absence from Israel.

3. Unpaid Leave:

On April 22, 2024, the Club agreed to release Zach from his obligations for the remainder of the 2023-24 season, while keeping the contract intact for the 2024-25 season. Zach agreed to what the Club refers to as an unpaid (but authorized) leave of absence. Accordingly, the Club at this time did not recognize or give notice of any breach of contract. The Club's statement that 'Your breach of the Employment Agreement caused the Club damage and left it with a missing player for your position' is patently dishonest as

a. *The Club agreed to release Zach for the season in exchange for extinguishing the bonus and salary obligations for the remainder of the season and*

b. The Club was hardly damaged as the playoffs concluded in the semi-finals, losing to the eventual league champions. The last time the Club finished lower was in 2012. Further, the Club's regular season record with Zach was 9-5 (64%) and after he left was 6-2 (75%).

Zach returned home shortly thereafter.

4. Intention to Fulfill Contractual Obligations

On or about May 21, Zach had surgery on his ____ which was _____ while performing basketball services for the Club. Even if Zach had determined Israel to be safe, he could not have physically returned to play before the end of the season.

Other than for this season ending ____, we have never categorically stated an intention never to return for the remainder of the Second or Third season, always expressing a need to reassess the situation periodically based on the ongoing ceasefire negotiations and Zach's lingering _____.

Despite the challenges Zach faced, he remained committed to fulfilling his contractual obligations for the Third Season, provided he was physically able and that security threat abated. As of June 27, 2024.The US Department of State shows the same warning,

- *'Terrorist groups, lone-actor terrorists and other violent extremists continue plotting possible attacks in Israel, the West Banku, and Gaza. Terrorists and violent extremists may attack with little or no warning, targeting tourist locations, transportation hubs, markets/shopping malls, and local government facilities. Violence can occur in Israel, the West Bank, and Gaza without warning.'*

We agree to stipulate that the Club reached out to us and inquired whether Zach intended to fulfill his obligations under his Employment Agreement and return to Israel for the Third Season. We responded that we were looking (as allowed by the Agreement) for teams in Europe and that Zach's outlook on playing in Israel had not changed. Zach's outlook, that there remains a security risk, was a matter of fact, not to be conveniently categorized as a refusal to return to Israel by the required date of August 13, 2024.

Any reference to exploring opportunities in Europe was an attempt to work toward a mutually agreeable resolution.

The Club's decision to sign a player for Zach's position is the Club's prerogative, but cannot be blamed on the self-serving and false claim of breach.

5. Request for Amicable Resolution

In the spirit of reaching an amicable resolution, we have offered the following:

1. *Termination of the Agreement, after settlement of any unpaid salaries prior to April 22 and any other unpaid fees due before April 22.*

2. *Replacement of the buyout with the following provisions:*

   A *If Hankins receives an annual salary of more than $375,000, the Club shall receive a one-time payment of the amount over $375,000, but not to exceed $100,000.*

   B *If Hankins receives an annual 2024-25 salary under $375,000, the Club shall receive no additional compensation.*

   C *The Club is free to contact other European clubs in hopes of locating opportunities which pay in excess of $375,000.*

We value our relationship with the Club and are committed to resolving this matter amicably. It is in both parties' interests to find a solution that allows Zach to play basketball in a secure environment."

27. The Club did not respond to the First Termination Proposal.

28. On 2 July 2024, the Club and professional basketball player [the Replacement Player] (the "**Replacement Player**") entered into a preliminary agreement upon which the Club conditionally engaged the Player for the 2024-25 season (the "**Preliminary Contract**"). The conditions for the Preliminary Contract to become effective were the Club's payment of the buy-out fee of USD 80,000.00 to the Replacement Player's former club and the Replacement Player passing a medical examination.

29. On 3 July 2024, the Player's agent submitted another proposal to the Club (the "**Second Termination Proposal**", and jointly with the First Termination Proposal the "**Termination Proposals**"), as follows:

"Settlement Proposal

1. Payment of $15,000:

- Zach agrees to make a one-time payment of $15,000 (Fifteen Thousand US Dollars) to Hapoel Jerusalem Basketball Club.

2. Release from Contract:

- Upon receipt of the aforementioned payment, Hapoel Jerusalem Basketball Club agrees to release Zach from his current employment contract, effective immediately.

- This release will allow Zach the freedom to sign with any basketball team globally without any further obligations to Hapoel Jerusalem Basketball Club."

30. The Club did not respond to the Second Termination Proposal.

31. On 9 July 2024, the Replacement Player passed the medical examination.

32. On 12 July 2024, the Player and the Romanian professional basketball club U-Banca Transilvania Cluj-Napoca ("**UBT Cluj**") entered into an agreement pursuant to which UBT Cluj engaged the Player for the 2024-25 and 2025-26 seasons (the "**UBT Cluj Contract**"). Under the UBT Cluj Contract, the Player was to earn a total salary of USD 300,000.00 (net) per season.

33. On 15 July 2024, the Club paid the buy-out fee of USD 80,000.00 to the Replacement Player's former club.

34. On 17 July 2024, the Club fulfilled the necessary VAT obligations in relation to the payment of a buy-out fee to the Replacement Player's former club equaling USD 13,618.00.

35. On 19 July 2024, UBT Cluj officially announced the hiring of the Player.

36. On 21 July 2024, the Club addressed a letter to UBT Cluj informing the latter that the Player was still under contract with the Club and requesting a buy-out fee in the amount of EUR 125,000.00. The letter reads as follows:

> *"We have recently noticed the announcement on your official webpage regarding your entry into a contract with Zach Hankins for the upcoming 2024/25 Season.*
>
> *As this issue has been widely reported in the media and is well known to Mr. Hankins and his agents, we are certain that you are aware that Mr. Hankins is currently under contract with our club, Hapoel Bank Yahav Jerusalem, for the 2024/25 Season.*
>
> *Under his contract, Mr. Hankins had the option to terminate the contract, exclusively for a Euroleague team, by notifying us no later than 14 days after the end of the 2023/24 season and paying a buyout fee of $125,000 USD NET.*
>
> *While Mr. Hankins expressed his intention not to perform his obligations under his contract in the 2024/25 season, he has never given notice of termination and never paid the buyout fee. As a matter of courtesy to Mr. Hankins and despite having no obligation to do so, we agreed to extend the termination option to include teams outside of the Euroleague and to extend the period for making the notice, but Mr. Hankins has not done so. It remains essential to note that Mr. Hankins is still under contract, and his release can only be granted upon payment of the buyout fee.*
>
> *By signing Mr. Hankins while he is still under contract with us, and while he breaches his obligation to pay the buyout fees, your club will be liable for all the damages caused to our club by this breach. We ask you to resolve this situation immediately.* […]*"*

37. On 24 July 2024, the Club addressed another letter to UBT Cluj stressing that the release of the Player can only be effectuated by payment of the buy-out fee.

38. On 6 August 2024, the Israeli Basketball Association informed the Club of FIBA's decision to grant a Letter of Clearance (the "**LOC**"), allowing the transfer of the Player to UBT Cluj. The letter reads as follows:

"FIBA hereby acknowledges your disagreement with the LOC #203502 concerning Zachary Scott HANKINS ("Player").

While we took note of the contract provided by the club to support your disagreement with the LOC, FIBA have been provided with the enclosed documents by the Player's agent, in particular a termination letter[1] and the proof of its notification.

It appears that such letter was sent by a representative of Hapoel Jerusalem ("Club"), [the Club's Representative], as confirmed by publicly available sources:

https://hapoel.co.il/news?NewsId=30335&lang=en.

We refer to the content of such letter which specifies inter alia the following:

« The Club can no longer wait without a player for the position that you were supposed to play. In order to mitigate the Club's damages from your continued breach of the Employment Agreement, the Club intends to sign a player for the position that you were supposed to play, all without derogating from any of the Club's rights under the Employment Agreement »

In light of the above, FIBA notes that the Club acknowledged the contractual breach and communicates its desire to replace the Player.

Considering the foregoing, we remind you that the LOC proceedings are merely designed to resolve administrative transfer dispute and shall not be the appropriate forum to adjudicate financial disputes between the Player and the Club. FIBA has created the Basketball Arbitral Tribunal ('BAT') to handle financial disputes and parties are generally free to agree to submit their case to it.

As a matter of fact, 'a letter of clearance may not be delayed or refused because of a monetary dispute between a club and a player', in accordance with article 3-60 of the FIBA Internal Regulation.

Therefore, FIBA considers that the Club acknowledged the termination of the relationship between the Player and the Club, while safeguarding its right to claim any potential damages or any other indemnities against the Player.

However, such claims shall be brought in front of the relevant jurisdiction and cannot

[1] This letter is the Notice of Breach issued by the Club on 30 June 2024.

constitute a just cause under article 3-60 for FIBA to refuse the LOC in the present case.

Consequently, FIBA will automatically issue the LOC within 24 hours."

39. On 20 August 2024, after the conditions set forth in the Preliminary Contract had been duly fulfilled, the Club and the Replacement Player entered into an agreement pursuant to which the Club engaged the Replacement Player for three consecutive seasons, namely 2024-25, 2025-26, and 2026-27 (the "**Replacement Contract**"). Clause 6 of the Replacement Contract stipulates that the Player shall receive a net salary of USD 700,000.00 for the 2024-25 season.

40. On 6 December 2024, the Club's counsel addressed a formal notice to the Player requesting payment of the amount of USD 469.759,72.

41. On 8 December 2024, the Player's agent formally rejected the Club's payment claim, referring to FIBA's determination that the Player Contract had been terminated.

42. On 11 December 2024, the Club's counsel sent further notice to the Player's agent, informing that BAT proceedings would be initiated in case the Player would not pay. On the same day, the Player's agent reiterated the Player's position that no payment would be made.

3.2. The Proceedings before the BAT

43. On 14 August 2025, the Claimant filed a Request for Arbitration in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 4,000.00 had been duly paid on 28 July 2025.

44. On 12 September 2025, the BAT informed the Parties that Ms. Annett Rombach had

been appointed as the Arbitrator in this matter. Furthermore, a time limit was fixed for the Respondent to file his Answer in accordance with Article 11.4 of the BAT Rules (the "**Answer**") by no later than 3 October 2025. The BAT also fixed the Advance on Costs to be paid by the Parties by no later than 22 September 2025, as follows:

> "*Claimant (Hapoel Jerusalem BC)* *EUR 4,750.00*
> *Respondent (Zachary Scott Hankins)* *EUR 4,750.00*"

45. On 3 October 2025, the Respondent requested the extension of the time limit to file his Answer until 20 October 2025. The BAT granted the request.

46. On 20 October 2025, the Respondent submitted his Answer. The BAT acknowledged receipt of the Claimant's share of the Advance on Costs and noted the Respondent's failure to pay his share. The BAT invited the Claimant to substitute for the Respondent's share of the Advance on Costs by no later than 28 October 2025.

47. On 18 November 2025, the BAT acknowledged receipt of the full amount of the Advance on Costs, with the Claimant having substituted for the Respondent's share. The Claimant was invited to comment on the Respondent's Answer by no later than 2 December 2025 (the "**Reply**").

48. On 2 December 2025, the Claimant submitted its Reply.

49. On 17 December 2025, the BAT invited the Respondent to comment on the Claimant's Reply by no later than 12 January 2026 (the "**Rejoinder**").

50. On 12 January 2026, the Respondent submitted his Rejoinder.

51. On 20 January 2026, the Parties were invited to set out (by no later than 27 January

2026) how much of the applicable maximum contribution to costs should be awarded to them and why. The Parties were also invited to include a detailed account of their costs, including any supporting documentation in relation thereto. Finally, the Parties were also notified that the exchange of submissions was closed in accordance with Article 12.1 of the BAT Rules.

52. The Claimant filed its costs submission on 27 January 2026.

53. On 28 January 2026, the Respondent requested the extension of the time limit to submit his cost submission until 29 January 2026. The BAT granted the request.

54. The Respondent filed his costs submission on 29 January 2026.

4. The Positions of the Parties

4.1. The Claimant's Position and Request for Relief

55. The Claimant submits the following in substance:

- The message from the Player's agent dated 26 June 2024, in which the Player confirmed his unwillingness to continue with the Club for the 2024-25 season, constituted a breach of the Player Contract. This breach directly resulted in the Club being required to hire the Replacement Player at additional cost, thereby causing damage to the Club. The wording of the agent's message ("*his* [the Player's] *outlook on the war had not changed*") indicates the Player's intention not to return to the Club. Without this message, the Club would not have hired the Replacement Player.

- The Player failed to exercise either the Euroleague Option or the NBA Option. Accordingly, he was not entitled to lawfully terminate the contractual relationship. The deadlines governing the Exit Options were to ensure that the Club was informed in a timely manner of the Player's departure, and that it had sufficient time to find a replacement player.

- The Player had no just cause to terminate the Player Contract. The Club always acted in good faith, respected the Player's safety concerns, and kept contact with him to organize his return.

- On the one hand, the Player asserts that he was unable to continue performing the Player Contract due to the deterioration of his _____ caused by the military situation in Israel. On the other hand, the Player maintains that he never notified the Club of definitive refusal to return. These two assertions are mutually inconsistent.

- The Player's departure in April 2024 constituted an unpaid, temporary leave for the remainder of the 2023-24 season and did not constitute authorization to extend such leave into the 2024-25 season.

- The Player again breached the Player Contract by negotiating with UBT Cluj without the Club's written approval, which is prohibited under Clause 3.e of the Player Contract. This contractual breach is directly and causally linked to the wrongful termination itself: the unauthorized negotiations with UBT Cluj culminated in the very act through which the Player unilaterally terminated the Player Contract.

- The safety concerns arising from the Israel-Gaza-Conflict do not constitute *force majeure*. The league continued its operations, the Player himself stayed in Israel

until April 2024, and numerous foreign players remained in the league as well. No conflict-related events of a severity preventing performance occurred beyond what the Player had already experienced in the previous season. Thus, this case is not comparable to BAT 1813/22.

- Accordingly, the Player's departure was motivated by the intention to sign with another club, rather than by any impossibility to perform the Player Contract.

- The Player's Termination Proposals were inadequate and far below the contractually agreed buy-out fees, thus had to be rejected.

- The Player Contract has never been formally terminated by the Parties. The contractual relationship between the Parties came to an end as a factual consequence of FIBA issuing the Letter of Clearance and the Player subsequently signing the UBT Cluj Contract. This conduct amounted to a tacit termination of the Player Contract, as the Player definitively ceased performing his contractual obligations *vis-à-vis* the Club.

- The Player's wrongful unilateral termination caused the Club a financial loss totaling USD 419,364.00. This amount represents the difference between (i) the costs incurred by the Club in hiring the Replacement Player (USD 956,864.00[2]) and (ii) the savings resulting from the early termination of the Player Contract

[2] The amount represents the sum of the following expenses: (i) Replacement Player´s salary: USD 800,000.00; (ii) Buy-out fee paid to the Replacement Player's former club: USD 80,000.00; (iii) VAT related to the buy-out fee: USD 13,618.00; (iv) Medical examination: USD 3,246.00; and (v) Agent's fee: USD 60,000.00.

(USD 537,500.00[3]).

- In addition to the financial loss, the Club also suffered sporting and reputational harm, as the Player joined UBT Cluj, a direct EuroCup rival which defeated the Club in competition and thereby undermined the Club's reputation and its future recruitment prospects.

- Although the Club's proven damages amount to at least USD 419,364.00**,** it voluntarily limits its compensation request to USD 125,000.00. The reduction is made solely in the interest of equity and efficiency, without waiving the Club's rights or validating the Player's conduct. This reduced figure reflects a pragmatic settlement approach and aligns with the amount previously indicated to UBT Cluj but does not constitute recognition of any contractual buy-out right for the Player.

56. The Claimant requests the following relief:

> *"Claimant requests an award to be rendered, per which Respondent shall:*
>
> ▪ *pay Claimant:*
>
> ➢ *an amount of one hundred twenty-five thousand US dollar ($ 125.000) as termination indemnity; plus*
>
> ➢ *late payment interests at a rate of five percent (5%) per annum on the termination indemnity of one hundred twenty-five thousand US dollar ($ 125.000), as from July 20, 2024, until full payment, at the date of the present Request for Arbitration equalling an amount of six-thousand six hundred ninety-five US dollar and twenty-one cents ($ 6.695,21).*

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[3] The amount represents the following savings: (i) Player's salary for the 2024-25 season: USD 500,000.00; (ii) Agent's fee: USD 37,500.00.

▪ *reimburse Claimant all BAT expenses and procedural costs, including:*

➢ *reimbursement of the BAT Handling Fee ex article 17.1 of the BAT Rules in the amount of four thousand euro (€ 4.000), to be paid supplementary on top of the contribution towards Claimant's legal fees and expenses;*

➢ *reimbursement of Claimant's share of the advance on costs; and*

➢ *in case Claimant would have to substitute for (part of) Respondent's share of the advance on costs, the reimbursement hereof.*

▪ *indemnify Claimant for all incurred legal and advisory expenses, up to the maximum as set forth in article 17.4 of the BAT Rules."*

4.2. The Respondent's Position and Request for Relief

57. The Respondent submits the following in substance:

- Contrary to what the Claimant asserts, the Respondent did not invoke a situation of *force majeure*. He has never claimed, explicitly or implicitly, that performance was impossible. The Player invokes the doctrine of "*clausula rebus sic standibus*" that warrants contract renegotiation and modification, or ultimately termination, when performance becomes excessively onerous or difficult for one party, albeit not impossible. This situation may offer a lawful exception to the rule that agreements must be kept, known as "*pacta sunt servanda*". In the present case, the Player's contractual commitment to perform under the Player Contract had changed fundamentally. After the conclusion of the Player Contract in August 2023, the working and living conditions in Israel changed dramatically as a result of the Israel-Gaza-Conflict, in a way that rendered the continuation of the employment relationship exceptionally difficult for the Respondent for another season, i.e. for 2024-25.

- Against this background, and clearly in good faith, the Respondent attempted to negotiate a way out of this situation by proposing a settlement agreement for contract termination. This is why he conveyed through his agent two proposals, one on 30 June 2024, and a second on 3 July 2024, both of which remained without any reply by the Club. The Club did not give a convincing answer for refusing to negotiate a settlement agreement with the Player. On the contrary, it insists on an excessively rigid stance, arguing that it had "*no duty to negotiate, no obligation to accept proposals that contradicted the contractual framework*".

- The Player's participation in the 2023-24 season was significantly more demanding physically, mentally, and psychologically compared to the previous season. His _____ deteriorated due to the constant fear and imminent danger arising from the ongoing military conflict, as also confirmed by his _____ performance coach, in his report dated 16 October 2025. The change in the general security and safety situation is further corroborated by independent and impartial bodies, including FIBA and Euroleague, which do not host international games in Israel for security reasons. These circumstances demonstrate that the Player's concerns were justified and legitimate, providing valid grounds for leaving the Club, and that his actions cannot be construed as being in bad faith.

- The Player's departure to Cyprus, followed by his travel to the USA for meniscus surgery, was agreed with the Club as an authorized period of unpaid leave, after the Player had fully explained and justified the reasons necessitating such leave.

- As the military situation in Israel remained unchanged, the Player, acting in good faith, began exploring alternative opportunities with other clubs and duly informed the Club thereof. However, at no point did the Player unequivocally refuse or definitively declare an intention not to return to Israel in August 2024, prior to the

commencement of preparations for the 2024-25 season. In June 2024, there were only informal and tentative discussions between the Club and the Player's agent about his future with the Club, something perfectly reasonable and normal under the circumstances already described (namely the adverse change of the circumstances and his safety concerns). This does not amount to a breach of contract.

- In its Notice of Breach, the Club prematurely concluded that the Player had already breached his future contractual obligations for the 2024-25 season. Moreover, the Club failed to specify any concrete deadline by which the Player was required to return to Israel and did not indicate whether or when he was expected to report for preseason preparations ahead of the 2024-25 season.

- The Player proceeded with the unilateral termination (which was essentially made by signing the UBT Cluj Contract on 12 July 2024) only as a last resort, and, only after having previously exhausted possible ways to find a negotiated and mutually agreed exit out of his employment relationship with the Club. However, his attempt failed due to the Club's failure to respond to his offers. The fact that the Player accepted a considerably lower salary under his employment agreement with UBT Cluj for the season 2024-25 is plain evidence that he was under an imperative pressure to leave Israel.

- The Club hired the Replacement Player while the Player Contract was still binding and effective. The Club thus acted in bad faith and in a calculated manner, in order to put the Player into an impasse. Based on the timeline of events, there is no clear causation between the Player's conduct (if this were to be construed as breach) and the Club's independent decisions.

- The Club has not established any financial damages resulting directly from the

alleged wrongful termination by the Player. There is no causal link between the Player's conduct and the requested compensation because: (i) the Replacement Player was signed while the Player Contract was still in full force; (ii) the terms of the Replacement Player Contract are not comparable to the Player Contract signed with the Player; and (iii) the Euroleague Option relied upon by the Club is irrelevant since UBT Cluj does not play in the Euroleague. Consequently, the requested compensation is random, arbitrary and results into a completely unfair, excessive and unrealistic payment.

- The Player should not be held liable to pay any amount of compensation in damages to the Club. If at all, the only fair, equitable, realistic, and proportionate amount of compensation payable to the Club would be USD 15,000.00 – the same amount the Club would have been required to pay the Player had it chosen, at its own discretion, to terminate the Player Contract prior to the 2024-25 season under Chapter 8. This amount would appropriately restore a balance of interests between the Parties.

58. The Respondent requests the following relief:

> "*In light of the above, the Respondent respectfully requests the BAT Arbitrator to rule as follows:*
>
> *(i) The Request for Arbitration filed by Hapoel Jerusalem BC on 14 August 2025 is dismissed in its entirety;*
>
> *(ii) Alternatively, and only in the event the BAT Arbitrator decides that the Claimant is entitled to compensation as a result of the termination of the Employment Contract (which the Player denies), the Club is not entitled to the full amounts it requests with the Request for Arbitration and that its compensation shall be reduced to any other reduced amount that the Arbitrator may deem appropriate on the appropriate on the basis of the ex aequo et bono considerations;*
>
> *(iii) Hapoel Jerusalem B.C. shall bear the entire costs of this arbitration, or at least a substantial part thereof;*

(iv) Hapoel Jerusalem B.C. shall not be entitled to any contribution towards its legal expenses, and he shall reimburse the Respondent for all legal costs and attorney's fees incurred in connection with this arbitration, which shall be submitted upon request of the BAT Arbitrator."

5. The jurisdiction of the BAT

59. 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).

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

61. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[4]

62. In assessing jurisdiction, the Arbitrator notes that the Player Contract contains two separate dispute resolution clauses. In order to determine which of these clauses applies, the Arbitrator must examine the specific structure and construction of the Player Contract. In this respect, the Arbitrator observes that the Player Contract is based on the Israeli League's standard contract – typically used to comply with Israeli budget control requirements – and is supplemented by individual "*complementary provisions*" set out in Chapter 8.

63. Chapter 7, section a. of the Player Contract ("Arbitration"), which forms part of the

[4] Swiss Federal Tribunal, decision of 23 June 1992, BGE 118 II 353, 356 et seq.

standard league template, provides that

> *"*[t]*he Parties hereby agree that any disputes between the Team and the Player or Between* [sic] *the Player and the Team, in any matter related to the provisions of this Agreement, shall be brought before an arbitrator who shall be nominated by virtue of the regulations of the Association's Institute of Arbitration".*

64. Section E ("Arbitration") of Chapter 8 ("Complementary Provisions") of the Player Contract, which provides for the individual agreement between the Parties complementing the standard league template, provides for the following alternative dispute resolution mechanism:

> "*Any disputes between the Player/or his agent and the Club in connection with the interpretation and/or execution of this Agreement shall be referred to arbitration in accordance with the Arbitration Law of the Israeli basketball association. This paragraph bounds the parties to respond to the application of arbitration proceedings by either party.*
>
> *OR*
>
> *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 arbitration shall be Geneva, Switzerland. The arbitration shall be governed by chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of parties domicile. The language of arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."*

65. The Arbitrator notes that Chapter 8 of the Player Contract constitutes a specific and complementary agreement between the Parties, supplementing the standard-form provisions of the league template. Under general principles of contract interpretation, and in line with BAT jurisprudence, such negotiated and specific clauses prevail over general or pre-formulated standard provisions.

66. The wording of Chapter 8 of the Player Contract establishes an alternative arbitration agreement, validly granting the Parties a choice between two arbitral *fora*. Both clauses as such do not apply cumulatively, but – according to the intent of the Parties –

alternatively. Thus, there is an agreement to arbitrate enshrined in the Player Contract and the correct forum is determined by the Party that lodges its claim first.

67. In the present case, the Claimant submitted the dispute to the BAT, and the Respondent participated in the proceedings without raising any objection to the BAT's jurisdiction. Both Parties filed their written submissions in full before the BAT and thereby unequivocally accepted BAT as the forum for the resolution of the dispute. Under Swiss arbitration law and consistent BAT practice, a party that participates in arbitration proceedings without contesting jurisdiction is deemed to have tacitly accepted the BAT's jurisdiction (*prorogation de compétence par comportement*).

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

69. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).

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

6. Other Procedural Issues

71. 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 Claimant's claims based on the written submissions and the evidence on record.

72. The Arbitrator notes that the Respondent's request to extend the deadline for the cost submission was filed belatedly. The Arbitrator nevertheless granted the request,

exercising procedural discretion, as the late submission of costs did not cause any delay to the proceedings, did not prejudice the Claimant's procedural rights, and did not affect the timely issuance of the Award.

7. Discussion

7.1. Applicable Law – *ex aequo et bono*

73. 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 reads as follows:

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

74. Under the heading "*Applicable Law 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.*"

75. Section E ("Arbitration") of the Chapter 8 ("Complementary Provisions") of the Player Contract provides that where jurisdiction is exercised by the BAT "[t]*he arbitrator shall decide the dispute ex aequo et bono*".

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

77. The concept of "*équité*" (translating into equity, or *ex aequo et bono*) used in Article 187(2) PILA is fundamentally different from arbitration "*en droit*" (i.e., according to the law). As explained by the Swiss Federal Tribunal:

> *"The authorisation to rule in equity, within the meaning of this provision, relieves the arbitrator of the obligation to apply the rules of law, even mandatory rules, subject to certain reservations* [...]*."*[5]

78. 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*".

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

7.2. Findings

80. The circumstances of the present case are unique. They are marked by the Israel-Gaza-Conflict for which, undisputedly, neither party bears any responsibility. The Parties' dispute centres on whether this conflict changed the architecture of the Player Contract to an extent that allowed the Player to discontinue his services for the Club beyond the

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5 Swiss Federal Tribunal, decision of 19 December 2001, 4P.114/2001, para. 2.c)bb)aaa) (free translation).

end of the 2023-24 season, and eventually to join another club.

81. The Player, on the one hand, argues that the Israel-Gaza Conflict, which began on 7 October 2023, and which culminated in Iranian airstrikes hitting Israeli territory in April 2024, brought about a fundamental change in circumstances allowing him to eventually terminate the contract under the concept of *clausula rebus sic stantibus* (on the right to terminate a contract under this doctrine see SFT 4C.67/2003, consid. 2.2), after he had made good faith settlement proposals to the Club that remained without any response.

82. The Club, on the other hand, maintains that the events surrounding the Israel-Gaza-Conflict did not constitute a material change in circumstances, that it had any right to request the Player's return for the 2024-25 season, that the Player was in breach of the Player Contract, that the Player ultimately terminated the Player Contract by signing the UBT Cluj Contract, and that the Player is responsible to cover the Club's costs for the Player's replacement, which the Club voluntarily limits to the buy-out amount due had the Player exercised the Euroleague Option.

83. The Arbitrator will address the respective events since April 2024 in chronological order to assess whether either of the Parties breached the Player Contract, or terminated it, and what the financial consequences of such assessment are, including whether the Club is entitled to reimbursement of parts of its costs for hiring the Replacement Player.

7.2.1. The Player's departure from Israel on 14 April 2024

84. Based on the record before her, the Arbitrator is satisfied that, irrespective of whether the Iranian airstrike entitled the Player and his wife to leave Israel, the Parties mutually agreed that the Player was allowed to leave Israel, and that the Parties treated such departure as a mutually agreed (unpaid) contract suspension. Accordingly, the Player's

departure neither constituted a breach nor a termination of the Player Contract. This conclusion rests on the following assessment:

85. When the Player expressed concerns on 14 April 2024 about the security situation in Israel, the Club promptly cooperated in booking flights for him and his wife to leave Jerusalem (see *supra*, para. 17). The Club told the Player that it would "*take care of it*" and eventually booked flights for the Player and his wife to go to Cyprus still 14 April 2024. Based on the evidence, the Club neither protested against the Player's wish to leave Israel, nor did it reserve its rights.

86. The Player's situation was again discussed between 18 and 22 April 2024 (see *supra*, paras.19, 20), when the Iranian airstrike had ended. While the Club considered it "*safe*" for the Player to return to Jerusalem, the Player invoked _____ and indicated his desire to return to his home country (the USA). Again, the Club did not submit any protest and did not request the Player's return to Israel. Based on the record submitted in these proceedings, the Club contacted the Player again on 17 June 2024, asking whether the Player was aware of the deadlines of the Exit Options. In this communication, the Club did still not mention any breach of contract.

87. Against this background, the Club's Notice of Breach issued on 30 June 2024, i.e. 2.5 months after the Player's departure, cannot have any legal bearing. Based on the Parties' communications since 14 April 2024 (summarized above) the Player could reasonably assume that his absence was mutually agreed with the Club, all the more so given that the Club had booked his flights, and given that the Club never requested his return, nor notified any breach of contract. From the perspective of an objective third party, the only reasonable conclusion that can be drawn from the Parties' interactions is that the Parties had mutually suspended the Player Contract, and that the Player's absence from 14 April 2024 onwards (until the end of the 2023-24 season) did not constitute a breach of contract.

7.2.2. The Club's Notice of Breach of 30 June 2024

88. The Arbitrator notes that, in its decision of 6 August 2024 granting the LOC for the Player upon request of UBT Cluj, FIBA considered that the contractual relationship between the Parties had been deemed terminated by the Club in view of its Notice of Breach issued on 30 June 2024. At the same time, FIBA informed that "*the LOC proceedings are merely designed to resolve administrative transfer dispute and shall not be the appropriate forum to adjudicate financial disputes between the Player and the Club. FIBA has created the Basketball Arbitral Tribunal ('BAT') to handle financial disputes and parties are generally free to agree to submit their case to it.*"

89. As such, FIBA's decisions regarding contract termination in disputes about the issuance of LOCs are not binding in BAT proceedings. They are taken under considerable time pressure in a different context (transfer dispute), without that FIBA has the benefit of an exhaustive case file with pleadings and evidence from both parties. In the circumstances in which FIBA resolves transfer disputes based on what can often be practically only a *prima facie* review of the contractual situation, FIBA must principally observe players' freedom of movement, which – in case of doubt – may result in the issuance of a LOC rather than its denial.

90. The situation is fundamentally different in BAT proceedings, where the arbitrator benefits from elaborate information and evidence submitted by the parties. Moreover, contrary to FIBA, the Arbitrator is mandated to decide a contractual dispute, and to do so *ex aequo et bono*. Considering the case record at hand, including the context within which the Notice of Breach was issued, the Arbitrator cannot conclude that such Notice of Breach constitutes a contract termination.

91. The Arbitrator notes that according to BAT case law, if a party to an employment contract decides to terminate the contract, "*it must be made reasonably clear to* [the other

contracting party] *what is happening. Termination does not occur 'by telepathy', nor can it be couched in vague language; equally, notice of termination should not become a hostage to ardent pedantry if it is sufficiently clear as to what is happening*".[6] An employment contract can be terminated not only by a formal (oral or written) termination statement, but also implicitly by actions or statements of a party from which the other party must conclude that the first party was not willing to fulfil the contract.[7] However, it is also well established BAT jurisprudence that the clear intention to terminate the contract with immediate effect must be apparent.[8]

92. No such clear termination intent can be drawn from the Notice of Breach. The letter is not labelled as a "Letter of Termination". The word "termination" does not occur in that letter. While it is not strictly necessary to use the word "termination", a party alleging a termination must indicate why a certain notice can still be interpretated as a termination of contract, bearing in mind that an immediate termination is usually serving as the *ultima ratio*.

93. The Arbitrator finds that the Club's announcement that it would look for a replacement player is not in itself sufficient to indicate its wish to terminate the existing Player Contract. Rather, in view of the fact that the Player had indicated the possibility that he would not return to Israel for the beginning of the 2024-25 season (as evidenced in the agent's message that the Player's "*outlook on the war has not changed*", see *supra*, para. 24), the Club's approach to seek other options is understandable, and its announced efforts to plan for the Player's potential non-return (or belated return) cannot be equated with a contract termination. This finding is corroborated by the last sentence

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6 BAT 0776/15, at para. 59.

7 BAT 1785/22, at para. 75.

8 BAT 0318/12, at para. 92.

of the letter, in which the Club clarified that its intention to sign a new player goes "*without derogating from any of the Club's rights under the Employment Contract.*" This sentence demonstrates the Club's intent to hold on to the Player Contract rather than terminating it. Furthermore, the Arbitrator is not persuaded that the Player understood the Notice of Breach as a termination. The evidentiary record demonstrates the opposite. Following the Notice of Breach, the Player submitted two Termination Proposals to the Club (see *supra*, paras. 26, 29), which makes sense only under the assumption that the Player considered the Player Contract still valid and effective.

94. As a result, the Player Contract was still valid beyond 30 June 2024.

7.2.3. The Player's signing of the UBT Cluj Contract on 12 July 2024

95. Undoubtedly, the Player's signing of the UBT Cluj Contract on 12 July 2024 and the issuance of the LOC by FIBA constitute a factual termination of the Player Contract.

96. The question is whether such termination was legally justified. The Player alleges that, while it was not legally "*impossible*" for him to work, he had a right to terminate the Player Contract based on the doctrine of *clausula rebus sic stantibus*, which provides that a party may withdraw from or modify a contract if there has been a fundamental change of circumstances that was not anticipated at the time the agreement was made. The Player alleges that the Israel-Gaza-Conflict, which began on 7 October 2023 (i.e. after the signing of the Player Contract) and was reinforced by the Iranian airstrikes hitting Israeli territory as of April 2024, had serious effects on his and his wife's _____ so that it was unbearable for him to return to Israel. The Club challenges these submissions and argues that the situation in Israel for the 2024-25 season was safe, that many American players lived and played in Israel, and that it was objectively bearable for him to return to Israel.

97. As an initial matter, the Arbitrator finds that the requirement of a fundamental change of circumstances must be assessed primarily according to an objective standard. The question is whether a reasonable person in the position of the Parties at the time of contracting would regard the change as fundamental, and capable of radically altering the contractual equilibrium or the scope of obligations. The focus is therefore not on the Parties' subjective feelings or expectations, but on whether the change objectively transforms the basis of the agreement. Typical objective elements to be considered as part of this analysis include (i) whether the change was unforeseeable at the time of the conclusion of the Player Contract, (ii) whether it affects the essential basis of the Parties' consent, and (iii) whether it radically alters the obligations still to be performed.

98. The Arbitrator finds that the Player's submissions regarding _____ the situation in Israel caused on him are credible, and they are in fact not disputed by the Claimant. The Player's deteriorated _____ is not only confirmed by the Player's_____ **[**performance**]** coach, but also by the fact that the Player was willing to give up his contract with the Claimant for a financially worse deal under the UBT Cluj Contract. The Claimant's net salary of USD 300,000.00 under the UBT Cluj Contract was lower than his gross salary of USD 500,000.00 (translating to USD 375,000.00 net) stipulated under the Player Contract. It is plausible that the security situation was the primary reason for the Player to waive his higher salary with the Claimant resulting from his execution of the UBT Cluj Contract.

99. However, at the same time, the Arbitrator finds that the Club's arguments are valid in terms of the required objective analysis. From an objective perspective, the situation was not unforeseeable when the Parties entered into the Player Contract. The Middle East region has been politically unstable for a long time, and (aggressive) tensions between Israel and Palestine have had a long tradition. Basketball players playing in Israel always had to account for more insecure living conditions than they would find in other places. The Player must have been aware of these risks, as he had been playing in Israel before.

100. Similarly, the Arbitrator finds that after the end of the Iranian airstrike, the situation had calmed down to an extent that made it possible again for foreign players to live in Israel (taking into account the general risk adjustments players playing in Israel have to make, see above). This is demonstrated, *inter alia*, by numerous American (and other foreign) players who played in the Israeli league in the 2024-25 season. The Respondent does not claim that the situation after the end of the Iranian airstrikes was more dangerous than after the events of 7 October 2023, following which the Player stayed in Israel still until April 2024. Rather, his main argument is that he still suffered from _____ as a consequence of the events up until April 2024. The assumption that not the actual safety situation in Israel in the summer of 2024, but his continued suffering from _____ caused by his past experience held him back from returning to Israel is further corroborated by the fact that the Player played for Maccabi Tel Aviv in the 2025-26 season (until at least February 2026, according to public information), which proves that he found it possible to go to Israel again after some time had passed.

101. As a result, the Arbitrator is not convinced that – from the required objective standpoint – his (subjective) symptoms of _____ entitled the Player to stay away from the Club under the doctrine of *clausula rebus sic stantibus.* Therefore, the Arbitrator finds that the Player's termination of the Player Contract was wrongful. In view thereof, it does not have to be decided whether his Agent's message of 26 June 2024, whereby the Player's "*outlook on the war had not changed*" was already a breach of contract, as argued by the Club.

102. As a consequence, the Arbitrator concludes that, objectively, the Player had to return to Israel for the new season 2024-25. Subjectively, however, she understands that the Player struggled with his return to a place that had apparently affected his _____, including continued fears of an outbreak of war. His return was subjectively unbearable. This fact will be accounted for in the assessment of the quantum of the compensation the Club is entitled to receive.

7.2.4. What is the equitable and fair compensation to be paid by the Player to the Club?

103. The Arbitrator finds that the just and equitable solution regarding the financial consequences of the termination of the Player Contract in this case cannot be found by simply asking which Party actually terminated the contract and whether there was sufficient reason to do so, but she must look at the rather extraordinary circumstances in their entirety. The present situation is characterised by a unique set of facts, i.e. a contract that was suspended (prior to termination) due to the armed conflict in Israel and a duty of both Parties to resolve the situation that was caused by circumstances not attributable to them through fair negotiation in light of a duty of mutual consideration for the legitimate interests of each other.

104. The concept of *ex aequo et bono* empowers but also requires the Arbitrator to adjust the consequences of the termination to the specific circumstances and to find a solution which in good faith can be considered fair and proportionate.

105. The situation caused a dilemma for both Parties.

106. The Player's dilemma was that he temporarily felt unable to return to Israel, without that he knew whether his _____ would allow for a return at a later point, but that at the same time he did not want to waive his lucrative contract with the Club too quickly.

107. The Club's dilemma was that it required a clear prospect as to whether the Player would return or not. In this respect, the Arbitrator acknowledges that the statement of the Player's agent of 26 June 2024 (according to which the Player's "*outlook on the war has not changed*") created uncertainty for the Club and may reasonably have led the Club to doubt whether the Player would return at all in August 2024.

108. The Arbitrator recognizes that the prolonged "wait and see" situation – following the

temporary contractual suspension mutually agreed by the Parties – primarily benefited the Player. During this period, the Player explored alternative options without providing a definitive position to the Club, while the Club faced increasing pressure to protect its sporting and economic interests by securing a replacement player in a competitive market for position 5 players. Even if the Player did not act in bad faith, his conduct ran counter to the contractual structure, which included clearly defined deadlines for the exercise of the Exit Options intended to prevent precisely such uncertainty. The deadline for the Euroleague Option expired on 21 June 2024 (i.e. 14 days after the last official game of the 2023-24 season on 7 June 2024), and the deadline for the NBA Option expired on 8 July 2024. The Club, however, had no realistic prospect to receive the Player's commitment that he would return for the beginning of the new season by the dates on which the Exit Options expired. This is further indicted by the Player's Settlement Proposals of 30 June 2024 and 3 July 2024, in which the Player requested his release. It was, therefore, a prudent business decision for the Club to start looking for a replacement player after the Euroleague Option had expired.

109. On the other hand, the Arbitrator observes that the Club did not meaningfully contribute to an amicable resolution of the situation. While the Player attempted to bring about an amicable settlement by making two settlement offers, the Club did not directly respond to such proposals, and its strict insistence on the principle of *pacta sunt servanda* was unsuitable to facilitate a solution to an extraordinary situation. Again, in the unique circumstances faced by the Parties, both the Player and the Club had to make efforts to discuss the situation in good faith and to try to find a solution. Instead of responding to the Player's settlement proposals, the Club consistently insisted on a compensation amount equivalent to a buy-out fee applicable to a Euroleague transfer, although the Player had not signed with a Euroleague club, and was therefore clearly in a different economic situation than in the buyout scenario foreseen in the Player Contract. In the prevailing circumstances, the Club was expected to demonstrate at least a degree of flexibility.

110. The Arbitrator therefore finds that, although the Player benefited from the "wait and see" situation, he did demonstrate an effort to resolve the matter in good faith through settlement discussions. The prolongation of the uncertainty was exacerbated by the Club's refusal to engage in negotiations or to provide counter-offers and by its insistence on compensation terms that appear disproportionate in light of the circumstances.

111. In determining the quantum of the compensation, the Arbitrator does find, however, that the buy-out provisions form at least an appropriate starting point. Under the Exit Options, the Player had the opportunity to terminate the Player Contract after the 2023-24 season within designated deadlines to join a Euroleague or NBA team, against payment of a buy-out fee. Hence, irrespective of the extraordinary circumstances of the case, the Club had to factor in the possibility of the Player's compensated departure in any case.

112. In light of the manner in which the Player Contract was drafted, and considering that the Club, in the event of early termination, legitimately expected the application of a buy-out mechanism, the Arbitrator finds it fair and equitable that the Player compensate the Club through the payment of a buy-out fee as a means of balancing the Parties' respective positions.

113. Usually, buy-out fees are specified and quantified in the employment agreements, which however is not the case here taking into consideration that none of the Exit Options was applicable to the current circumstances. The rationale behind buy-out clauses is – *inter alia* – to deter a player from simply walking away from an ongoing contract and to ensure that a club participates economically in a lucrative career move of the player.[9] In most cases, the buy-out fees are defined as a lump-sum and do not relate to specific costs

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9 BAT 1833/22, at para. 194.

and expenses.[10] A buy out fee is not a penalty for any misconduct,[11] and not a payment for sustained damages.

114. In determining the appropriate and equitable amount of the buy-out fee, the Arbitrator notes that the Player did not join a Euroleague team, but a team playing in the (lower) EuroCup). The Parties would likely have agreed on an amount lower than USD 125,000.00 for the Player's leaving to a EuroCup team. The Arbitrator also considers that the Player's lower salary at UBT Cluj must be balanced against the amount payable by him.

115. Under the specific circumstances of this case, the Arbitrator finds it fair, equitable, and proportionate to set the hypothetical buy-out fee at 50% of the Euroleague buyout, i.e. at USD 62,250.00. In determining this figure, the Arbitrator has taken into account that the Player acted in good faith, was materially affected by the armed conflict in Israel, did not personally benefit or enrich himself from the circumstances leading to the early termination, and made genuine efforts to reach a settlement with the Club. At the same time, this amount accounts for the Club's interests, which also bears no fault in the situation, and which would not have let the Player go to another EuroCup team (a potential competitor) for a lower amount than USD 125,000.00 under normal circumstances. Considering these factors and given the absence of a contractual formula for calculating compensation under the prevailing circumstances, the Arbitrator concludes that USD 62,250.00 represents a fair and proportionate compensation to the Club for the Player's early release from the Player Contract.

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10 BAT 1833/22, at para. 194.

11 BAT 1833/22, at para. 194.

7.2.5. Interest

116. The Claimant requests "*late payment interests at a rate of five percent (5%) per annum on the termination indemnity of one hundred twenty-five thousand US dollar ($ 125.000), as from July 20, 2024, until full payment, at the date of the present Request for Arbitration equalling an amount of six-thousand six hundred ninety-five US dollar and twenty-one cents ($ 6.695,21)*".

117. The Player Contract does not provide any regulation concerning interest. According to standing BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. This is a generally accepted principle, which is embodied in most legal systems. As requested by the Club and in correspondence with the standing BAT jurisprudence the default interest rate is 5% per annum.

118. Regarding the starting date, the Arbitrator notes that the first time the Club requested a payment from the Player was its letter of 6 December 2024 (amount of USD 469.759,72). In that letter, the Club set a payment deadline of "*within the next eight (8) days*". At the latest at that time, the Player was fully aware that the Club would not accept his departure without any legal consequences. For these reasons, the Arbitrator orders interest on the compensation from 15 December 2024 (i.e. one day after the period granted by the Club expired).

8. Conclusion

119. Based on the foregoing, and after taking into due consideration all the evidence submitted and all arguments made by the Parties, the Arbitrator finds that the Player shall pay the Club a compensation of USD 62,250.00 together with interest at 5% per

annum on any outstanding balance (as may be the case from time to time) from 15 December 2024 until payment in full.

9. Costs

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

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

121. On 30 March 2026, the BAT President determined the arbitration costs in the present matter to be EUR 9,500.00.

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

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

123. Considering the Parties' requests for relief on the one hand and the outcome of the case on the other hand, in particular the fact that the Claimant won by 50%, the Arbitrator finds it appropriate that each Party shall bear 50% of the arbitration costs. Because the Claimant paid the entire amount of the arbitration costs, the Respondent shall reimburse the Claimant the amount of EUR 4,750.00.

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

that

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

125. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses (excluding the non-reimbursable handling fee). In this case, the maximum contribution is EUR 10,000.00.

126. In view of the fact that each Party prevailed at 50%, the Arbitrator orders that each Party shall bear its own legal fees, and that the Respondent shall reimburse the Claimant for 50% of the handling fee, i.e. EUR 2,000.00.

127. In summary, therefore, the Arbitrator decides that in application of Articles 17.3 and 17.4 of the BAT Rules:

    (i) The Respondent shall pay EUR 4,500.00 to the Claimant as a reimbursement for the arbitration costs advanced by the latter;
    (ii) The Respondent shall pay EUR 2,000.00 as a reimbursement for the handling fee paid by the Claimant;
    (iii) Each Party shall bear its own legal fees and other expenses.

10. AWARD

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

1. **Mr. Zachary Scott Hankins shall pay Hapoel Jerusalem BC a compensation of USD 62,250.00 together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) from 15 December 2024 until payment in full.**

3. **Each Hapoel Jerusalem BC and Mr. Zachary Scott Hankins shall bear 50% of the arbitration costs. Accordingly, Mr. Zachary Scott Hankins shall reimburse EUR 4,750.00 to Hapoel Jerusalem BC.**

4. **Mr. Zachary Scott Hankins shall reimburse EUR 2,000.00 to Hapoel Jerusalem BC for the handling fee.**

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

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

Geneva, seat of the arbitration, 8 April 2026

Annett Rombach
(Arbitrator)