BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0141/10)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Nate James Reinking

- Claimant 1 -

Court Side
Parkwijklaan 229, 1326 JT Almere, Netherlands

- Claimant 2 -

Alliance Sports
PO Box 881009, Boca Raton, FL 33448, USA

- Claimant 3 -

vs.

Mersin Buyuksehir Belediye Spor Kulubu
Kultur Mahallesi 4303 Sokak Ozgur Dusunce Apartmani 1/1, Mersin, Turkey

- Respondent -

1. The Parties

1.1. The Claimants

1. Mr. Nate James Reinking (hereinafter “the Player”) is a professional basketball player of British and US nationality. He is represented by Mr. Dejan Vidicki, President of the agency Court Side, and Mr. Jim Naughton, Vice-President of the agency Alliance Sports, both certified FIBA agents.

2. Court Side (hereinafter also “Claimant 2”) is a basketball management and representation company with its headquarters in Almere, Netherlands. It is represented by its President, Mr. Dejan Vidicki, and in these proceedings also by Mr. Jim Naughton.

3. Alliance Sports (hereinafter also “Claimant 3”) is a basketball management and representation company located in Boca Raton, Florida, USA. It is represented by its Vice-President Mr. Jim Naughton, and in these proceedings also by Mr. Dejan Vidicki.

1.2. The Respondent

4. Mersin Buyuksehir Belediye Spor Kulubu (hereinafter the “Club” or “Respondent") is a professional basketball club located in Mersin, Turkey. Respondent is represented in these proceedings by its Vice-President Mr. Osman Necat Keykubat and its accountant Mr. Mehmet Özcan.

2. The Arbitrator

5. On 25 November 2010, the President of the Basketball Arbitral Tribunal (hereinafter the "BAT") appointed Dr. Stephan Netzle as arbitrator (hereinafter the “Arbitrator”) pursuant

to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules").

6. None of the Parties has raised objections to the appointment of the Arbitrator or to the declaration of independence rendered by him.

3. Facts and Proceedings

3.1. Background Facts

7. On 17 September 2010, the Player and Respondent signed an employment contract (hereinafter referred to as the “Player Contract”) according to which the Player was employed by Respondent as a basketball player for the 2010-2011 season. The Player Contract provides for a guaranteed net salary of USD 70,000.00, payable in eight installments of USD 8,750.00 each, the first due on 30 September 2010 and the others due on the 21st day of each following month until 21 April 2011.

8. The Player and Respondent agreed that the Player Contract was a “guaranteed, no-cut agreement” with some exceptions, which were stipulated in Clause 3 of the Player Contract. One of these exceptions was the Club’s right to terminate the Player Contract during a so-called “try out period“ until 26 September 2010, as set out in Clause 3a) of the Player Contract. After that date, the Player Contract would be fully valid and enforceable and the Club had to fulfill its contractual obligations to the Player and the agents.

9. Also on 17 September 2010, Claimants 2 and 3 and Respondent signed an agent agreement (hereinafter referred to as the “Agent Agreement”). The Agent Agreement provides for a compensation for Claimants 2 and 3 for their services in connection with the signing of the Player Contract. Clause 3 of the Agent Agreement reads as follows:

"3. Compensation

For the contract procured by the Agent and signed between the player and the Club, the Club agrees to pay to the Agent a fee of $ 7,000.00 (Seven thousand American Dollars) for the 2010-2011 season. The Club obliges itself to pay the agent, right after the player's qualification through the medical test and receiving his letter of clearance from the basketball federation of the team he last played, and before the November 15th, 2010, upon receiving an invoice from Court Side.

The above agent fee is a compensation for the help that the Agent has provided in the signing of an agreement between the club and the player. The agent fee does not depend on the performance of the player or on the success of the club during the season."

10. On 5 October 2010, the Player returned to the United Kingdom. The reasons for his departure are in dispute between the Parties.

11. By email of 22 October 2010, the Player's representative asked Respondent to clarify the status of the Player with the Club and to pay the Player's first salary installment. He also forwarded an invoice dated 30 September 2010 for the agent fee in the amount of USD 7,000.00.

12. By email of 2 November 2010, the Player's representative notified Respondent that the Club was in breach of the Player Contract, that the Player no longer had any obligations towards the Club and that the Player's full salary for the 2010/2011 season and the agent fee must be paid before 10 November 2010. To date, Respondent has not paid the Player's salary or the agent fee.

13. On 2 November 2010, the Player entered into a new employment contract with the British basketball club Mersey Tigers Basketball Club for a period until 30 April 2011. Clause 27 lit. a) of this employment contract provides for salaries in the total amount of GBP 13,200.00 and – in lit. e) – a signing-on fee in the amount of GBP 1,320.00.

3.2. The Proceedings before the BAT

14. On 17 November 2010, Claimants filed a Request for Arbitration in accordance with the BAT Rules, which was received by the BAT on 19 November 2010. By email of 22

November 2010, Claimants' representative, Mr. Dejan Vidicki, informed the BAT Secretariat that the Request for Relief by Claimant 2 was meant as a joint request by Claimants 2 and 3.

15. By letter dated 14 December 2010, the BAT Secretariat confirmed receipt of the Request for Arbitration as well as of the non-reimbursable handling fee (EUR 1,955.00 received in the BAT bank account) and informed the Parties about the appointment of the Arbitrator. Furthermore, a time limit was fixed for Respondent to file its Answer to the Request for Arbitration in accordance with Article 11.2 of the BAT Rules by no later than 5 January 2011 (hereinafter the "Answer"). The BAT Secretariat also requested the Parties to pay the following amounts as an Advance on Costs by no later than 29 December 2010:

"Claimant 1 (Mr. Nate James Reinking)	*EUR 3,000*
Claimant 2 (Court Side)	*EUR 500*
Claimant 3 (Alliance Sports)	*EUR 500*
Respondent (Mersin Buyuksehir Belediye Spor Kulubu)	*EUR 4,000"*

16. By letter of 12 January 2011, the BAT Secretariat acknowledged receipt of Claimants' shares of the Advance on Costs in a total amount of EUR 4,000.00 and informed the Parties that Respondent had failed to submit its Answer and to pay its share of the Advance on Costs. Furthermore, the BAT Secretariat noted that in accordance with Article 9.3 of the BAT Rules the arbitration would not proceed until the full amount of the Advance on Costs was received. Therefore, Claimants were requested to effect payment of Respondent's share of the Advance on Costs by no later than 21 January 2011.

17. By letter of 28 January 2011, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs. In the same letter, Claimants were requested to submit further documents by no later than 11 February 2011.

18. On 31 January 2011, Claimants submitted two of the three requested documents.

19. By letter of 23 February 2011, the Arbitrator declared the exchange of documents complete and invited the Parties to submit a detailed account of their costs until 4 March 2011. In addition, Claimants were invited to submit the missing document by no later than 28 February 2011, which they did.

20. On 3 March 2011, Respondent informed the BAT Secretariat that the letter of 23 February 2011 was the very first document which it had received in this case. It had unofficially been forwarded by the local government of Mersin which had received it by facsimile. Obviously the contact details of Respondent on which the BAT Secretariat had relied, had not been accurate. Respondent objected to the closing of the proceedings and requested the Arbitrator to re-open the exchange of documents, to forward all documents of the case to Respondent and to grant a reasonable time to submit any reply and evidence.

21. In accordance with Articles 3.1 and 12.2 of the BAT Rules, the Arbitrator decided to re-open the proceedings, to send all documents and submissions of the case to Respondent and invited Respondent to file its Answer by no later than 28 March 2011.

22. On 4 April 2011, the BAT Secretariat informed the Parties that the FIBA Arbitral Tribunal (BAT) had been renamed Basketball Arbitral Tribunal (BAT) as of 1 April 2011 and that, absent any objections by the Parties on or before 11 April 2011, the new name would be applied also to the present proceedings. None of the Parties raised any objections within the said time limit.

23. By a further letter of 4 April 2011, the BAT Secretariat informed the Parties that Respondent had failed to submit an Answer. However, due to technical problems all documents of the case at hand were submitted once again to Respondent and the Arbitrator fixed a final time limit to file an Answer by no later than 18 April 2011.

24. On 18 April 2011, Respondent submitted its Answer (including two exhibits) which was forwarded by the BAT Secretariat to Claimants by email of 20 April 2011. In the same email, the BAT Secretariat also invited Claimants to respond to the Answer and to file

any documents related thereto by no later than 6 May 2011.

25. On 27 April 2011, Claimants submitted their response to the Answer together with several exhibits.

26. On 2 May 2011, the BAT Secretariat forwarded Claimants' response to Respondent and invited Respondent to provide its comments by no later than 11 May 2011. In the same letter, the Arbitrator requested the Parties to answer certain questions by no later 11 May 2011.

27. On 11 May 2011, Claimants replied to the Arbitrator's questions and submitted certain additional exhibits. On the same date, Respondent submitted its comments on Claimants' response and asked the Arbitrator for an additional time period to review the new documents.

28. By letter of 12 May 2011, the BAT Secretariat forwarded the Parties' submissions for information to the respective other Parties. The BAT Secretariat also informed the Parties that Respondent had failed to answer the Arbitrator's questions and that the Arbitrator had granted a final, non-extendable time limit for Respondent to respond by no later than 16 May 2011.

29. On 16 May 2011, Respondent submitted a letter dated 13 May 2011 with answers to the Arbitrator's questions.

30. By letter of 18 May 2011, the Arbitrator declared the exchange of documents complete and invited the Parties to submit a detailed account of their costs until 23 May 2011.

31. On 23 May 2011, Claimants submitted an account of costs as follows:

> *"Claimant 1 (Reinking): EUR 2.000 non-reimbursable BAT handling fee*
> *Claimant 1 (Reinking): EUR 6.000 in advanced costs*
> *Claimant 2 (Court Side): EUR 1.000*
> *Claimant 3 (Alliance Sports): EUR 1.000"*

32. On the same date, Respondent submitted an account of costs as follows:

"Communication costs	*100.00 Euro*
Translation costs	*500.00 Euro*
Legal Assistance	*2,000.00 Euro*
TOTAL	*2,600.00 Euro"*

33. The Parties were invited to submit their comments, if any, on the other Parties' account of costs by no later than 3 June 2011. On 1 June 2011, Claimants submitted comments to Respondent's account of costs and asked for a more detailed account and copies of invoices. Respondent did not submit any comments.

34. The Parties did not request the BAT to hold a hearing. The Arbitrator therefore 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. Summary of Claimants' Submissions

35. Claimants submit that the Club did not terminate the Player Contract within the "try-out period" which lasted until 26 September 2010. Thereafter, the Player Contract became a fully guaranteed, no-cut contract for the rest of the 2010-2011 season.

36. However, in the morning practice of 4 October 2010, the Club's head coach told the Player that due to a change of the team roster, Player's services were no longer required. After the evening practice, the Club's assistant coach informed the Player that he had to leave the country by plane the next morning and that he would be picked up at 7 a.m. at the hotel. The flight ticket for the return flight was booked by Respondent and handed over to the Player immediately before his departure. No further information

was given by the Club, although the Player repeatedly asked in writing about the future of his employment and continued to offer his services.

37. Because the Club failed to pay the first installment of the salary according to Clause 5 para. c) of the Player Contract, the Player was free to offer his services to another club from 2 November 2010 on. However, the Club's obligations to pay the Player the agreed amounts remained in full force and effect.

38. Player's employment contract with his new club in the UK was worth USD 23,345.00 (GBP 14,250.00). To subscribe to the UK club was the only chance for the Player to pursue his career since no other team wanted to hire the Player because of his advanced age and due to the fact that the season had already begun. It did not make sense for the Player to voluntarily leave Respondent's team and to return to the UK playing for less than half of the salary he would have earned at Respondent's.

39. According to the Agent Agreement, Claimants 2 and 3 are jointly entitled to an agent fee in the amount of USD 7,000.00. Despite the fact that Claimant 2 sent numerous reminders and invoices to Respondent, no agent fee has been paid to date, nor has Respondent answered Claimants' correspondence at any time.

4.2. Claimants' Request for Relief

40. Claimants submit the following Requests for Relief. They submitted later (see para. 9 above) that the Request for Relief by Claimant 2 was meant to be a joint request of Claimant 2 and 3:

> *"Claimant 1 requests:*
>
> *-$ 70.000 salary - $ 23.345 (British contract) = $ 46.655*
> *-standard BAT interest of 5 %*
> *-Non-reimbursable BAT handling fee*
> *-All BAT costs*

-All costs for legal advise and counselling

Claimant 2 requests:

-$ 7.000 agent fee
-standard BAT interest of 5 %
-Non-reimbursable BAT handling fee
-All BAT costs
-All costs for legal advise and counselling" (sic)

4.3. Summary of Respondent's Submissions

41. Respondent submits that the Player Contract was not terminated within the "try-out period". However, the Player left the country without any permission from the Club and did not fulfill his obligations to the Club. All arguments alleged by Claimants that the Player was requested to leave the Club's team and the country are "*totally baseless, ill-thought and therefore unacceptable*" and the arbitration before the BAT "*is filed in bad faith*".

42. The Player did not attend the training sessions on 5 October 2010, which is evidenced by the attached minutes issued by the Club's staff. When Respondent called the Player's hotel, it learned that the Player had already left the country. After the Player's departure, the team officials tried to communicate with the Player and his agent but Claimants did not answer.

43. The Club's technical staff wanted to have the Player on the team. It would not make sense for the Club to dismiss the Player in the beginning of October 2010 only a few days after the expiration of the try-out period.

44. Since the Player left the Club without permission, the agents did not deserve the claimed agent fee and all requests of Claimants are "*totally against the law and bona fides*" (sic).

4.4. Respondent's Request for Relief

45. Respondent submits the following request for relief:

> *"Consequently, based on foregoing reasons, we hereby ask for the Arbitrator to sweep aside and reject the baseless claims of the Claimants, to dismiss the ill-founded case, and to charge the court expenses to the Claimants."* (sic)

5. Jurisdiction

46. 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).

47. The jurisdiction of the BAT presupposes the arbitrability of the dispute as well as the existence of a valid arbitration agreement between the parties.

5.1. Arbitrability

48. 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]

5.2. Formal and substantive validity of the arbitration agreement

49. The existence of a valid arbitration agreement will be examined in light of Article 178

---

[1] Decision of the Swiss Federal Tribunal 4P.230/2000 dated 7 February 2001, cons. 1, reported in ASA Bulletin 2001, p. 523 et seq., with reference to the decision of the Swiss Federal Tribunal dated 23 June 1992, BGE 118 II 353, 356, cons. 3b.

PILA, which reads as follows:

> *"1 The arbitration agreement must be concluded in writing, by telegram, telex, telefax or any other means of communication which allow proof of the agreement by text.*
>
> *2 Furthermore, the arbitration agreement shall be valid if it conforms to the law chosen by the parties, to the law governing the dispute, in particular the principal contract, or to Swiss law."*

50. The Arbitrator finds that the jurisdiction of the BAT over the dispute between the Player and Respondent results from the Clause titled "Arbitration" of the Player Contract which reads as follows:

> *"Any dispute arising out of, or in connection with, this Agreement shall be submitted to the FIBA Arbitration Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitively 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) in 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."*

51. Moreover, the Arbitrator finds that the jurisdiction of the BAT over the dispute between Claimants 2 and 3 and Respondent results from Clause 8 of the Agent Agreement which reads as follows:

> *"Any dispute arising out of, or in relation to, the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitively in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT president. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by chapter 12 of the Swiss Act on Private International Law (PIL) irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."*

52. The Player Contract and the Agent Agreement are in written form and thus the arbitration agreements fulfill the formal requirements of Article 178(1) PILA.

53. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast doubt on the validity of the arbitration agreements under

Swiss law (cf. Article 178(2) PILA). In particular, the wording *"any dispute arising out of, or in connection with, this Agreement"* in the Clause titled "Arbitration" of the Player Contract and *"any dispute arising out of, or in relation to, the present contract"* in Clause 8 of the Agent Agreement clearly cover the present dispute.[2]

54. The jurisdiction of BAT has not been disputed by Respondent.

55. The Arbitrator thus finds that he has jurisdiction to decide the claims of Claimants.

6. Other Procedural Issues

56. Respondent objected to the first closing of the proceedings and requested the Arbitrator to re-open the exchange of documents because no document of this case had been received by Respondent due to wrong contact information.

57. Since Respondent submitted reliable evidence, *inter alia*, a statement of the local government of the city of Mersin, and after having carefully examined Respondent's submissions the Arbitrator decided in accordance with Articles 3.1 and 12.2 of the BAT Rules to re-open the proceedings. Respondent's right to be heard has therefore been fully respected.

7. Applicable Law – *ex aequo et bono*

58. 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

---

[2] *See for instance* BERGER/ KELLERHALS: International and domestic Arbitration in Switzerland, Berne 2010, N 466.

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 rules 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".*

59. In their arbitration agreements in the Clause titled "Arbitration" of the Player Contract and in Clause 8 of the Agent Agreement, the Parties have explicitly directed and empowered the Arbitrator to decide the dispute *ex aequo et bono*. Consequently, the Arbitrator will decide the present matter *ex aequo et bono*.

60. 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* of 1969[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]

61. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives

> *"the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the*

---

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 KARRER, in: Basel commentary to the PILA, 2nd ed., Basel 2007, Article 187 PILA N 289.

5 JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

circumstances of the case at hand".[6]

62. 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".*

63. In light of the foregoing developments, the Arbitrator makes the following findings:

8. Findings

64. Claimants request outstanding salaries and an agent fee plus interest. Therefore, the Arbitrator has to decide,

- whether the Player is entitled to outstanding salaries in the requested amount of USD 46,655.00,
- whether Claimants 2 and 3 are entitled to outstanding agent fee in the requested amount of USD 7,000.00, and
- whether Claimants are entitled to interest in the rate of 5%.

65. It is undisputed that Respondent did not exercise its right to terminate the Player Contract early during the "try-out period until September 26, 2010". The Player Contract was therefore valid and enforceable at the time the Player left the Club on 5 October 2010. He has not returned to the Club, which is another undisputed fact.

66. The essential question is therefore, whether the Player walked away from the Club without any reasons provided by the Club as asserted by Respondent or whether the

---

6 POUDRET/BESSON: Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

Club no longer wanted the Player in its team and sent him back home, as submitted by Claimants.

67. The Claimants' version is supported by the fact that the flight ticket to be used on 5 October 2010 was provided by Respondent: the name of the travel agency printed on the Player's return ticket is the same as printed on the Player's flight ticket for his flight to Turkey in September 2010. The booking confirmation was sent by email to Mr. Melih Metin Keykubat who works for Respondent as a manager and who is the son of Respondent's Vice President. In addition, any inquiry from Claimants' side about the reasons of the dismissal of the Player remained unanswered and Respondent did not make any attempts to get the Player back.

68. On the other hand, the Arbitrator is less convinced by the evidence provided by Respondent, namely that a) the Player did not attend the training session of 5 October 2010 – which is simply a matter of fact and does not add anything regarding the reasons why the Player did not attend the training – and b) the argument that it would not make sense to dismiss the Player just a few days after the expiration of the "try-out period" which ended on 26 September 2010. The same common-sense argument cuts both ways: it would be equally difficult to understand why the Player voluntarily left the Club where he had a valid contract and a stable, guaranteed salary and accepted an offer in the UK where he would earn substantially less.

69. The Arbitrator therefore finds *ex aequo et bono* that on 5 October 2010, Respondent sent the Player away and did not want him back in the team. Thus, Respondent breached the contract and becomes liable for the compensation of the damage caused by this breach.

8.1. Outstanding salaries in the amount of USD 46,655.00

70. Respondent is liable for the damage which the Player suffered as a consequence of

the breach of the Player Contract. The damage consists of the salary the Player would have earned according to the "guaranteed no-cut" Player Contract. According to Clause 5 of the Player Contract, the Player was entitled to an annual salary of USD 70,000.00. To date, the Player has not received any payments.

71. Nevertheless, according to the consistent jurisprudence of the BAT[7], any other payments received during the contractual period for which compensation is sought, must be taken into account as a consequence of the Player's duty to mitigate the damage. Therefore, any salaries which the Player has earned otherwise during the term of the Player Contract must be deducted.

72. During the same season (2010/2011) for which the Player Contract would apply, the Player was hired by the UK basketball club Mersey Tigers Basketball Club and was entitled to salaries in the total amount of GBP 13,200.00 and a signing-on fee of GBP 1,320.00. These amounts have to be deducted from the compensation owed by Respondent. Applying the currency rate as of the date of this Award, i.e. GBP 1.00 = USD 1.60, the compensation which remains to be paid by Respondent to the Player amounts to a sum slightly higher than the claimed amount of USD 46,655.00. The Player is therefore entitled to the claimed amount in full.

73. Under these circumstances, the Arbitrator does not find it necessary to further review whether, according to Clause 5 lit. c) of the Player Contract, the Player was also entitled to terminate the Player Contract because of Respondent's failure to pay the salary.

---

7 *See ex multis* 0129/10 BAT, Pomare vs. Gaz Metan Medias; 0043/09 BAT, Gomis vs. Women's Basketball Club Fenerbahce.

8.2. Agent fee in the amount of USD 7,000.00

74. It is undisputed that Claimants 2 and 3 supported and facilitated the signing of the Player Contract. Respondent rather submits that Claimants 2 and 3 did not earn the agents fee because the Player did not fulfill his contractual obligations.

75. As already stated above, the Arbitrator finds that it was Respondent and not the Player who breached the Player Contract. On the other hand, Claimants 2 and 3 complied with their obligations of the Agent Agreement since the condition for the payment of the agent fee, namely to advise and assist the Club in connection with the engagement of the Player by the Club, was met. Claimants 2 and 3 are therefore entitled to the contractually agreed agent fee in the amount of USD 7,000.00.

8.3. Interest

76. The Claimants request interest at 5% on the due payments. Such obligation is neither stipulated in the Player Contract nor in the Agent Agreement.

77. According to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest on overdue salaries[8]. Although the Player Contract and the Agent Agreement do not provide for the obligation of the debtor to pay default interest, this is a generally accepted principle which is embodied in most legal systems. The Arbitrator, deciding *ex aequo et bono*, considers an interest rate of 5% p.a. to be fair and equitable in the present case.

78. With regard to the compensation for the salary payments, the Player does not request interest from a specific date. The Arbitrator finds however that interest is due on each

---

8 *See* 0092/10 BAT, Ronci, Coelho vs. WBC Mizo Pecs 2010; 0069/09 BAT, Ivezic, Draskicevic vs. Basketball Club Pecsi Noi Kosariabda Kft; 0056/09 BAT, Branzova vs. Basketball Club Nadezhda.

payment according to the payment timetable agreed in the Player Contract.

79. When determining the commencement dates of the interest, the Arbitrator sets off the payments received from the UK club against the first salary installments owed by Respondent. This leads to the following calculation:

- Interest of 5% on the amount of USD 2,905.00 since 22 November 2010.
- Interest of 5% on the amount of USD 8,750.00 since 22 December 2010.
- Interest of 5% on the amount of USD 8,750.00 since 22 January 2011.
- Interest of 5% on the amount of USD 8,750.00 since 22 February 2011.
- Interest of 5% on the amount of USD 8,750.00 since 22 March 2011.
- Interest of 5% on the amount of USD 8,750.00 since 22 April 2011.

80. With regard to the agent fee, no commencement date for the interest has been determined either. The Arbitrator therefore relies on the payment date as requested in the invoice of 30 September 2010 according to which payment of the agent fee was requested by 15 November 2010. Interest of 5% is therefore due from the day after this date.

9. Costs

81. 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 states that the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

82. On 6 July 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 8,000.00.

83. In the present case, in line with Article 17.3 of the BAT Rules and considering that Claimants prevailed in their claims, the Arbitrator finds it fair that the fees and costs of the arbitration be borne by Respondent alone. Thus, a more detailed account of Respondent's costs, as requested by Claimants, was not deemed necessary.

84. Given that Claimants paid the totality of the Advance on Costs of EUR 8,000.00, the Arbitrator decides that:

(i) Respondent shall reimburse to Claimants the costs advanced by them, i.e. EUR 8,000.00.

(ii) Furthermore, the Arbitrator considers it adequate that Claimants are entitled to the payment of a contribution towards their legal fees and other expenses (Article 17.3. of the BAT Rules). As Claimants did only request compensation for the non-reimbursable handling fee but did not request further legal costs and fees, the Arbitrator holds it adequate to take into account the non-reimbursable handling fee paid by the Player and received in the BAT bank account in the amount of EUR 1,955.00 when assessing the expenses incurred by Claimants in connection with these proceedings. The Arbitrator therefore fixes the contribution towards the Player's legal expenses at EUR 1,955.00.

10. AWARD

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

1. **Mersin Buyuksehir Belediye Spor Kulubu is ordered to pay to Mr. Nate James Reinking the amount of USD 46,655.00 plus interest of 5% p.a.**
   - **on the amount of USD 2,905.00 since 22 November 2010,**
   - **on the amount of USD 8,750.00 since 22 December 2010,**
   - **on the amount of USD 8,750.00 since 22 January 2011,**
   - **on the amount of USD 8,750.00 since 22 February 2011,**
   - **on the amount of USD 8,750.00 since 22 March 2011 and**
   - **on the amount of USD 8,750.00 since 22 April 2011.**

2. **Mersin Buyuksehir Belediye Spor Kulubu is ordered to pay jointly to Court Side and Alliance Sports the amount of USD 7,000.00 plus interest of 5% p.a. since 16 November 2010.**

3. **Mersin Buyuksehir Belediye Spor Kulubu is ordered to pay jointly to Mr. Nate James Reinking, Court Side and Alliance Sports the amount of EUR 8,000.00 as a reimbursement of the advance on arbitration costs.**

4. **Mersin Buyuksehir Belediye Spor Kulubu is ordered to pay to Mr. Nate James Reinking the amount of EUR 1,955.00 as a contribution towards his legal expenses.**

5. **Any other or further-reaching claims for relief are dismissed.**

BASKETBALL
ARBITRAL TRIBUNAL

Geneva, seat of the arbitration, 8 July 2011

Stephan Netzle
(Arbitrator)