CAS 2024/A/10644 Federazione Italiana Pallacanestro and S.S.P. Reyer Venezia Mestre SRL v. FIBA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Jonathan Hall, Solicitor, Dubai, United Arab Emirates

Arbitrators: Mr Andrew de Lotbinière McDougall KC, Attorney-at-Law in Paris, France
Mr Giulio Palermo, Attorney-at-Law in Geneva, Switzerland

between

Federazione Italiana Pallacanestro, Rome, Italy

- First Appellant -

and

S.S.P. Reyer Venezia Mestre SRL, Venice, Italy

- Second Appellant -

Both represented by Mr Luca Ferrari, Mr Daniel Gore, Attorneys-at-Law, Milan, Italy; Mr Giancarlo Guarino, Attorney-at-Law, Rome, Italy; and Mrs Lydia Banerjee, Barrister, London, United Kingdom

v.

Fédération Internationale de Basketball, Mies, Switzerland

Represented by Prof. Antonio Rigozzi and Mr Eolos Rigopoulos, Attorneys-at-Law, Geneva, Switzerland

- Respondent -

* * * * *

I. PARTIES

1. Federazione Italiana Pallacanestro ("FIP" or the "First Appellant") is the governing body for basketball in Italy and is a member of the Fédération Internationale de Basketball.

2. S.S.P. Reyer Venezia Mestre SRL ("Reyer" or the "Second Appellant") is a basketball club which competes in the Serie A league in Italy and is affiliated to FIP.

3. Fédération Internationale de Basketball ("FIBA" or the "Respondent") is the world governing body of the sport of basketball and an association under Swiss law.

4. The First Appellant and the Second Appellant are together referred to as the "Appellants" and collectively with the Respondent as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties' oral and written submissions as lodged with the Court of Arbitration for Sport (the "CAS"). 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, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

A. The Preliminary Agreement

6. Mr Bruno Correa Fernandes Caboclo (the "Player") is an internationally renowned Brazilian basketball player, who has played for several National Basketball Association ("NBA") teams in North America throughout his career.

7. On 23 June 2023, Reyer and the Player entered into a contract which was entitled Preliminary Agreement regarding the Player's participation for Reyer's first team for the 2023/2024 and 2024/2025 basketball seasons. The terms of the Preliminary Agreement are identified in further detail below.

8. On the same day, Reyer and the Player entered into another ancillary agreement entitled Bonus Agreement in relation to the individual bonuses owed to the Player if certain sporting results were achieved.

9. The Preliminary Agreement included the following in its preamble:

> "*a) The Player has currently a binding agreement with Ratiopham1 Basketball Ulm, valid also for the basketball season 2023-2024, with the right in favor of the same Player to unilaterally, withdraw from the aforesaid agreement within _____, paying the sum of € 70,000.00 (euro seventy thousand/00), net of any tax due, within ____;*

b) Notwithstanding what is stated at letter a. above, the Player wishes to register for the Club as a professional basketball player, according to the applicable regulations, for two sporting seasons;

c) The Club, while taking note of what is stated at letter a. above, wishes to employ the Player as a professional basketball player, according to the applicable regulations, for two sporting seasons;

*d) With the signing of this Preliminary Agreement, the Club and the Player undertake to enter into an employment agreement for the sporting seasons 2023/2024 and 2024/2025, which shall enter into force under the terms and conditions set forth hereunder (the "**Employment Agreement**").*"

10. Clause 1.1 of the Preliminary Agreement stated that the anticipated Employment Agreement "*shall be valid for 2 (two) sporting seasons, from 1st July 2023 to 30th June 2025 (the "Term")*".

11. The Preliminary Agreement provided at clause 2 under the heading "Object" as follows:

"*2.1 Subject to the timely exercise of the right of withdrawal by the Player from the contractual bond with Ratiopharm Basketball Ulm and the consequent timely payment by the Club in favor of Ratiopharm Basketball Ulm of the sum required for this purpose (€ 70,000.00), the Parties hereby irrevocably undertake that subject to Law n. 91/1981, the applicable 2003 collective bargaining agreement ('CBA') and the Regulations of the Federazione Italiana Pallacanestro […] and the Federation Internationale de Basketball […], they will enter into the Employment Agreement, which shall mutatis mutandis incorporate all terms and conditions set forth hereunder. […]*

2.3 The Player irrevocably agrees and undertakes: (i) to attend any official matches in which the Club will be engaged (without limitation, any matches of Campionato italiano di Serie A, Coppa Italia, All Star Game, Supercoppa and the international competitions) as well as any friendly matches […]; (ii) participate in all training and Match preparation sessions; (iii) play at all times to the best of his skill and ability; (iv) abide by any Club's instructions, including in respect of his sports performance. […]

2.5 The validity and effects of the Preliminary Agreement and the Employment Agreement are subject to the occurrence of all the following events: (i) the exercise of the right of withdrawal by the Player of the contractual obligation with Ratiopharm Basketball Ulm within_____; (ii) the receipt by the Club of the Letter of Clearance within _____. The condition in question, which is unilateral in nature, shall be deemed to have been entered into exclusively in favor of the Club."

12. At clause 3, the Preliminary Agreement provided the remuneration that the Player would earn under the contemplated Employment Agreement.

13. Clause 4 of the Preliminary Agreement read as follows:

"*4.1 At the end of the season 2023/2024, the Club may terminate this contract by giving notice expressed by registered mail with return receipt and/or PEC/e-mail to be sent to the Player and/or to his Representative within June 30th, 2024; in this case, the Club will pay the Player the amount of €10,000.00 (ten thousand euro) net, to be paid by July 15th, 2024.*

4.2 At the end of the season 2023/2024, the Player may terminate this contract by giving notice expressed by registered mail with return receipt to be sent to the Club within June 30th, 2024; in this case, the Player will pay the Club the amount of € 70,000.00 (seventy thousand euro) net, to be paid by July 15th, 2024."

14. Clause 5.1 of the Preliminary Agreement contained the following "Penalty Clause":

"*Should the Player fail to fulfill his obligation to enter into the Employment Agreement pursuant to article 2.1. above, through the fault of the Player, the Player shall pay the Club a penalty of € 150,000.00 (one hundred fifty thousand euro).*"

15. Clause 6 of the Preliminary Agreement concerned "Medical Examinations" and provided in particular the following:

"*6.1 The Player declares that he is fit to undertake sports activity under F.I.P. regulations and, pursuant to article 14.3 of the CBA, shall undertake the medical examinations organized by the Club within 120 hours from the execution of the Employment Agreement and in any case before the Player starts any professional sports activity for or with the Club*

6.2. The Parties agree that the positive outcome of the medical examinations set forth in paragraph 6.1 above is a condition precedent for the Employment Agreement to be valid and binding. […]"

16. Clauses 7-8 of the Preliminary Agreement dealt with "Injury and Illness" and the "Club's Disciplinary Code.

17. Clause 9 of the Preliminary Agreement entitled "Collective Bargaining Agreement" (CBA) provided in particular the following:

"*9.1 It is understood between the Parties that the Employment Agreement shall be regulated by the CBA with respect to all the matters not specifically agreed upon hereunder.*

9.2. To this end, the Parties agree that the following provisions of the CBA shall apply – without limitation – to the Employment Agreement: employment agreement (art. 8), health care (art. 14), F.I.P. sanctions (art. 19), compensation (art. 20), termination (art. 22), exploitation of Player's image rights and advertising agreements (art. 23), injury and illness (art. 24), disputes resolution (articles 29-

30-31-32). To the avoidance of doubt, it is understood that the aforementioned exploitation of Player's image rights includes the Player's participation in promotional events and/or activities of the Club.

9.3 Should the CBA be amended and/or replaced by a new applicable collective bargaining agreement coming into force before the execution of the Employment Agreement, the Parties shall negotiate in bona fide the terms and conditions hereof according to the provisions of the new collective bargaining agreement."

18. Clause 10.1 of the Preliminary Agreement entitled "F.I.P. Standard Employment Contract and Language" provided in particular the following:

"*The Parties agree that the Employment Agreement shall be drafted in keeping with the form provided by F.I.P. and duly filed by the Club with the competent League pursuant to article 8 of the CBA.*"

19. Under the heading "Applicable Law and Arbitration Clause", clause 11 of the Preliminary Agreement provided that the Preliminary Agreement was governed by Italian law and that the "*arbitration board*" provided in the CBA was competent to hear any disputes in relation thereto.

20. Finally, clauses 12-15 of the Preliminary Agreement dealt with certain ancillary matters, namely "Assignment", "Entire Agreement", "Notices", and "Survival of Rights, Duties and Obligations".

B. The circumstances leading up to the FIBA decision on 7 November 2023 to grant a letter of clearance allowing the Player to play for BC Partizan

21. On 28 June 2023, Reyer entered into a transfer agreement with the Player's former club (Ratiopharm Basketball Ulm), which was signed by the Player on 30 June 2023. That agreement provided for the transfer of the Player to Reyer in exchange for the transfer fee of EUR 70,000.

22. On 6 July 2023, FIBA issued a letter of clearance allowing the Player to play for Reyer.

23. During July 2023, Reyer took steps to apply for a visa for the Player and to arrange accommodation for him. At the Player's request, Reyer arranged a higher standard of accommodation for the Player than for others in the team.

24. In August 2023, Reyer agreed to the Player's request that he participate in the FIBA Basketball World Cup 2023 and then spend time in the United States. At that stage, Reyer and the Player agreed that he would arrive in Venice on 15 September 2023. That was in circumstances where Reyer's pre-season training commenced in late August 2023.

25. On 15 September 2023, the Player and Reyer's Basketball Director (Mr Sartori) exchanged the following messages via WhatsApp:

Player: *Hi Mauro, I changed representation, Daniel Hazan will be in contact with you soon.*

Mr Sartori: *Are you on your way to Venice?*

26. On the same day, Mr Hazan and Mr Sartori exchanged various WhatsApp messages as follows:

Hazan: *This is Daniel hazan nba agent*

Hazan: *Bruno changed representation*

Hazan: *And we currently represent Bruno*

Sartori: *I guess he is on his way to Venice…*

Hazan: *Unfortunately*

Hazan: *He did not get on the flight*

Sartori: *Why not?*

Hazan: *There are some personal issues that he is currently dealing with*

Hazan: *So we need to work through them*

Hazan: *And see what is going on exactly*

Hazan: *But I wanted to inform u in advance*

Hazan: *I just got thrown into the situation so I am trying to figure It all out now*

27. On the same day, Mr Sartori sent a letter to the Player (which was also sent to Mr Hazan and the Player's former agent) which included the following:

"*Without prejudice to the foregoing, I would also like to remind you that on 23.6.2023 a binding preliminary contract was signed by you and Reyer Venezia, by virtue of which both parties undertook to enter into a definitive contract for professional sports performances and to file it with the competent Authorities.*

Well, should the aforesaid definitive contract not be signed and filed, on the one hand Article 5.1 of the preliminary contract would apply, pursuant to which the Club has the right to receive a sum equal to €150,000.00 (one hundred and fifty thousand), and on the other hand the same preliminary agreement would remain binding, valid and effective for the current sports season, considering that a right of withdrawal was agreed only at the end of the same."

28. Mr Hazan and Mr Sartori also continued their discussions over Whatsapp, including Mr Sartori offering for the Player to come to Venice on 21 September 2023 ahead of the commencement of the season on 1 October 2023.

29. On 18 September 2023, Reyer received a letter from Daniel Marcus of Hustle Law. It stated the following:

> "*I represent the New York-based basketball talent agency, Hazan Sports Management, who as you know, represent Bruno Caboclo. I am writing to give you formal notice that for personal reasons Bruno does not intend to report or play for Reyer Venezia. While you are welcome to proceed and respond as you see fit, we will not hesitate to respond in kind to any threats, allegations, or leaks to the press that are intended to disparage, defame, or otherwise hinder Bruno's ability to play his craft as a professional basketball player. Please direct all future correspondences with respect to this matter directly to me from this point forward.*"

30. On 12 October 2023, Reyer's lawyers wrote to Hustle Law and said "*the Player is currently bound by a valid agreement whereby he committed to play for Reyer for the 2023/2024 and 2024/2025 seasons.*"

31. On 19 October 2023, the NBA requested a letter for clearance from FIBA in respect of the Player. The FIP disagreed with that request, which was communicated to the NBA on 23 October 2023. The NBA did not formally challenge the position of FIP. Thus, the NBA's request for a letter of clearance was automatically rejected by FIBA on 26 October 2023.

32. On 30 October 2023, the Serbian Basketball Federation (the "KSS") requested a letter of clearance from FIBA to allow the Player to play for BC Partizan, a club in the Serbian League and EuroLeague. The FIP objected to that request and KSS sought FIBA's intervention.

33. Also on 30 October 2023, BC Partizan offered to pay Reyer the amount of EUR 150,000 in exchange for Reyer's consent to the transfer of the Player to BC Partizan. That amount is the amount that is set out in the Preliminary Agreement as an amount payable by the Player to Reyer if he did not perform his obligations under the Preliminary Agreement. That clause is referred to in further detail, below.

34. On 7 November 2023, after review of the submissions by the parties to this transfer dispute, FIBA decided that a letter of clearance in respect of the Player should be granted (referred to as the "FIBA Decision"), allowing the Player to sign with BC Partizan, subject to BC Partizan making a payment of EUR 150,000 to Reyer.

35. BC Partizan paid that amount to Reyer and the Player went to play for BC Partizan.

C. The Proceedings before Serie A Arbitration Tribunal

36. On 23 October 2023, Reyer filed a statement of appeal before the Serie A Arbitration Panel in accordance with Article 11 of the Preliminary Agreement.

37. On 9 January 2024, the Serie A Arbitration Tribunal issued an award ("Serie A Award") and held in particular the following:

> "*the Arbitral Tribunal finds that it cannot agree with the assumption of the claimant whereby, in spite the nomen iuris, the agreement between the parties is specifically a final agreement 'given that it contains not only the essentialia*

negotii (e.g. art. 1 on the duration; art. 2.3 on the Player's professional services; art. 3.1(a) fixed salary) but punctually all the covenants aimed at regulating in detail the contractual relationship (e.g. art. 2.1(b) on the benefits and expenses granted to the Player; art. 7 on injuries and illness; art. 8 on Reyer's disciplinary code; art. 9 on the reference to the applicable provisions of the Collective Agreement).['']

It is true that an examination of the clauses of the agreement in question shows how the parties fully regulated not only the essential elements of the agreement but also all the incidental covenants aimed at regulating the contractual relationship in detail; however, a systematic reading must be favoured that takes into account the actual will of the parties, who were well aware of the formalism required by law for the validity of the employment agreement and, for that very reason, have conditioned the registration of the full player to a subsequent manifestation of will through the execution of the final agreement.

After all, if the agreement under examination was specifically a definitive agreement, then it could never be considered valid, since, in accordance with the provisions of Article 4 of Law no. 91 of 1981 (and, in any case, of Article 27, paragraph 4, of Legislative Decree no. 36 of 2021) and Article 8 of the A.C. 'Giocatori Professionisti 2003', the employment relationship is established on the basis of the direct recruitment and by means of the execution of a written form, otherwise it is null and void, between the player and the club receiving his sports services, in accordance with the standard form example annexed to the Collective Agreement.

In the present case, therefore, we are dealing with a preliminary employment agreement pursuant to which Mr. Caboclo undertook to sign the employment contract form, thereby binding himself to play for Reyer for the sporting seasons 2023/2024 and 2024/2025 as expressly established at letter (d) of the agreement, whereby 'With the signing of this Preliminary Agreement, the Club and the Player undertake to enter into an Employment agreement for the sporting seasons 2023/2024 and 2024/2025, which shall enter into force under the terms and conditions set forth hereunder (the Employment Agreement)'. It follows that the arbitration panel must declare the illegitimacy of Mr. Caboclo's refusal to sign the employment contract form, as well as the existence of the obligation upon the player to sign the employment contract form, the normal consequence of which is to perform the sports services stipulated in the agreement"

38. The operative part of the Serie A Award reads as follows:

"***For the above reasons***

The Permanent Board of Conciliation and Arbitration set up by the Lega Basket Serie A, unanimously and definitively ruled in the dispute between the parties, disregarding all further requests, objections and allegations:

I. ascertains and declares the full validity of the preliminary agreement signed on

23.06.2023 between Società Reyer Venezia Mestre S.r.l. and Mr. Bruno Correa Fernandes Caboclo;

II. *ascertains and declares the ensuing obligation of Mr. Bruno Correa Fernandes Caboclo to sign the employment contract form with the club Reyer Venezia Mestre S.r.l. for the 2023/2024 and 2024/2025 sporting seasons;*

III. *ascertains and declares that Mr. Bruno Correa Fernandes Caboclo is under an obligation carry out any activities necessary to allow the club Reyer Venezia Mestre S.r.l. to register and use him;*

IV. *orders Mr. Bruno Correa Fernandes Caboclo to pay the costs of the functioning of the Arbitral Tribunal, quantified at €43,122.00, plus CNPA 4% and VAT 22%, to be shared in equal quotas in favour of the three arbitrators, without prejudice to the joint and several liability of the parties;*

V. *further orders Mr. Bruno Correa Fernandes Caboclo to pay the legal costs incurred by the Claimant in the amount of €10,180.00 (ten thousand one hundred and eighty//00), plus incidental legal costs, as well as the appeal fee paid by the appellant in the amount of €1,000.00.*"

D. The Proceedings before the FIBA Appeals Panel

39. On 21 November 2023, FIP and Reyer filed a statement of appeal before the FIBA Appeals Panel against the FIBA Decision.

40. On 25 January 2024, following a request by FIBA (to which the Appellants objected), the FIBA Appeals Panel Single Judge joined the Player and BC Partizan to the proceedings because "*the interests of both the Player and BC Partizan* [would be] *affected by the* [Decision under Appeal, as,] [i]*f the Appellants are successful, FIBA's letter of clearance will be revoked and the Player* [would] *not be able to continue playing for BC Partizan.*"

41. At a hearing on 27 March 2024, the FIBA Appeals Panel Single Judge received submissions from FIP, Reyer, FIBA and BC Partizan. The Player did not take part in the FIBA Appeals Panel proceedings. The Single Judge also heard evidence from Mr. Federico Casarin, President of Reyer; Mr. Maurizio Bertea, the Secretary General of FIP; and Mr. Umberto Gandini, President of Italian Basketball Serie A First Division (the "LBA").

42. Following the hearing, the FIBA Appeals Panel Single Judge issued his decision on 14 May 2024 (the "Appealed Decision") reaching, *inter alia*, the following conclusions:

i. "*The only question that is to be resolved in these proceedings is whether, by reason of the Preliminary Agreement, it can be said that the Player was, in the words of Article 3-60(a) FIBA IR "under contract to play for the player's club beyond the scheduled transfer date".*"

ii. "*….the Preliminary Agreement is somewhat enigmatic. Parts of the Preliminary Agreement are expressed to be obligations which subsist from the date of the Preliminary Agreement (e.g. Clause 2.3 and Clause 4). Whereas others clearly envisage the later Employment Agreement to be the source of those obligations (e.g. Clauses 9 and 10). The Single Judge considers that the surest guides to the interpretation of the Preliminary Agreement are the Recitals and Clause 2.1 of the Preliminary Agreement. Those clauses state, at the outset of the agreement, the parties' intention that there be a later agreement (the Employment Agreement) and that the later agreement will incorporate the terms and conditions set out in the Preliminary Agreement.*"

iii. "*Reviewing the remainder of the agreement with that in mind assists to resolve the tensions referred to in the previous paragraph. Most clauses, where no reference is made to the Employment Agreement (such as Clause 2.3), are included because those are the contractual terms which the parties intended would ultimately be reflected in the Employment Agreement. Other clauses, which do refer specifically to the later Employment Agreement do so because they are regulating specific aspects of the eventual Employment Agreement….*"

iv. The Single Judge therefore found that the Preliminary Agreement was an agreement by which the parties:

> "*i. Undertook to enter into a later Employment Agreement;*
>
> *ii. Agreed the terms (or, at least, the vast majority of the terms) of that later Employment Agreement; and*
>
> *iii. By clause 5.1, provided a liquidated damages clause that would apply where the Player did not comply with his obligation to enter into the later Employment Agreement.*"

v. "*Prior to his entry into the ultimate Employment Agreement, the Player was not contractually obliged to play for Reyer. After entry into the Employment Agreement, he would be obliged to do so, and would then be "under contract to play".*"

vi. "*For similar reasons, it cannot be concluded that Reyer was "the player's club" prior to an Employment Contract being finalised. At that stage, the Player could not be registered to play in Italy and Reyer was not his employer. Both of those things required further steps to be taken.*"

vii. Whilst the Single Judge noted that:

> "*It should not be thought that the determination in this case means that the execution of such preliminary agreements can never amount to a player being "under contract to play for the player's club", within the terms of Article 3-60(a) FIBA IR. Each matter will turn on the terms of the particular agreement being considered.*"

he decided that:

"*FIBA was correct to conclude that the Preliminary Agreement at issue in this proceeding was not one that meant that the player fell within Article 3-60(a) FIBA IR.*"; and

the Player was not "*under contract to play for the player's club*" for the purposes of "*Article 3-60 FIBA IR*".

viii. The Single Judge also addressed various other matters which arose in the appeal including alleged inconsistencies by FIBA, FIBA's power to investigate, the validity of the Preliminary Agreement, FIBA's discretion and whether the Preliminary Agreement was terminated.

43. On the basis of his conclusions, the FIBA Appeals Panel Single Judge dismissed the appeal thereby confirming the FIBA Decision. The operative part of the Appealed Decision reads as follows:

"*1. The appeal by FEDERAZIONE ITALIANA PALLACANESTRO and S.S.P. REYER VENEZIA MESTRE SRL against the decision of the Secretary General of FIBA issued on 7 November 2023 is dismissed.*

2. The Appellants are to bear the costs of the proceedings."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

44. On 4 June 2024, the Appellants filed their Statement of Appeal to the CAS in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code") against the Respondent, to challenge the Appealed Decision. In its Statement of Appeal, the Appellant requested that the matter be submitted to a Sole Arbitrator.

45. On 24 June 2024, the Appellants filed their Appeal Brief with the CAS Court Office, in accordance with Article R51 of the CAS Code.

46. On 23 August 2024, the Respondent filed its Answer with the CAS Court Office, in accordance with Article R55 of the CAS Code.

47. On 26 August 2024, in accordance with Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was therefore constituted as follows:

President:	Mr Jonathan Hall, Solicitor in Dubai, United Arab Emirates;
Arbitrators:	Mr Andrew de Lotbinière McDougall KC, Attorney-at-Law in Paris, France; and Mr Giulio Palermo, Attorney-at-Law in Geneva, Switzerland.

48. On 3 October 2024, after consulting the Parties, the CAS Court Office informed the Parties that a hearing would be held on 27 November 2024 in person at the CAS Court Office.

49. Following communication between the Parties and the CAS Court Office on behalf of the Panel, on 29 October 2024 the CAS Court Office informed the Parties that the Panel would allow Mr Bertea, the FIP Secretary General (who the Appellants wished to call as a witness), to give his testimony remotely should he be unable to attend the hearing in person. The Appellants were asked to make the necessary arrangements to secure Mr Bertea's attendance and were advised that if he was unable to appear for examination his witness statement would not be considered as witness testimony by the Panel but be treated as party submission.

50. On 6 November 2024, the CAS Court Office communicated to the Parties the Order of Procedure issued on behalf of the Panel.

51. On 6 November 2024 and 7 November 2024, the Respondent and the Appellants respectively submitted to the CAS Court Office a signed copy of the Order of Procedure.

52. On 27 November 2024, a hearing was held in person in the present matter in Lausanne at the premises of the CAS. In addition to the Panel and Dr Björn Hessert, CAS Counsel, the following persons attended the hearing:

For the Appellants:	Mr Luca Ferrari, Attorney-at-Law and Mrs Lydia Banerjee, Barrister, Mr Francesca Riccò, witness, Mr Maurizio Bertea, remotely, witness, and Mr Luca Canuto, interpreter;
For the Respondent:	Prof. Antonio Rigozzi and Mr Eolos Rigopoulos, Attorneys-at-Law, Mr Jaime Lamboy, FIBA Head of Legal, and Mr Benjamin Schindler, FIBA Senior Legal Counsel.

53. At the outset of the hearing, the Parties declared that they had no objections as to the appointment of the Panel which they had also confirmed in signing the Order of Procedure.

54. At the hearing, the Panel heard evidence from both Mr Francesco Riccò and Mr Maurizio Bertea on behalf of the Appellants. Before taking the respective evidence from the witnesses, the President of the Panel informed each witness (and the translator) of their duty to tell the truth, subject to sanctions of perjury under Swiss law. Then, the Parties and the Panel had the opportunity to examine and cross-examine each witness.

55. The content of Mr Francesco Riccò's testimony can be summarised as follows:

i. In his capacity as the General Secretary of the LBA, Mr Riccò was able to confirm that the standard form of employment contract (the "League Form") is provided for by Italian Law, FIP regulations and the Collective Bargaining Agreement between the LBA, FIP and the players association. It is drafted for each season jointly by the LBA, FIP and the players' association and is then printed by the LBA and

circulated to clubs for the start of the next season.

ii. Based on the information shared with the LBA by Reyer regarding the employment agreement entered into between Reyer and the Player, the League Form for the 2023/24 season had not yet been delivered to Reyer at the date of the conclusion of the Preliminary Agreement.

iii. He was aware that it was commonplace for Serie A clubs in the LBA from time to time to enter into agreements that were not based on the League Form in order to engage players (particularly foreign players) before the League Form was circulated by the LBA and that the terms set out in such agreements (which the LBA do not deal with) could be reflected in the League Form once it became available.

iv. He confirmed that the LBA supported the appeal on the assumption by Reyer that a "*contract to play*" for the purposes of Article 3-60 of the FIBA Internal Regulations was concluded with the Player.

v. He also confirmed that the League Form was one of the documents required in order for a player to play in the league.

vi. He further confirmed that the LBA had not seen the Preliminary Agreement in this case and that it only sees the relevant League Form once completed and not the pre-agreements that clubs may sign.

vii. He also explained that he was not aware of a player backing out of a pre-contract in his 18 years of experience but equally he acknowledged that he may not necessarily be aware of it if it were to happen as it might be a matter that remained solely between a club and a player.

56. The content of Mr Maurizio Bertea's testimony can be summarised as follows:

i. Mr Bertea introduced himself as the Secretary General of FIP.

ii. He confirmed that following a request for clearance that FIP received in relation to the Player from the NBA on 19 October 2023, FIP analysed the contractual position and determined that there was a valid contract between Reyer and the Player for the Player to play for Reyer for the 2023/24 season (being the Preliminary Agreement). FIP thought the Preliminary Agreement was a valid agreement to carry out the registration of the Player in the FIP system. Having also considered the position under Article 3-60a of the FIBA Internal Regulations, FIP determined that the request for clearance be rejected.

iii. On 31 October 2023 FIP received another request for clearance, this time from the Serbian Basketball Federation ("KSS") and once again FIP rejected the request for clearance on the basis that the contract satisfied the requirements in Article 3-60a of the FIBA Internal Regulations.

iv. When KSS challenged the decision with FIBA, FIP made written submissions to FIBA on 3 November 2023 explaining FIP's analysis of the matter. FIP then received a copy of FIBA's decision to grant the letter of clearance on 7 November 2023.

v. He explained that under the Collective Bargaining Agreement for professional basketball players, Serie A clubs must enter into employment agreements with players on the basis of a specific form which is published by the LBA each year typically just after the start of the relevant season.

vi. FIP's view is that the Preliminary Agreement qualified as a "contract to play" for the purposes of Article 3-60 of the FIBA Internal Regulations as it was a fully valid and binding agreement that established an employment relationship between Reyer and the Player.

vii. He explained that clubs would use a contract with players during the period they were waiting for the final registration of players based on federation procedures; registrations were usually possible from the start of July but parties wanted to bind themselves before then.

viii. He also confirmed that FIP considers that the liquidated damages clause in the Preliminary Agreement does not result in termination of the agreement – it simply provided for damages in favour of Reyer where the Player breached his obligation to sign the standard form of employment agreement.

ix. He confirmed that FIP had not taken legal advice on the application of Article 3-60 before reaching their view on it and he was not aware of anyone at FIP asking FIBA for their view beforehand either though he said it was possible that one of his colleagues may have done so.

57. The Parties, then, submitted by counsel their pleadings, insisting for the granting of the relief respectively sought.

58. At the end of the hearing, the Parties confirmed that they were satisfied with the procedure throughout the hearing, and confirmed that their right to be heard had been fully respected.

IV. THE PARTIES' SUBMISSIONS

59. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellants

60. In their Appeal Brief, the Appellants requested that the CAS:

> "*overturns, in whole or in part, the Decision under Appeal and accordingly issues the following ruling:*
>
> *(a) A finding that the Agreement entered into by and between Reyer and Mr Bruno Correa Fernandes Caboclo on 23 June 2023 is a fully valid and binding*

'contract to play' for the purposes of Article 3-60a. of the FIBA Internal Regulations;

(b) A finding to reject FIBA's claims in the present proceedings and, consequently, to annul the Decision under Appeal rendered by the FIBA Appeal's Panel on 14 May 2024 which upheld the FIBA Decision issued on 7 November 2023 to issue to the Serbian Basketball Federation the Letter of Clearance for the transfer Mr Bruno Correa Fernandes Caboclo;

(c) Alternatively, to the extent this Honourable Panel considers that the Agreement entered into by and between Reyer and Mr Bruno Correa Fernandes Caboclo on 23 June 2023 is not a 'contract to play' under Article 3-60a. of the FIBA Internal Regulations, a declaration of the minimum conditions that are necessary in order for a contract to qualify as a 'contract to play' for the purposes of Article 3-60a. of the FIBA Internal Regulations;

(d) In any event, an order that FIBA pay all the costs of the arbitration, inclusive of fees and expenses of the present proceedings in so far as the Honourable Panel considers reasonable."

61. The Appellants summarized their arguments in support of their requests as follows:

"2. The present dispute originates from the Player's breach of the Agreement (as defined below) and failure to play for Reyer during the 2023/2024 season (and beyond), following the Player's apparent change of mind (alongside a change of his agent).

3. The Player was the first transfer negotiated by Reyer in the 2023 summer period; as explained to his agent, he was intended to be the 'key' player of Reyer's first team, being a former successful NBA player. Once the Player's signature was confirmed, Reyer's entire team building strategy was planned around him. However, the Player then committed a very serious breach of the Agreement and failed to join up with Reyer on his agreed date of arrival, leaving fans waiting at the airport, and failing to play for Reyer at all during the 2023/2024 season. The Player did not correspond at all with Reyer and his agent's communications (as set out below) were vague and ambiguous as to the reason for the Player failing to honour his contractual commitment or his intention moving forward.

4. However, with that short summary of the background in mind, it is important to clarify at the outset that this appeal is not seeking any relief for a breach of contract or any compensation for damages. Contrary to the comments in the Decision under Appeal about Reyer's ability to enforce the terms of its agreement, this appeal is not seeking relief for breach of an agreement.

5. The purpose of this appeal is to determine whether the employment agreement entered into between Reyer and the Player on 23 June 2023 (the 'Agreement' - Exhibit 6) qualifies as a 'contract to play for the player's club beyond the scheduled transfer date' pursuant to Article 3-60a. of the FIBA Internal

Regulations ('FIBA IR'). In the edition in force upon commencement of the proceedings before FIBA regarding the issuance of the LoC1, Article 3-60a. of the FIBA IR provided, in relevant part, as follows:

> *'60. The reasons for which FIBA may refuse to grant the request for a letter of clearance are:*
>
> *a. the player is under contract to play for the player's club beyond the scheduled transfer date. See article 3-67;'*

6. *Article 3-60a. of the FIBA IR intends to set the circumstances in which a letter of clearance should not be granted.*

7. *By way of background, in order to have clearer picture of the background matters which underpin the present dispute, we highlight the fact that under Italian basketball regulations clubs must register players on the basis of a starter form employment contract from a template, which is published by the Serie A Basketball League ('Serie A League') on a yearly basis after the start of the sporting season, which starts on 1 July (the 'League Form').*

8. *The League Form is usually made available in the second half of July. Consequently, it is a long-standing and widely applied common practice for Serie A clubs to enter into 'preliminary' employment agreements with players, in order to be able to bind such player to a contractual commitment to play for the client at a time when the League Form is still unavailable. This allows both the player in question to prepare for the season and make any necessary travel and living arrangements in good time, and also the club in question to prepare for the upcoming season and complete all of its necessary team building plans.*

9. *This happened in the present case: Reyer entered into the Agreement with the Player on 23 June 2023, at a time when the League Form for the 2023/2024 sporting season had not been published yet. The standard form template was made available by the Serie A League at a later stage in July 2023 as confirmed:*

   - *in the Serie A League's Witness Statement (Exhibit 7), in which Mr Gandini confirmed at paragraphs 8 and 9 thereof that:*
     'As relates to the 2023/2024 season, at the date of the employment agreement concluded between Reyer and the Player, based on the information shared by Reyer in its letter of 22 September 2023, the Form for the 2023/2024 season had not been delivered to Reyer yet.
     I am aware that, at times, Serie A basketball clubs enter into employment agreements that are not based on the Form in order to be able to engage players (particularly foreign players) before the Form is circulated by Serie A, and that the terms for the contractual relationship between the player and the club which are set out in said contractual agreement are reflected into the Form when it becomes

available; and

- *by the witness Mr Gandini at the hearing held on 27 March 2024 (Exhibit 8, at hour 1, minute 19).*

10. *In other words, there are a series of steps and formalities which Serie A clubs are required to fulfil in order to engage new players (including in relation to medical clearances and VISA permits). Until the League Form is made available, the first one of these steps is the need for Serie A clubs to enter into (fully valid and binding) agreements, which must necessarily provide for the parties' obligation to reflect such contractual terms into the League Form and (in respect of any provision that cannot fit into it) into an annex to the League Form or, even if not attached to the League Form, additional ancillary specific terms and conditions that remaining binding between the parties. It follows that such employment agreements are a conditio sine qua non in order for clubs to be able to add new players to the roster.*

11. *This is a long-standing common practice, fully accepted and explained to the Singe Judge by Serie A League and FIP as it is indeed not designed to circumvent any rules, but rather to allow clubs to engage their new players in good time to build a team upon the start of the new season.*

12. *The Appellants deem that the Decision under Appeal is wrong as a matter of law particularly, amongst other reasons as set out hereinafter, in respect of the following statements, which in the Appellants' view are incorrect and inconsistent:*

    (a) *'the Preliminary Agreement at issue in this proceeding was not one that meant that the player fell within Article 3-60a. FIBA IR.'; and*

    (b) *'It should not be thought that the determination in this case means that the execution of such preliminary agreements can never amount to a player being "under contract to play for the player's club", within the terms of Article 3-60a. FIBA IR. Each matter will turn on the terms of the particular agreement being considered.' (paragraph 111 of the Decision under Appeal).*

13. *For the reasons set out hereinafter, the Appellants seek to obtain clarity on the interpretation and implementation of Article 3-60a. of the FIBA IR, especially in light of the overarching EU principle of contractual stability in team sports (see paragraph 72 below).*

14. *Furthermore, with this appeal the Appellants wish to have FIBA apply consistently its own case law in connection with Article 3-60a. of the FIBA IR, whereby – as FIBA admitted at the hearing (see paragraph 67 below) – FIBA constantly refuses requests for a letter of clearance in cases of players unlawfully breaching their contract. This principle should apply also in the present case.*"

B. The Respondent

62. In its Answer, the Respondent requested the CAS as follows:

> "*(i) To the extent it is admissible, the appeal filed by the Appellants against the Decision under Appeal and all of their prayers for relief are dismissed;*
>
> *(ii) The Decision under Appeal is confirmed;*
>
> *(iii) The Appellants shall, jointly and severally, bear all arbitration costs incurred with the present proceedings and pay a contribution towards the legal costs incurred by FIBA in connection with these proceedings.*"

63. The Respondent summarized its arguments in support of its requests as follows:

> "*4. The present case concerns the letter of clearance of 7 November 2023 issued by FIBA in respect of the Player ("Letter of Clearance") following which he signed to play with Serbian Basketball Club Partizan ("Partizan").*
>
> *5. In essence, the Appellants' position is that FIBA should have refused to issue the Letter of Clearance based on Article 3-60(a) of the FIBA Internal Regulations ("FIBA IR"), which reads as follows:*
>
> > *The reasons for which FIBA may refuse to grant the request for a letter of clearance are:*
> >
> > *a. the player is under contract to play for the player's club beyond the scheduled transfer date. See article 3-67[.]*
>
> *6. The Appellants' position is indeed that the Preliminary Agreement dated 23 June 2023 between Reyer and the Player ("Preliminary Agreement") should be considered "a contract to play" under Article 3-60(a) of the FIBA IR, which would justify refusing to issue the Letter of Clearance.*
>
> *7. The Appellants' position is untenable as FIBA will demonstrate in the ensuing paragraphs, where FIBA will start by (II) briefly recalling the relevant factual and procedural background of the present case, before (III.A) addressing the appeal's admissibility. It will then show that the appeal should be dismissed because (III.B) the Appellants failed to name the correct respondents, (III.C) the appeal is moot, and (III.D) in any event, the Letter of Clearance was rightfully issued. In the final sections of this Answer, FIBA (IV) deals with the costs incurred as a result of this arbitration, (V) the hearing requested by the Appellants, and (VI) lists its prayers for relief.*"

64. In relation to points (III.A) to (III.D) referenced by the Respondent above, the Respondent's position can be further summarised as follows.

i. <u>(III.A) – Admissibility of the Appeal</u>

In its written submission, the Respondent asks the Panel to examine this *ex officio* as it is not clear if the Appellants' submissions were filed in accordance with Articles R31(3) and R32(1) of the CAS Code.

ii. (III.B) – Failure to name proper Respondents
Both the Player and BC Partizan should have been named as additional respondents in the appeal. The appeal is mainly directed against the Player as the other party to the Preliminary Agreement and an annulment of the Appealed Decision would imply that the Player would not be able to play for BC Partizan who would not be able to keep the Player on its roster.

The appeal should be dismissed on that basis.

iii. (III.C) – Appeal is Moot
The dispute can only be one of a purely financial nature as players cannot be forced to play for a club. Where a player is in breach, they will be held liable for damages and possible sanctions. The relief sought could not achieve Reyer's financial objectives and the appeal should therefore be dismissed.

Furthermore, point (c) of the Appeal Brief's prayers for relief must be dismissed as CAS appeals are not meant for parties to seek advice from CAS Panels whose function is to adjudicate disputes.

iv. (III.D) – FIBA rightfully issued the Letter of Clearance
FIBA rightfully exercised its discretion in accordance with Article 3-60(a) of the FIBA Internal Regulations as the Article uses the word "*may*" and the only way for the Panel to review the discretion exercised by FIBA is if it was done arbitrarily, discriminatorily or as a breach of mandatory legal principles that would offend a basic sense of justice. The Appellants have not tried to demonstrate that and neither have they demonstrated their alleged evident and gross unreasonableness of the decision.

The Preliminary Agreement cannot qualify as a "*contract to play*" under Article 3-60(a). The Preliminary Agreement was terminated by the Player on 18 September 2023 which put the contract at an end. Even it had not been so terminated, the Preliminary Agreement was a contract to enter into an employment agreement and to be able to play, the Player needed to have signed the contemplated employment agreement which would have had to be filed in accordance with the applicable regulations. which did not happen. In any event the Preliminary Agreement is not an employment agreement.

V. JURISDICTION OF THE CAS

65. In relation to jurisdiction, the Appellants refer in their Statement of Appeal to Article R27 of the CAS Code which provides:

"*These Procedural Rules apply whenever the parties have agreed to refer a sport-*

related dispute to CAS. Such reference … may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings)."

66. Article R47 of the CAS Code also provides as follows:

"*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 it 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."

67. The Appellants also refer in their Statement of Appeal to:

Article 1-264 of the FIBA Internal Regulations which provides that:

"*A further appeal against the decision by the Appeals' Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following notice of the reasons for the decision (see article 1-224). The Court of Arbitration for Sport shall act as an arbitration tribunal and there shall be no right to appeal to any other jurisdictional body. If so requested by FIBA, the CAS shall establish an expedited procedural calendar in order to ensure the smooth running of any directly or indirectly affected competition(s).*";

and to the Appealed Decision itself which states as follows:

"*Notice of Right to Further Appeal (Article 1-259 of the FIBA Internal Regulations) A further appeal against the decision by the Appeals' Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following notice of the reasons for the decision (see article 1-259). The Court of Arbitration for Sport shall act as an arbitration tribunal and there shall be no right to appeal to any other jurisdictional body. If so requested by FIBA, the CAS shall establish an expedited procedural calendar in order to ensure the smooth running of any directly or indirectly affected competition(s).*"

68. CAS jurisdiction is not disputed by the Parties and is confirmed by the Parties' signature of the Order of Procedure. It follows from the above, by virtue in particular of Article 1-264 of the FIBA Internal Regulations that the CAS has jurisdiction to hear the appeal filed by the Appellants against the Appealed Decision.

VI. ADMISSIBILITY

69. Article R49 of the CAS Code provides, inter alia, 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 agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against*. […]".

70. As referenced at paragraph 65 i. above, any appeal against decision of the FIBA Appeals' Panel shall be lodged with the CAS withi 21 days from its notification to the parties.

71. The Appealed Decision was notified to the Appellants on 14 May 2024. Filed on 4 June 2024, thus within the 21-days relevant time limit, and in compliance with the requirements of Articles R47, R48, R51 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee, the Appeal is admissible.

VII. APPLICABLE LAW

72. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

73. As a result, the Panel finds (i) that Italian Law applies to the Preliminary Agreement and (ii) that the various regulations of FIBA, and chiefly Article 3-60(a) of the FIBA Internal Regulations, are primarily applicable. Swiss law applies subsidiarily, should the need arise to fill a possible gap in the various regulations of FIBA.

VIII. MERITS OF THE APPEAL

74. The object of the present arbitration is the Appealed Decision, in which a FIBA Appeals Panel, on appeal, upheld the decision of the Secretary General of FIBA whereby FIBA determined that a letter of clearance could be issued to the KSS to allow the transfer of the Player from Reyer to BC Partizan i.e. the FIBA Decision.

75. However before considering the merits further, it is first of all important to address the issue of standing (in this case standing to be sued). The Respondent claims that the Appellants have failed to name the proper respondents and should have included both the Player and BC Partizan as respondents. The Appellants did not name the Player and/or BC Partizan as respondents but initially indicated them as "Joined Parties". In its letter of 5 June 2024 the CAS Court Office informed the Parties that since those entities were not designated as formal respondents by the Appellants, and since Articles R41.2 and R41.3 of the CAS Code could not be invoked by the Appellants, the CAS Court Office would not consider them as parties to these proceedings.

76. Established CAS jurisprudence based on Swiss Law indicates that the question of standing to be sued (or to sue) is a matter related to the merits and not a question for the admissibility of an appeal (see, *inter alia*, CAS 2015/A/3910, CAS 2016/A/4602, CAS 2020/A/7356). The Panel is therefore satisfied that it is appropriate to deal with the question of standing to be sued as a matter related to the merits.

77. The same CAS jurisprudence as referred to above indicates that this issue must be resolved on the basis of weighing the interests of the persons affected by the relevant decision. This approach applies in particular where the appealed decision is not of a disciplinary nature as is the case here. The key question for the Panel to consider is whether it is appropriate, in light of the need for fairness and the right to be heard, to bind any party that is not involved in a hearing to the outcome of that hearing (see, *inter alia*, CAS 2015/A/3910 and CAS 2016/A/4602).

78. The dispute in this matter indeed involves parties other than the Appellants and the Respondent, specifically the Player and BC Partizan. However, in the Panel's opinion there is some doubt as to whether or not the Appellants should have added the Player and/or BC Partizan in this case. If the Panel were to allow the appeal, then the Player and/or BC Partizan may end up affected (and the Panel recognsies that that may cause some difficulties) but that would not necessarily be the clear outcome.

79. It is possible for the Panel to leave the question of standing to be sued undecided (see CAS 2020/A/7356), pending its decision on whether or not to allow or dismiss the appeal. If the appeal is dismissed, and the Appealed Decision therefore upheld, the question of standing becomes moot. On the other hand, if the Panel wishes to allow the appeal, then the Panel will need to return to the question of standing before doing so. The Panel has decided to adopt this approach in these proceedings.

80. Putting to one side for now the question of standing, the key issue for the Panel to determine is whether or not the Respondent was correct in granting and issuing the letter of clearance to enable the Player to sign and play for BC Partizan.

81. In this respect the Parties agree that the relevant provision is Article 3-60a of the FIBA Internal Regulations in force at the commencement of the proceedings before the Respondent (which resulted in the FIBA Decision) which states:

> "*60. The reasons for which FIBA may refuse to grant the request for a letter of clearance are:*
>
> *a. the player is under contract to play for the player's club beyond the scheduled transfer date. See article 3-67;….*"

82. The question for the Panel is whether or not the Appealed Decision was correct in dismissing the appeal by the Appellants and thereby confirming the earlier FIBA Decision that the Preliminary Agreement entered into between the Reyer and the Player on 23 June 2023 did not qualify as a "*contract to play for the player's club beyond the scheduled transfer date*" pursuant to Article 3-60a above.

83. On the one hand, the Appellants, *inter alia*, submit that the Preliminary Agreement was such a "*contract to play*" in line with the long-standing and widely applied common practice for Serie A clubs whereby clubs enter into such employment agreements with players in order to be able to bind players to a contractual commitment to play for the club at a time when the Serie A standard League Form was not yet available in the lead up to the relevant season. This allows both the player to prepare for the season, including making any necessary travel and living arrangements in good time, and also the club to prepare for the upcoming season and complete all of its necessary team building plans.

84. The Appellants further submit that this common practice was expressly recognised in the Serie A Award which confirmed that: "*Mr Caboclo undertook to sign the employment contract form, thereby binding himself to play for Reyer for the sporting seasons 2023/2024 and 2024/2025.*"

85. The Appellants also submit that the use of the word "*may*" in Article 3-60 does not provide an unfettered discretion for the Respondent. There is a list of reasons that follows in Article 3-60 which fetters the basis of the Respondent's discretion to that list when considering whether or not to refuse a letter of clearance.

86. On the other hand, the Respondent, *inter alia*, submits that the Preliminary Agreement was a contract to enter into an employment agreement and to be able to play. However it was not the necessary "*contract to play*" in the form of the standard League Form which would have had to be filed in accordance with the applicable regulations in order for the Player to be able to play, and which did not happen. The Respondent also submits that the Preliminary Agreement was in any event terminated by the Player (through his lawyer) on 18 September 2023 which put the contract at an end.

87. The Respondent further submits that Article 3-60a uses the word "*may*" which gives the Respondent discretion in arriving at its decision and the only way for the Panel to review the discretion exercised by the Respondent is if the decision was made arbitrarily, discriminatorily or in breach of mandatory legal principles that would offend a basic sense of justice. The Respondent adds that the Appellants have not tried to demonstrate that and neither have they demonstrated any evident and gross unreasonableness of the decision.

88. The Panel's view is that as Article 3-60 uses the word "*may*" there must therefore be some discretion allowed to the Respondent in determining whether or not to refuse to grant a request for a letter of clearance. Article 3-60 then provides what appears, by the way it is drafted, to be a finite a list of reasons pursuant to which the Respondent can exercise its discretion.

89. One such reason at Article 3-60a is that "*the player is under contract to play for the player's club*….".

90. The Panel accepts the relevance of the jurisprudence referred to by the Respondent which indicates that it is only possible for the CAS to review the decision by FIBA if the decision entailed "*arbitrariness, a misuse of its discretionary power*" which "*leads to discrimination or breaches any relevant mandatory legal principle*…."; this was the

test applied by the CAS in relation to a decision of FIFA (CAS 2018/A/5888). Another CAS Panel found that "*[t]he arbitrariness, discrimination or breach must be blatant and manifest, and offend a basic sense of justice*" in order for the CAS to review the decision of a sports governing body (CAS 2020/A/7090).

91. The Panel therefore accepts that the test it needs to apply is whether or not the Respondent exercised its discretion under Article 3-60a arbitrarily, discriminatorily or in breach of mandatory legal principles that would offend a basic sense of justice.

92. In considering the interpretation of Article 3-60a further, the Panel can understand why there are conflicting views on whether or not the Preliminary Agreement was a "*contract to play*" for the purposes of such Article.

93. On the one hand, there is the view as submitted by the Appellants that the Preliminary Agreement could be said to be a "*contract to play*" as it was a binding agreement requiring the Player to sign the standard League Form and to play for Reyer. For example, clause 2.3 of the Preliminary Agreement explicitly states that the Player "*irrevocably agrees and undertakes…to play at all times to the best of his skill and ability*" and there are other aspects of the Preliminary Agreement that are not subject to the standard League Form being entered into but which relate to the Player playing for Reyer such as payment of the transfer fee, the provision of a flat, travel arrangement etc.

94. On the other hand, it is clear, as submitted by the Respondent, that there were further recognized requirements that needed to be fulfilled before the Player was able to play and that this included the signing of the standard League Form. It is a challenge to demonstrate that a contract that does not of itself allow a player to play (i.e. the Preliminary Agreement) is a "*contract to play*" under Article 3-60a (as it is not in the standard League Form).

95. In his evidence, Mr Riccò, whilst supportive of the Appellants' case and acknowledging that the use of preliminary contracts was commonplace, also confirmed in his evidence at the hearing that the registration of a player required the official form (i.e. the standard League Form) and if a player was not registered he could not play.

96. The Panel also notes that the Player joined BC Partizan following payment of the sum of EUR 150,000 by BC Partizan to Reyer on behalf of the Player after the FIBA Decision. The Player played for BC Partizan during the 2023/24 season.

97. So far as the possible termination of the Preliminary Agreement by the Player (through his lawyer) on 18 September 2023 is concerned, it is unclear to the Panel whether this was enough to amount to a valid termination or whether it was simply a notice of breach. In light of its other considerations, the Panel does not make a finding on this issue.

98. What is clear to the Panel is that, had the wording of Article 3-60a stated in some way that there needed to be a contract to play in the form agreed in the relevant jurisdiction, then it may have helped in providing clarity.

99. However, it did not provide such clarity and the Panel is therefore left to consider whether in all the circumstances the Respondent exercised its discretion appropriately as set out in paragraph 90 above.

100. Based on everything that was submitted by the Parties on this matter, the Panel is comfortably satisfied that the Respondent did not exercise its discretion under Article 3-60a arbitrarily, discriminatorily or in breach of mandatory legal principles that would offend a basic sense of justice.

101. The Panel's view is that the decision by the Respondent (by virtue of both the FIBA Decision and then the Appealed Decision) that the Preliminary Agreement did not amount to a "*contract to play*" under Article 3-60a was not an unreasonable position for the Respondent to take in the circumstances – and they certainly did not exercise their discretion arbitrarily in reaching their decision.

102. In this respect, the Panel further notes that the FIBA Appeals' Panel found that the Appellants' witnesses themselves testified at the FIBA Appeals' Panel hearing that the Preliminary Agreement of itself did not entitle the Player to actually compete for the Club (see Exhibit A-2 to the Statement of Appeal, para. 97).

103. In addition, the Panel notes that the preamble of the Preliminary Agreement (at para. d)) states that it is signed in order to "*enter into an employment agreement*", which could imply the promise of an employment contract rather than an actual employment contract. These factors alone are enough to raise ambiguity about whether there existed a contract to play, such that the Respondent cannot be said to have acted arbitrarily.

104. The Appellants also requested in their Prayers for Relief (at (c)) as follows:

> "*Alternatively, to the extent this Honourable Panel considers that the Agreement entered into by and between Reyer and Mr Bruno Correa Fernandes Caboclo on 23 June 2023 is not a 'contract to play' under Article 3-60a. of the FIBA Internal Regulations, a declaration of the minimum conditions that are necessary in order for a contract to qualify as a 'contract to play' for the purposes of Article 3-60a. of the FIBA Internal Regulations;*"

105. The Panel has decided to uphold the Appealed Decision which held that the Preliminary Agreement did not amount to a "*contract to play*" under Article 3-60a. However, the Panel has not made a finding of its own on the issue. Since the above-presented relief is only requested in the event that the Panel issues its own decision on the matter ("*to the extent this Honourable Panel considers*…."), the Panel does not need to make such a declaration. In addition, declaratory relief can be granted only if the requesting party "*establishes a special legal interest to obtain such declaration*" (CAS 2013/A/3272, para. 69). Here, the Appellants have not articulated a special legal interest in obtaining such a declaration.

106. As a result, the appeal lodged against the Appealed Decision has to be dismissed and any further claims or requests for relief are also therefore to be dismissed. For completeness, the Panel also states that there is therefore no need for it to rule on the issue of standing

as referred to at paragraphs 74-78 above.

IX. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 4 June 2024 by Federazione Italiana Pallacanestro and S.S.P. Reyer Venezia Mestre SRL against the decision issued by the Single Judge of the FIBA Appeals' Panel on 14 May 2024 is dismissed.

2. (…).

3. (…).

4. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 28 April 2025

THE COURT OF ARBITRATION FOR SPORT

Jonathan Hall
President of the Panel

Andrew de Lotbinière McDougall KC
Arbitrator

Giulio Palermo
Arbitrator