



Arbitration CAS 2013/A/3263 Azovmash Mariupol Basketball Club v. Luca Bechi, award of 14 March 2014

Panel: Mr Marco Balmelli (Switzerland), President; Mr Stuart McInnes (United Kingdom); Mr Efraim Barak (Israel)

Basketball

CAS jurisdiction

Conditions for filing an appeal with the CAS

Authority of the CAS panel to decide on its own jurisdiction in case of a defence of lack of jurisdiction

Difference between the standard BAT clause, version 2009 and the BAT clause, version 2011

Conditions for the validity of an arbitration clause or an arbitration agreement

- 1. An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body. An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.**
- 2. In case a respondent's answer contains a defence on jurisdiction, the CAS panel has the authority to decide on its own jurisdiction, in accordance with Article R55 of the CAS Code. When an objection to CAS jurisdiction is raised, the CAS Court Office or the panel, if already constituted, shall invite the opposing party (parties) to file written submissions on the matter of CAS jurisdiction. The panel may rule on its jurisdiction either in a preliminary decision or in an award on the merits. Under Article R55 CAS Code, the panel has the so-called Kompetenz-Kompetenz, i.e. the authority to determine whether it has jurisdiction to determine the merits of the case.**
- 3. Other than the standard BAT clause, version 2009 (before FAT was renamed by the FIBA General Statutes 2010 into BAT), the standard BAT clause, version 2011 no longer includes the possibility to appeal to CAS.**
- 4. For an arbitration clause or arbitration agreement to be valid, it has to make clear the parties' consent to arbitration, to define the scope and limit of that consent. Further, the clause has to cover precisely the subject matter the parties' intend to submit to arbitration and to provide for the designated dispute resolution method, as well as for exclusivity.**

I. THE PARTIES

1. The Appellant, Azovmash Basketball Club (the “Club” or “Appellant”), is a professional Ukrainian basketball club that competes in the Ukrainian Superleague.
2. The Respondent, Mr. Luca Bechi (the “Coach” or “Respondent”), is a professional basketball coach who was hired as head coach of the Appellant’s senior men’s team for a portion of the 2011-2012 season and the 2012-2013 season.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. The Bechi Contract

4. On 9 February 2012, the Coach signed an employment agreement with the Club wherein he would join the Club as head coach of the senior men’s team for the remainder of the 2011-2012 season and the entire 2012-2013 season (the “Bechi Contract”).
5. The Bechi Contract provides, *inter alia*, as follows:

Article 1
Employment duration

The Club, hereby employs the Coach in the capacity of professional basketball coach as the first (head) coach of men’s senior professional team of the Club competing in the Ukrainian Superleague, VTB League and ULEB Eurocup, for a term of two (2) basketball seasons (2011/2012 and 2012/2013) to commence on the date hereof and to continue through the first day following the final game in which the Club participates in the 202/2013 regular season, whichever date occurs later. Coach’s employment during the term of this Contract only includes coaching on the senior professional basketball team of the Club participating in the Ukrainian Superleague, VTB League and ULEB Eurocup. It is absolutely understood that Club can not assign Coach to coach any other subdivision of the Club other than the the senior professional basketball team of the Club participating in the Ukrainian Superleague, VTB League and ULEB Eurocup. It is understood that the Coach shall not be required to participate in any postseason exhibition games scheduled by the Club after the conclusion of the Club’s participation in their last official Ukrainian Superleague game (whether regular season or playoffs) for the 2011/2012 and 2012/2013 basketball season respectively.

[...]

Article 2
Obligations of the Coach

Coach agrees:

- A) To prepare to lead and execute all games, practices and all other necessary sessions and activities for the Club with the purpose to achieve the best possible goals in all competition, both league and cup, in which participates.*
- B) To be an example for the players on and off the court in all respects.*
- C) To participate in all activities of the Club with a positive outlook and serious manner.*
- D) To keep up with the most recent developments in the sport of basketball and to assimilate the instructions promulgated by the directors of the Club with the intention of putting his talents at the service of the Club in order to assure a good performance before the public/spectators.*
- E) To be present at all meetings and events organized by the Club (press conferences, meetings with sponsors, receptions, dinners, etc.)*

[...]

Article 3
Obligations of the Club

The Club agrees to pay to the Coach the fully guaranteed Base Salary of € 65,000.00 Euro (sixty five thousand Euro) Net of taxes for the 2011 / 2012 basketball season and € 175,000 Euro (one hundred and seventy five thousand Euro) Net of taxes for the 2012 / 2013 basketball season in accordance with the payment schedule set forth below.

[...]

Club agrees that this contract is a fully guaranteed contract for the 2011 / 2012 basketball season and in case that in the 2011 / 2012 basketball season Club reaches the finals of the Ukrainian Superleague of the Final Four of the VTB League for the 2012 / 2013 basketball season.

In this regard, even if Coach is removed or released from the Club or this contract is terminated or suspended by Club due to Coach's lack of or failure to exhibit sufficient skill or achieve certain result, Coach's death, illness, injury or mental or physical disability (whether incurred on or off the court) or for any other reason whatsoever other than Coach's direct and material breach of this contract, Club shall nevertheless be required to pay to Coach and Agent, on the dates set forth above, the full amounts set forth above. If any scheduled payment is not received by Coach's bank within twenty one (21) days of due date, the Coach's performance obligations shall cease, Coach shall have the right, at the Coach's option, to terminate this contract and accelerate all future payments required under this contract. In this case, Coach shall be free to leave Club to coach basketball anywhere in the world he chooses, but the duties and liabilities of Club toward Coach and Agent under this contract shall continue in full force and effect. Furthermore, the Club shall have no rights over or with respect to Coach, and the Club will not be entitled to request or receive any payments pertaining to the Coach coaching basketball anywhere in the world.

[...]

*Article 6
Amenities*

In addition to the fully guaranteed Base Salary payments to the Coach contained in Article 3, the Bonuses payable to the Coach as per Article 4 and the payments of all taxes by the Club on behalf of the Coach as specified in Article 5, Club further agrees to provide the Coach during this contract with the following without charge or cost to the Coach.

- a) *Automobile. The Club will provide an automobile for exclusive use by the Coach and his family during the time of this contract and for a period of ten (10) days thereafter. Club shall pay “full” car insurance throughout the term of this contract on the automobile, covering damage to the car. The cost of normal inspection of the vehicle will be covered by the Club, including replacement of use parts and changing tires, as long as those damages have not been caused by the negligent conduct of the Coach or by abusing the vehicle. The Club shall be responsible for all expenses for the automobile except for the cost of gas and traffic tickets which shall be paid by the Coach.*
- b) *Apartment. The Club shall provide the Coach a fully furnished large two bedroom apartment for his exclusive use during the entire period of this contract and for a period of ten (10) days thereafter. Coach shall maintain the premises placed at this disposal in good condition, excepting normal wear and tear. Such apartment’s furnishings shall include all normal and reasonable items including a king size bed, washer and dryer, television with satellite hook-up, DVD player and internet access. The Club shall be reasonable for all payments associated with the assigned apartment including but not limited to rent, taxes, electricity, water, gas, etc.*

[...]

- d) *Mobile phone expenses. The Club agrees to pay Coach’s mobile phone expenses, but not more than 500 USD.*

[...].

B. Termination of the Bechi Contract

- 6. Following the 2011/2012 season, the Club wished to terminate the Contract with the Coach. Discussions between the parties over the Coach’s termination ensued on 10 and 11 June 2012, but apparently no agreement between the parties was reached (the Coach believed the Club terminated his contract whereas the Club believed it made a termination/settlement offer which was refused by the Coach).
- 7. On 2 July 2012, the Club signed an employment agreement with Mr. Aleksandar Kes ar to join the Club as a “Consultant in the capacity of professional basketball consultant of the head coach of men team of the club for the 2012/2013 and 2013/2014 seasons”.

8. The hiring of Mr. Kesar – which was apparently unknown to the Coach – was reported in various media outlets, including the Club’s own website. In response, on 16 July 2012, Mr. Stefano Meller (a representative of the Coach) emailed Mr. Rolandas Jarutis (the Club’s General Manager) inquiring about the Club’s new hire. Over the next several weeks, the Club and Coach (by and through each party’s representatives) exchanged emails over the Coach’s status with the Club (again, the Coach asserting that he was terminated and the Club requesting the Coach’s continued employment as Coach).
9. On 30 July 2012, the Club sent the Coach an email requesting his travel preferences for the Club’s upcoming training camp in Mariupol beginning 1 August 2012. The Coach did not respond and did not show up to training camp. So on 3 August 2012, the Club sent a termination letter to the Coach, which provided as follows:

Dear MR Bechi,

With this letter, BC Azovmash Mariupol, TERMINATES the contract, signed on the 9th of February 2012, with immediate effect.

The GM of the Club, Rolandas Jarutis, sent several time [sic] invitation to you, to inform the club about route of travelling and request to be present in Mariupol, on the 1st of August 2012, for beginning of the work for playing season 2012/13.

Unfortunately, you did not appear on the team meeting on the 1st, 2nd and 3rd of August 2012.

According to the article 11.2.B of Internal rules and regulations of the Club, the fine for absence from practice (team meeting), when it is repeated for the 3 times case, without an excusal, is 50 percents [sic] of monthly salary or termination of the contract, and the club decide to terminate the contract.

In the next following days, we would inform you about monetary compensations, which will be required from you, due to the breach of the contract.

10. On 9 August 2012, the Club formally announced that Mr. Kesar was appointed head coach of the Club.
11. On 17 August 2012, the Coach’s legal counsel sent a final notice to the Club advising them of their alleged breach of the Contract.

C. The Virtus Contract

12. On 4 March 2013, the Coach signed an employment agreement with the professional basketball club Virtus Pallacanestro Bologna s.p.a. (the “Virtus Contract”). According to the Virtus Contract, the Coach was employed as a professional basketball coach with Virtus for the remainder of the 2012/2013 season. The total remuneration due under the Virtus Contract was EUR 15,000.

D. The BAT Proceedings

13. On 15 August 2012, the Club filed a request for arbitration with the Basketball Arbitration Tribunal (“BAT”) against the Coach seeking a determination that the Club properly terminated the Bechi Contract when the Coach failed to attend the training camp in Mariupol. According to the Club, as result of the Coach’s absence, the Coach breached the Bechi Contract thereby requiring the Club to promote Mr. Kesar to head coach. In doing so, the Club incurred damages on the increase of coaching salary in the amount of USD \$100,000, as well as an increase in an agent’s fee (USD \$5,000) and additional salary payments for assistant coaches (USD \$44,000).
14. On 10 October 2012, the Coach filed his answer to the Club’s request for arbitration and asserted a counterclaim. According to the Coach, the Bechi Contract was terminated by the Club during their discussions on 10 and 11 June 2012 and only the finer details of the termination would be worked out between the parties in the follow days. This was confirmed not only by the parties’ actions, but the additional hiring of Mr. Kesar. The Coach asserted damages in the amount of EUR 175,000 (salary for the remainder of his contract), the value of the various benefits under the contract (housing, vehicle, phone, etc.) (estimated at EUR 24,388), plus interest.
15. On 1 July 2013, the Sole Arbitrator rendered his decision dismissing the claim of the Club and admitting the Coach’s counterclaim. In doing so, the Club was ordered to pay the Coach’s salary in the amount of EUR 160,000 net and damages for the value of the benefits in the amount of EUR 14,000, as well as various interest on the award.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 22 July 2013, the Appellant filed a statement of appeal against the BAT Award with the Court of Arbitration for Sport (“CAS”) in accordance with Article R48 of the Code of Sports-related Arbitration Rules (the “Code”). Furthermore, the Appellant requested that the appeal be decided by a Sole Arbitrator.
17. On 31 July 2013, the Respondent objected to the statement of appeal and challenged the jurisdiction of the CAS to hear the appeal. Moreover, the Respondent requested that the appeal be decided by a three-member panel. By return letter that same day, the CAS Court Office suspended the deadline for the Appellant’s appeal brief.
18. On 2 August 2013, the parties were informed that a decision on CAS jurisdiction would be issued by the Panel and again reminded that all other deadlines except for those relating to CAS jurisdiction were suspended pending the Panel’s decision on jurisdiction.

19. On 7 August 2013, the parties were informed that the Deputy President of the Appeals Arbitration Division had decided to submit the appeal to a three-member panel pursuant to Article R50 of the Code.
20. On 5 August 2013, the Appellant submitted its comments in opposition to the Respondent's objection to CAS jurisdiction.
21. On 14 August 2013, the Appellant nominated Mr. David W. Rivkin, Attorney-at-Law, New York, USA, as its arbitrator.
22. On 22 August 2013, the Respondent nominated Mr. Efraim Barak, Attorney-at-Law, Tel Aviv, Israel, as its arbitrator.
23. On 20 September 2013, the parties were informed that Mr. Rivkin declined his appointment, and the Appellant was invited to nominate a new arbitrator within seven (7) days.
24. On 26 September 2013, the Appellant nominated Mr. Stuart McInnes, Solicitor, London, England, as its new arbitrator.
25. On 11 October 2013, the CAS Court Office informed the parties that pursuant to Article R54 of the Code, the Panel appointed to hear the appeal was constituted as follows:

President: Dr. Marco Balmelli, Attorney-at-Law, Basel, Switzerland
Arbitrators: Mr. Stuart McInnes, Solicitor, London, England
Mr. Efraim Barak, Attorney-at-Law, Tel Aviv, Israel
26. On 25 October 2013, the Respondent filed his reply to the Appellant's comments on CAS jurisdiction.
27. On 18 November 2013, the Appellant filed its comments to the Respondent's reply on CAS jurisdiction. A 10-day deadline was then set for the Respondent to submit a final written submission, following which the Panel would not accept any further submissions on CAS jurisdiction.
28. On 2 December 2013, the Respondent filed its final submission in response to the Appellant's comments to the Respondent's reply on CAS jurisdiction.
29. On 10 March 2014, the parties were informed that the Panel, after consulting the parties (both parties having declined a hearing on jurisdiction) would not hold a hearing pursuant to Article R57 of the Code.

IV. THE PARTIES' SUBMISSIONS

30. In its request for arbitration, the Appellant asserted that Article 9 of the Bechi Contract permitted the appeal of any BAT award. Article 9 provides as follows:

*Article 9
Disputes*

Any disputes arising or related to the present Agreement shall be submitted to the FIBA Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved definitely in accordance with the FIBA Arbitration Rules by a single arbitrator appointed by the BAT President.

The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties' domicile.

The seat of the arbitration shall be Geneva, Switzerland.

The language of the arbitration shall be English.

The arbitrator and CAS shall decide the dispute ex aequo et bono.

31. The Respondent's objection to jurisdiction in response to the request for arbitration, in essence, may be summarised as follows:

- Neither the Fédération International de Basketball ("FIBA") Regulations nor BAT's Arbitration Rules provide the possibility to file an appeal against a BAT award with the CAS.
- The jurisdiction of the CAS can only be based upon an arbitration agreement between the parties. In this regard, Article 9 of the Bechi Contract only refers to the words "and CAS", which is clearly insufficient to establish CAS jurisdiction.
- Such provision has been modified from the standard BAT arbitration clause, which indicates that the parties intended to exclude CAS jurisdiction and therefore, the presence of the words "and CAS" results from a mere clerical error.

32. Moreover, the Respondent requested that "[b]ased upon the aforementioned arguments, the conditions of articles S20, b., R27 and R47 of the CAS Code are not fulfilled and therefore the CAS has no jurisdiction regarding the appeal against BAT Award 0317/12".

33. In its comments on jurisdiction, the Appellant maintained, in essence, the following:

- The last sentence of Article 9 clearly provides that "[t]he arbitrator [of BAT] and CAS shall decide the dispute ex aequo et bono", and the most important element of this statement is that the parties expressly stated "the arbitrator and CAS" (not "the arbitrator or CAS"). As such, it was the parties' intention that both the BAT and CAS would have jurisdiction.

- It has been a long-standing tradition of the Club to include modified arbitration clauses in all of its contracts with players and coaches providing for the possibility to challenge BAT arbitral awards at the CAS.
- Moreover, it was the Respondent, not the Appellant, who prepared the Bechi Contract, and therefore it was the Respondent who offered to include the possibility to appeal to CAS. The language provided in Article 9 matched the Appellant's expectations and intention of the possibility of CAS appeals of BAT awards.

V. APPLICABLE LAW

34. 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.

35. Article 9 of the Bechi Contract provides that this arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law ("PILA"), irrespective of the parties' domicile. Moreover, Article 9 provides that the relevant body shall decide the dispute *ex aequo et bono*, which is in accordance with Article 187 para. 2 of the PILA. Regarding the question of jurisdiction, the Panel is especially guided by Article R47 of the CAS Code.

VI. JURISDICTION OF THE CAS

36. Article R47 of the CAS Code states the following:

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

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.

37. In case a Respondent's answer contains a defence on jurisdiction, such as it is in this case, the Panel has the authority to decide on his own jurisdiction, in accordance with Article R55 of the CAS Code, which states that:

When an objection to CAS jurisdiction is raised, the CAS Court Office or the Panel, if already constituted, shall invite the opposing party (parties) to file written submissions on the matter of CAS jurisdiction. The Panel may rule on its jurisdiction either in a preliminary decision or in an award on the merits.

38. Article R55 of the Code follows article 186 (1) of the PILA, which provides that the “*arbitral tribunal shall rule on its own jurisdiction*”. The Panel therefore has the so-called *Kompetenz-Kompetenz*, *i.e.* the authority to determine whether it has jurisdiction to determine the merits of the case (CAS 2010/A/2091). It follows that the Panel may adjudicate this preliminary issue by means of a partial award on jurisdiction, as was confirmed to the parties by letter of the CAS Court Office dated 20 December 2013.

39. In view of the above, this award solely concerns the issue of jurisdiction of the CAS.

A. The CAS does not have jurisdiction to hear this appeal.

40. Article R27 of the CAS Code provides the following:

These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or in a regulation or by reason of a later arbitration agreement (ordinary arbitration agreement) (...).

41. In its response to the Appellant’s statement of appeal, the Respondent submitted that since neither FIBA’s Internal Regulation nor BAT’s Arbitration Rules provide the possibility to file an appeal against a BAT award with the CAS, jurisdiction can only be established upon an arbitration agreement. The wording of Article 9 of the Bechi Contract is insufficient to establish a jurisdiction of the CAS. Furthermore, the Respondent referred to the standard BAT clause, version 2009 (before FAT was renamed by the FIBA General Statutes 2010 into BAT) and to the standard BAT clause, version 2011, and pointed out that the standard BAT clause, version 2011, no longer includes the possibility to appeal to CAS.

42. In his final submission dated 2 December 2013, the Respondent denied drafting the Bechi Contract, and supplied the arbitration clause of a former player of the Appellant, which excludes CAS jurisdiction, as a reference.

43. On the other hand, in response, the Appellant submitted that the wording of Article 9 of the Bechi Contract “*the arbitrator and CAS shall decide ex aequo et bono*” clearly provides for CAS jurisdiction and pointed out that it has been a long standing policy of the Appellant to modify the standard BAT clause by including the possibility to appeal with CAS.

44. The Appellant further argued that the template of the Bechi Contract was prepared by the Respondent and therefore proposed to include CAS jurisdiction. In addition, the Appellant referred to a decision of the Swiss Supreme Court (4A_246/2011), which states that so called pathological clauses can – through interpretation in terms of the principle of trust – establish jurisdiction.

45. In his final submission, the Appellant emphasised that the Club continued including CAS jurisdiction clauses even after FIBA changed its standard BAT clause. Therefore, CAS has to be regarded as an appropriate appeal institution. Moreover – since the Respondent drafted the Contract – the principles of interpretation *contra proferentem* and of confidence shall apply.

The interpretation considering these principles shall only lead to the conclusion that the parties agreed upon CAS jurisdiction.

46. In this regard, the Panel observes that for an arbitration clause or arbitration agreement to be valid, it has to make clear the parties' consent to arbitration, to define the scope and limit of that consent. Further, the clause has to cover precisely the subject matter the parties' intend to submit to arbitration and to provide for the designated dispute resolution method, as well as for exclusivity.
47. Primarily, the Panel refers to the parties' consent that neither FIBA's Internal Regulation nor BAT's Arbitration Rules provide the possibility to file an appeal against a BAT award with the CAS. Therefore jurisdiction can only be established by a mutual agreement of the parties.
48. Furthermore, the Panel notes that the standard BAT arbitration clause changed significantly in 2010 (valid from 2011): Whereas the standard clause 2009 included the possibility to appeal with CAS, the standard clause 2011 defines BAT as the final instance and excludes CAS as an instance of appeal.

The standard clause 2009:

“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 the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties' domicile. The language of the arbitration shall be English. Awards of the FAT can be appealed to the Court of Arbitration for Sports (CAS), Lausanne, Switzerland. [...] The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono”.

The standard clause 2011:

“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, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono”.

49. The Panel further observes that Article 9 of the Bechi Contract complies with the standard BAT clause 2011 except from the wording “and CAS” in the sentence “The Arbitrator and CAS shall decide the dispute ex aequo et bono”. Considering the fact that the standard proceeding ruled by FIBA expressly excludes CAS jurisdiction since BAT was established, the Panel states that the before-mentioned reference to CAS in Article 9 is not sufficient to establish jurisdiction with CAS. In the view of the Panel, the reference to CAS in the last sentence of Article 9 of the Bechi Contract appears to be a mere clerical error.

50. Considering the arguments of the Appellant, the Panel sees no reason to reach a different conclusion. Firstly, the Appellant failed proving that the Bechi Contract was drafted by the Respondent. However, the Panel considers it to be irrelevant since the mention of CAS in the last sentence does not reveal a mutual agreement upon CAS jurisdiction even with regard to the principle of trust or *contra proferentem*. Secondly, the cited decision of the Swiss Supreme Court 4A_246/2011 was about a football case whereby – without CAS ruling over the case – there would have been no possibility to appeal to an independent arbitral tribunal. In the case at hand, parties are already provided with an award by an independent arbitral tribunal (BAT). Therefore, the cases cannot be compared. Thirdly, the Bechi Contract conflicts with the Club’s contracts with other players (as provided by the Appellant) as said contracts all state a clear intent to include an appeal with CAS. The argument, that it is a long standing policy of the Club to include CAS jurisdiction, is not relevant when interpreting the Bechi Contract, as a long standing policy could only be considered if it was established between the parties at hand.
51. In conclusion, not one sentence expresses the will of the parties to submit to CAS jurisdiction. Therefore, the reference of the words “*and CAS*” – which appears in isolation – is not sufficient to create jurisdiction and is manifest of no agreement between the parties.

VII. CONCLUSION

52. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Panel finds that:
- (i) The reference to the word “*and CAS*” in Article 9 of the Bechi Contract is not sufficient to establish CAS jurisdiction. Consequently, CAS is not competent to deal with the merits of the present dispute.
53. Consequently, the Panel decides that it does not have jurisdiction to rule on the merits of this case.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Court of Arbitration for Sport does not have jurisdiction to decide the present dispute between Azovmash Mariupol Basketball Club, as Appellant, and Mr. Luca Bechi, as Respondent;
- (...)
4. All further and other claims for relief are dismissed.