**Arbitration CAS 2013/A/3126 Xinjiang Guanghui Basketball Club Ltd. v. C., award of 20 December 2013**

Panel: Mr András Gurovits (Switzerland), Sole Arbitrator

*Basketball*
*Contractual agreement between a basketball club and a coach*
*Conditions for a CAS panel to rule on a case ex aequo et bono*
*Burden of proof and burden of production of the proof*
*Breach of an employment agreement by electing not to render any further work or service*

1. **Pursuant to Article R58 of the Code, the dispute must be decided *"according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties …"*. The 12th Chapter of the Swiss Private International Law Statute (PILS), applicable to international arbitrations in Switzerland provides in Article 187 para. 2, that the parties may authorize the arbitral tribunal to decide *ex aequo et bono*. This is therefore possible if this is provided in the agreement between the parties or / and if the parties confirm that they agree thereto at the hearing.**

2. **Article R55 para. 1 of the CAS Code provides that as part of its answer brief the respondent shall submit, among other things, *"any exhibits or specification of other evidence upon which the Respondent intends to rely"*. This is in line with the general principle that each party must provide evidence for any fact on which it intends to rely. In a one-word-against-another situation, the party having the burden of proof should provide further evidence supporting its argument.**

3. **Under an employment agreement the employee typically renders work and receives, in exchange, a salary. More generally, agreements for work and/or services are - as many other types of commercial agreements - governed by the basic *do ut des* principle, which means that the provider receives money in exchange for his work. This principle, however, only applies as far as the work and/or service is actually provided. If the provider or employee elects to not render any further service, he has no right for any further payment that he would have been entitled to had he rendered his work as agreed.**

## I. THE PARTIES

1. The Appellant, Xinjiang Guanghui Basketball Club Ltd., is a basketball club located in the Guanghui Province in the People's Republic of China, and plays in the Chinese Basketball Association.

2. The Respondent, C., is a U.S. citizen (Baltimore, Maryland) who was engaged by the Appellant as a Strength Coach.

## II. FACTS

3. On 5 August 2011, the Appellant and the Respondent signed an agreement (the "Agreement") in accordance to which the Appellant employed the Respondent as strength coach.

4. The Agreement provided, inter alia, for the following

*"1. TERM*

*The Term of this Agreement is for One (1) season. The CLUB hereby confirms and agrees to the employment of C. as a Strength Coach for 1 season 2011-2012 the CBA season. This agreement is fully guaranteed and if the strength coach is terminated by the club prior to the conclusion of the 201-2012 season all payment will be due by the COACH as according to the attached payment schedule without delay, unless a mutually agreed upon alternative payment schedule is agreed upon. …*

*2. SALARY COMPENSATION*

*For rendering services as a professional basketball club, the CLUB agrees to pay the COACH as follows:*

*A. For the 2011-2012 seasons: $48,000 or 12 equal payments of 4000.00 USD net of Chinese taxes;*
*…*

*Payments shall be made to COACH by CLUB in equal instalments starting October 1st 2011 and paid once per month on the 1st of each month for 12 months for the duration of the contract. Such payments are fully guaranteed for the Contract Year), and cannot be interrupted by either the CLUB. …*

*ARBITRATION*

*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. …*

*Awards of the FAT can be appealed to the Court of Arbitration for Sports (CAS), Lausanne, Switzerland. The Parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law.*

*The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono".*

5. On 6 October 2011, the Respondent started his work for the Appellant, and on 12 March 2012, the Respondent left the Appellant - according to the Appellant for a holiday break, according to the Respondent due to his employment having come to an end.

6. On 26 April 2012, the Appellant sent an email to the Respondent asking him to return to work. On 5 May 2012, the Respondent answered and stated that he had been told that his services were no longer needed and requested that his salary be paid in the future on each 1st day of the month.

7. By emails dated 22 May 2012 the Appellant, as well as its legal counsel, sent further notices to the Respondent requesting him to return to the club, failing which his salary payments starting from June 2012 would be suspended. As per June 2012, the Appellant stopped paying any further salary.

8. On 12 July 2012, the Respondent's advisor sent an email to the Appellant requesting the latter to rectify the situation and effect payment of the salary within seven days as well as stating that in case of failure of the Appellant, in accordance with the terms of the Agreement, the entire outstanding salary would become due.

9. On 14 July 2012, the Appellant's counsel sent another email to the Respondent informing him that he was to return and report to the club immediately, and in case of non-compliance, he would be responsible for any consequences caused by the delay. On the same day, the Appellant's counsel sent another notice to the Respondent explaining that the latter was in breach of the Agreement, that the Appellant was, thus, entitled to withhold payment. Again, the Appellant requested that the Respondent return to his duties for the Appellant.

10. On that same day - 14 July 2012 - the Respondent's advisor answered by stating that the Respondent had been told that the Agreement was terminated, that the Appellant was breaching the Agreement, and that the Respondent was now with the Olympic team of China. On the same day, the Appellant's counsel replied and requested that the Respondent fulfill the Agreement and return to the Appellant.

11. On 18 July 2012, the Appellant's representative sent another notice to the Respondent and, again, stated that he was in violation of the Agreement. The Respondent's advisor answered on 22 July 2012 stating, again, that the Respondent had been told that the Agreement was terminated and announced that the matter would be submitted to the Basketball Arbitral Tribunal (BAT).

12. The Respondent filed a request for arbitration, dated 20 August 2012, with the BAT. The Respondent requested payment of the salary for four (4) months from June 2012 to September 2012 in the amount of USD 16,000, plus interest. On 25 February 2013, the BAT issued its award (the "BAT Award") and determined that the Appellant was to pay salary of USD 16,000, plus interest, and that the Appellant was to bear the cost of the BAT proceedings in the amount

of EUR 3'975 (and to reimburse the Respondent his share of EUR 1'990) as well as the Respondent's legal fees in the amount of EUR 1'500.

## III. PROCEEDINGS BEFORE CAS

13. The Appellant filed its statement of appeal on 15 March 2013 pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code"). It later filed its "Petition of Appeal (i.e. appeal brief) on 27 March 2013 pursuant to Article R51 of the Code.

14. On 19 April 2013, the Respondent filed his "Appeal Response" (i.e. answer) pursuant to Article R55 of the Code.

15. By letter dated 27 May 2013, the CAS Court Office, pursuant to the terms of the Agreement and Article R59 of the Code, confirmed the appointment of the current Sole Arbitrator to preside over this appeal.

16. On 2 July 2013, the CAS Court Office sent a letter to the BAT requesting the production of the complete case file. The case file was sent to the CAS Court office by letter dated 12 July 2013, and forwarded to the parties and the Sole Arbitrator by the CAS Court Office on 17 July 2012.

17. On 30 August 2013, the CAS Court Office invited the Appellant to provide a supplemental submission answering specific questions of the Sole Arbitrator. The Appellant filed such submission on 4 September 2013 and, further, requested that a hearing be held. On 11 September 2013, the Respondent filed his comments on the Appellant's letter submission.

18. On 13 September 2013, the Appellant's representatives sent a letter to the CAS Court Office requesting permission to file witness evidence. On 17 September 2013, the Respondent requested that this request be denied and explained that such request was late and thus inadmissible. The admissibility of such evidence would, in essence, entail a new round of submissions and the Appellant had provided no compelling reasons that would justify the filing of witness evidence at this late stage of the proceeding. On 24 September 2013, the CAS Court Office informed the parties that the Sole Arbitrator had denied the Appellant's request.

19. On 26 September 2013, the Respondent's representative sent a letter requesting to be allowed to amend his prayer for relief so as to also include a request for a contribution to its legal fees, explaining that the Respondent had represented himself for most of the arbitration, but as a result of the Appellant's request for a hearing he now needed advise by counsel. By letter dated 1 October 2013, the Appellant's counsel objected to this request of the Respondent.

20. On 1 October 2013, the CAS Court Office informed the parties that the hearing had been scheduled to take place on 17 October at the CAS Court Office in Lausanne, Switzerland.

21. By letter dated 11 October 2013, the CAS Court Office sent the parties the order of procedure, which both parties signed and returned on 15 October 2013.

22. On 15 October 2013, the Respondent's counsel sent another letter expressing his concerns about the Appellant being represented at the hearing by Mr Guo Jian as this could result in re-introducing witness evidence that the Appellant had tried to put forward in its 13 September 2013 letter, but which had been rejected by the Sole Arbitrator.

23. On 17 October 2013, the hearing was held at the CAS Court Office in Lausanne, Switzerland. The Appellant was represented by its counsel Mr Ioannis Mournianakis as well as Mr Guo Jian who participated by telephone conference. The Sole Arbitrator permitted Mr Guo Jian to attend as a representative of the Appellant, and not as a witness. The Respondent attended, in part, by telephone conference, and was represented by his counsel Mr Guillaume Tattevin.

24. Following the hearing, the parties confirmed that their right to be heard had been respected.

## IV. THE PARTIES' SUBMISSIONS

25. In its Petition of Appeal (i.e. appeal brief) dated 27 March 2013, the Appellant submitted the following requests for relief:

*"In conclusion, the club would like to respectfully request CAS support the club's claims as follows:*

*1.a) Cancel BAT award and retrial on this matter.*

*2.a) Confirm the term of the contract is one year, did not end on 09 March 2012 and Coach's violation of the contract.*

*3.a) Dismiss the coach's claim for the salary of 4 months with a total of US$16,000.*

*4.d) Order the coach to be burdened with all legal fees of the appellant inured during arbitration procedure".*

26. The Appellant principally submits that:

a. The Agreement designates CAS as the competent body to solve this dispute under the Agreement.

b. The term of the Agreement was one year, i.e. from 1 October 2011 to 30 September 2012.

c. On 12 March 2012, the Respondent started his annual leave and should have returned on

26 April 2012.

d. The Respondent never returned to the Appellant; the Respondent rather argued that the Appellant had told him that his services were no longer needed, but was still obliged to pay the Respondent's salary up to September 2012.

e. The Appellant never terminated the Agreement and insisted that the Respondent reported back to the Appellant. As the Respondent did not return he was in breach of the Agreement and, consequently, the Appellant stopped to pay any salary as from June 2012.

27. In his Appeal Response (i.e. answer) dated 18 April 2012, the Respondent submitted that *"C. should be awarded the original FIBA Bat award"* which is to be understood as a request for rejecting the appeal and maintaining the BAT Award.

28. The Respondent principally submits that:

a. The term of the Agreement was for the 2011-2012 CBA season, i.e. from 1 October 2011 until 9 March 2012, which is the day of the last CBA 2011-2012 season game. On that day, the Respondent's responsibilities were complete.

b. On 10 March 2012, at the gate waiting to board for the flight from Guangzhou to Urumqi after the last CBA season game, the general manager of the Appellant, Mr Guo Jian, approached the Respondent and informed him that his services were no longer needed and that his salary would be paid in accordance with the Agreement. During that conversation, the Respondent asked three times for a written confirmation that his services were no longer requested, but this confirmation was denied.

c. The Respondent remained in Urumqi until 19 March 2012 when he and his family left on holiday. They returned to the USA on 10 April 2012.

d. In accordance with the Agreement, the parties had agreed that the Respondent's services would be needed until the end of the 2011-2012 season only, but he would be compensated for 12 months through 2012.

e. As the payments under the Agreement were *"fully guaranteed"* the Respondent breached the Agreement when stopping payments to the Respondent.

f. It was not possible to construct the Agreement pursuant to which the Respondent's salary would be paid in equal parts of the length of the season because no one would know how long the season would last (given the playoffs could extend the season). The twelve equal instalments were put in the Agreement for the convenience of the Appellant.

## V. ADMISSIBILITY

29. 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 […]".*

30. The BAT Award is dated 25 February 2013 and, according to the BAT Tribunal, was notified to the parties by email. Supposing that the BAT Award was duly notified to the parties on the same day (which, however, can be left open here) the 21-day period in accordance with Art. 49 of the CAS Code started running on 26 February 2013. As the CAS Court Office received the statement of appeal on 15 March 2013, it was lodged on time. Likewise, the appeal brief dated 27 March 2013 was submitted on time.

31. The Sole Arbitrator, therefore, holds that the appeal is admissible.

## VI. JURISDICTION

*32.* Although none of the parties ever raised any objection relating to the present proceeding, the Sole Arbitrator verified *ex officio* whether CAS had jurisdiction. According to Article R27 of the Code *"These Procedural Rules* [the ones of the Code] *apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) […]. Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests brought into play in the practice or the development of sport and, generally speaking, any activity related or connected to sport. […]".*

*33.* In this regard, the section of the parties' Agreement entitled *"Arbitration"* provides that *"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. …*

*Awards of the FAT can be appealed to the Court of Arbitration for Sports (CAS), Lausanne, Switzerland. The Parties expressly waive recourse to the Swiss federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal as provided in Article 192 of the Swiss Act on Private International Law".*

34. The Sole Arbitrator notes that in accordance with Article 32.2 of the FIBA General Statutes, BAT awards shall be final and binding on the parties. However, the Sole Arbitrator notes that, as set forth above, the parties included an explicit arbitration agreement pursuant to which either party shall have the right to appeal against the BAT Award with CAS within the Agreement. This explicit agreement prevails over the rules set out in the FIBA Statutes.

35. Further, the Respondent did not raise any *exceptio arbitri* claiming that CAS would not be competent, but rather made his appearance in the present proceeding and signed the order of procedure thereby confirming competence of CAS in the present appeal proceeding.

36. Finally, the parties signed the Order of Procedure which provides in section 1 *"Xinjiang Guanghui Basketball Club (the Appellant") relies on Clause No. 11 in the Employment Agreement with Mr. C. (the "Respondent") as conferring jurisdiction on the CAS. The jurisdiction of the CAS is not contested by the Respondent and is confirmed by the signature of the present order"*.

37. The Sole Arbitrator finds, therefore, that the Agreement and the conduct of the parties provides that CAS has jurisdiction to hear the present dispute.

## VII. APPLICABLE RULES OF LAW

38. Pursuant to Article R58 of the Code, the dispute must be decided *"according to the appliable regulations and, subsidiarily, to the rules of law chosen by the parties …"*.

39. The Sole Arbitrator notes that the second last paragraph of the Agreement provides that *"The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono"*. Further, at the hearing, both parties confirmed that the matter should be decided *ex aequo et bono*.

40. Given that the seat of this international arbitration is in Switzerland, the *lex arbitri* is Swiss law which means that, in particular, the 12th Chapter of the Swiss Private International Law Statute (PILS) applies. In accordance with Article 187 para. 2 of the PILS, the parties may authorize the arbitral tribunal to decide *ex aequo et bono*.

41. Considering the above, the Sole Arbitrator finds that the present matter is to be determined *ex aequo et bono*.

## VIII. MERITS

### *a. The Term of the Agreement*

42. The parties disagree about the period during which the services were to be rendered by the Respondent under the Agreement and about the terms of the Agreement. While the Appellant takes the position that the term was one year, the Respondent argues that he was to render the services during the 2011-2012 CBA season, which ended after the last game of the 2011-2012 CBA in March 2012.

43. Consequently, the Appellant takes the position that after having paid salaries to the Respondent up to May 2012, it does not owe any further salary as the Respondent had decided not to return

to the club after the end of the holidays on 26 April 2012. The Respondent, on the other hand, argues that his obligation to render the services under the Agreement ended after the last 2011-2012 season game, which was on 9 March 2012. He also submits that on 10 March 2012 he had been orally informed by the Appellant's general manager that his services were no longer needed and that he was dismissed. Therefore, he had no obligation to return to the club after his holidays, but was still entitled for all monthly salaries up to and including September 2012.

44. As the parties disagree about the content of the Agreement, the Sole Arbitrator will interpret the Agreement and the parties' conduct, the latter based on the facts as established by the parties, in order to determine whether (i) the parties had agreed that the Respondent was to render his services during one year, (ii) in the affirmative, the Appellant terminated the Agreement in March 2012, and/or (iii) the parties had agreed that the Respondent was to render his services until the last 2011-2012 season game only and should have received monthly salary payments until September 2012, irrespective of the fact that the last season game was in March 2012.

45. Clause 1 of the Agreement (headed *"1. TERM"*) provides the following: *"The Term of this Agreement is for One (1) season. The CLUB hereby confirms and agrees to the employment of C. as a Strength Coach for 1 season 2011-2012 the CBA season. This agreement is fully guaranteed and if the strength coach is terminated by the club prior to the conclusion of the 201-2012 season all payment will be due by the COACH as according to the attached payment schedule without delay, unless a mutually agreed upon alternative payment schedule is agreed upon"*., while Clause 2 (headed *"2. SALARY COMPENSATION"*) of the Agreement provides: *"For rendering services as a professional basketball club, the CLUB agrees to pay the COACH as follows: A. For the 2011-2012 seasons: $48,000 or 12 equal payments of 4000.00 USD net of Chinese taxes…Payments will be made to COACH by CLUB in equal instalments starting October 1st 2011 and paid once per month on the 1st of each month for 12 months for the duration of the contract. Such payments are fully guaranteed for the Contract Year), and cannot be interrupted by either the CLUB"*. It is evident that Clause 1 para. 1 and Clause 2 use different terms to define the duration of the Agreement. While according to Clause 1 para. 1, the term was for *one season*, pursuant to Clause 2, the duration of the contract was *twelve months*.

46. The Sole Arbitrator also notes that Clause 1 para. 2 of the Agreement provides an extensive enumeration of events that the Respondent had to attend during his employment and sets out that the employment of the Respondent included the Respondent's *"attendance (unless coach has Chinese National Team duties, all Chinese National team duties supersede any scheduled Team events in every situation) and participation in the CLUB's preseason, regular season, post-season, play-offs, exhibition, tournaments, marketing and promotion club events, friendly games, practices, League and Tournament games during the noted term scheduled and entered into by the Club during the term as well as basketball events (e.g. all star game) organized by the Club's league or other national or international basketball association of which CLUB is a member during the playing seasons under this Agreement"*. This list of duties includes, in particular, *"post-season"* events and practices which indicates that the Respondent was to work for the Appellant not only up to the last game of the 2011-2012 CBA season or championship, but also after such last game.

47. The Sole Arbitrator holds that the above is supported by reading Clause 1 of the Agreement in conjunction with Clause 2. As already set out above, pursuant to Clause 2, payments should *"be made to COACH by CLUB in equal instalments starting October 1st 2011 and paid once per month on the 1st of each month for 12 months for the duration of the contract. Such payments are fully guaranteed for the Contract Year"*. Clause 2 expressly provides, in other words, that (i) the Respondent's salary had to be paid once per month *for twelve months for the duration of the contract* and that (ii) these payments were fully guaranteed for the *contract year*.

48. After having been asked about the meaning of Clause 2 of the Agreement, the Respondent's counsel explained in the hearing that Clause 1 prevails over Clause 2 and the term ended after the last season game and not after twelve months. The Respondent has, however, not provided any evidence that this was what the parties had actually understood when they entered into the Agreement.

49. The Sole Arbitrator, however, holds that this interpretation is not supported by the content of the Agreement and the conduct of the parties. Rather, interpreting the Agreement in an objective manner, i.e. by asking what the parties, acting reasonably and in good faith, should have understood, one must conclude that the parties had agreed on a term of twelve months. It would not have made sense for parties, acting reasonably, to agree, on the one hand, that the salary had to be paid during twelve months *"for the duration of the contract"* and that the payments were guaranteed *"for the contract year"* if they, on the other hand, intended to employ the Respondent only until the last match of the 2011-2012 season. While the wording of Clause 1 para. 1 and Clause 2 are not fully consistent, reading these clauses in the context of each other and in conjunction with Clause 1 para. 2 one must conclude that the parties agreed on a term of the Agreement of one year.

50. The conduct of the parties does not lead to a different result. After the end of the holiday period end of April 2012, the Appellant sent various reminders to the Respondent requesting him to report back to the club and reminded him that the Agreement was still in force. The Appellant further paid the Respondent's salary for the months April and May, i.e. for two months following the last match of the 2011-2012 season or championship, respectively. This is consistent with the Appellant's position that the Agreement was concluded for one year and the Respondent was on vacation from mid-March until end of April 2012.

51. On the other hand, in his first response to the reminders of the Appellant on 8 May 2012, the Respondent explained that the Appellant had terminated the Agreement, but did not take the position that the Agreement had a term until the last season game, i.e. mid March 2012, only. Based on the evidence provided by the parties it appears that the Respondent raised the argument that the Agreement had a shorter term, i.e. until the last game of the 2011-2012 season, only in his request for arbitration to the Basketball Arbitral Tribunal, dated 20 August 2012. Whether or not the Agreement was terminated in March 2012 as the Respondent argues will be examined in further below. In the present context, however, it is to be noted that the wording as well as the conduct of the parties lead to the conclusion that the parties had (initially) agreed on a term of the Agreement of one year.

52. The Sole Arbitrator holds that this result is also supported by Clause 3.C of the Agreement which provides that the Respondent *"shall be entitled to a vacation each year of this Agreement of 45 consecutive days during the off-season"*. This provision would not make any sense if one assumed that the Agreement expired after the last 2011-2012 season match in March 2012. Had the parties intended to employ the Respondent only until such date, they would not have, acting reasonably, agreed on 45 days holidays during the *"off-season"* as in such case the Respondent would not have been under contract any longer when the off-season started.

53. The Respondent not only argues that the Agreement had a limited term until the last game of the 2011-2012 season, but also that the Appellant terminated the Agreement. The Respondent explained that on 10 March 2012, the general manager of the Appellant had told him that his service were no longer needed and that, thus, his obligations to render services came to an end.

54. Article R55 para. 1 of the CAS Code provides that as part of his answer brief the Respondent shall submit, among other things, *"any exhibits or specification of other evidence upon which the Respondent intends to rely"*. This is in line with the general principle that each party must provide evidence for any fact on which it intends to rely.

55. In the case at hand, this means that the Respondent has the burden of proof in respect of the fact that the Appellant had terminated the Agreement on 10 March 2012 during a conversation between the general manager of the Appellant, Mr Guo Jian, and the Respondent at the Guangzhou International Airport, as the Respondent explains.

56. In its written briefs, the Appellant denied that it had terminated the Agreement. During the hearing, Mr Guo Jian, who attended on the Appellant's behalf by means of telephone conference, confirmed that a conversation took place on 10 March 2012, but denied that during such conversation he had terminated the Agreement in the name of the Appellant.

57. In such a *one-word-against-another* situation, the Respondent, having the burden of proof, should have provided further evidence supporting his argument that the Agreement was terminated on 10 March 2012 which he, however, did not.

58. While the Respondent has explained that he had asked for a written confirmation that the Agreement was terminated but that he did never receive such confirmation, he elected not to undertake any other step that would have resulted in further support for his position. For instance, it appears the Respondent has not confirmed in writing, by himself, the content of the conversation with the general manager of the Appellant on 10 March 2012, although he would have been in a position to do so. Had he done so, the situation could potentially have been clarified prior to the end of his vacation in April 2012 and the Respondent could possibly have obtained evidence supporting his position.

59. Based on the evidence submitted, the Sole Arbitrator concludes that the Respondent, who had the burden of proof for this relevant fact, has not established that the Appellant had terminated

the Agreement on 10 March 2012.

60. Based on an objective interpretation of the Agreement, it is concluded that the term of the Agreement was one year. The Respondent, therefore, should have rendered his services until end of September 2012, in accordance with the terms of the Agreement.

### *b. The Breach of the Agreement*

61. As the Respondent elected not to return to the club after the end of his vacation in April 2012, he breached the Agreement.

62. Under an employment agreement the employee typically renders work and receives, in exchange, a salary. More generally, agreements for work and/or services are - as many other types of commercial agreements - governed by the basic *do ut des* principle, which means that the provider receives money in exchange for his work. This principle, however, only applies as far as the work and/or service is actually provided. If the provider or employee elects to not render any further service, he has no right for any further payment that he would have been entitled to had he rendered his work as agreed.

63. The Sole Arbitrator holds that in the case at hand this means that the Respondent forfeited his right for salary payments when he decided not to return to the Appellant. Consequently, the Appellant was entitled to withhold salary payments for the months June, July, August and September 2012.

### *c. Conclusion*

64. Based on all the above, the Sole Arbitrator finds that the Respondent breached the Agreement when he did not return to the Appellant and stopped rendering further service. Therefore, the Appellant was entitled not to effect any salary payment for the months June to September 2012.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules:**

1. The Court of Arbitration for Sport rules that:

2. The appeal of Xinjiang Guanghui Basketball Club Ltd. is upheld.

3. The award of the Basketball Arbitral Tribunal (BAT), dated 25 February 2013, is set aside.

4. (…).

5. (…).

6. All other and further claims for relief are dismissed.