



Arbitration CAS 2014/A/3524 BC VEF Riga v. Kaspars Berzins & Bill A. Duffy International Inc., dba BDA Sports Management, award of 6 October 2014

Panel: Mr Jacopo Tognon (Italy), President; Mr Andras Gurovits (Switzerland); Mr Michele Bernasconi (Switzerland)

Basketball

Breach of employment contract

Concept of ex aequo et bono

Termination of employment contract with just cause

1. When deciding *ex aequo et bono*, the arbitral tribunal pursues a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules. The arbitral tribunal deciding *ex aequo et bono* receives a mandate to render a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, it must stick to the circumstances of the case, while enjoying a “global discretion” as compared to limited discretion if the dispute is decided according to the law. Hence, when compared to a decision in accordance with Swiss substantive law, a decision *ex aequo et bono* means that the arbitral tribunal shall not apply a general-abstract legal provision, but rather create an individual-concrete, case-specific rule which it considers just and appropriate for the case at issue. Even if an arbitral tribunal decides *ex aequo et bono* it may normally not derogate from the wording of a contract; it may however disregard an unnecessarily high and thus abusive penalty clause and reduce it to an acceptable level, and is also empowered to order an adaptation of the contract.
2. If a player does not – as foreseen in his employment contract – sign the Internal Rules provided to him by his club in his employment contract and the club - in reaction - suspends the payment of the player’s salaries, the player may terminate his employment contract with the club with just cause, due to the club being in breach of contract. However, if the player refuses without providing any reasons to sign the Internal Rules as foreseen, and does not make any effort or attempt to come to an agreement with the club, this may constitute a minor breach of contract by the player himself which may lead to a reduction of the compensation payable by the club to the player following the club’s breach of contract.

I. THE PARTIES

1. BC VEF Riga (the “Appellant” or “Club”) is a professional basketball club, based in Riga, Latvia. It participates in the Latvian Basketball League and the VTB United League, and is a member of the Fédération Internationale de Basketball (the “FIBA”).
2. Mr. Kaspars Berzins (the “Player” or “First Respondent”) is a professional basketball player of Latvian nationality. During the 2010-2014 playing seasons, the First Respondent played for the Appellant. He currently plays for Obradoiro CAB, Santiago de Compostela, in Spain.
3. Bill A. Duffy International Inc., dba BDA Sports Management (the “Agency” or “Second Respondent”) is a sports agency which provides representation services to professional basketball players. It is located in California, United States of America.

II. THE FACTS

4. A summary of the facts and background giving rise to the present dispute will be developed below based on the parties’ submissions and the evidence examined in the course of these proceedings. Additional background may be also mentioned in the legal considerations of the present award. In any case, the Panel has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings, but it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

A. THE CONTRACT

5. On 25 July 2012, the parties entered into an employment contract (the “Contract”) whereby the Appellant engaged the Player to play with the Club for three seasons (2012/2013, 2013/2014, and 2014/2015). The remuneration of the Player was fixed in the following terms: a) for the first season, a total amount of net € 130.000, in ten instalments; b) for the second season, a total amount of net € 150.000, in ten instalments; c) for the third season, a total amount of € 165.000, in ten instalments.
6. The Agency’s fees under the Contract were fixed (according to clause 6.1.1 of the abovementioned contract) as follows: a) for the first season, € 13.000, payable on or before 15 January 2013; b) for the second season, € 15.000, payable on or before 15 January 2014; c) for the last season, € 16.500, payable on or before 15 January 2015.
7. Under Paragraphs 8.2 and 8.4 of the Contract, the Player was required to sign the Club’s Internal Rules, which, according to the Club, were to be an integral part of the Contract.
8. At the time the Player entered into the Contract, the Club provided the Internal Rules to the Player and the Agency for review and signature. Such Internal Rules, however, were not signed, and thereafter, the Club repeated its request to the Player and Agency that the Player sign the rules, failing which the Club would withhold the Player’s salary.

9. As of 8 March 2013, the Club suspended the payment of salaries to the Player (having only paid the first five (5) instalments under the Contract) and of the compensation due to the Agency.
10. On 8 April 2013, the Agency, on behalf of the Player, wrote to the Club informing it of the issue of non-payment and seeking payment under the Contract. In response (received by the Agency on 16 April 2013), the Club acknowledged its non-payment, but indicated that such payment was conditioned upon the Player signing the Internal Rules (as required under Paragraphs 8.2 and 8.4 of the Contract) which he had repeatedly failed to do.
11. On 2 May 2013, the Agency wrote to the Club again informing it of its alleged breach of the Contract and set a deadline of 8 May 2013 for payment, following which a claim would be filed with the Basketball Arbitral Tribunal (“BAT”).
12. On 16 May 2013, the Agency again wrote to the Club informing it that due to repeated non-payment pursuant to the Contract, the Contract was deemed breached by the Club and that the Player would no longer participate in club activities and demanded a Letter of Clearance.
13. On 27 May 2013, the Club wrote to the Agency complaining of the Player’s behaviour.

B. THE PROCEEDINGS BEFORE THE BAT

14. On 29 May 2013, the Player and the Agency filed a request for arbitration before the BAT.
15. Following the submission of briefs, the BAT decided the dispute with an award dated 21 February 2014 (the “Appealed Decision”) which in principle part reads as follows:

- “1. BC VEF Riga must pay Mr. Kaspars Berzins EUR 380.000,00 net as outstanding and accrued salary.*
- 2. BC VEF Riga must pay Bill A. Duffy International Inc., dba BDA Sports Management EUR 44.500,00 net as outstanding and accrued Agency Fees.*
- 3. BC VEF Riga must pay jointly to Mr. Kaspars Berzins and Bill A. Duffy International, Inc., dba BDA Sports Management EUR 11.000,00 as reimbursement for their arbitration costs.*
- 4. BC VEF Riga must pay jointly to Mr. Kaspars Berzins and Bill A. Duffy International, Inc., dba BDA Sports Management EUR 4.000,00 and USD 2.275,00 as a contribution to their legal fees and expenses.*
- 5. Any other or further-reaching requests for relief are dismissed”.*

16. The main grounds of the Appealed Decision can be summarised as follows:
 - First, after having confirmed the jurisdiction in the case at stake, the BAT underlined that the Appealed Decision was taken on the merits “*ex aequo et bono*”, such that the arbitrator received a mandate to give a decision based exclusively on equity, without regard to legal

rules. This is confirmed also by Article 15.1 of the BAT rules according to which the arbitrator applies “*general considerations of justice and fairness without reference to any particular National or International law*”.

- Bearing in mind the doctrine of *pacta sunt servanda*, the key question was whether the Player’s failure to sign the Internal Rules permitted the Club to withhold payment of salary and agency fees.
- The Contract clause under interpretation provides as follows:

“8. Club Rules:

- 8.1 *The PLAYER agrees to observe and comply with all reasonable requirements of the CLUB regarding the conduct of the basketball team and its players, provided that the said requirements are enforced against all club’s players in a uniform non-discriminatory manner. In this regard, the PLAYER will upon presentation of the CLUB rules in writing and in English, review specific CLUB rules.*
- 8.2 *Within one week of such presentation by the CLUB, the PLAYER will sign a copy of such rules and will identify any obligations he may have. Additionally it is hereby noted that the use of drugs by the PLAYER will be considered a breach of contract and would warrant immediate termination of the agreement by the CLUB.*
- 8.3 *Notwithstanding anything to the contrary in this agreement or the CLUB rules, the PLAYER is permitted to play, practice, demonstrate or instruct basketball in connection with a camp or clinic; and also participate in off season basketball pick- up games, weight training, running and other individual or group conditioning activities.*
- 8.4 *PLAYER must sign CLUB’s internal rules within 7 days after signing of contract. PLAYER and CLUB must mutually agree on terms of internal rules”.*

- According to the Appealed Decision, “*the mandatory language of the first sentence of clause 8.4 is modified significantly by the second sentence in which player and respondent are required to “mutually agree on terms of internal rules” ... thus, Respondent’s position is unsustainable, namely that clause 8.4 operated to oblige player to sign internal regulations and until such time as they were signed, payment could be withheld*” (see par. 53 of the Appealed Decision).
- In any case, “*even if clause 8.4 were capable of supporting an interpretation favourable to Respondent ... the arbitrator finds it impossible to see how, as a matter of the terms of the agreement, the payment obligations assumed by Respondent can be suspended or made conditional*” (see par. 54 of the Appealed Decision).
- Based on the foregoing, the Appealed Decision determined that the Contract was validly terminated on 16 May 2013. In doing so, it was determined that the parties clearly intended that the guaranteed sums payable under the Contract were protected from any reduction or mitigation as foreseen in Article 4 of the Contract, hence, the well-established principles of mitigation were not applicable.

- The Club, therefore, was liable for the failure to execute the payments under the Contract without just cause and all sums due, for both the Player and the Agency, were payable in their entirety.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. In accordance with Articles R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”), the Appellant filed its statement of appeal on 14 March 2014. Within such statement of appeal, the Appellant nominated Mr. Andreas Gurovits, attorney-at-law in Zurich, Switzerland, as an arbitrator and requested that the appeal proceed in English. In addition, the Appellant sought a stay of the Appealed Decision.
18. On 19 March 2014, the Appellant, having considered that the Appealed Decision was not enforceable during the pendency of this appeal, formally withdrew its application for a stay.
19. In accordance with Article R51 of the Code, the Appellant filed its appeal brief on 24 March 2014.
20. On 2 April 2014, the Respondents nominated Mr. Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland, as arbitrator.
21. On that same day – 2 April 2014 – the CAS Court Office informed the parties that the Respondents’ nomination of Mr. Bernasconi was untimely, and thereafter invited the Appellant to state whether it objected to such late nomination.
22. On 7 April 2014, the CAS Court Office confirmed – failing any objection from the Appellant – Mr. Bernasconi’s nomination.
23. In accordance with Article R55 of the Code, the Respondents filed their answer on 17 April 2014. Within such answer, the Respondents requested that the Appellant produce certain documentation.
24. On 28 April 2014, the Appellant produced the documents requested by the Respondents. In the same letter, the Appellant stated that it preferred the Panel to render a decision in this case based solely on the parties’ submissions.
25. By separate letter of the same day – 29 April 2014 – the Respondents confirmed that they also preferred the Panel to render a decision in this case based solely on the parties’ submissions.
26. On 30 April 2014, the BAT provided the CAS Court Office with a clean copy of the Appealed Decision, including all relevant service documents. Such documents were forwarded to the parties on the same day.

27. By letter of 8 May 2014, the CAS Court Office informed the parties that, pursuant to Article R55 of the Code, the Panel responsible for handling the present appeal had been constituted as follows: President: Mr. Jacopo Tognon, attorney-at-law in Padova, Italy; Dr. Andras Gurovits, attorney-at-law in Zurich, Switzerland, appointed by the Appellant; Mr. Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland, appointed by the Respondents.
28. On 19 May 2014, the CAS Court Office, on behalf of the Panel and in accordance with Article R57 of the Code, requested that the BAT provide the Panel with a copy of its case file.
29. On 26 May 2014, the Respondents filed a letter containing their observations on the documents submitted by the Appellant on 29 April 2014.
30. On 2 June 2014, the CAS Court Office forwarded the complete BAT file concerning the Appealed Decision to the parties.
31. On 19 June 2014, the CAS Court Office, on behalf of the Panel, informed the parties that the Panel was sufficiently well informed to render a decision without the need for a hearing in accordance with Article R57 of the Code.
32. On 25 June 2014, the parties signed and returned the Order of Procedure to the CAS Court Office.

IV. THE PARTIES' POSITIONS

A. APPELLANT'S SUBMISSIONS AND REQUESTS FOR RELIEF

33. In summary, the Appellant submits the following arguments in support of its appeal:
34. First, the Club underlines that on four occasions (namely, during the negotiation process, and by mail on 27 July 2012, on 17 January 2013 and on 12 April 2013) it tried to obtain the Player's signature on the Internal Rules, but this was not possible due to the lack of cooperation on the part of the Respondents. The good faith of the Club was in this circumstance well demonstrated. On the contrary, the behaviour of the Player was not in line with his Contract since, *inter alia*, he had had some disciplinary problems in the previous seasons (during which he was also a part of the Club) and in the first season of the Contract, as clearly explained in the letter of 27 May 2013.
35. Moreover, the Club notes that it always remained in good faith with the Player, especially considering that the Club (and not the Latvian Basketball Federation) ordered and paid for an MRI to examine the Player.
36. The Internal Rules of the Club were to be binding on the Player; indeed all the players of the Club signed them. The Internal Rules are an essential document and regulate many matters.

Therefore, such a situation (*id est* not signing the rules) has to be considered as a serious breach of contract.

37. Concerning the validity of the Contract, the Club emphasizes that the Player should be considered under contract with the Club since he repeatedly respected the content of the Contract.
38. On the other hand, the Club refutes the arguments concerning the amounts to be paid, if any, under the Contract, since they would have to be considered as an unjust enrichment, under Latvian Civil law. In any case, the Appellant stresses that *“when deciding ex aequo et bono, the arbitrator must remain within the general frame of acceptable national and international public policies. Waiver of duty to mitigate and ignoring the principle of unjust enrichment is contrary to the public policy, notably the economic and social values it addresses”*.
39. Therefore, the Club is entitled to reduce the payable amounts.
40. In any case, it is correct to underline, in accordance with the Club’s opinion, that all the efforts made by the Club to reach an amicable settlement concerning the signing of the Internal Rules were frustrated by the Respondents.
41. In conclusion, in its Appeal Brief, the Appellant submitted the following prayers for relief:
 - *“To annul the award appealed against by the Appellant;*
 - *To recognize the contract between the Appellant and the Respondents as fully valid and enforceable;*
 - *To impose an obligation for the Respondent Kaspars Berzins (the Player) to sign the Internal Rules of the Appellant;*
 - *To recognize that the Player is still in the Appellant’s basketball team squad and that the Player’s contract with the Spanish club Obraidoro CAB is void and therefore request and enforce all necessary actions for the Player to be registered with the Appellant again;*
 - *To recognize as void and unlawful the awarded amount to the Respondents (set in the award appealed against) and award the Player and the other Respondent only with the amounts owed to them for the 2012/2013 season”*.

B. RESPONDENTS’ SUBMISSIONS AND REQUESTS FOR RELIEF

42. In summary, the Respondents submit the following arguments in support of their Answer:
43. After having summarized the most important facts and circumstances of the case, and admitted the CAS Jurisdiction and the applicable law (that is the *ex aequo et bono*), the Respondents argue that a) the Appellant was in breach of its contractual obligation to pay the Player; b) the Contract was consequently lawfully terminated by the Player for breach of contract; c) pursuant to the Contract, all monies payable therein are due to the Player.

44. As for the first point, the Player and the Agency state, *inter alia*, that the Internal Rules did not form part of the contractual relationship between the parties and therefore cannot be relied upon to reduce salary payments due to the Player.
45. Concerning the disciplinary problems of the Player, it has been demonstrated that the first alleged “incident” (namely, the one which occurred on the morning of 15 May 2013) took place when the Player was entitled to treat the Contract as no longer binding upon him.
46. As for the payments to the Agency, moreover, there was no question that all the sums due had to be paid.
47. Nevertheless, it is evident that the Club breached fundamental provisions of the Contract.
48. Under this circumstance, the non-payment of the salary for three months is a just cause for termination of the Contract.
49. Bearing in mind that the Agency had the authority to terminate the Contract on behalf of the Player and the events subsequent to termination did not, in any case, nullify the termination, the Respondents, focusing on the Internal Rules, stated that “*if there was no obligation to sign, there cannot be subsequently a breach by not signing*”.
50. Indeed, “*if the internal rules were such an important document, the Club could and should have incorporated the rules into the Contract by reference and without any requirement for the player to sign and amend or agree on terms after the signing of the contract*” (*id est*, paragraph 94 of the answer).
51. Therefore, in summary:
- “*The Latvian Civil Code provision on unjust enrichment is not applicable;*
 - *Even if it was to apply, there is no unjust enrichment as the Respondents’ claims are based on just cause, namely the Contract, which provides that all monies due during the entire term is payable upon termination; and*
 - *The buyout clause is not applicable to this scenario and in any case does not limit the money owed to the Respondents*”.
52. In conclusion, the Respondents submitted the following prayers for relief:
- (I) *The appeal of BC VEF Riga is dismissed.*
 - (II) *The 21 February decision of the Basketball Arbitral Tribunal is confirmed.*
 - (III) *BC VEF Riga shall bear all costs of this arbitration.*
 - (IV) *BC VEF Riga shall reimburse Kaspars Berzins and BDA Sports management for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel.*

V. ADMISSIBILITY

53. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the Statutes or Regulations of the Federation, association or sports-related body concerned, or in a previous agreements, the time limit for the appeal shall be twenty one days from the receipt of the decision appealed against [...]”.

54. Based on the documents submitted, the grounds of the Appealed Decision were notified on 21 February 2014 to the parties, and the Appellant filed his Statement of Appeal on 14 March 2014.

55. The Panel is satisfied that the Appellant’s Statement of Appeal was timely filed and is therefore admissible.

VI. JURISDICTION

56. Article R47 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

57. Clause 9.2 of the Contract states:

“Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland, and shall be resolved in accordance with the FAT Arbitration rules by a single arbitrator appointed by the FAT 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 the parties’ domicile. The language of the arbitration shall be English. Awards of the FAT can be appealed to the Court of the Arbitration for Sport (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decision of the Court of the Arbitration for Sport (CAS), upon appeal, as provided in art. 192 of the Swiss act on Private International law. The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono”.

58. In light of the fact that jurisdiction a) is not contested by either of the parties and is also clearly confirmed by the above-mentioned provisions and that b) both parties have signed the Order of Procedure, the Panel is satisfied that CAS has jurisdiction to resolve and decide on the present case.

VII. APPLICABLE LAW

59. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

60. Clause 9.2 of the Contract, in the part related to the law applicable to the merits, provides as follows:

“The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono”.

61. Furthermore, Article 15.1 of the BAT Rules states that:

“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”.

62. In light of the fact that the law applicable to the merits a) is not contested by either of the parties and is also clearly confirmed by the above-mentioned provisions and that b) both parties have signed the Order of Procedure, the Panel is satisfied that CAS shall decide the present case applying the principle of *ex aequo et bono*.

VIII. MERITS OF THE APPEAL

A. LEGAL ANALYSIS – STANDARD OF REVIEW

63. As well known, and as the Panel agrees with the BAT analysis, the concept of *ex aequo et bono* used in article 187 (2) of PILA “originates from art. 31 (3) of the Concordat Intercantonal sur l’arbitrage (Concordat), under which Swiss courts have held that arbitration “en équité” is fundamentally different from arbitration “en droit”: “when deciding *ex aequo et bono*, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules” (see paragraph 40 of the Appealed Decision).

64. “In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives “a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case” (see paragraph 41 and the doctrine quoted, POUURET/BESSON, Comparative Law of International Arbitration, London 2007, n. 717, pp. 625-626).

65. In other words, an arbitral tribunal authorized to decide the case *ex aequo et bono* enjoys a “global discretion”, while such discretion is limited to specifically defined aspects if the dispute shall be

decided according to the law (see BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, second edition, pp-375 et seq.).

66. Hence, when compared to a decision in accordance with Swiss substantive law, a decision *ex aequo et bono* means that the arbitral tribunal shall not apply a general-abstract legal provision, but rather create an individual-concrete, case-specific rule which it considers just and appropriate for the case at issue.
67. Even if a panel decides *ex aequo et bono* it may normally not derogate from the wording of a contract, it may, however disregard an unnecessarily high and thus abusive penalty clause and reduce it to an acceptable level. As a matter of course, an arbitral tribunal deciding *ex aequo et bono* is also empowered to order an adaptation of the contract.
68. In conclusion, this Panel is convinced that in the case at stake it shall be decided *ex aequo et bono*, with a global discretion and it shall duly consider the circumstances of the case and the behaviour of the parties.

B. TERMINATION OF CONTRACT

a) The behaviour of the Club and the non-payment of the five instalments of the Contract for the season 2012/2013

69. First, the Panel has to decide whether the Player has terminated the Contract with just cause.
70. The Panel is of the opinion that several factors clearly tip the balance in favor of the consideration that the Player did have just cause to terminate the Contract.
71. Indeed it is sufficient to stress that:
 - The Club has paid only five instalments of the first season of the Contract and decided unilaterally to suspend the payments. The panel is convinced that the delay in paying the instalments under clause 10.1 of the Contract was a sufficient condition to terminate the Contract itself.
 - The suspension, due to the non-signature of the Internal Rules, was not justified bearing in mind that such an obligation, to which the Panel will return later on, cannot be at the same level of the principle obligation (namely, the payments of the salaries of the Player).
 - The Contract was fully guaranteed (as for clause 4.1) with all the payments being unconditional, not contingent on anything other than the Player providing his services.
 - For the other circumstances (the “so called” events after the termination) the Panel agrees completely with the decision of first instance, namely paragraph 60 to 63, which are recalled in this award *per relationem*.

72. All these arguments led the Panel to conclude that the Player has terminated the Contract with just cause due to the Club's breach of contract of the fundamental obligation: paying the salaries during the sporting season.

b) The behaviour of the Player and the non-signature of the Internal Rules

73. The Panel must also resolve the issues concerning the non-signature of the Internal Rules.

74. In other words, the Panel must decide if the Contract requires the Player acting in good faith to, at least, negotiate the content of the Internal Rules and to make the specific proposals if he does not accept them in their entirety (instead of remaining silent and disregarding the Club's request to sign the Internal Rules).

75. In this respect, the Panel does not entirely agree with the Appealed Decision.

76. It is true, indeed, that this clause is not inserted as a "pre-condition", but it is also true that a correct interpretation of the two parts of the clause (Paragraph 8.2 and 8.4) leads the Panel to conclude that there was a (minor) breach of Contract on the part of the Player.

77. It is clear for the Panel that even after four attempts the Player decided to ignore all the requests on the part of the Club, without making any other alternative proposals, but simply rejecting all the issues.

78. Pursuant to the Contract, the Player has to sign these Internal Rules within one (1) week after their presentation. In paragraph 8.4, the term "must" is used, implying the maximum obligation for the Player.

79. It is correct that the parties must agree on the content, but it is impossible to reach any agreement if a party systematically fails to provide any of his ideas or amendments concerning the Internal Rules proposed.

80. This behavior appears to the Panel to be contrary to a general principle of good faith and puts the Player in a situation of (minor) breach of Contract, not comparable with the non-payment of the salaries and commission, but existing in any case.

81. Properly considering the opportunity for the Panel to decide with a global discretion and adhere to the circumstances (the *ex aequo et bono* decision), it has to be also stated that the Player, even if in a different and to a lesser extent, violated the Contract (profiting of an ambiguous clause) with all the consequences that follow.

C. FINANCIAL COMPENSATION

82. Taking into consideration the principles previously mentioned, it seems necessary to point out the consequences of the behavior of the Club (and of the Player and the Agency as well) that this Panel finds incorrect in comparison to the decision of first instance.
83. Indeed, it cannot be acceptable under the above-mentioned provisions to disregard the fact that no effort and no attempt was made by the Player and his representative to come to an agreement (that must be reached) and sign the Internal Rules as the Contract requires.
84. As previously stated, it seems to the Panel that it was easier for the Player to simply avoid reaching the settlement. In fact, acting in good faith would have imposed on the Player the obligation to make an effort in order to reach an agreement relating to the Club's disciplinary rules.
85. Nothing (but really nothing) was done by the Player and this fact leads the Panel to conclude that a reduction of the compensation due to the Player is appropriate.
86. In light of the foregoing, and taking into due consideration all the circumstances of the present case, including the behavior of the parties during the Contract and after its termination, and under the application of the doctrine of *ex aequo et bono*, the appeal shall be partially upheld.
87. For the consequences of the reduction imposed it is important to distinguish that for the first season no reduction or mitigation could be imposed since the Player effectively gave his services.
88. So the remaining part of € 65.000,00 (as well as the Agency's commission for the first year) is due.
89. The Panel reasons differently in relation to the last two years of the Contract.
90. The Panel notes that clause 10.1.3 of the Contract expressly provides that the Player shall be under no obligation to mitigate his damages. The Contract, thus, prevents the Panel, in principle, from taking into account the salary that the Player has or may have earned under the employment contract with his new club and to reduce the compensation accordingly as may have been appropriate had the Contract not expressly provided otherwise. However, in light of the circumstances and legal requirements discussed above, the Panel holds, indeed, that it is *just* and *equitable* to reduce up to 25% the sums due to the Player considering that even if the suspension of the payments was not a correct remedy to resolve the situation, the non-will of the Player was a (minor) breach of contract that has to be valued in terms of a reduction of the compensation due.
91. Taking into consideration that the Club never disputed that the Agency's fee were due, and considering all the circumstances of the case, the Panel sees no reason to reduce the fees due by the Appellant to the Agency.

92. To summarize, these are therefore the amounts due to the Player:

- For the season 2012/2013 € 65.000
- For the season 2013/2014 € 112.500,00
- For the season 2014/2015 € 123.750,00

For a total sum of € 301.250,00.

These are, instead, the amounts due to the Agency:

- For the season 2012/2013 € 13.000,00
- For the season 2013/2014 € 15,000,00
- For the season 2014/2015 € 16,500,00

For a total sum of € 44,500,00.

93. In conclusion, and on the basis of the particular law applicable to the merits that permits the Panel to take a decision *ex aequo et bono*, and on the principles clearly explained above, the Panel states that the Appeal lodged by the Club is partially upheld and the decision of the BAT shall be partially set aside for the reasons set forth above.

94. All other and further requests of relief coming from the parties are to be rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by BC VEF Riga on 14 March 2014 is partially upheld.
2. The Decision issued by the Basketball Arbitration Tribunal dated 21 February 2014 is partially set aside.
3. The Appellant Club BC VEF Riga shall pay to the Player Kaspars Berzins the following amounts:

For the season 2012/2013 € 65.000;
For the season 2013/2014 € 112.500,00;
For the season 2014/2015 € 123.750,00.
For a total sum of € 301.250,00.

4. The Appellant Club BC VEF Riga shall pay to the Agent Bill A. Duffy International Inc., dba BDA Sports Management the following amounts:

For the season 2012/2013 € 13.000.00;
For the season 2013/2014 € 15,000.00;
For the season 2014/2015 € 16,500.00.
For a total sum of € 44,500,00.

(...)

7. All other prayers for relief are dismissed.