



**BASKETBALL**  
ARBITRAL TRIBUNAL

**ARBITRAL AWARD**

(BAT 0168/11)

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Ulrich Haas**

in the arbitration proceedings between

**Mr. Tyrese Rice**

c/o Priority Sports, 325 N La Salle Dr 650, Chicago, IL 60654, USA

**Priority Sports**

325 N La Salle Dr 650, Chicago, IL 60654, USA

**Star Vision Enterprises Ltd.,**

Ionos Dragoumi 93, 16561 Glyfada, Greece

represented by Mr. Brad Ames, Priority Sports

**- Claimants -**

vs.

**Panionios K.A.E.,**

Ioannou Chrisostomou 1, 17123 Nea Smirni, Greece

represented by Mr. Nikolaos Kakkavas, Attorney at Law, Athens, Greece

**- Respondent -**

## **1. The Parties**

### **1.1 The Claimants**

1. Mr. Tyrese Rice (hereinafter also referred to as “the Player”) is an American professional basketball player, who played for the basketball club Panionios K.A.E. during the season 2009/2010.
2. Priority Sports (hereinafter also referred to as "Claimant 2") is an American sports agency situated in Chicago, Illinois.
3. Star Vision Enterprises Ltd. (hereinafter also referred to as "Claimant 3") is a Greek sports agency situated in Glyfada, Greece. The Player, Claimant 2 and Claimant 3 are collectively referred to as the “Claimants” throughout this Award.

### **1.2 The Respondent**

4. Panionios K.A.E. (hereinafter also referred to as “the Club”) is a professional basketball club competing in the Greek professional basketball league.

## **2. The Arbitrator**

5. On 16 March 2011, the President of the Basketball Arbitral Tribunal (the "BAT") appointed Prof. Dr. Ulrich Haas as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

### 3. Facts and Proceedings

#### 3.1 Summary of the Dispute

6. On 27 July 2009, the Player and the Club entered into an agreement whereby the latter engaged the Player for the 2009/2010 season (the "First Agreement").
7. On 29 July 2009, an annex was added to the First Agreement concerning agency commission fees.
8. Section 2 of the First Agreement provides that

*"The Club agrees to pay Player a full guaranteed net Base Salary of USD 125,000.00 for the 2009/2010 basketball season in accordance with the payment schedule set forth below. All payments to Player hereunder must be made in United States Dollars in accordance with wire transfer instructions or other instructions to be provided by the Player from time to time. The payment schedule is as follows; provided, however, in the event any payment or payments set forth below are scheduled to be paid after Club's last official Greek league game, said payment or payments shall instead be due and payable within five (5) days after Club's last official Greek League game:*

2009/2010:

<i>Upon Player passing physical &amp; doping tests</i>	<i>USD 12,500.00</i>
<i>October 10, 2009</i>	<i>USD 12,500.00</i>
<i>November 10, 2009</i>	<i>USD 12,500.00</i>
<i>December 10, 2009</i>	<i>USD 12,500.00</i>
<i>January 10, 2010</i>	<i>USD 12,500.00</i>
<i>February 10, 2010</i>	<i>USD 12,500.00</i>
<i>March 10, 2010</i>	<i>USD 12,500.00</i>
<i>April 10, 2010</i>	<i>USD 12,500.00".</i>

9. Section 2 of the First Agreement furthermore provides that

*"It is agreed that any payment to Player pursuant to the above shall be subject to an interest penalty of One Hundred Dollars (USD 100.00) per day for each day after the fifteenth (15th) day after said payment was due."*

10. The annex to the First Agreement stipulates that

*"Panionios K.A.E. agrees to pay USD 6,250.00 to Priority Sports & Entertainment and USD 6,250.00 to Star Vision Enterprises Ltd. upon the Player's passage (or deemed to have passed) of his physical examination for the Agreement year 2009/2010, but no later than September 15, 2009."*

13. The Player has received several payments from the Club in the total net amount of USD 68,787.00. These payments were made as follows:

Amount received	Date Received
USD 9,880.00	14 Sep 2009
USD 11,151.00	23 Oct 2009
USD 11,765.00	15 Dec 2009
USD 12,500.00	20 Jan 2010
USD 11,555.00	12 Feb 2010
USD 11,936.00	22 Mar 2010

No further payments were made by the Club to the Player after 22 March 2010.

14. It is, furthermore, undisputed between the parties that the Club did not make any payments to Claimant 2 and Claimant 3.
15. The Club's final game of the season 2009/2010 was on 3 May 2010.

### **3.2 The Proceedings before the BAT**

16. On 7 February 2011, the Player filed a Request for Arbitration in accordance with the BAT Rules.
17. On 18 February 2011, the Claimants paid the non-reimbursable handling fee. However, instead of paying EUR 2,000.00 the amount of EUR 2,491.50 was received in the BAT bank account.

18. On 16 March 2011, the BAT informed the Parties that Prof. Dr. Ulrich Haas had been appointed as the Arbitrator in this matter and fixed the advance on costs to be paid by the Parties – by no later than 30 March 2011 – as follows:

<i>“Claimant 1 (Mr. Tyrese Rice)</i>	€	2,226.94
<i>Claimant 2 (Priority Sports)</i>	€	890.78
<i>Claimant 3 (Star Vision Enterprises Ltd.)</i>	€	890.78
<i>Respondent (Panionios K.A.E.)</i>	€	4,500.00”

In addition, BAT informed the claimants that the overpayment in the amount of EUR 491.50 would be deducted from the Claimants' share of the Advance on Costs.

19. By letter dated 4 April 2011, the BAT Secretariat informed the Parties that the FIBA Arbitral Tribunal (FAT) had been renamed into Basketball Arbitral Tribunal (BAT) and that, unless one of the Parties objected by 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.
20. On 6 April 2011, the Club submitted its Answer.
21. On 8 April 2011, Claimant 3 paid its part of the foregoing advance on costs.
22. On 12 April 2011, BAT informed the parties that both the Player and Claimant 2 as well as the Club had failed to pay their shares of the Advance on Costs. BAT advised them that they had to effect their payment by no later than 19 April 2011.
23. On the same day, the Player and Claimant 2 paid a total of EUR 3,117.72 as their share of the Advance on Costs, thus overpaying the amount due by EUR 866.78.
24. On 27 April 2011, BAT informed the parties that the Respondent had still failed to pay its share of the Advance on Costs and invited Claimants to substitute for the Club's

share by no later than Friday 6 May 2011 in order for the arbitration to proceed.

25. On 12 May 2011, the Claimants substituted for the Club's share of the Advance on Costs.
26. On 23 May 2011, BAT informed the parties that the full amount of the Advance on Costs had been received and that the proceedings would continue. Furthermore, considering that neither party had solicited 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 Parties' written submissions. The Arbitrator accordingly advised the parties that the exchange of documents was completed and invited them to submit their cost accounts until Monday, 30 May 2011.
27. On 27 May 2011, the Claimants submitted the following account of costs and expenses:

**"TYRESE RICE COSTS:**

1,843.66 EUR	BAT Application fee paid by Tyrese Rice
3,819.18 EUR	Advance on Claimant's Share of Costs paid by Tyrese Rice
<u>3,750.78 EUR</u>	<u>Advance on Respondent's Share of Costs paid by Tyrese Rice</u>
<b>9,413.62 EUR</b>	<b>Total Costs paid by Tyrese Rice</b>

**PRIORITY SPORTS COSTS:**

156.34 EUR	BAT Application Fee paid by Priority Sports
278.13 EUR	Advance on Claimants' Share of Costs paid by Priority Sports
<u>278.13 EUR</u>	<u>Advance on Respondent's Share of Costs paid by Priority Sports</u>
<b>712.60 EUR</b>	<b>Total Costs paid by Priority Sports</b>

**STAR VISION COSTS:**

<u>873.78 EUR</u>	<u>Advance on Claimants' Share of Costs paid by Star Vision</u>
<b>873.78 EUR</b>	<b>Total Costs paid by Star Vision</b>

28. The Club did not submit an account of costs.
29. On 1 June 2011, the Claimants' account of costs was forwarded to the Club for

comments. However, no comments were received by the expiration of the deadline on 6 June 2011.

#### **4. The Positions of the Parties**

##### **4.1 The Claimants' Position**

30. The Claimants submit the following in substance:

- According to the First Agreement, the Club owed the Player a fully-guaranteed net base salary in the amount of USD 125,000.00 in exchange for the Player's services for the 2009/2010 basketball season.
- Even though the Player provided his services, he received from the Club only a net amount of USD 68,787.00.
- Furthermore, the Club had entered into an agency agreement with Claimant 2 and Claimant 3 (annex to First Agreement). According to this agreement, the Club owed to the Claimants the amount of USD 6,250.00 each for the agent services both Claimants had provided to the Club.
- The Club failed – without justification – to pay part of the contractually agreed salaries under the First Agreement. Furthermore, the Club did not pay any of the contractually agreed agent fees according to the annex to the First Agreement.
- Throughout the course of the 2009/2010 season until December 2010, Claimant 3 contacted the Club numerous times requesting the outstanding salaries and agent fees. Despite numerous attempts, no agreement or settlement was agreed upon

between Claimants and the Club.

- In their Request for Arbitration dated 7 February 2011, the Claimants requested the following relief:

*"Claimants request:*

- 1) Immediate payment from Club to Player in the amount of Fifty Six Thousand Two Hundred Thirteen US Dollars (\$56,213.00 USD) in past-due base salary, plus interest at the standard rate of five percent (5%) per annum.*
- 2) Immediate Payment from Club to Player in the amount of Fourteen Thousand One Hundred US Dollars (\$14,100.00 USD) in late payment penalties as calculated in the attached spreadsheet and per Paragraph 2 of the Agreement, plus interest at the standard rate of five percent (5%) per annum.*
- 3) Immediate payment from Club to Priority in the amount of Six Thousand Two Hundred Fifty US Dollars (\$6,250.00 USD) in past-due commission, plus interest at the standard rate of five percent (5%) per annum.*
- 4) Immediate payment from Club to Star Vision in the amount of Six Thousand Two Hundred Fifty US Dollars (\$6,250.00 USD) in past-due commission, plus interest at the standard rate of five percent (5%) per annum.*
- 5) Immediate reimbursement from Club to Player, Priority, and Star Vision for the FAT application fee, plus any additional costs of arbitration, legal fees, and/or expenses related to this FAT case."*

#### **4.2 The Respondent's Position**

31. The Club submits the following in substance:

*"Towards the end of June 2009, the majority shareholder and basic financial underwriter of the team, Mr. Elias Lianos, publicly announced his decision to withdraw from the position of President of Panionios due to a serious family matter and expressed his wish that the management and representation of the Club should go to members of the Panionios "family." This would take the form of cooperation between the Municipality of Nea Smyrni and, personally, of the Mayor, George Koutelakis and the founding athletic club (Panionios G.S.)*

*At the beginning of July, 2009, by the invitation of then-mayor of Nea Smyrni, a group of friends of Panionios responded, motivated by their love of the team and with the intention of unselfish support, they promised to contribute financially according to their means and participate personally in the management and representation of the Club.*

*Unfortunately, the general financial circumstances placed the management of the team beyond their estimated budget, since the projected income from sponsorships and advertising was not achieved. This was not due to the incompetence or misjudgment of the management, but to the deepening of the economic crisis and the relative budget cuts of interested advertisers and sponsors.*

*Having met its contractual obligations toward the athletes up to the end of the season, the management found it impossible to pay off the last instalments of the contract.*

*In order to reach a feasible solution to satisfy the player's demands as much as possible, the management began persistent negotiations with the athletes and their representatives. Finally a compromise was reached with most of them which included reduction of their requirement made in partial payments with relative guarantees.*

*[...]*

*In this agreement the athlete limits his demands to \$30,000.00 and Priority Sports to receive the sum of \$6,250.00, while the payment to Star Vision Enterprises, Ltd. is not foreseen.*

*This agreement was proposed by the representatives of the athlete but was not valid because it did not bear the signatures of the contracted parties."*

- In his Answer dated 6 April 2011, the Respondent requested the following relief:

*"Panionios B.C. respectfully requests recognition with your decision to award the athlete the amount of the agreed compromise."*

## **5. Jurisdiction**

32. 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).
33. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

### **5.1. Arbitrability**

34. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA1.

### **5.2. Formal and substantive validity of the arbitration agreement between the Club and the Player**

35. The jurisdiction of the BAT over the dispute between the Player and the Club results from the arbitration clause contained in Section 11 of the First Agreement, which reads as follows:

*“Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT President.*

*The seat of the arbitration shall be Geneva, Switzerland.*

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

*The language of the arbitration shall be in English. (sic)*

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

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

36. The Agreement is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PILA.
37. With respect to substantive validity, the Arbitrator considers that there is no indication

in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).

38. As to the scope of arbitration agreement, the Arbitrator is of the view that the wording “[a]ny dispute arising from or related to the present contract ...” clearly covers the Player’s claim. Finally, it should be noted that the jurisdiction of the BAT has not been contested by the parties in the course of their submissions to the BAT.
39. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Player’s claim.

**5.3. Formal and substantive validity of the arbitration agreement between the Club and Claimant 2 and Claimant 3**

40. Claimant 2 and Claimant 3 base their claim on the annex to the First Agreement. This annex to the First Agreement however, does not contain any specific arbitration clause. Nonetheless, the Arbitrator holds that he has jurisdiction in respect of these claims for the following reasons:
41. First and foremost, a plea of lack of jurisdiction must be raised prior to any defence on the merits (Article 186(2) PILA). It is exactly for this reason that Article 3.2 of the BAT Rules provides: *“Any party which proceeds with the arbitration without raising its objection to a failure to comply with any provision of these Rules, or any other rules applicable to the proceedings, any direction given by the Arbitrator, or to the conduct of the proceedings, shall be deemed to have waived its right to object”*. In its Answer the club states – inter alia – that it *“contests and objects to the unfounded allegations of the player and his agent and respectfully request that FIBA reject the petition”*. However, the Club in its Answer, does not contest the jurisdiction of the BAT over the dispute

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

between it and Claimant 2 and Claimant 3.

42. Secondly, the annex to the First Agreement refers in its contents to the First Agreement. Furthermore, both contracts are – from an economic point of view – closely connected. Finally, the close legal and economic relationship between both contracts is also evidenced by the fact that both contracts were entered into within a short lapse of time, i.e. within two days. It follows from all of the above, that the arbitration clause contained in the First Agreement extends also to the annex to the First Agreement.

## **6. Discussion**

### **6.1 Applicable Law – ex aequo et bono**

43. 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” instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

*“the parties may authorize the arbitral tribunal to decide ex aequo et bono”.*

44. 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.”*

45. Section 11 of the First Agreement between the Player and the Club reads: *“The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono.”*

46. Consequently, the Arbitrator shall decide the issues submitted to him in this proceeding *ex aequo et bono*.

47. 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<sup>2</sup> (Concordat)<sup>3</sup>, 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.”<sup>4</sup>*

48. 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”.

49. In light of the foregoing considerations, the Arbitrator makes the findings below.

## 6.2 Preliminary observation

50. As mentioned above, the Club in its Answer – inter alia – “*contests and objects to the unfounded allegations of the player and his agent and respectfully requests that FIBA reject the petition*”. The Arbitrator holds that – even though the Club contests the Player's allegation in a general way – the specific facts submitted by the Claimants are not disputed. This is due to the following reasons:

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<sup>2</sup> 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).

<sup>3</sup> P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

<sup>4</sup> JdT 1981 III, p. 93 (free translation).

51. According to Articles 9.1 and 11.2 of the BAT Rules, both parties are obliged to bring forward "*a statement of all the facts and legal arguments*". It follows from this that the parties have an obligation to submit a detailed description of the facts on which they base their requests. Accordingly, the Respondent has to substantiate its factual submissions, in particular, it must submit which specific facts brought forward by the Claimants it contests or agrees with and, more specifically, in the case of contestation, it must explain why, and in what respect the factual submissions made by the Claimants are false, incomplete and/or misleading. The degree of substantiation required from Respondent will, of course, depend somewhat on the degree of specificity with which Claimants have outlined their factual submissions. As a general rule, however, a general contestation of all facts submitted by Claimants does not meet the standard as required by the BAT Rules. Hence, the Arbitrator holds that the factual submissions by the Claimants are basically uncontested.

### **6.3 Findings in relation to Player's claim for outstanding salaries**

52. In view of the above the Arbitrator holds that:

- The Player and the Club entered into an agreement on 27 July 2009,
- the Player fulfilled his contractual obligations and
- that the Club failed to pay him the contractually owed salaries in the amount of USD 56,213.00 net of taxes.

53. It follows from all of this that the Club has an obligation to pay to the Player USD 56,213.00 (USD 125,000.00 – USD 68,787.00).

54. Along with its Answer, the Club submitted a document entitled "Settlement Agreement", according to which the Player voluntarily agreed to surrender part of his salary.

However, the Settlement Agreement does not bear the signature of the Player. Furthermore, the Club states in its Answer that a settlement along the lines of the Settlement Agreement was reached with most of the athletes, however not with the Claimants. Since the obligations agreed upon by the Parties in the First Agreement cannot be altered unilaterally by the Club, the latter remained under the obligation to pay the full amounts. This is all the more true in view of Section 12 of the First Agreement, which stipulates that “any modification of this Agreement must be in writing and signed by both Club and Player”. Finally, the Arbitrator notes, that nothing in the submissions of the parties indicates that the Player was under some (implied) duty to accept the Settlement Agreement proposed by the Club.

55. The Club has further submitted that it is financially impossible for it to pay the full salaries to the Player. In the Arbitrator’s view, however, this explanation does not release the Club from its obligation to pay the agreed salaries. It is one of the basic principles of justice and fairness that contracts – once agreed upon – are to be honoured by the parties. Furthermore, it is a duty of both parties to ensure that they are able to fulfil the contractual obligations they have entered into. The Club must, therefore, take all necessary precautions in order to be and remain capable of paying the contractually agreed monies. In the Arbitrator’s view the economic risks that go along with the Club’s business are to be borne by it alone and cannot be shifted to its employees, in particular not to its players.
56. To sum up, the Arbitrator holds that the Club is in breach of its contractual duties in relation to the Player and is, thus, obliged to pay the outstanding salaries in the amount of USD 56,213.00.

#### **6.4 Findings in relation to claims for outstanding agent fees**

57. Claimant 2 and Claimant 3 have entered into an agreement (annex to First Agreement)

with the Club on 29 July 2009. While both Claimants fulfilled their part of the agreement, the Club has refrained from paying the contractually agreed agent fees. It follows from this that the Club is under an obligation to pay the outstanding agent fees. This obligation has neither been altered nor reduced by any subsequent agreement between the parties. The so-called Settlement Agreement does not bear the signatures of Claimant 2 or Claimant 3; nor is the fact that the Club finds itself in a financially difficult position a valid justification to withhold the contractually agreed amounts, i.e. USD 6,250.00 for each of the agencies.

#### 6.5 Findings in relation to the claim for late payment penalties

58. As mentioned above the Club was in breach of its contractual duties in relation to the Player. Section 2 of the First Agreement provides that *"it is agreed that any payment to Player pursuant to the above shall be subject to an interest penalty of One Hundred Dollars (USD 100.00) per day for each day after the fifteenth (15<sup>th</sup>) day after said payment was due"*.
59. With the Request for Arbitration, the Player has provided a schedule of payments due and the dates on which those payments were made (in full or in part). The Club has not disputed the contents of that table, part of which is as follows:

*"AGREEMENT BETWEEN PANIONIOS K.A.E. AND TYRESE RICE  
SUMMARY OF BASE SALARY PAYMENTS DUE TO PLAYER PER AGREEMENT DATED JULY 27, 2009*

<i>Due Date</i>	<i>Amount Due</i>	<i>Amount Received</i>	<i>Date Received</i>	<i>Amount Due</i>	<i>Days Late*</i>	<i>Penalty Per Day</i>	<i>Total Penalty</i>
<i>August 25, 2009</i>	<i>\$ 12,500.00</i>	<i>\$ 9,880.00</i>	<i>9/14/2009</i>	<i>\$ 2,620.00</i>	<i>4</i>	<i>\$ 100.00</i>	<i>\$ 400.00</i>
<i>October 10, 2009</i>	<i>\$ 12,500.00</i>	<i>\$ 11,151.00</i>	<i>10/23/2009</i>	<i>\$ 1,349.00</i>	<i>0</i>	<i>\$ 100.00</i>	<i>-</i>
<i>November 10, 2009</i>	<i>\$ 12,500.00</i>	<i>\$ 11,765.00</i>	<i>12/15/2009</i>	<i>\$ 735.00</i>	<i>20</i>	<i>\$ 100.00</i>	<i>\$ 2,000.00</i>
<i>December 10, 2009</i>	<i>\$ 12,500.00</i>	<i>\$ 12,500.00</i>	<i>1/20/2010</i>	<i>-</i>	<i>25</i>	<i>\$ 100.00</i>	<i>\$ 2,500.00</i>
<i>January 10, 2010</i>	<i>\$ 12,500.00</i>	<i>\$ 11,555.00</i>	<i>2/12/2010</i>	<i>\$ 945.00</i>	<i>17</i>	<i>\$ 100.00</i>	<i>\$ 1,700.00</i>
<i>February 10, 2010</i>	<i>\$ 12,500.00</i>	<i>\$ 11,936.00</i>	<i>3/22/2010</i>	<i>\$ 564.00</i>	<i>27</i>	<i>\$ 100.00</i>	<i>\$ 2,700.00</i>
<i>March 10, 2010</i>	<i>\$ 12,500.00</i>			<i>\$ 12,500.00</i>	<i>39</i>	<i>\$ 100.00</i>	<i>\$ 3,900.00</i>
<i>April 10, 2010</i>	<i>\$ 12,500.00</i>			<i>\$ 12,500.00</i>	<i>9</i>	<i>\$ 100.00</i>	<i>\$ 900.00</i>
<i>May 8, 2010**</i>	<i>\$ 12,500.00</i>			<i>\$ 12,500.00</i>	<i>0</i>	<i>\$ 100.00</i>	<i>-</i>
<i>May 8, 2010**</i>	<i>\$ 12,500.00</i>			<i>\$ 12,500.00</i>	<i>0</i>	<i>\$ 100.00</i>	<i>-</i>
<b>TOTAL</b>	<b>\$ 125,000.00</b>	<b>\$ 68,787.00</b>		<b>\$ 56,213.00</b>			<b>\$ 14,100.00</b>

\* AS OF: 5/4/2010  
CONSIDERED "LATE" 15 DAYS AFTER PAYMENT DUE DATE PER PARAGRAPH 2 OF AGREEMENT  
\*\* PER PARAGRAPH 2 OF AGREEMENT, THESE PAYMENTS ARE DUE WITHIN FIVE (5) DAYS AFTER CLUB'S  
LAST OFFICIAL GREEK LEAGUE GAME (MAY 3, 2010)"

60. The Player submits that he is entitled to late payment penalties in respect of those payments that were made to him late in accordance with the terms of the First Agreement, in the amount of USD 14,100.00.
61. The issue of penalty payments was considered by this Tribunal in FAT 0036/09 Petrosean v Women Basketball Club Spartak St Petersburg. In that award (at paragraphs 54-55), the Arbitrator set out a number of reasons for which such clauses can lead to excessive penalties.
62. In respect of penalty payments, a very similar contractual clause to the one at issue here was considered in FAT 0100/10 Taylor v KK Crvena Zvezda. In that award, the Arbitrator found that the clause was intended to provide that the penalty payment would accrue between the date of late payment and the date on which the player chose to terminate the contract. The purpose of the clause was as a "dissuasive measure" to prevent late payments. However, once the contract was terminated by the player, penalty payments ceased to accrue.
63. The Arbitrator considers the reasoning contained in both these Awards to be persuasive and useful. Of course, each case must be judged according to its own facts. The various factors to be considered in relation to penalty payments may apply to a greater or lesser degree in different circumstances. It is, therefore, up to each Arbitrator to decide the matter *ex aequo et bono* and to consider whether, in light of the features of the contract at issue and all further circumstances, the claimed penalty payments are excessive.
64. According to Section 1 of the First Agreement, the employment relationship of the parties came to an end on "the first day following the final game in which the Club

participates in the 2009/2010 regular season or the 2009/2010 Greek League playoffs, whichever date occurs later.” The Club’s final game was on 3 May 2010. Hence, the First Agreement expired on 4 May 2010.

65. Subject to a consideration of the quantum of penalty payments in total (to which the Arbitrator refers below, see para. 66), the amounts claimed by the Player are properly payable under Section 2 of the Agreement.
  
66. The Arbitrator considers that, once a determination regarding the payment of penalties according to the Agreement has been made, it is necessary to consider whether the total amount is excessive in light of all the circumstances, including in light of the factors referred to in FAT 0036/09 Petrosean v Women Basketball Club Spartak St Petersburg and FAT 0100/10 Taylor v KK Crvena Zvezda. As mentioned above, the circumstances of each case will be different and the Arbitrator must take into account the individual circumstances of each case. In the circumstances of the case at hand, deciding the matter *ex aequo et bono*, the Arbitrator does not consider that these penalty payments are excessive, and finds that USD 14,100.00 is payable by the Club to the Player.

#### **6.6 Findings in relation to interest**

67. The Claimants further request 5% interest per annum on the various amounts due. However, the Claimants fail to specify on which date the interest ought to begin accruing.
  
68. For the reason set out above (sections 6.3 and 6.5 of this Award), the Club owes to the Player, as of 4 May 2010 (date of expiry of the First Agreement), the following amounts:

- USD 56,213.00 in unpaid salaries and
- USD 14,100.00 in late payment penalties.

69. Firstly, the Arbitrator is of the view that in light of *ex aequo et bono* principles it is appropriate to apply an interest rate of 5% per annum in respect of the outstanding amounts. According to consistent BAT jurisprudence, such a rate is necessary to avoid that the Club may profit from its non-compliance with its obligations. However, the Arbitrator equally holds that the Player is only entitled to interest payments for any periods of time following the expiry of the contract. The Arbitrator finds that awarding late payment penalties and interest on unpaid salaries for the same period of time would be excessive. To conclude, therefore, the Club has to pay interest to the Player at a rate of 5% as of 5 May 2010 on the amounts of USD 56,213.00 (unpaid salaries) and USD 14,100.00 (late payment penalties).

70. According to the above analysis (section 6.4 of this Award), Claimant 2 and Claimant 3 are both entitled to USD 6,250.00. The annex to the First Agreement provides that the agent commission fees "are to be paid upon the Player's passage of (or being deemed to have passed) his physical examination for the Agreement year 2009/2010, but no later than September 15, 2009". Both Claimants failed to state when the Player passed his physical examination for the season 2009/2010. Therefore, the Arbitrator decides that the agent commission fees were due as of 15 September 2009. The Arbitrator holds therefore, that the interest of 5% per annum is to be calculated on the unpaid amounts commencing on 16 September 2009.

## **7. Costs**

71. Article 17 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President, and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule,

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

72. 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 to be EUR 7,550.00.
73. Considering that the Claimants prevailed with their claims, it is fair that the fees and costs of the arbitration be borne by the Club and that it be required to cover its own legal fees and expenses.
74. The Arbitrator notes that the Claimants paid the totality of the advance on costs of EUR 9,000.00 according to the following schedule:

	<b>Claimant's share</b>	<b>Respondent's share</b>	<b>total</b>
Player	EUR 3,819.18	EUR 3,750.78	EUR 7,569.96
Claimant 2	EUR 278.13	EUR 278,13	EUR 556.26
Claimant 3	EUR 873.78		EUR 873.78

75. Furthermore, the Claimants paid a non-reimbursable handling fee of EUR 2,000.00, as follows: the amount of EUR 1,843.66 was paid by the Player and the amount of EUR 278.13 by Claimant 2.
76. Therefore, the Arbitrator decides that in application of Article 17.3 of the BAT Rules:

- (i) BAT shall reimburse to the Claimants a total amount of EUR 1,450.00, being the difference between the costs advanced by them and the arbitration costs fixed by the BAT President. The reimbursement shall be divided among the Claimants as follows:

<b>Player</b>	<b>Claimant 2</b>	<b>Claimant 3</b>
EUR 1,220	EUR 90	EUR 140

- (ii) The Club shall pay EUR 6,349.96 to the Player, being the difference between the costs advanced by him and the amount he is going to receive in reimbursement from the BAT;
- (iii) The Club shall pay EUR 466.26 to Claimant 2, being the difference between the costs advanced by it and the amount it is going to receive in reimbursement from the BAT;
- (iv) The Club shall pay EUR 733.88 to Claimant 3, being the difference between the costs advanced by it and the amount it is going to receive in reimbursement from the BAT;
- (v) Furthermore, the Arbitrator considers it appropriate to take into account the non-reimbursable fee of EUR 2,000.00 when assessing the expenses incurred by the Player and Claimant 2 in connection with these proceedings. Hence, the Arbitrator fixes the Club's contribution towards the Player's expenses at EUR 1,843.66 and towards Claimant 2's expenses at EUR 278.13. Since no attorney's fees have been claimed by Claimants, a contribution by the Club to such costs cannot be awarded.

## **8. AWARD**

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

- 1. Panionios K.A.E. shall pay Mr. Tyrese Rice a total amount of USD 56,213.00, net of taxes, for unpaid salary payments plus interest at a rate of 5% per annum on this amount from 5 May 2010 onwards.**
- 2. Panionios K.A.E. shall pay Mr. Tyrese Rice a total amount of USD 14,100.00 for late payment penalties, plus interest at a rate of 5% per annum on this amount from 5 May 2010 onwards.**
- 3. Panionios K.A.E. shall pay Priority Sports an amount of USD 6,250.00 for unpaid agent fees plus interest at a rate of 5% per annum on this amount from 16 September 2009 onwards.**
- 4. Panionios K.A.E. shall pay Star Vision Enterprises Ltd. an amount of USD 6,250.00 for unpaid agent fees plus interest at a rate of 5% per annum on this amount from 16 September 2009 onwards.**
- 5. Panionios K.A.E. shall pay Mr. Tyrese Rice an amount of EUR 6,349.96, Priority Sports an amount of 466.26 and Star Vision Enterprises Ltd an amount of EUR 733.88 as a reimbursement of the arbitration costs paid by them.**
- 6. Panionios K.A.E. shall pay Mr. Tyrese Rice an amount of EUR 1,843.66, and Priority Sports an amount of 278.13 as a contribution towards their legal fees and expenses.**
- 7. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 11 July 2011.

Ulrich Haas  
(Arbitrator)