BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0139/10)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Mr. Jamal Sampson, 7266 Ainsley Dr, Huntington Beach, CA 92648, USA

- Claimant 1 -

Octagon Inc, 1751 Pinnacle Drive Suite 1500, Mclean, VA 22102, USA

- Claimant 2 -

vs.

Samahang Basketbol NG Pilipinas Inc
Ground Floor, PSC Building A, Philsports Complex, Meralco Avenue,
Pasig City, Philippines

- Respondent -

BASKETBALL
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1. The Parties

1.1 The Claimant

1. Mr. Jamal Sampson (hereinafter the “Player”) is a professional basketball player and a citizen of the USA.

2. Octagon Inc (hereinafter the “Agency”) is a basketball players’ agency based in Virginia, USA.

3. In these proceedings, both Claimants are represented by an agent for the Second Claimant, Mr Alexandros Saratsis.

1.2 The Respondent

4. Samahang Basketbol NG Pilipinas Inc (hereinafter the "Respondent") is the body governing basketball in the Philippines. The Respondent is responsible for the national basketball team of the Philippines and is represented in these proceedings by Mr. Xavier Favre-Bulle of Lenz & Staehelin, attorneys at law in Geneva, Switzerland.

2. The Arbitrator

5. On 25 November 2010, the President of the Basketball Arbitral Tribunal (the "BAT") appointed Raj Parker as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules"). None of the Parties has raised objections to the appointment of the Arbitrator.

3. Facts and Proceedings

3.1 Background Facts

6. On 4 December 2009, the Player and the Respondent entered into a contractual agreement entitled "Team Pilipinas Player's Contract" (the "Contract"), under which the Respondent agreed to pay the Player certain salary and bonus payments in return for the Player playing basketball for the Men's National Team of the Philippines (the "Team") during the 2009/2010 basketball season. The Contract stated that the ultimate objective of the Respondent was to play in the Asian Games in 2010, FIBA-Asia Championships in 2011 and London Olympics in 2012.

7. The Player played as part of the Team in December 2009. His performances were marred by injuries (about which there is a dispute between the Parties). The Player returned to the USA in January 2010. He has not played for the Team since then.

8. The main dispute between the Parties, which is set out in further detail below, relates to whether the Respondent is required to pay the Player for the remainder of the period covered by the Contract. The Agency also claims fees that are said to be outstanding.

3.2 The Proceedings before the BAT

9. On 22 October 2010, the Claimants filed a Request for Arbitration in accordance with the BAT Rules.

10. By letter dated 29 November 2010, a time limit until 20 December 2010 was fixed for the Respondent to file the Answer to the Request for Arbitration. By the same letter, and with a time limit for payment until 13 December 2010, the following amounts were

fixed as the Advance on Costs:

"Claimant 1 (Mr. Jamal Sampson)	*EUR 5,000*
Claimant 2 (Octagon, Inc.)	*EUR 1,000*
Respondent (Samahang Basketbol NG Pilipinas Inc)	*EUR 6,000"*

11. Upon request by the Parties, the arbitrator extended the time limits for the payment of the advance on costs. The Claimants paid their respective shares on 13 and 20 December 2010, while the Respondent, paid its share on 14 January 2011.

12. The Arbitrator issued various procedural orders seeking further information from the Parties. These were dated 4 February 2011, 11 March 2011, 18 May 2011 and 22 June 2011. Both Parties responded to these orders. On 12 July 2011, the Arbitrator closed the proceedings and asked the Parties to submit a summary of their costs.

13. On 25 July 2011, the Claimants submitted a summary of their costs in the amount of USD 18,875, being the costs incurred in respect of these proceedings in addition to the Advance on Costs. On 20 July 2011, the Respondent submitted a summary of its costs setting out total costs incurred of CHF 62,790.09 and PHP 632,049.62.

14. On 21 July 2011, the Claimants were given an opportunity to comment on the Respondent's summary of costs. The Claimants filed their comments on 27 July 2011. On 26 July 2011, the Respondent was given the opportunity to comment on the statement of costs of the Claimants. The Respondent did not do so.

15. The Parties did not request a hearing. The Arbitrator decided in accordance with Article 13.1 of the BAT Rules not to hold a hearing and to deliver the award on the basis of the written submissions of the Parties.

4. The Positions of the Parties

4.1 The Claimants' position

16. The Player submits that the Contract between him and the Respondent is valid and binding for the season 2009/2010 and that the Contract provided that the Player would continue to be paid if he was injured. He submits that he injured his _____ in December 2009 and this prevented him from continuing to play for the Team.

17. The Player claims the following:

> *"10 salaries mentioned above as well as his monthly food allowance: Total amount - $211,475 … [The Claimant] is also seeking a repayment of the costs of the Arbitration … [and] 5% yearly interest to be paid on the monies owed to Jamal Wesley Sampson. Such yearly interest will be compounded from 28 February 2010.*
>
> *[The Claimant] is also requesting tax documentation clearly stating taxes paid on his behalf by the club for ALL monies paid and owed to the Claimant."*

18. The Agency claims the following amount, said to be owing under the Contract:

> *"[I]mmediate payment of $24,000 … as agreed upon in the Contract, detailed in article 16.1 … as well as a repayment of any costs associated with this Arbitration included but not limited to legal fees and FAT filing costs"*

4.2 The Respondent's position

19. The Respondent submitted an answer to the Arbitrator in which it raised various matters regarding the conduct of the Player during the time he played for the Team. These matters can be summarised as follows:

a) That the Player was not injured, but pretended to be injured because he did not wish to play against strong teams;

b) That the Player made various other demands of the team which were not justified under the Contract;

c) That the Player missed various training sessions or games without good reason;

d) That the Player sought employment from another club, which was itself a breach of contract.

20. The Respondent also submits that if the Player was injured and for that reason was not able to play for the Team, the Contract did not require payment to the Player. The Respondent bases this submission on the fact that the "guaranteed" salary is merely contained in a recital to the Contract, and therefore it was clearly not the intention of the Parties that the guarantee would be binding.

5. Jurisdiction and other Procedural Issues

5.1 The jurisdiction of BAT

21. Pursuant to Article 2.1 of the BAT Rules, "[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland". Hence, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

22. The Respondent did not challenge the jurisdiction of BAT. Hence the Arbitrator asserts jurisdiction over the present dispute (Art. 186(2) PILA). For the sake of completeness, the Arbitrator will nevertheless examine the validity of the arbitration agreement contained in the Contract (see paragraphs 23-31 below).

5.2 Arbitrability

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

24. The Arbitrator notes that the dispute referred to him is clearly of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[1]

5.3 Formal and substantive validity of the arbitration agreement

25. The existence of a valid arbitration agreement is to be examined in light of Article 178 PILA, which reads as follows:

> *"1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.*
>
> *2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law."*

26. The jurisdiction of the BAT over the dispute between the Claimants and the Respondent results from clause 13 of the Contract which reads as follows:

> *"13. Applicable Law and Disputes*
>
> *13.1 For what is not expressly provided in this Agreement, this Agreement is governed by the law of the Republic of the Philippines.*
>
> *13.2 This Agreement shall be subject to the laws of Swiss* [sic] *and the regulation of FIBA and Court of Arbitration for Sport (CAS). Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva,*

[1] Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

Switzerland and shall be resolved definitely in accordance with the FAT Arbitration Rules. The arbitrator shall decide the dispute ex aequo et bono. Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. To the extent legally possible under Swiss law recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal shall be excluded. The party that fails to prevail shall pay the costs, expenses and reasonable attorneys' fees of the opposing party."

27. On 1 April 2011 this tribunal changed its name from the FIBA Arbitral Tribunal to the Basketball Arbitral Tribunal. In accordance with Article 18.2 of the BAT Rules, clause 13.2 is to be understood as referring to the Basketball Arbitral Tribunal.

28. As the present dispute relates to amounts owing under the Contract, the Arbitrator concludes that clause 13 of the Contract establishes the jurisdiction of the BAT over the dispute between the Player and the Respondent.

29. The Arbitrator finds that the same conclusion applies to the dispute between Respondent and the Agency, which also arises from the Contract itself. Respondent did not argue otherwise in this respect either.

30. The Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.

31. With respect to substantive validity, the Arbitrator considers that there is no indication which could cast doubt on the validity of the arbitration agreement under Swiss law (cf. Article 178(2) PILA). In particular, the wording "[a]ny dispute arising from or related to the present contract" clearly covers the dispute between the Claimants and the Respondent.

6. Discussion

6.1 Applicable Law – ex aequo et bono

32. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the Parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the Parties may authorize the arbitrators to decide *"en équité",* as opposed to a decision according to the rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

> *"the parties may authorize the arbitral tribunal to decide* ex aequo et bono*."*

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

> *"Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law."*

34. As mentioned above (see paragraph 26), the Contract expressly contemplates that the BAT arbitrator shall decide any dispute arising *ex aequo et bono.* It also states that "*for what* is *not expressly provided*" in the Contract, the law of the Republic of the Philippines shall apply. It is a matter of interpretation of the Contract to determine how deciding the case *ex aequo et bono* fits with the reference to Philippines law.

35. The Arbitrator considers that in the present case the Parties' intention was, by clause 13.1, to ensure that Philippines law applied to govern the Contract where matters under the Contract did not become contentious. However, as is made clear by the terms of clause 13.2, any disputes deriving from the performance of the Parties' obligations under the contract would be decided *ex aequo et bono* if submitted to the BAT.

36. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding. In coming to that decision, the Arbitrator will have regard to any evidence of Philippines law submitted by the Parties, but will not be bound by any such evidence, for the reason given above. The Arbitrator notes that this approach appears to be in accordance with that suggested by the Respondent[2] and there is nothing in the Claimants' submissions suggesting that such an approach is inappropriate.

37. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the *Concordat intercantonal sur l'arbitrage*[3] (Concordat),[4] under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

> *"When deciding ex aequo et bono, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*[5]

38. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives "a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case".[6]

39. This is confirmed by Article 15.1 of the BAT Rules *in fine* according to which the arbitrator applies "general considerations of justice and fairness without reference to any particular national or international law".

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2 See paragraph 52 of the Respondent's Answer.

3 That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

4 P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

5 JdT 1981 III, p. 93 (free translation).

6 POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

40. In light of the foregoing considerations, the Arbitrator makes the following findings:

6.2 Findings

The issues to be resolved

41. There are six elements of the Request for Arbitration that must be resolved:

a) Whether the Contract was guaranteed against the Player being injured.

b) Whether the Player breached the Contract by not playing certain matches owing to a _____ injury.

c) Whether the Player breached the Contract by not playing certain matches for reasons other than a _____ injury or in making other demands of the Respondent.

d) Whether the Player breached the Contract by missing a “tune up” game.

e) Whether the Player sought employment from another club, and thereby breached the Contract.

f) Whether the Player sought to be released from the Contract, demonstrating that his injuries were not genuine.

42. The Arbitrator deals with each of these matters in turn.

A. Guaranteed Contract?

43. After reciting a number of matters in relation to the identity of the Parties to the Contract and the purpose of the Contract, the Contract contained the following words:

> *"WHEREAS, the contract if [sic] fully guaranteed for all injury, mental illness, lack of skill, and death.*
>
> *NOW THEREFORE for and in consideration of the foregoing premises and those hereinafter stipulated, the Parties hereto have agreed as they hereby agree as follows:"*

44. Clause 1 imposes the following obligations on the Player:

> *"(a) Make himself at all times eligible to play as a Naturalized Filipino for the Philippine National Basketball Team in accordance with the appropriate FIBA Statutes and Internal Regulations (except when the Player has authorization to leaver as per the conditions of this contract);*
>
> *(b) Attendance at any training camp, at any practices and meetings conducted by the Team or SBP (except when the Player has authorization to leaver as per the conditions of this contract);*
>
> *(c) Playing all games at a national and international level scheduled by and for the Team or SBP (except when the Player has authorization to leaver as per the conditions of this contract);*
>
> *(d) Playing all exhibition games scheduled by the Team or the SBP (except when the Player has authorization to leaver as per the conditions of this contract);*
>
> *(e) Attendance at every event organized or promoted or conducted by the SBP for the Team including, but not limited to, media sessions (except when the Player has authorization to leaver as per the conditions of this contract);*
>
> *(f) Attendance and participation in all promotional activities of the Team or the SBP.*
>
> *(g) Any other service or activity provided for in this Agreement."*

45. Clause 2 contains the following payment and other obligations of the Respondent:

> *"48.1 For the rendering of the services and athletic activities provided by in this Agreement, the SBP shall pay the Player the total amount of **Two Hundred Forty Thousand US Dollars (US$ 240,000,000)** as compensation to be paid in Twelve (12) instalments, with the advances, deadlines and mode and manner of payment to be*

specified as follows:

December 15, 2009	*$15,000USD and P235,000*
January 31, 2010	*$15,000USD and P235,000*
February 28, 2010	*$15,000USD and P235,000*
March 31, 2010	*$15,000USD and P235,000*
April 30, 2010	*$15,000USD and P235,000*
May 31, 2010	*$15,000USD and P235,000*
June 30, 2010	*$15,000USD and P235,000*
July 31, 2010	*$15,000USD and P235,000*
August 31, 2010	*$15,000USD and P235,000*
September 30, 2010	*$15,000USD and P235,000*
October 31, 2010	*$15,000USD and P235,000*
November 30, 2010	*$15,000USD and P235,000*

Bonus Plan:
Php4,000 – Eliminations/Quarter-Finals (if feasible)
Php6,000 – Semi-Finals
Php8,000 – Finals

- *Won game bonuses are for the following tournaments: PBA Champions Cup (all Filipino), Jones Cup, FIBA Asia Champions Cup, and SEABA*

All bonuses will be paid with the salary payment immediately subsequent to when the bonus was earned

…

48.2 The SBP shall provide food allowance of Forty Five Thousand Pesos (P45,000,000) per month to player."

46. The Respondent submits that the Contract is not guaranteed against injury on the following bases:

a) The fact that the "guarantee clause" of the contract was added by the Player's agent at the last minute demonstrates that there was no common intention to guarantee the contract against injury; and

b) The part of the Contract that refers to the Contract being guaranteed is only a 'whereas' clause contained in the recitals to the contract, and not in the main body of the provisions so that as a matter of Philippines law it is of no binding effect.

47. In respect of the first point, the Arbitrator considers that questions of contractual intention should be objectively ascertained. Absent questions of misleading conduct or mistake, the strongest evidence that the Respondent agreed to the Player's salary being guaranteed is that it signed the Contract which included such an obligation. If the Respondent did not agree to the clause being inserted at the last minute, it was not obliged to sign the Contract. Indeed, the Arbitrator considers that the specific amendment being requested by the Player and granted by the Respondent (rather than being part of a "template" document) provides stronger evidence of a common intention of the Parties. The Arbitrator also notes that the final words of the introduction to the Contract refer to the Parties' obligations in the main body of the contract being given "*for and in consideration of the foregoing premises*". The fact that the clause was added at the last minute is therefore no reason that it should not operate in accordance with its terms.

48. The next question is whether the clause is rendered inoperative by virtue of its position in the recitals. Both the Player and the Respondent have presented submissions of Philippines law on this point which draw on a variety of US and Philippine authorities. The Respondent's submissions on this point stem from the dissent of Justice Davide in the case of *Republic of the Philippines v Sandiganbayan*, G.R. No 92594, 4 March 1994:

> *"It is a settled rule in the construction of contracts that in a case of conflict between the operative part of the contract and the recitals thereof, the former will prevail … The recitals are but merely introductory and preparatory statements of a deed and are not an essential part of the operating portions of the contract. They may be used as a guide in interpreting ambiguous portions of the operative part, but cannot supersede the latter."*

49. Both Parties agree that US jurisprudence is persuasive in the Philippine jurisdiction.

50. The Claimants refer to a number of US authorities to the effect that the purpose of contractual construction is to ascertain the Parties' intentions, and that in doing so, recitals to a contract can be important. The Claimants also rely on the case of *Kuwait*

Airways Corporation v Philippine Airlines Inc, G.R. No 156087, 8 May 2009 to support the Claimants' submission that where a recital is an expression of the contracting Parties' intentions, then a Court should be willing to give effect to it. The Respondent responds that this is a misapplication of the case and refers, in particular, to the following extract from the judgment:

> *"The original intention of the "Whereas" clause was to reflect what was then a given fact relative to the nationalized status of Philippine Airlines. With the change of ownership of Philippine Airlines, the "Whereas" clause had ceased to be reflective of the current situation as it now stands as a seeming invitation to the Philippine government to erode private vested rights. We would have no problem according the interpretation preferred by Kuwait Airways of the "Whereas" clause had it been still reflective of the original intent to waive vested rights of private persons, rather than the rights in favor of the government by a GOCC. That is not the case, and we are not inclined to give effect to the "Whereas" clause in a manner that does not reflect the original intention of the contracting parties."*

51. The Arbitrator considers that this analysis does not assist the Respondent. The reasoning of the Supreme Court reflected above directs attention to the intention of the Parties and the relationship of the Parties at the time of the Contract. Here, the Parties had not previously had contractual relations. There appears to be no purpose of having a recital referring to a "*contract if fully guaranteed for all injury*" other than if the contract referred to is the present contract.

52. For this reason, the Arbitrator accepts that the wording of the recital represents a proper construction of the Parties' contractual intention. Having considered the evidence of Philippines law provided by the Parties, the Arbitrator considers that the fact that the clause appears in the recitals to the Contract does not remove the contractual effect of the obligation. In particular, the Arbitrator considers that there is no conflict between the Recital and the remainder of the Contract that requires the Recital to be read down by reference to such a conflict.

53. The Arbitrator also notes that, no matter the requirements of Philippines law, he is satisfied that this is the correct conclusion, deciding the matter *ex aequo et bono*. It is

appropriate and equitable to give effect to an agreement that appears to represent the intentions of the Parties that was specifically drafted, rather than to make a nullity of the provision simply because of its position within a recital and outside the body of the text. In particular, the Respondent has not identified any other part of the Contract with which the clause conflicts, which may have led to a different conclusion.

B. Injury – the approach to be applied under the Contract

54. In respect of the Player's physical condition, the relevant clauses of the Contract are clauses 3 and 4, which state:

> *"3. Healthcare/Hospitalization*
>
> *3.1 The SBP shall shoulder all non-cosmetic (unless the result of basketball injury) medical expenses for the Player that cover all injury and illness. The doctor and hospital shall be selected by the SBP.*
>
> *4. Player's physical condition*
>
> *4.1 During the term of this Agreement, the Player shall maintain his physical, mental and psychological condition at his highest level for the best performance of his sports activity for the benefit of the Team.*
>
> *4.2 The Team has the right, from time to time, to check through a qualified physician the medical, physical and psychological condition of the Player and to require him to submit to medical physical and psychological tests. The Player shall follow any medical and dietetic advice received.*
>
> *4.3 The Player shall not practice risky activities or sports such as, but not limited to, sky dividing, car racing, soccer, boxing, water skiing and wrestling."*

55. The Parties agree that the Player did not play a number of matches (or missed large parts of a number of matches) by reason of injury. The Respondent claims that any injury was not serious enough to prevent the Player playing matches, so that by refusing to play matches on this basis, the Player was in breach of clause 1 of the Contract.

56. Before considering the evidence on this topic, it is necessary to consider the approach the Arbitrator must take to determine this issue.

57. The Player accepts that he did not play a number of games for the Team and part of his claim is that his _____ was injured such that he could not continue playing for the Team. Thus, it is an element of the Player's claim that he had a valid reason under the contract not to play those games. It is for the Player to prove that for the matches that he missed, his _____ was sufficiently injured to excuse his obligations to play for the Team.

58. Clause 3.1, above, refers to the Respondent's obligation to pay for all treatment required by the Player due to injury and/or illness. However, with the exception of clause 3.1, the Contract does not refer to injury any further and does not specifically define what type of injury would be sufficient to excuse the Player's obligations to play.

59. In the context of the contractual provisions set out above, the Arbitrator considers that the obligation contained in the Recital to the Contract is that the Contract is guaranteed for all injury, save for any injury that is so insignificant that no reasonable player in the position of the Player could have his ability to perform impaired.

C. _____ Injury – the medical evidence

60. While the Player played with the Team, there were a number of people who were consulted regarding his physical condition.

61. Prior to signing the Contract, in November 2009, the Player underwent physical examinations, the result of which, according to the Team's physical therapist was that

he was in "good physical health".[7] During November and December 2009 and January 2010, the Player did not play in various games, for reasons other than a _____ injury. These are dealt with further below.

62. On 14 January 2010 the Team played a friendly match in Dubai against the United Arab Emirates National team, in preparation for a tournament in Dubai in which the Team was competing. The Respondent contends that prior to that match, the Player said that he did not want to play in a later match against Al Jala'a and asked the Conditioning Coach to tell the Head Coach that he "*had a sprained ankle or something.*" The Player denies that he said anything about not playing against Al Jala'a, but that he did inform the Conditioning Coach that his _____ was hurting.

63. The Player played in the first game, but during and after this game, the Player claimed that his _____ was injured.

64. After that date, the Respondent arranged for the Player to see Dr Daffodil Guevarra, a doctor in a hospital in Dubai. The Parties have different accounts of what occurred at the consultation with Dr Guevarra. In summary:

    a) The Player says that Dr Guevarra "*acknowledged that Mr Sampson's _____ was swollen and stated that she could not know more without an x-ray and MRI*,"[8]

    b) The Respondent says that Dr Guevarra diagnosed a "*mild strain of the calf muscle and concluded that there was no injury that would prevent Mr Sampson from*

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7 Witness statement of Albert Rolle dated 21 December 2010, paragraph 1.

8 Witness statement of Jamal Sampson dated 18 February 2011, paragraph 13.

practicing and playing basketball".[9]

65. Neither party has produced any documentation with respect to the consultation with Dr Guevarra. Mr Saret (the Respondent's Conditioning Coach) has said that it was provided to Mr Rolle, the team physiotherapist, but the Respondent has not produced a copy of this document. The Respondent's lawyers have said that they have sought a copy of the documentation from Dr Guevarra, which has been unsuccessful.

66. The Parties agree that Dr Guevarra sought an MRI and x-ray of the Player's _____. The Player's evidence is that the x-ray was not obtained because Mr Saret, who accompanied the Player to the hospital, did not have sufficient funds to pay for the x-ray.[10] The Respondent's evidence is that the x-ray was not obtained because the Player did not wish to wait in line at the hospital in Dubai.[11]

67. The Respondent also relies on evidence from the Head Coach and Conditioning Coach that during this period, the Player was moving normally and was not moving like a player with the _____ injury that he claimed.[12]

68. The Player did not play matches on 15 January 2010 (another preparatory game) or 17 January 2010 (the first game of the Dubai tournament). For matches on 18, 19 and 20 January 2010, the Player played for short periods, often coming from the bench (according to the Respondent, following requests from the Player as to when he would

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9 Witness statement of Raiko R Toroman dated 21 December 2010, paragraph 14; Witness statement of Jim Saret dated 21 December 2010, paragraph 5; Witness statement of Albert Rolle dated 21 December 2010, paragraph 6.

10 Witness statement of Jamal Sampson dated 18 February 2011, paragraph 13.

11 Witness statement of Jim Saret dated 21 December 2010, paragraph 6.

12 Witness statement of Jim Saret 21 December 2010, paragraph 8; Witness statement of Raiko R Toroman dated 21 December 2010, paragraph 15.

be fielded and replaced in those games[13]). He did not play the final three games of the Dubai tournament (22, 23 and 24 January 2010).

69. Following the Team's return from the Dubai tournament, the Player attended the Cardinal Santos Medical Center with representatives of the Team on around 27 January 2010. This consultation was with Dr Edgar Eufemio. In a letter dated 30 January 2010 prepared after that consultation, Dr Eufemio stated:

> *"He consulted with complaints of _____ pain with occasional _____ and weakness.*
>
> *His physical examination findings are consistent with the above diagnosis. This can be treated conservatively and the patient is allowed to engage in strenuous physical activities within pain tolerance.*
>
> *The team requested for an MRI which showed essentially normal findings except for internal degenerative changes of the posterior horn of the medial meniscus."*

70. The Player's evidence is that apart from the matters contained in the letter dated 30 January 2010, Dr Eufemio also told the Player that "*for athletes, this type of inury could linger for months if Mr Sampson continued his normal physical activity"* and that "*with rest, the injury would heal in one to two months*".

71. The Respondent has provided a witness statement from Dr Eufemio dated 17 March 2011. Dr Eufemio states:

> *"2. Mr Sampson consulted me with complaints of _____ pain with occasional _____ and weakness. However, when I conducted a physical examination on him, his _____ was stable with no swelling and minimal tenderness at the back of the _____. I diagnosed him to have _____ which is basically a diagnosis of exclusion. It is a very benign condition that can be treated conservatively (by anti-inflammatories and a physical therapy program). For this reason, I allowed Mr Sampson to engage in strenuous physical activities (such as practicing and playing basketball) within his pain tolerance. Measurement of pain, however, is mainly subjective, and depends entirely on the patient's pain tolerance.*

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13 Witness statement of Noli Eala dated 21 December 2010, paragraph 16.

> *3. Consistent with the results of the physical examination, Mr Sampson's MRI results likewise showed essentially normal findings except for internal degenerative changes of the posterior horn of the medial meniscus, which means that there was only minimal bruising. This is a condition that most professional athletes have and would not prevent a patient from engaging in strenuous physical activities like practicing and playing basketball."*

72. In February 2010, the Player left the Philippines. What happened after his departure is dealt with further below. However, in respect of his _____ injury, the Player has submitted documents from a doctor in Los Angeles showing the Player undergoing surgery to repair _____.

73. The Player has also put forward a copy of what appears to be a Facebook message (a form of electronic communication) sent from Mr Saret to the Player on 31 March 2011. In response to what appears to be a comment from the Player that "*you know as well as anyone my _____ was hurt and swollen*" the message states:

> *"Hey bro I am really sorry about how everything is being handled, it is out of my control. I told them many times I felt your _____ was hurt*."

74. The Respondent has provided a witness statement from Mr Saret stating that he did not send this message and that he was not "*real friends*" with the Player so as to correspond with the Player in any form.[14]

75. Finally, the Player also refers to various newspaper reports of the Team's results in which the Player's _____ injury is referred to as evidence of that injury. The Player has also provided evidence of a video which is said to demonstrate the Player's _____ injury.

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[14] Witness statement of Jim Saret dated 5 June 2011.

D. The Arbitrator's conclusions in respect of the Player's _____ injury

76. The Arbitrator considers that the most pertinent evidence in respect of this issue is that of Dr Eufemio. The Respondent portrays Dr Eufemio's evidence as being that Dr Eufemio gave the Player a 'clean bill of health' in respect of his _____. However, the Arbitrator does not consider that this is accurate. The key part of Dr Eufemio's evidence is that the Player was allowed to engage in strenuous physical activities "*within his pain tolerance*". As Dr Eufemio points out, pain is a subjective matter – where many players with the same condition might find themselves able to continue playing, other players may not.

77. Here, the Player's refusal to play matches at the end of January is some evidence to demonstrate that the _____ injury was such that playing basketball was not within his pain tolerance. The question is whether the evidence put forward by the Respondent is sufficient to show that this refusal was due to reasons other than his injury.

78. For the reasons set out in the remainder of this section, the Arbitrator is not satisfied that the various matters referred to by the Respondent demonstrate that the Player had fabricated the injury so as to avoid playing.

79. The Arbitrator has considered the various matters put forward by the Parties. In summary:

a) The Arbitrator does not consider that the newspaper reports or video to which the Player refers are useful. The newspaper reports are likely to be based on information from the team and the Arbitrator considers it is likely that the Team would inform reporters of an injury even where the injury was still to be investigated. The Arbitrator does not consider that the video provided by the Player provides any significant evidence of injury.

b) The Arbitrator does not consider that the evidence of Mr Rolle and Mr Saret in their observations of the Player provide sufficient reason to doubt that the Player's _____ was sufficiently painful to prevent him from playing. As referred to above, such matters are subjective so that the Player's direct evidence on this is to be preferred to the observations of Mr Saret and Mr Toroman.

c) In respect of the allegation that the Player said that he would not play against Al Jala'a, the witness statements of Mr Saret and the Player are in direct contradiction of each other.[15] Having considered those statements, the Arbitrator is not satisfied that the conversation occurred and therefore does not consider this demonstrates that the Player's _____ injury was fabricated.

d) The Parties have different accounts of the circumstances of the visit to Dr Guevarra and the reasons that an MRI and x-ray were not taken at that stage. The Arbitrator is unable to resolve these factual differences based on the material before him. This is particularly so given that the contemporaneous document recording the consultation with Dr Guevarra is unavailable. Because of this, the Arbitrator does not place significant weight on either of the Parties' accounts of the visit to Dr Guevarra.

e) The Parties' evidence in respect of the purported Facebook message is equally inconclusive. As the Arbitrator is not able to determine these matters, this evidence does not affect the conclusion one way or another.

f) In respect of the evidence from the Player's doctors in Los Angeles, the Arbitrator does not consider that material from April 2010 is particularly helpful in determining whether the Player was injured in January or February 2010.

80. The Arbitrator's conclusion is that the evidence shows that the Player's _____ was injured so as to excuse him from playing at the end of January 2010.

81. The Arbitrator notes that the Respondent would have been entitled to require the Player to return to the Philippines later in 2010 so that they could continue to monitor his progress and ensure he returned to playing matches once the injury allowed him to do so. The Player's scheduled rest in February 2010 may have assisted and treatment of the injury could have taken place. If the Respondent had continuing concerns as to whether the injury was genuine, further medical opinion could have been sought. This did not occur due to the Respondent's termination of the Contract.

E. Other complaints about the Player's conduct

82. The Respondent makes various complaints about the Player's conduct in November and December 2009, such as the fact that he missed games due to stomach-ache[16] or required particular meals[17] or living arrangements.[18]

83. The Arbitrator does not consider that any of these complaints are sufficient to prevent the Player from recovering salary otherwise due to him. If the Respondent considered that the Player was acting otherwise than in accordance with the Contract, it could have refused to accommodate the demands of the Player. However, there is no evidence of the complaints referred to in paragraph 82 being communicated to the Player until the Respondent served its Answer in the present arbitration. In particular,

15 Witness statement of Jim Saret dated 21 December 2010, paragraph 3; Witness statement of Jamal Sampson dated 18 February 2011, paragraph 11.

16 Paragraph 16 of the Respondent's Answer.

17 Paragraph 20 of the Respondent's Answer.

18 Paragraph 20 of the Respondent's Answer.

there is no evidence of any communications at the time of these events to the effect that the Player was not entitled to act as he did.

84. The Arbitrator also notes that the Respondent has not provided any evidence demonstrating that the Player was not ill at the times that he missed games through illness, or to show that his demands in respect of food and living arrangements were unreasonable.

85. Therefore, the Arbitrator finds that the complaints of the Respondent referred to in paragraph 82 do not provide any reason to reduce the salary payable to the Player.

F. Missing the match on 9 December 2009

86. The Respondent claims that the Player refused to play a game on 9 December 2009, the day that the Contract was signed. There is a factual dispute between the Parties in respect of this. The Player claims that he did not play that game because the contract had not yet been signed. The Respondent claims that the Contract was signed prior to the game, but the Player refused to play due to a stomach-ache.

87. Having considered submissions from the Parties regarding when the Contract was signed, the Arbitrator considers that the Respondent's detailed evidence in respect of this matter is more convincing and that the Contract was signed prior to the time that the game on 9 December 2009 was scheduled to start.

88. However, the Respondent took no action in respect of what it now says was the Player's unjustified refusal to play in that game. In particular, the Respondent paid the Player for the month of December and there is no evidence of communications with the Player or the Player's agent suggesting that the Respondent considered that the Player had acted in breach of the Contract.

89. The only relevance of this matter, therefore, is whether this issue casts doubt on the credibility of the Player. The Arbitrator does not consider that it does so – the relevant events were around 18 months ago and the Arbitrator does not expect Parties to retain perfect recollection of such matters.

G. The Player's return to the US and missing the tune-up game

90. The Respondent claims that the Player "*refused to join in a team building activity on 18 December 2010 and asked to be sent back [to the US] already on 16 December [2010]*". It appears that the Player's "refusal" was by way of his request to return on 16 December 2010. The date on which that request was made is not clear. However, the evidence of Mr Sampson is that Mr Eala (the Executive Director of the Respondent) approved his request to return to the US, and this part of Mr Sampson's evidence is not challenged by the Respondent. The Arbitrator does not consider that the Player's departure to the US on 16 December 2010 was a breach of the Contract by the Player.

91. The Respondent also contends that it scheduled a "Tune-up" game for the Team at the start of 2010 and that the Player breached the Contract by missing that game, despite a number of reminders about the game. The Player's evidence in respect of this match is:

a) that it did not appear on any official team schedule, so he was not aware of it;

b) that no-one ever notified him of the Tune-up game; and

c) that the Respondent organised all travel for him so that the Respondent was aware of when he was returning and did not notify him that this would affect any Tune-up game.

92. In respect of this, the Arbitrator finds the evidence of the Respondent, by the witness

statement of Mr Toroman, more convincing in respect of the various ways in which the Player was reminded of the Tune-up game. The Player's evidence is that he was not notified of the game. No attempt is made to answer the specific items in Mr Toroman's witness statement as to the ways in which the Player was reminded of the match. The Arbitrator does not consider that the fact that an employee of the Respondent organised the Player's airline tickets excuses him from non-attendance. The Player's compliance with clause 1.1 of the Contract was a matter for him and it was apparent that those who could have excused the Player from attending had not done so.

93. In addition to the Player's obligations to the Respondent in clause 1 of the Contract (referred to above), clause 12 provided as follows:

> *"12 Early Termination*
>
> *12.1 In the event of an alleged default by the SBP in the payments to the Player provided for in this Agreement, or in the event of an alleged failure by the SBP to perform any other material obligation that it has agreed to perform hereunder, the Player shall notify the SBP in writing of the fact constituting such alleged default or alleged failure. If the SBP does not cause such alleged default or alleged failure to be remedied within thirty days after the receipt of such written notice, then all monies owed to the Player, past and future will be due immediately.*
>
> *12.2 If any scheduled payment is not received by Player's bank within thirty (30) days of the date due, the Player's performance obligations shall cease, Player shall have the right, at Player's option, to terminate this Agreement and accelerate, all future payments required under this Agreement and Player shall be free to leave the Philippines with his FIBA Letter of Clearance to play basketball anywhere in the world Player chooses, but the duties and liabilities of the Team under this Agreement shall continue in full force and effect. Any dispute arising out of or relating to the Letter of Clearance shall be settled by the Board of Arbitration of FIBA located in Switzerland-Geneva in accordance with the rules of the FIBA.*
>
> *12.3 In the event the Player is contracted to play for a team in the National Basketball Association, the Player has the right herein to amend, supplement or suspend this Agreement for the duration that the Player has been offered a Contract by an NBA team, provided the Player shall remain under contract to play for the Team and SBP for the Asian Games in November 2010 and FIBA ASIA Championship for Men in August 2011 and at least 4 weeks prior to the said tournaments, unless the Player has a partially guaranteed contract from an NBA team, the NBA Team or the Player, shall pay a developmental fee to the SBP in the amount equivalent to three (3) months salary ($60,000USD). Additionally, the Player has the right to use his vacation days to play in*

NBA Summer League during the month of July.

12.4 With the exception of the above Article 12.1 and 12.2, the player has no right to an early termination of this Agreement.

12.5 The SBP may terminate or suspend temporarily this Agreement if the Player shall do any of the following:

(a) At any time, fail, refuse or neglect to render his services hereunder or in any other manner materially breach this Agreement.

(b) Also, if the player is found to be ineligible to undergo the Naturalization process.

12.6 The SBP and the Player agree that if at any time the Player's weight is more than 136 Kilograms, each time the SBP shall have the right to admonish in writing the Player and after fifteen days, if the weight is not reduced below the said limit, to impose on him a fine of up to 5% of his annual compensation without bonuses.

94. The Arbitrator does not consider that the breach of the Contract was "material" (as required by clause 12.5(a)) so as to allow the Respondent to terminate the Contract. This is primarily because the match that was missed was an internal practice match. Although it was scheduled so as to allow the Player to adjust to playing for the team, missing that match did not have any consequences for the Respondent in terms of official results.

95. The Arbitrator considers however, that this was a breach of the Contract, for which the Respondent is entitled to compensation. The Arbitrator considers that an appropriate sanction for the breach is USD 5,000 being one third of the Player's monthly salary for January 2010.

H. Did the Player seek employment from other clubs?

96. The Respondent also refers to the fact that the Player sought employment from another basketball club as demonstrating that his _____ was not injured and he was in a position to play basketball.

97. Clause 15 of the Contract contains the following in respect of the Player playing for other basketball clubs.

> *"15. Miscellaneous:*
>
> *15.1 It is strictly forbidden for the Player to play, to attempt or threaten to play, or negotiate for the purpose of playing, during the term of this Agreement, for any other basketball club, team, person, firm, corporation, or organization except in cases provided in paragraph 12.3 without written approval from the SBP.*
>
> *15.2 At the conclusion of this agreement, the SBP will provide the Player his Letter of Clearance within 72 hours of written or verbal request so that the Player is free to play anywhere in the world.*
>
> *15.3 It is agreed that in the event the Player is playing, attempting or threatening to play, or negotiating for the purpose of playing, during the term of this Agreement, for any other basketball club, team, person, firm, corporation or organization, the SBP may impose on the Player a fine of up to 10% of his annual Compensation and immediately terminate this Agreement."*

98. The Respondent's evidence for its allegation is a letter dated 11 February 2010, received from the Chinese Basketball Association referring to a request by the Player to play for Club Fujianxunxing, a club in China.

99. The Agency has provided evidence that neither the Player nor the Agency approached Club Fujianxunxing until after Mr Eala (the Chief Executive of the Respondent) had informed Mr Emens (an employee of the Agency) of the letter that had been received, on 14 February 2010. The Agency has provided a copy of an email to a representative of Club Fujianxunxing shortly after that, on 18 February 2010 asking if that Club had spoken to a Mr John Funicello about the Player's employment. The Agency has also provided a later letter sent to Mr Funicello asking him to cease contacting Clubs in respect of the Player.

100. The Arbitrator accepts the evidence of the Claimants that Club Fujianxunxing was not contacted by the Player or the Agency until after being informed by the Respondent of the letter from Club Fujianxunxing dated 11 February 2010. For this reason, the Arbitrator does not consider that this letter amounted to any breach of the Contract by

the Player.

101. Equally, insofar as the Respondent argues that the Player's request to play for another club is evidence of the fact that his _____ was not injured (see paragraph 63 of the Answer filed by the Respondent), the Arbitrator rejects this contention.

I. Did the Player seek to be released from the Contract?

102. The Parties make competing arguments about whether the other party asked to be released from its obligations under the Contract. The Respondent alleges that the Player sought to be released from the Contract from January 2010 onwards. The Player and Agency allege that in early February 2010 the Respondent requested Mr. Emens (an employee of the Agency) to arrange a "buy-out" whereby another club would enter into a Contract with the Player for the remainder of the season, relieving the Respondent of its payment obligations to the Player.

103. The Arbitrator does not consider it necessary to resolve this issue in respect of the Player. Discussing a potential release of the Contract with the Respondent does not amount to a breach of the Contract.

104. In respect of the claim that the Respondent requested Mr. Emens to arrange a "buy-out" of the Contract, this may be relevant in that it demonstrates that the Club did not consider the Player to have breached the Contract. This is because such a breach would entitle the Respondent to terminate the Contract immediately pursuant to clause 12.5 of the Contract so that there would be no need for such buy-out.

105. The Arbitrator also does not consider this to be a significant matter. There is nothing inconsistent about a club seeking to achieve the same outcome consensually (through a buy-out) what it would otherwise be required to achieve by way of terminating the Contract and facing BAT proceedings in respect of any dispute about that termination.

J. Conclusions in relation to the Player's Claim

106. For the reasons above, the Arbitrator has found that the Player's claim succeeds, subject to a deduction of USD 5,000.

107. Apart from the deduction, this means the Player is found to be entitled to:

a) Ten monthly salary payments from February 2010 until November 2010, i.e. until the contract would expire had it not been terminated by the Respondent. These payments are for USD 15,000 plus PHP 235,000 per month.

b) Food allowance of PHP 45,000 per month. The Player claims that these payments are outstanding for every month of the Contract (December 2009 – November 2010), and the Respondent has not provided evidence that any such allowance has been paid.

108. The Respondent did not object to the conversion rate used by the Claimants in the Request for Arbitration and the Arbitrator therefore uses those rates. This means that the USD equivalent of the PHP part of the monthly salary is USD 4,953.30 and the USD equivalent of the monthly food allowance is USD 951.25.

109. The Claimants' prayer for relief appears to contain an arithmetical error as the amount claimed in the Request for Arbitration (USD 211,475) is higher than the total of the sums referred to in the section entitled "Facts and Legal Arguments" (USD 150,000 + USD 49,533 + USD 11,415 = USD 210,948).

110. The Arbitrator finds that the Player is entitled to the following payments, which total USD 205,948:

a) USD 11,415, being the total monthly food allowance claimed by the Player –

payments of USD 951.20 for the months from December 2009 – November 2010.

b) USD 194,533, being monthly salary of USD 19,953.30 for February 2010 – December 2010, subject to a USD 5,000 deduction for the salary due to be paid in February 2010 (that payment being the first monthly salary that has not been paid by the Respondent).

K. The Agency's Payment

111. In respect of the Agency, clause 16 of the Contract provided as follows:

> *"16. Agent's Fee*
>
> *16.1 The Player's Agents, Octagon, Inc. and Mr Bobby Rius shall receive 10% of the total agreement (US$24,000.00) as agent's fee. In the case of player renews his contract with the Team for the coming years, Octagon ($10,000) and Bobby Rius ($4,000) Jamal Sampson ($10,000) will have the same benefit (10% of the contract). This fee is due no later than January 1, 2010 and no later than November 1 of 2010 if the team is to pick up the option to retain the Player for a second year. If payment has not been received in the designated bank account according the Fee Agreement, then a late fee of $100USD will be assessed for each day that the fee is delinquent. If fee is more than 10 days late the Player is entitled to withhold his service to the SBP until Agent Fee has been paid and such action will not constitute a breach of his contract."*

112. As the Player only played during one season, the relevant part of this clause is the first line – that the Agency and Bobby Rius shall receive USD 24,000.

113. The Respondent's answer to the Agency's claim for payment is threefold:

a) That the Respondent had previously paid the Agency a fee in respect of a different player (Mr Giles), for which there could be "*no valid claim in the circumstances*", so that it should not pay the fee under clause 16.1;

b) That because the Player had not complied with his obligations under the Contract, this was sufficient reason to "*withhold and set off any remaining amounts*"; and

c) That it has already paid USD 10,000 to the Agency.

114. The Arbitrator does not accept the Respondent's argument in respect of fees paid for Mr Giles. There is nothing in the Contract reflecting this suggestion and the Respondent has provided no evidence to demonstrate that any payment was made where there was "*no valid claim in the circumstances*".

115. The Arbitrator also does not accept that any breach of the Contract by the Player means that the Agency is not entitled to compensation. No such limitation is contained within clause 16.1 and the Respondent has not suggested any other legal basis on which such a limitation should be read into the Contract.

116. The Arbitrator accepts, however, that the Respondent has paid USD 10,000 in respect of the Agency Fee. This is also accepted by the Claimants in their response to the Procedural Order dated 18 May 2011. In that response, the Claimants state:

> *"Respondent's evidence only demonstrates that the team paid far less than the entire $24,000. Specifically, Respondent has paid only Mr. Sampson's share (i.e. U.S. $10,000) of the agent's fee. Thus, Respondent still owes Octagon, Inc. its share of the fee, i.e. U.S. $10,000"*

117. By this Response, the Arbitrator considers that the Agency has amended its request for relief to USD 10,000. For the reasons given above, the Arbitrator finds that the Agency is entitled to this amount.

L. Interest

118. In the Request for Arbitration, the Player claimed interest on the amounts outstanding at 5% per annum. Payment of interest is a customary and necessary compensation for late payment and there is no reason why the Player should not be awarded interest. The Arbitrator considers, in line with the jurisprudence of the BAT, that 5% per annum

is a reasonable rate of interest that should be applied to the outstanding payments. The Player has claimed that interest should be paid from 28 February 2010. The Arbitrator therefore finds that interest is payable from that date for the payments that were due to be paid on or before that date. However, in respect of payments which were due to be paid (under the terms of the Contract) at a date later than 28 February 2010, interest is payable from that later date. Interest is payable until the date that the outstanding amounts are paid.

119. The Agency did not claim interest on the amounts claimed, so the Arbitrator does not award such interest.

7. Costs

120. Article 17.2 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and may either be included in the award or communicated to the Parties separately. Furthermore, Article 17.3 of the BAT Rules provides that, as a general rule, the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

121. On 5 October 2011, considering that pursuant to Article 17.2 of the BAT Rules "the BAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator", and that "the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the BAT President from time to time", taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised, the BAT President determined the arbitration costs in the present matter at EUR 12,000.

122. In the present case, the Claimants have been largely successful except for a deduction of USD 5,000 to the amounts claimed by the Player and a reduction in the amounts claimed by the Agency. Ninety percent (90%) of the arbitration costs shall therefore be borne by the Respondent. The Respondent shall also pay the Claimants' legal fees and expenses, to the extent they are reasonable.

123. The legal fees and expenses incurred by the Claimants were:

a) Fees charged by Octagon Inc to Mr Sampson in respect of Mr Sampson's claims. These fees amounted to USD 16,875;

b) Fees incurred by in-house counsel for Octagon Inc in respect of the claim of Octagon Inc. These fees amounted to USD 2,000;

c) The non-reimbursable fee of BAT of EUR 4,000.

124. The Arbitrator notes that this case has involved a number of Procedural Orders which required responses from the Claimants. In most instances and in the circumstances of this case, the amount of time spent by Octagon Inc on each such procedural order and the rate charged per hour do not appear excessive. The Arbitrator also notes that the Respondent has not provided any submissions in relation to the amounts claimed.

125. In respect of the Player's claim, the Arbitrator has found that the claim is subject to a deduction of USD 5,000. For that reason, the Arbitrator considers that a reduction in the legal costs awarded is appropriate.

126. In respect of the Agency's claim, the Agency has not recovered the amount initially claimed because it overstated its claim in the Request for Arbitration. For that reason, the Arbitrator considers that a reduction in the legal costs awarded is appropriate.

127. Taking into account all of the above, the Arbitrator finds that the Claimants are entitled to recover the following amounts from the Respondent in respect of legal costs:

a) USD 15,000 in respect of the legal costs of Mr Sampson;

b) USD 1,000 in respect of the legal costs of Octagon Inc;

c) EUR 4,000 being the non-reimbursable filing fee.

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

(i) the Respondent shall pay to the Claimants EUR 6,000 by way of reimbursement of the Advance on Costs.

8. AWARD

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

I. Samahang Basketbol NG Pilipinas Inc is ordered to pay to Mr Jamal Sampson an amount of USD 205,948 for unpaid salaries and monthly food allowance.

II. Samahang Basketbol NG Pilipinas Inc is ordered to pay interest to Mr Jamal Sampson at the rate of 5% per annum in respect of the amounts and for the periods shown in the table:

Amount	Date from which interest is payable
USD 951.25	28 February 2010
USD 951.25	28 February 2010
USD 15,904.55	28 February 2010
USD 20,904.55	31 March 2010
USD 20,904.55	30 April 2010
USD 20,904.55	31 May 2010
USD 20,904.55	30 June 2010
USD 20,904.55	31 July 2010
USD 20,904.55	31 August 2010
USD 20,904.55	30 September 2010
USD 20,904.55	31 October 2010
USD 20,904.55	30 November 2010

III. Samahang Basketbol NG Pilipinas Inc is ordered to pay Octagon Inc an amount of USD 10,000 for unpaid agent fees.

IV. Samahang Basketbol NG Pilipinas Inc is ordered to pay the Claimants EUR 6,000 as a reimbursement of the Advance on Costs.

V. Samahang Basketbol NG Pilipinas Inc is ordered to pay the Claimants USD 16,000 plus EUR 4,000 as a contribution towards their legal fees and expenses.

VI. Any other or further-reaching claims are dismissed.

Geneva, seat of the arbitration, 31 October 2011

Raj Parker

(Arbitrator)