BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0765/15)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Mr. Brandon Triche

- Claimant -

represented by Mr. Billy J. Kuenziger, attorney at law,
700 Ygnacio Valley Road, Ste. 330,
Walnut Creek, CA 94596, USA

vs.

Pallacanestro Virtus Ssrl Unipersonale Roma
Via Vittoria Colonna 39, 00193 Roma (RM), Italy

- Respondent -

represented by Messrs. Gianfranco Tobia and Achille Reali, attorneys at law,
Viale Mazzini, 11 – 00195 Roma, Italy

1. The Parties

1.1 The Claimant

1. Mr. Brandon Triche (the “Player” or “Claimant”) is a professional basketball player of U.S. nationality.

1.2 The Respondent

2. Pallacanestro Virtus Ssrl Unipersonale Roma (the “Club” or “Respondent” and together with Claimant the “Parties”) is a professional basketball club located in Rome, Italy.

2. The Arbitrator

3. On 20 November 2015, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (the "BAT"), appointed Ms. Annett Rombach as arbitrator (the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

4. On 17 July 2014, the Player and the Club entered into a contract (the “Player Contract”), pursuant to which the Club engaged the Player as a professional basketball player for the 2014-15 season. Pursuant to Clause 1.4 of the Player Contract, the agreement “*will be split into a League Agreement and Image Contract*” and the image contract “*may be signed by a third company*”.

5. The Player's remuneration was addressed in Clause 2.1 Player Contract, which reads as follows:

> *"Upon signing and successfully passing the physical exam, which is a compulsory condition to validate this contract, the CLUB agrees to pay the PLAYER the following:*
>
> | | |
> |---|---|
> | *2014/2015 Season* | *$140,000 USD net of any Italian taxes* |
> | *League Agreement:* | *$80,000 USD net of any Italian taxes* |
> | *Image Contract* | *$60,000 USD net of any Italian taxes"* |

6. The payments under the league agreement were to be made in 9 instalments on the 10th of each month, starting in November 2014. Pursuant to Clause 4.1 of the Player Contract, all payments were fully and unconditionally guaranteed.

7. Also on 17 July 2014, an image contract within the meaning of Clause 1.4 of the Player Contract was executed between Respondent and Claimant's representative, Bill A. Duffy International Inc. ("Bill A. Duffy"), a U.S. sports marketing and advertising company (the "Image Contract"). The Image Contract was also signed by the Player. Its purpose was to grant the Club a license for the use of the Player's image rights.

8. Pursuant to Clause 5 of the Image Contract, the Club agreed to the following:

> *"In consideration of the grants of rights by Bill A. Duffy International Inc. to the CLUB hereunder the CLUB shall pay Bill A. Duffy International Inc. the following amounts:*
>
> | | |
> |---|---|
> | *September 10, 2014* | *$10,000 USD net of any Italian taxes* |
> | *October 10, 2014* | *$8,500 USD net of any Italian taxes* |
> | *December 20, 2014* | *$15,000 USD net of any Italian taxes* |
> | *February 28, 2015* | *$15,000 USD net of any Italian taxes* |
> | *April 30, 2015* | *$15,000 USD net of any Italian taxes* |
> | ***Total for season 2014/2015*** | ***$63,600 USD net of any Italian taxes*** |
>
> [sic]"

9. The payments under the Image Contract were fully guaranteed and had to be wired to a bank account of Bill A. Duffy (Clause 6).

10. On 1 October 2014, the Player and the Club signed the Italian league contract (the "League Contract"). Clause 2 of the League Contract stipulated that the Player would receive a total remuneration "before-tax" of EUR 111,000.00 for the 2014-15 season.[1] No schedule of payments was included in the League Contract.

11. The League Contract refers to certain provisions of the Italian Civil Code and the "Professional Players 2003" Collective Labor Agreement (the "Collective Labor Agreement"). Clause 6 of the League Contract provides for the following with regard to dispute resolution:

> *"All disputes regarding the interpretation and execution of the collective agreement and of the present individual labor contract […], are deferred to the Permanent Board of Conciliation and Arbitration ruled by article 29 and following of the "Professional Players 2003" collective Labour Agreement. The arbitration board is located in Bologna at the Italian Basketball League premises and is composed of three members: the President, invariable, designated by common consent from the League and the GIBA every two years; one member chosen each time by the members suggested by the League in a special list, and a member chosen each time by the members suggested by the League in a special list.* [sic]*."*

12. On 27 January 2015, in a Euro Cup game against BC Cedevita, Claimant [medical details].

13. On 29 January 2015, the Player was examined by Respondent's medical staff. An MRI was performed, showing [injury].

14. On 31 January, Claimant was examined by Prof. Adriani, an orthopedic specialist in the Sports Clinic Mater Dei in Rome. As per his medical report dated 23 February 2015

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[1] On 1 October 2014, this amount corresponded with the amount of USD 140,000.00 provided for in the Player Contract. The applicable EUR-USD exchange rate was 1.2618 (http://www.finanzen.net/devisen/dollarkurs/ historisch).

(the "Adriani Report"), Prof. Adriani suggested a specific functional rehabilitation for the gradual return to sport activities and a [medical treatment] to be performed after the season for the purpose of evaluating the [injury]. The Adriani Report also indicated the possibility of the Player undergoing [medical treatment]. Prof. Adriani concluded that the Player "could play with caution" once the [injury] got better.

15. Between 1 and 15 February 2015, the Player played four games.

16. On 16 February 2015, during an official team break scheduled until 20 February 2015, the Player left Rome for the United States.

17. In the United States, the Player visited an orthopedic specialist to get a second opinion on his injury.

18. On 18 February 2015, a medical report was issued by SOS (Syracuse Orthopedic Specialists, PC), diagnosing an [injury] (the "SOS Report"). The SOS Report concluded the following (*inter alia*):

> *"It's in his* [the Player's] *best interest not to play on the* [injury]. *He does face* [medical treatment] *for the [injury]. Further playing could increased* [sic] *damage to [injury] and injury to other structures. As far as surgery is concerned. He understands that this would involve an extensive period of time in rehabilitation. He would return to basketball if at all. In the meantime, I recommend an* [medication]. *[…] He will be discussing this with his team and his agent. My recommendation that he not resume basketball participation at this time on this injured* [body part]."

19. On 20 February 2015, the Italian representative of Bill A. Duffy, Marco Valenza, ("Mr. Valenza") sent an e-mail to Respondent's General Manager Mr. Nicola Alberani ("GM"). It is disputed between the Parties whether this e-mail included a copy of the SOS Report.

20. On the same day, Respondent's GM replied that he expected the Player to return to Rome. In addition, Respondent's GM and Mr. Valenza had a WhatsApp communication, stating as follows (in relevant part):[2]

> *"NA:[3] Please have Brandon to leave or we have problems. We don't put him on the floor, but if he's not here Toti[4] kills us and me.*
> *MV:[5] Ok.*
> *NA: You still have nothing written?*
> *NA: To me, I need something because tomorrow at 5pm there is practise.*
> *MV: Nothing. I wrote that he has to leave. But it's early in the US.*
> *NA: Ok.*
> *MV: He won't leave. I'm waiting a report.*
> *NA: If he doesn't leave I'll have to fine him and we'll have a big mess. Please convince them.*
> *MV: It's impossible. As soon as I have communication I forward to you."*
> [sic]

The Player did not show up for the first team practice after the break on 21 February 2015.

21. Also on 21 February 2015, Mr. Valenza informed Respondent's GM by e-mail that the Player would be using his U.S. insurance to cover his medical expenses, and that he hoped to know the date of the Player's surgery by Monday (23 February). Respondent's GM and Mr. Valenza continued to discuss the issue via What's App:

> *"MV: Did you have news. I didn't.*
> *NA: Zero.*
> *[…]*
> *MV: I know that they were looking for a second opinion and that in any case he would have got surgery in Syracuse.*
> *MV: With his insurance.*

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2 Translation provided by Claimant.

3 Nicola Alberani, Respondent's GM.

4 Claudio Toti, Respondent's President.

5 Marco Valenza.

NA: Ah ok.
MV: That's what I read in their conversation.
MV: It's already an info.
MV: At the end, we only need authorization.
NA: Triche only one missing.
MV: I sent email to Jamar and Rade. I wait them to answer. I know they are waiting a second opinion and then proceed to surgery.
NA: Ok, but they have to write us 2 lines.
MV: I have email. I forward to you. Something is confidential.
NA: Ok."

22. On 23 February 2015, the Club sent a letter to the Player "*to formally contest*" that the Player did not show up for the practice sessions on 21 and 22 February 2015. The Club announced that it would commence disciplinary actions against the Player in accordance with the Collective Labor Agreement and requested a written justification from the Player.

23. The Club sent a total of 5 further warning letters to the Player with essentially the same content from 24 to 28 February 2015.

24. On 27 February 2015, Claimant's counsel sent a letter to the Club. In relevant part, the letter reads as follows:

> *"As you know very well, Mr. Triche suffered a* [injury]. *Pursuant to his contract (Paragraph 3.7), he is entitled to have his treatment performed by any doctor of his choosing. The Club and Club's doctor are very familiar with the injury and Brandon has been playing injured for over two months, with* [injury] *after each game. The Club and the Club's doctor took no specific action to help Mr. Triche regarding the injury. They just kept him playing. As a result, during the team break, he came to the US and during his stay, he had a second opinion performed. Attached you will find the MRI results of that opinion, and on Monday we will be able to provide you with the complete medical notice. At that point, we will be able to inform you of the necessary program for Mr. Triche's treatment, including his* [medical treatment] *and recovery."*

25. The letter contained the results of the latest MRI performed on the Player on 24 February 2015.

26. On 28 February 2015, the same letter was re-sent to Respondent (by e-mail).

27. On 6 March 2015, Claimant's counsel sent a letter informing Respondent that the Player would be in Rome from 10-13 March 2015. The letter confirmed, *inter alia*, that the Player "*will be available to you if you wish to conduct a meeting regarding medical tests*" and that the Player "*will bring with him all documents of medical checks done in US*". Additionally, the Club was informed that the Player would not be able to return to the court in the 2014-15 season due to a required [medical treatment] of the [injury]. The letter also stated that the surgery was to be performed in the U.S. on 18 March 2015.

28. On 7 March 2015, the Club sent a letter to the Player terminating his employment (the "Termination Letter"). The letter reads as follows:

> *"Following our letters dated February 23rd, 24th, 25th, 26th, 27th and 28th 2015, all without feedback, we note that you don't provide any justification for the behavior objected.*
>
> *Taking note of the above, we have to inform you that your serious misbehavior (your not return to Rome as agreed with the Club, your truancy in various training sessions, missing official home game against Pesaro) pursuant to the provisions of art. 26.11 of Collective Agreement signed between FIP, League and GIBA, determines the measure of justified dismissal."*

29. On 10 March 2015, the Player travelled to Rome. The Club had taken away his apartment and car, with his belongings being packed in bags for the Player to pick them up.

30. On 11 March 2015, Mr. Valenza wrote a letter to the Italian Basketball Federation (FIP), the Italian League and the players' union (GIBA), explaining the events which resulted in Mr. Triche's termination from his perspective.

31. On 24 March 2015, Respondent paid the Player's salary which had become due up until the date of the Termination Letter, and the full agent fee.

32. On 31 March 2015, the Player underwent surgery in the U.S. The post-operative report was sent by the doctor on 7 April 2015.

3.2 The Proceedings before the BAT

33. On 4 November 2015, the Claimant filed a Request for Arbitration together with several exhibits (received by the BAT Secretariat on 5 November 2015) in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 2,000 was received in the BAT bank account on 6 November 2015.

34. On 2 December 2015, the BAT informed the Parties that Ms. Annett Rombach had been appointed as Arbitrator in this matter, invited the Respondent to file its Answer in accordance with Article 11.2 of the BAT Rules by no later than 23 December 2015 (the "Answer"), and fixed the amount of the Advance on Costs to be paid by the Parties as follows:

"Claimant (Mr Brandon Triche)	*EUR 6,000*
Respondent (Pallacanestro Virtus Roma)	*EUR 6,000"*

35. On 23 December 2015, Respondent filed its Answer.

36. On 11 January 2016, BAT acknowledged receipt of Claimant's share of the Advance on Costs (with Respondent having failed to pay its share) and the Answer. Claimant was invited, in accordance with Article 9.3.3 of the BAT Rules, to select between the options of an award without reasons and an award with reasons.

37. On 18 January 2016, Respondent paid its share of the Advance on Costs.

38. On 29 January 2016, the BAT Secretariat acknowledged receipt of the full Advance on Costs. Claimant was invited to comment on Respondent's Answer ("Reply") and to address certain specific questions identified by the Arbitrator.

39. On 19 February 2016, within the (extended) time limit, Claimant filed the Reply.

40. On 26 February 2016, Respondent was invited to comment on Claimant's Reply ("Rejoinder"), and to confirm whether it maintains its request for a hearing.

41. On 8 March 2016, Respondent filed its Rejoinder.

42. On 16 March 2016, the Arbitrator issued a Procedural Order, determining that a hearing would be held and invited the parties to confer with respect to the logistics of such hearing.

43. On 23 March 2016, Respondent filed its comments on the hearing logistics.

44. On 31 March 2016, within the (extended) time limit, Claimant filed his comments on the hearing logistics.

45. On 6 April 2016, the Arbitrator proposed a hearing date in June. The Parties were requested to pay additional amounts of costs as follows:

"Claimant (Mr Brandon Triche)	*EUR 2,000.00*
Respondent (Pallacanestro Virtus Roma)	*EUR 2,000.00"*

46. On 8 April 2016, Respondent informed BAT that it would be available at the proposed date, and that the hearing could take place at its headquarters in Rome.

47. On 19 April 2016, the BAT Secretariat sent a final reminder to the Parties concerning the payment of the additional Advances on Cost, which both Parties had failed to pay thus far.

48. On 2 May 2016, both Parties paid their respective shares of the additional Advance on Costs (Claimant EUR 1,788.62, Respondent EUR 2,000).

49. By Procedural Order dated 2 May 2016, the BAT Secretariat confirmed receipt of the additional Advance on Costs and provided the Parties with further details regarding the organization of the hearing. The Parties were invited to introduce new facts, evidence or legal arguments (Pre-Hearing Briefs) by no later than 13 May 2016.

50. On 13 May 2016, the Parties filed their Pre-Hearing Briefs. For the required translation from English to Italian and vice versa, Respondent offered two translators.

51. By Procedural Order of 1 June 2016, the Arbitrator provided further information to the Parties with respect to the agenda and the logistics of the hearing. The Arbitrator informed the Parties that in light of the fact that the translators offered by Respondent were the sons of Respondent's president, she could not accept them, and that BAT would arrange for the necessary translation services.

52. On 3 June 2016, Respondent confirmed the reservation of three hearing rooms at its headquarters and proposed new translators.

53. By e-mail of 8 June 2016, the BAT Secretariat informed the Parties that it had already arranged for two professional interpreters for the hearing.

54. On 14 June 2016, a hearing took place in Rome, Italy, at Respondent's headquarters. The following people were present at the hearing (all in person):

- Mr. Brandon Triche, Claimant
- Mr. Luca Pardo, counsel for Claimant
- Mr. Mario Vigna, counsel for Claimant
- Mr. Giulio Ciompi, counsel for Claimant
- Mr. Billy Kuenziger, counsel for Claimant
- Mr. Gianfranco Tobia, counsel for Respondent
- Mr. Achille Reali, counsel for Respondent
- Mr. Philipp Hill, translator
- Ms. Olga Fernando, translator
- Ms. Annett Rombach, BAT Arbitrator
- Dr. Heiner Kahlert, BAT Secretariat

55. The Arbitrator opened the hearing by giving a brief introduction on the merits and by discussing certain organizational and procedural issues, followed by opening statements given by both Parties' counsel. After the opening statements, the following parties and witnesses were examined (first by the Arbitrator, followed by questions from the party representatives):

Solely and separately from each other:

- Mr. Brandon Triche (Claimant)
- Prof. Ezio Adriani (Orthopedic surgeon, offered by Respondent)
- Dr. Paolo Montera (Respondent's team doctor, offered by Respondent)

Through a witness conferencing:

- Mr. Marco Valenza (local representative of Claimant's agency, offered by Claimant)
- Mr. Rade Filipovic (President of Claimant's agency, offered by Claimant)

- Mr. Nicola Alberani (former GM of Respondent, offered by both Parties)
- Mr. Claudio Toti (Respondent's president, offered by Respondent)

56. Before the conclusion of the hearing, the Arbitrator discussed with the Parties the possibility of a settlement and potential Post Hearing Briefs.

57. By Procedural Order dated 15 June 2016, the Arbitrator suspended the proceedings until 29 June 2016 for the Parties to explore the possibility of a settlement and/or for the Parties to agree on the necessity of Post Hearing Briefs.

58. By e-mail of 16 June 2016, the BAT Secretariat delivered to the Parties the hearing minutes and two documents that had been provided physically by the parties during the hearing.

59. By Procedural Order of 30 June 2016, the Arbitrator, noting that the Parties had not responded to the Order of 15 June 2016, closed the proceedings and invited the Parties to submit their detailed cost accounts.

60. The Parties submitted their cost accounts on 5 July 2016 (Respondent) and on 12 July 2016 (Claimant).

61. On 13 July 2016, the Parties were invited to comment on the respective other side's cost account. Neither of the Parties filed any comments.

4. The Positions of the Parties

62. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Arbitrator has accounted for and carefully considered all of the submissions made and

evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

4.1 Claimant's Position

63. Claimant submits the following in substance:

- After the injury occurred on 27 January 2015, following the advice of Respondent's doctors, the Player continued playing games despite a constant pain he felt in the injured [body part]. While the [injury] got better, the Player was never in normal shape and was worried about his health.
- The Player felt that the Club expected him to play due to the precarious situation with many injured players and important games the team needed to play. However, the Player remained very concerned about his condition and did not trust Respondent's doctors.
- The Player made all therapies offered by Respondent's doctors.
- During the team break, the Player decided to get a second opinion in the U.S. The U.S. doctor advised him that he was unable to travel and should not play basketball.
- The Player's agents sent the Club the SOS Report as early as on 20 February 2015 (i.e. before the end of the official team break). They also advised the Club that Claimant planned to have surgery in the U.S. and that he would not return to Rome due to the required medical treatment. Indeed, the Club was at all times properly informed about the Player's medical status quo.
- Mr. Valenza, through whom all communication on behalf of the Player was channeled, is the Italian senior director of Bill A. Duffy. Respondent knew very well that his communications were made on behalf of the Player, and that he was representing the Player's agency in Italy.

- The Club had the intention to cut the Player from the roster already in early January 2015 (before the occurrence of the injury), because it was unhappy with his performance. Since it was not possible to replace him any later than January, the Club tried to find other ways to get rid of the Player.
- BAT has jurisdiction to decide the dispute. The League Contract is a mere form agreement which was not intended by the Parties to supersede the Player Contract.

64. Claimant requests the following relief:

> *"Due to the failure of the Respondent to pay the unpaid balance payments to Claimant on the agreed dates, the amounts are now due and payable. The Respondent owes the following:*
>
> *1. $44,000 USD in League Agreement Fees 2014/2015*
> *2. $30,000 USD in Image Contract Fees 2014/2015*
>
> *These amounts are due immediately.*
>
> *Claimant request(s):*
>
> *The Club therefore currently owes the Claimant, Brandon Triche, the following:*
>
> *1. $74,000 USD in Agreement payments for the 2014/15 season*
>
> *For the Claimant, costs of this action plus attorney's fees."*

4.2 Respondent's Position

65. Respondent submits the following in substance:

- BAT does not have jurisdiction to decide the present case. The League Contract, which was signed by the Player after the execution of the Player Contract, contains a dispute resolution clause in favor of the Permanent Board of Conciliation and Arbitration in Bologna. The Player Contract ended upon signing of the League Contract.

- As per its doctors' conclusions, the Club was convinced that the Player was able to play after the injury and did not need surgery. However, the Club never forced the Player to play.
- At some point in time, the Player refused to participate in the necessary therapeutic programs set up by the Club.
- The Player did not give any justification for his absence after the end of the team break on 21 February 2015. The SOS Report was received by the Club no earlier than on 27 February 2015, after the Club had already sent several warning letters inviting the Claimant's justification for his absence.
- Claimant had no right to stay in the U.S. for obtaining medical treatment there without cooperating with the Club. Specifically, the Club would have had the right to seek a third opinion, given that its doctors and Claimant's doctor had different views regarding the Player's injury.
- Mr. Valenza was not representing Bill A. Duffy, at least not from the Club's perspective. Therefore, his statements cannot be attributed to the Player.
- The Claimant's Request for Arbitration filed 8 months after the Club had terminated the Player Contract was filed too late: pursuant to Italian law, any termination of an employment for cause must be filed within 60 days. The Collective Labor Agreement is applicable because it is incorporated in the League Contract.
- The quantum of Claimant's claim rests on the incorrect assumption that Respondent had only paid him USD 36,000.00. In reality, Respondent had paid USD 41,212.00.

66. Respondent requests the following relief:

> *"The Respondent, therefore, requests that the BAT declares its lack of jurisdiction for the Agreement, dated 17/7/2014 and, in any case, rejects the claims of Mr. Triche and declares that his justified dismissal*

is definitive and that no amount is due by Virtus Roma to Mr Triche for the season 2014/2015.
Moreover, the Respondent requests that the BAT condemns Mr. Triche to pay legal fee and expenses, arbitration costs, incurred in connection with this proceeding."

5. The Jurisdiction of the BAT

67. Pursuant to Art. 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").

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

69. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Art. 177(1) PILA.

70. The Player Contract (Clause 11) and the Image Contract (Clause 8) contain the following identical dispute resolution clause in favor of BAT:

> *"Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."*

71. The arbitration agreements are in written form and thus fulfill the formal requirements of Article 178(1) PILA.

72. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast any doubt on the initial validity of the arbitration agreements in the present matter under Swiss law (cf. Article 178(2) PILA).

73. However, Respondent has challenged BAT's jurisdiction with reference to the League Contract, which was executed by both Parties after the signing of the Player and Image Contract, and which provides for the jurisdiction of the Permanent Board of Conciliation and Arbitration in Bologna, Italy (Clause 6 of the League Contract quoted above at para. 11). In Respondent's view, the arbitration clauses in the Player and Image Contracts were superseded by the Parties' subsequent agreement on a different dispute forum in the League Contract.

74. In case of competing dispute resolution clauses, the Arbitrator needs to determine which of them is intended to prevail.

75. As a starting point, it can be presumed that parties executing more than one contract consider the most recent contract to be the prevailing one (principle of *jus posterior derogat priori*). However, this presumption may be overridden. If there is evidence indicating that the parties' true intent is aimed at giving effect to the older contract, such intent needs to be respected, and the principle of *jus posterior derogat priori* must be subordinated.

76. In the case at hand, the Arbitrator is convinced that, based on the evidence on record, the Parties intended to be bound by the Player and Image Contracts and not by the League Contract, for the following reasons:

77. The Player Contract is an elaborate tripartite agreement between the Player, Bill A. Duffy and the Club. It contains detailed arrangements on all aspects of the parties' relationship, including salaries and bonuses, payment schedules, other benefits (such as apartment, airplane tickets, automobile), medical care, taxes, club rules, agency fees etc. The League Contract, on the other hand, is a one page skeleton agreement only between the Player and the Club, not including the Agency. It is a standard form

document which any player playing professional basketball in Italy must sign in order to be eligible for registration. It is common knowledge (also encountered in numerous BAT proceedings) that Italian clubs use this form agreement frequently and repeatedly, with the same boilerplate language. The relationship between the Player and the Club is, at best, described in a rudimentary form and excludes the above-mentioned details which are contained in the Player Contract.

78. Accordingly, one cannot assume that when the Player and the Club signed the League Contract – the "standard forms and conditions" provided by the Italian Basketball Federation, the Italian League and players' union – they wanted to set aside their individually negotiated agreement contained in the Player Contract. This is all the more true in light of the fact that the Player was required to sign the League Contract in order to be able to play for the Club.

79. Additionally, the Arbitrator notes that the League Contract ignores the fact that the Player's salary payments were to be split in league payments and image rights payments, pursuant the three-sided agreement contained in the Player Contract and the Image Contract. Pursuant to the Image Contract, the Agency was entitled to collect a portion of the Player's salary structured as consideration for the granting of the Player's image rights. Assuming the League Contract, which provides for the whole salary sum to be paid to the Player alone, was meant to override the Image Contract, it would amount to a contract at the expense of a third party. Such contracts are, as a matter of principle, null and void. Rather than producing a void contract, the Parties obviously took the League Contract for what it was: a skeleton form required for the registration of the Player with the Italian League, without any effect on their elaborate agreement concluded earlier.

80. As a consequence, the Arbitrator finds that the arbitration clauses in favour of BAT contained in the Player and Image Contract prevail over the dispute resolution clause included in the League Contract, and that she has jurisdiction to decide the present dispute.

6. Applicable Law – *ex aequo et bono*

81. 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".*

82. Under the heading "Applicable Law", Article 15.1 of the BAT Rules reads as follows:

> *"Unless the parties have agreed otherwise 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."*

83. In Clause 11 and Clause 8 of the Player and Image Contracts, respectively, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to any other law. Consequently, the Arbitrator will decide the issues submitted to her in this proceeding *ex aequo et bono*.

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

7. Findings

85. The Player requests outstanding payments in the total amount of USD 74,000 under the Player Contract and Image Contract. These amounts correspond with the agreed remuneration from March 2015 until the end of the 2014-15 season. The Club contests the Player's payment claim, arguing that it was entitled to terminate the Player and Image Contract for just cause because of the Player's allegedly unjustified absence.

86. Accordingly, the validity of the Player's claim depends on whether the Club effectively terminated the Player's employment, which issue the Arbitrator will analyze now.

7.1 Validity of the Club's termination of the Player's employment

87. The Club submits that the termination of the Player's employment was justified because the Player did not return to the Club after the team break and missed various training sessions and games. Allegedly, the Player did not provide any justification for his absence, despite several invitations to do so. The Club bases the termination on the provisions of the Collective Labor Agreement.

88. In order to resolve the issues pertaining to the Club's attempt to terminate the Player's employment, the Arbitrator will address, in turn, which law and legal standards are governing the Club's right to termination (below at i.), whether the Club had a legal right to end its relationship with the Player prematurely under the applicable law and standards (below at ii.), and, if applicable, whether the Player timely challenged the validity of the termination (below at iii.).

(i) <u>Applicable law and legal standards which govern the termination</u>

89. As explained above, pursuant to the Parties' agreement in the Player and Image Contracts, the Arbitrator is obligated to decide the dispute *ex aequo et bono*. Respondent, however, maintains that the termination is primarily governed by the Collective Labour Agreement and Italian Law, because the Parties made a respective choice of law in the League Contract.

90. The Arbitrator disagrees. As discussed in detail above at para. 75 et seq., because the Player Contract is the prevailing agreement governing the Parties' relationship, the League Contract does not provide for any choice of law which would supersede the Parties' election of *ex aequo et bono*.

91. Having determined that Italian substantive law does not apply to the present dispute, the Arbitrator still needs to address whether certain provisions of Italian Labor law (including the Collective Labor Agreement) apply to the dispute, irrespective of the Parties' choice of law, because they are considered mandatory in nature. In particular, this would be relevant with respect to the following rules invoked by Respondent:

- Time limit of 60 days to challenge a dismissal;[6]
- The Club's right to interfere with the Player's choice of his doctor;[7]
- Prerequisites for an immediate dismissal.[8]

92. It is broadly accepted that in accordance with Art. 19 PILA, the mandatory rules of the law of another country with which the case has a close connection must be observed by an arbitral tribunal seated in Switzerland if these rules are of fundamental importance.[9] In the words of Article 9 (1) Rome I Regulation, "[o]verriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract". In practice, such

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6 Art. Art. 32 of Law N. 183/2010: "*The dismissal must be challenged under penalty of forfeiture within sixty days from the receipt of a notice in writing …*" (simple convenience translation provided by Respondent).

7 Art. 14.8 of the Collective Labor Agreement: "*In the event of disagreement on the way of medical treatment, surgical or rehabilitation to be adopted, the Club that do* [sic] *not agree to the therapeutic proposal of the player, may require a medical assessment sending a letter with the appointment of its doctor and inviting the player to appoint his doctor within three days by letter. The refusal to appoint its doctor cause* [sic] *the automatic reduction to six months of the "respite period" as established at art. 24.1 of this Agreement*." (simple convenience translation provided by Respondent).

8 Art. 26.11 of the Collective Labor Agreement: "*Subject to the rules of Italian law about the justified dismissal, the dismissal may be imposed in* [sic] *the following mandatory conditions:* […]
- unjustified absence in more than one game in the season
- serious and repeated breach of obligations arising from this contract." (simple convenience translation provided by Respondent).

9 See Swiss Federal Tribunal 4P.115/1994 of 30 December 1994 (cited in *Berger/Kellerhals*, International and Domestic Arbitration in Switzerland (2010), para. 1303).

mandatory rules consist of essentially three categories of objectives: social policy objectives aimed at protecting weaker parties, economic policy objectives aimed at regulating competition and trade, and other objectives aimed at protecting goods such as human dignity, health or cultural property.[10]

93. Applying these principles to the present case, the Arbitrator finds that the above-quoted labor law rules invoked by Respondent to justify the termination of the employment do not have the quality of mandatory rules overriding the application of *ex aequo et bono*.

94. These rules are not specifically designed to protect a weaker party which would otherwise be unprotected. In fact, here it is the employer, who is generally considered the superior party in the employment relationship, who seeks the protection of Italian law. The rules upon which the Club relies cannot be considered a cornerstone of Italian labor law in a sense that one of the parties would be deprived of elementary rights if they were disregarded. Rather, the essential principles underlying these rules may well be considered under *ex aequo et bono* standards.

95. This means that under *ex aequo et bono* and irrespective of Italian law, the Arbitrator is able to and in fact will analyze whether a dismissal is supported by "just cause", whether the Player took too long to challenge the dismissal, and what the rights of the Parties are in respect of the selection of medical assistance for an injured player.

96. In summary, the Arbitrator will analyze the issue of termination solely pursuant to the principles of *ex aequo et bono* and without regard to the cited Italian labor law provisions, which cannot be considered mandatory law rules in the sense of the Swiss International Private Law.

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[10] *Kaufmann-Kohler/Rigozzi*, International Arbitration, Law and Practice in Switzerland (2015), para. 7.93.

(ii) Legal right by the Club to dismiss the Player

97. Under established BAT principles, a club may terminate a player's employment with immediate effect if it demonstrates "just cause". If a player seriously breaches the contract with his club, "just cause" can regularly be assumed. However, an immediate dismissal will principally be justified only upon a prior warning requesting the player to stop the challenged behavior, or to cure the committed breach. Only in certain cases of grave breach, an immediate dismissal without prior warning may be justified under the circumstances. In all cases, the club bears the burden of proof to show that "just cause" entitled it to terminate the employment prematurely.

98. The Club is of the opinion that the Player's refusal to return to Rome after the end of the team break, and his failure to respond to no less than 6 warning letters sent by it between 23 and 28 February 2015 justified the dismissal. The Player, on the other hand, argues that he was entitled to stay in the U.S. beyond the end of the team-break in order to receive medical treatment on his injured [body part], and that he communicated his medical status to the Club in good faith at all times.

99. It is undisputed between the Parties that the Player suffered an injury on his [body part] on 27 January 2015, during one of Respondent's games. It is also undisputed that the Player received medical assistance from the Club's medical staff and from a specialized orthopedic surgeon, Prof. Adriani, in the following days. Prof. Adriani saw the Claimant four days after the game, on 31 January 2015, and diagnosed [injury]. He suggested conservative treatment and concluded that the Player would be able to play once the [injury], but that no [medical treatment] would be necessary.

100. The Player purports that despite the fact that he played four more games after the injury, and in spite of a gradual improvement of his physical condition, he continued to feel discomfort and pain and did not trust Respondent's doctors. Due to his experience with a prior [medical treatment] received 7 years earlier, the Player testified that he was

particularly worried to further damage his health without surgery. The Club, on the other hand, argues that the Player never articulated any discomfort or concerns and that it assumed – in accordance with the doctor's opinions – that the Player was ready to play.

101. Pursuant to Clause 3.7 Player Contract, "[t]*he PLAYER has the sole right to select who will provide his medical and dental care and the location of such care, including to select the doctor of his choice*."

102. The Arbitrator finds that it was legitimate for the Player to consult with another orthopedic specialist in the U.S. pursuant to Clause 3.7 of the Player Contract. The Player credibly testified during the hearing that he was concerned about his health, that when the team break came he felt not entirely recovered, and that he had doubts about the appropriateness of the received treatment. Since health and fitness are probably the most valuable assets a professional basketball player has, a player should principally be permitted to consult with his trusted doctors in order to examine an injury that does not heal as expected. In the case at hand, it is comprehensible that a 23 year old player with his whole basketball career ahead of him has an interest in getting a second opinion on his injured [body part] when he feels that he is unable to fully recover. This is all the more true in light of the fact that the Player had already suffered a severe injury on the same [body part] 7 years earlier, and that Prof. Adriani had told him that his career might be over if he hurt the same [body part] again.

103. For the avoidance of any doubt, the Arbitrator wishes to clarify that for the Player to make use of his right "*to select the doctor of his choice*", it was not necessary to show that the Club's doctors mistreated the Player. Indeed, in the case at hand, there is no evidence whatsoever that Respondent's medical staff or Prof. Adriani did not perform in accordance with the required professional standards. Rather, the Player's right to seek a second opinion was justified in light of the fact that with [body part] injuries such as Claimant's, a correct diagnosis may be extremely difficult (especially at an early stage),

and expert opinion on the proper treatment (surgery vs. conservative rehabilitation) may differ. Prof. Adriani, who had only seen the Player once very shortly after the injury occurred, confirmed these difficulties during the hearing, testifying that Mr. Triche seemed to be suffering from a chronic [medical condition], but that he could not exclude the possibility of an acute [medical condition].

104. Clause 3.7 of the Player Contract also makes clear that the Player was allowed to choose the "*location*" of his medical care, which means that he was justified to travel to the U.S. for such treatment. The Player acted in good faith when he decided to use the official team break for such travel. Contrary to the Club's initial assertion in the Answer that the Player went to the U.S. without the Club's authorization, the evidence on record clearly shows that the Club knew about the Player's leave, and that it had not objected thereto. In a WhatsApp communication with Mr. Valenza on 15 February 2015, the Club's GM confirmed that "*Brandon leaves tomorrow for the States*".

105. The central question which must now be resolved is whether the Player – based on the results of the SOS Report dated 18 February ([medical condition]) – was entitled to stay in the U.S. beyond the end of the team break against the Club's will, or whether he was obligated to return to Rome upon the Club's so requesting. The evidence shows that the Club repeatedly and unambiguously requested the Player to return to Rome as from 20 February 2015.

106. To resolve this question, it is important to understand the communications between the Club and the Player between 20 February 2015 (the last day of the team break) and 7 March 2015 (the date of the Termination Letter). Was the Club timely informed of the SOS Report? Did it issue the warning letters despite its knowledge that the Player intended to get surgery? Where the Club's requests for the Player's return made in good faith?

107. There are various e-mails and WhatsApp chat protocols on record which shed light on these questions. As an initial matter, the Arbitrator notes that Mr. Valenza's e-mails and chat conservations were made on behalf of the Player, and that it was clear to the Club that Mr. Valenza – as the Italian representative of Claimant's agency – acted for the Player. Respondent's contentions otherwise are not credible and contradicted by the long and frequent chat conversations of its GM with Mr. Valenza about the Player. In fact, Respondent's GM would not have routed his requests for the return of the Player through Mr. Valenza had the Club not believed in Mr. Valenza's position as the Player's representative.

108. Regarding the Club's knowledge of the SOS Report and the Player's plan to undergo surgery in the U.S., Respondent alleges that it received this report only on 27 February 2015, i.e. as late as 6 days after the end of the team break. While it is true that a medical report was sent to Respondent's official e-mail address on 27 February 2015, the Arbitrator is preponderantly convinced that the SOS Report was received by Mr. Alberani – Respondent's GM – already on 20 February 2015 (the last day of the team break). On that day, one of Bill A. Duffy's U.S. representatives, Mr. Smiley, sent an e-mail to Mr. Valenza, with the subject line "*Brandon Triche*" and a short body text reading "*Marco, please get this information to the team.*" Mr. Valenza forwarded this message without any further comment to Mr. Alberani on the same day. Mr. Alberani immediately sent the following reply: "*Ok understood, but he needs to return, or we will have chaos. He will not have to play if he is not feeling well, but at least Toti won't start war, and he will get all the money.*"[11] While the print out of this e-mail chain does not directly show whether the SOS Report was attached, the Arbitrator is convinced that it was, in light of Mr. Alberani's reply. Mr. Alberani's reply e-mail, which clearly refers to

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[11] English convenience translation. The Italian original reads as follows: "*ok capisco, pero' deve tornare senno' e' un casino. Mica lo facciamo giocare se sta male ma almeno Toti non va in Guerra e lui prende tutti I suoi soldi*".

the Player's physical condition, would not make any sense without the report, because the body text of Mr. Valenza's e-mail contained no substantive information.

109. Against this background, Respondent's blanket allegation that the report was not attached to Mr. Valenza's e-mail cannot be accepted. Respondent failed to provide any explanation on how Mr. Alberani could respond in the above-cited manner on an empty e-mail, assuming the report was not attached. Mr. Alberani, when questioned on this issue during his examination, stated that he could not remember whether the report was attached. On the other hand, he also testified that he forwarded the report to Respondent's team doctor and to Prof. Adriani.

110. Additionally, on 21 February 2015, Mr. Valenza sent a follow-up e-mail to Respondent's GM, stating that the Player had a U.S. insurance to cover his treatment, and that he hoped to have a date "*for the surgery*" two days later. This e-mail also evidences that the Club was well aware of the Player's condition and his plan to undergo surgery.

111. As a result, the Arbitrator finds that the Player, through his agents, communicated the second opinion and his surgery plan to the Club transparently and timely. The Club knew from the last day of the team break that the Player would not return and why. It cannot argue that it was left in the dark about the Player's non-return to Rome.

112. The next question to be addressed in this context is whether the Club was entitled to request the Player's return despite the SOS Report and the recommended [medical treatment]. The Club is of the opinion that as the Player's employer, it had a right to instruct the Player to return in order to obtain a third opinion on the Player's injury and treatment. In the Club's view, because two different opinions existed with respect to the Player's medical state, it was allowed to order the Player's return for the performance of another medical examination.

113. By definition, in an employment relationship – outside and inside of sports – the employer has a right of direction. The employer may decide what work is performed and how, when, where, at what time and by whom. The employee must principally follow the instructions given by the employer.

114. However, the employer's direction right does not come without limits. The employer may not give orders which are illegal, contrary to fair practices, unreasonable, discriminating. He may also not act in bad faith. If the employer violates these restrictions, the employee has the right to not follow the instructions.

115. Applying these principles to the present case, the Arbitrator finds that the Player was entitled not to return to Rome, because the Club's instruction was not reasonable under the specific circumstances indicated in the record:

116. Contrary to the Club's assertions in this arbitration, it was never communicated to the Player at the time that the Club intended to obtain a third medical opinion. Indeed, nothing in the record indicates that the Club ever challenged the conclusions of the SOS Report. Both Respondent's team doctor and Prof. Adriani, who treated the Player after he had suffered the injury, testified that they have never received the SOS Report. Respondent cannot seriously argue that it challenged the SOS Report if it has not even shared that report with the doctors who initially treated the Player.

117. The Club at the time failed to give any reason – orally or in writing – why it sought the Player's return to Rome despite the fact that the Player was unable to play and had a date for surgery scheduled in the U.S. The six warning letters, which are very similar and were apparently sent to create a paper trail of the Player's alleged misbehavior, did not explain what the Player was supposed to do upon his return to Rome.

118. Similarly, the Club's GM simply requested the Player's return, without providing any meaningful explanation:

> *"Please have Brandon to leave or we have problems. We don't put him on the floor, but if he's not here Toti kills us and me. […] If he doesn't leave I'll have to fine him and we'll have a big mess."*[12]

> *"[…] he needs to return, or we will have chaos. He will not have to play if he is not feeling well, but at least Toti won't start war."*[13]

119. The Club's unreasoned request for the Player's return – allegedly made to avoid an angry reaction from the Club's President – is to be balanced against the Player's situation at the time, which was characterized by:

- An unchallenged and up to date medical report (the SOS report) diagnosing an acute [medical condition], and recommending surgery and that the Player does not play;
- The Player's continued discomfort and pain;
- The Player's good faith attitude towards the Club before his departure, when he played several games in pain despite the injury;
- The Player's desire to get surgery in the U.S., in accordance with his right to freely choose the place of his medical treatment (Clause 3.7 of the Player Contract).

120. Against this background, the Player's decision to stay in the U.S. – communicated properly to the Club – is reasonable whereas the Club's request for his return appears to be irrational.

121. Finally, the Arbitrator notes that upon completion of the medical tests in the U.S. the Player, through his agency's letter dated 6 March 2015, informed the Club that he would be back in Rome four days later with all of the relevant documents, and would be

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12 What's App communication between the Club's GM and Mr. Valenza dated 20 February 2015.

13 E-Mail from Respondent's GM to Mr. Valenza dated 20 February 2015.

available for further examinations before undergoing surgery. The Club nevertheless sent the Termination Letter one day later, on 7 March 2015, without regard to the Player's situation and offer to return to Rome.

122. As a result, the Arbitrator finds that there was no "just cause" for the Club to dismiss the Player. The Player had a right to treat his injury in the U.S. in accordance with the unchallenged recommendations of the SOS Report.

(iii) Time-limit for challenging the invalidity of the termination

123. As discussed above at para 91 et seq., the six weeks time limit for challenging an unjust dismissal contained in Italian law does not apply to this dispute. Rather, the question of whether the Player timely challenged the termination must be determined in accordance with the general guidelines for a waiver of rights.

124. Here, the Player received the Termination Letter on or around 7 March 2015. The Request for Arbitration was filed 8 months later, in early November 2015. The Arbitrator is of the opinion that 8 months is still an acceptable period of time, given that the Player had to await the passing of the payment due dates in order to be able to claim these payments, and given that he is to be granted a certain time for the preparation of the arbitration.

125. Hence, Respondent challenged the dismissal in a timely manner.

7.2 Quantum of the Player's claim

126. Because the termination of the employment by the Club is invalid, the Player is entitled to receive the outstanding salary for the 2014-15 season.

127. The salary is payable under two different contracts, the Player Contract and the Image Contract. While the Player is undoubtedly entitled to claim the monies under the Player Contract, the situation is less clear with respect to payments owed under the Image Contract. Pursuant to Clause 5 of the Image Contract, the Cub "*shall pay*" the image fee to Bill A. Duffy, not to the Player. On the other hand, Clause 2.1 of the Player Contract stipulates that "*the CLUB agrees to pay the* ***PLAYER*** *the following:* […] *Image Contract: $60,000 USD net of Italian taxes*".[14]

128. The Image Contract has to be interpreted in the context of the Player Contract. Both Agreements are closely intertwined with each other. They were signed on the same day between the same parties, and were meant to address the same factual situation (the Player's employment as a professional basketball player at the club).

129. In the Arbitrator's view, Clause 2.1 of the Player Contract and Clause 5 of the Image Contract do not contradict each other, but contain complimentary arrangements. The Player Contract clarifies that the Player, under all circumstances, shall have his own claim to request the entirety of the agreed compensation. His right to claim such payments in his own name and on his behalf exists irrespective of the characterization of a portion of the compensation as image fees, and irrespective of the payment modalities described in the Image Contract. The split of the agreed compensation into salary payments and image fee payments was created for tax reasons alone, and was not meant to deprive the Player of any part of the payments promised under the Player Contract. Therefore, the Player Contract makes clear that the Player shall have a right to request these payments. The fact that image fee payments shall be made to an account of Bill A. Duffy is a mere payment modality without any effect on the Player's standing to claim these monies.

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[14] Emphasis added.

130. Turning now to the quantum of the compensation, the outstanding amounts under the Image Contract (USD 30,000) are not in dispute, while the debt under the Player Contract is.

131. Under the Player Contract, Claimant purports that the unpaid salary amounts to USD 44,000, with Respondent having paid USD 36,000. Respondent alleges that it paid a higher amount, USD 41,212. It submitted bank statements showing 5 money transfers to the Player (on 14 November 2014, 15 December 2014, 19 January 2015, 27 February 2015 and 30 March 2015), which in the aggregate amount to USD 41,212, and thus confirm Respondent's numbers. Claimant has neither challenged Respondent's calculation nor the bank statements.

132. Accordingly, the Arbitrator finds that Claimant has received an amount of US 41,212.00, and that only USD 38,788.00 remain outstanding today.

133. As a result, the Arbitrator awards Claimant USD 68,788.00 (USD 30,000 plus USD 38,788) in total.

7.3 Summary

134. For the reasons set forth above, the Player is entitled to receive USD 68,788.00 in compensation for the 2014-2015 season.

135. This amount is to be paid net of all deductions for social insurance and/or taxes.

8. Costs

136. Article 17 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule,

shall grant the prevailing party a contribution towards its legal fees and expenses incurred in connection with the proceeding.

137. On 30 October 2016 – considering that pursuant to Article 17.2 of the BAT Rules "the BAT President shall determine the final amount of the costs of the arbitration, which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator"; that "the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the BAT President from time to time", and taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised – the BAT President determined the arbitration costs in the present matter to be EUR 15,789.50.

138. Considering that Claimant prevailed on the main question in this arbitration, i.e. the invalidity of the Club's purported termination, it is consistent with the provisions of the BAT Rules that 100% of the fees and costs of the arbitration, as well as 100% of Claimant's reasonable costs and expenses, be borne by Respondent. Of specific relevance in this regard is an aspect of Article 17.3 of the BAT Rules ("[W]*hen deciding on the arbitration costs and on 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*"). Additionally, the Arbitrator notes the provisions of Article 17.4 of the BAT Rules as follows:

> *"The maximum contribution to a party's reasonable legal fees and other expenses (including the non-reimbursable handling fee) shall be as follows:*

Sum in Dispute *(in Euros)*	Maximum contribution *(in Euros)*
up to 30,000	5,000
from 30,001 to 100,000	7,500
from 100,001 to 200,000	10,000
from 200,001 to 500,000	15,000
from 500,001 to 1,000,000	20,000
over 1,000,000	40,000

[…].”

139. Given that the sum in dispute relating to Claimant’s claims fell in the range of EUR 30,001 to 100,000, the maximum possible amount which could be awarded by the Arbitrator to the Claimant as a contribution to reasonable legal fees and other expenses is EUR 7,500.00.

140. Turning to Claimant’s actual claim for legal fees and expenses, this comprises: (a) EUR 2,000.00 for the handling fee; (b) USD 3,290.30 for legal fees (U.S. and Italian attorneys); and (c) EUR 4,251.30 and USD 1,588.10 in travel expenses for the Player and witness Mr. Filipovic. The total amount in legal fees and other expenses is USD 4,878.40 plus EUR 6,251.30.

141. This amount exceeds the maximum contribution possible in this case. It must, therefore, be reduced. Given that this arbitration was particularly complex with several rounds of submissions and a one day hearing in Rome, the Arbitrator finds that the maximum possible contribution can be awarded to Claimant. Accordingly, Respondent shall reimburse Claimant legal fees and other expenses (including the handling fee) in the amount of EUR 7,500.

142. The Arbitrator decides that in application of Article 17.3 of the BAT Rules:

- Respondent shall pay EUR 7,789.50 to Claimant, being 100% of the arbitration costs advanced by the Claimant;

- Respondent shall pay EUR 7,500 to Claimant, representing a contribution by it to his legal fees and expenses

- Respondent shall bear its own legal fees and expenses.

9. AWARD

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

1. **Pallacanestro Virtus Ssrl Unipersonale Roma is ordered to pay Mr. Brandon Triche USD 68,788.00 net as salary compensation.**

2. **Pallacanestro Virtus Ssrl Unipersonale Roma is ordered to pay Mr. Brandon Triche EUR 7,789.50 as a reimbursement of the arbitration costs.**

3. **Pallacanestro Virtus Ssrl Unipersonale Roma is ordered to pay Mr. Brandon Triche EUR 7,500.00 as a contribution towards his legal fees and expenses. Pallacanestro Virtus Ssrl Unipersonale Roma shall bear its own legal fees and expenses.**

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

Geneva, seat of the arbitration, 22 November 2016

Annett Rombach

(Arbitrator)