BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0247/11**)**

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Mr. Michal Ignerski

- First Claimant -

Mr. Robert Stanley

- Second Claimant -

vs.

Besiktas Jimnastik Kulübü
Suleyman Seba Caddesi, No. 48 NJK Plaza, Akaretler,
Besiktas, 34357 Istanbul, Turkey

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. Michal Ignerski (hereinafter, "Claimant 1") is a professional basketball player of Polish nationality. In these proceedings, Claimant 1 is represented by Mr. Sébastien Ledure of Lorenz International Lawyers, Boulevard du Régent 37-40, 1000 Brussels, Belgium.

2. Mr. Robert Stanley (hereinafter, "Claimant 2" and together with Claimant 1, the "Claimants") is a basketball players' agent of Belgian nationality. Claimant 2 is Claimant 1's agent. In these proceedings, Claimant 2 is represented by Mr. Sébastien Ledure of Lorenz International Lawyers, Boulevard du Régent 37-40, 1000 Brussels, Belgium.

1.2 The Respondent

3. Besiktas Jimnastik Kulübü (hereinafter, the "Respondent") is a Turkish basketball club. In these proceedings, the Respondent is represented by Ms. Basak Akbas, Attorney at Law in Istanbul, Turkey.

2. The Arbitrator

4. On 14 February 2012, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (hereinafter the "BAT") appointed Mr. Raj Parker as arbitrator (hereinafter, the "Arbitrator") pursuant to Article 8.1 of the Rules of the BAT (hereinafter, the "BAT Rules").

5. None 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 Background Facts

6. On 24 August 2010, Claimant 1, Claimant 2 and the Respondent entered into a contract of employment, whereby the Respondent engaged Claimant 1 for the 2010-2011 season (hereinafter, the "Agreement").

7. Clause II of the Agreement provides:

> *"The term of this Agreement shall be deemed to have commenced on the date of signature of this Agreement and shall last until three days after the last scheduled game of the 2010/2011 season."*

8. Clause IV of the Agreement provides:

> *"The Club agrees to pay the Player as follows for the 2010/2011 season:*
>
> *A total amount of 250,000 Euros net (two hundred and fifty thousand Euros net). The Player is guaranteed 250,000 Euros net (two hundred and fifty thousand Euro net) by the Club.*
>
> *The amount to be paid is as follows:*

Upon arrival	-	*50,000 Euro net*
September, 30 2010	-	*22,220 Euro net*
October 30, 2010	-	*22,220 Euro net*
November 30, 2010	-	*22,220 Euro net*
December 30, 2010	-	*22,220 Euro net*
January 30, 2011	-	*22,220 Euro net*
February 28, 2011	-	*22,220 Euro net*
March 30, 2011	-	*22,220 Euro net*
April 30, 2011	-	*22,220 Euro net*
May 30, 2011	-	*22,240 Euro net*

> *[…]"*

9. Claimant 1 and the Respondent agree that the Respondent has paid EUR 160,266.67 to Claimant 1 to date pursuant to Clause IV.

10. Clause XII of the Agreement provides:

> *"The Player's Agent shall receive an Agent's fee of 10% of the amounts earned by the Player during the term of this Agreement. The agent's fee will be a base of 25,000 Euro (twenty five thousand Euros) this base payment will be paid on or before September 30th 2010. This Agent fee shall be payable upon receiving the invoice from the Agent for his service."*

11. Claimant 2 and the Respondent agree that Claimant 2 has received no monies pursuant to Clause XII of the Agreement.

12. In addition, the 'Official Contract Appendix', which was incorporated into the Agreement pursuant to Clause XI, also provides as follows:

> *"Besiktas JK provides the Player with a fully insured automobile for the length of the contract. […] The Club is responsible for all repairs and maintenance, while the Player is responsible for gasoline, oil and all traffic fines."*

13. On 16 June 2011, Claimant 2's counsel sent a formal notice by fax, email and registered letter to the Respondent, stating that the Respondent had failed to satisfy its financial obligations to Claimant 2 under the Agreement and that if the Respondent had not satisfied such obligations within 8 days, BAT proceedings would be initiated.

14. On 24 June 2011, in an exchange of emails between Claimant 2's counsel and the Respondent, the Respondent acknowledged that it still owed the agent's fee and proposed a payment plan.

15. On 1 July 2011, Claimant 2's counsel informed the Respondent by email that no agreement had been reached in relation to payment of the agent's fees and so BAT proceedings would be initiated.

16. By letter dated 5 October 2011, Claimant 1's counsel sent a formal notice to the Respondent, stating that the Respondent had failed to satisfy its financial obligations

to Claimant 1 under the Agreement and that if the Respondent had not satisfied such obligations within 8 days, BAT proceedings would be initiated.

3.2 The Proceedings before the BAT

17. On 21 December 2011, the Claimants filed a Request for Arbitration in accordance with the BAT Rules. On 6 and 10 January 2012, the BAT received a non-reimbursable handling fee of EUR 3,000.00 from the Claimants.

18. By letter dated 16 February 2012, and with a time limit for payment of 27 February 2012, the BAT fixed the Advance on Costs as follows:

"Claimant 1 (Mr. Michal Ignerski)	*EUR 3,500*
Claimant 2 (Mr. Robert Stanley)	*EUR 1,000*
Respondent (Besiktas Jimnastik Kulübü)	*EUR 4,500"*

19. By the same letter dated 16 February 2012, the BAT Secretariat fixed a time limit of no later than 8 March 2012 for the Respondent to file its Answer to the Request for Arbitration.

20. On 20 February 2012, Claimant 2 paid his share of the Advance on Costs. On 28 February 2012 Claimant 1 paid his share of the Advance on Costs.

21. The Respondent failed to pay its share of the Advance on Costs. On 22 March 2012, Claimant 1 paid EUR 3,500.00 of the Respondent's share of the Advance on Costs, and on 27 March 2012, Claimant 2 paid the remaining EUR 1,000.00 of the Respondent's share of the Advance on Costs (in accordance with Article 9.3 of the BAT Rules).

22. On 8 March 2012, the Respondent submitted its Answer to the Request for Arbitration.

23. On 18 April 2012, the Arbitrator issued a procedural order (hereinafter, the "First Procedural Order") requesting further submissions and evidence from Claimant 1 and the Respondent by no later than 2 May 2012.

24. Claimant 1 responded to the First Procedural Order by letter dated 26 April 2012. The Respondent responded to the First Procedural Order on 2 May 2012 by letter.

25. On 5 May 2012, the Arbitrator issued a second Procedural Order (hereinafter, the "Second Procedural Order"), requesting further submissions and evidence from the Respondent. The Respondent responded to the Second Procedural Order by letter dated 11 May 2012.

26. On 18 June 2012, the Arbitrator issued a third Procedural Order (hereinafter, the "Third Procedural Order"), declaring the exchange of documents complete, and requesting that the Parties submit detailed accounts of their costs by 27 June 2012. By the same Procedural Order, the Arbitrator sent the Claimants copies of the Respondent's response to the Second Procedural Order.

27. On 18 June 2012, after the Third Procedural Order had been sent to the Parties, Claimant 1 made an unsolicited submission to the BAT containing comments on the Respondent's response to the Second Procedural Order.

28. On 26 June 2012, the Claimants submitted the following statement of costs:

> *"…Claimant's legal expenses in the case at hand amount to 11.455 € (representing 10.850 € as fees and 605 € as administrative expenses). This includes 31 hours spent on file analysis, correspondence, drafting notice letters, extraordinary expenses related to translation, client contacts, reviewing BAT case law and drafting all required BAT procedural acts (Power of Attorney, Request for Arbitration, Inventory of Exhibits, Comments…)."*

29. On 27 June 2012, the Respondent submitted the following statement of costs:

> *"Legal Representation costs 2.000,00 Euro*
> *Miscellaneous expenses cost 100 Euro"*

30. On 27 June 2012, the BAT sent the Parties' respective accounts of costs to each of the Parties, and invited each Party to submit comments (if any) on the other Parties' account of costs by no later than 4 July 2012.

31. On 4 July 2012, the Respondent submitted the following comments on the Claimants' account of costs:

> *"[…] Such costs and expenses may in no event be acceptable to our Club since no documents or instruments were submitted to us which prove that such sums were actually incurred in connection with the action"*

32. None of the Parties requested a hearing. The Arbitrator therefore decided in accordance with Article 13.1 of the BAT Rules not to hold a hearing and to deliver this Award on the basis of the written submissions of the Parties.

4. The Parties' Submissions

4.1 The Claimants' Submissions

33. In the Claimant's Request for Arbitration, Claimant 1 submits that, pursuant to Clause IV of the Agreement, he was entitled to receive net salary payments from the Respondent for the 2011-2012 season totalling EUR 250,000.00. However, the Respondent paid only EUR 160,000.00, leaving EUR 89,733.33 outstanding.

34. Claimant 2 submits that the Respondent has not paid an agent's fee of EUR 25,000.00 owed to Claimant 2 under clause XII of the Agreement.

35. In the Request for Arbitration, the Claimants requested the following relief:

> ***"3. Request for Relief***

Claimants request an award to be rendered against Respondent, according to which:

- *Respondent is liable of paying the amount of ninety thousand Euro (90,000 €) in principal to Claimant 1 and of twenty five thousand Euro (25,000 €) in principal to Claimant 2;*
- *Respondent is liable of paying late interest to Claimant 1 on the amount of ninety thousand Euro (90,000 €) at a rate of 5% per year, starting May 31, 2011 and to Claimant 2 on the amount of twenty-five thousand Euro (25,000 €) at a rate of 5% per year, starting October 1, 2010 until the day of complete payment;*
- *Respondent is liable of reimbursing all BAT expenses and procedure costs which have been advanced by Claimants; and*
- *Respondent shall indemnify Claimants for incurred legal expenses (including attorney's fees) up to an amount of which will be determined later."*

36. The principal claimed by Claimant 1 was subsequently reduced to EUR 89,733.33 after Claimant 1's counsel stated in its response to the First Procedural Order that:

> "*[…] Claimant 1 doesn't intend to contest the difference of 266,67 € (most likely due to withheld bank wire expenses) and agrees on the fact that the Respondent still owes him an amount of 89.733,33 € in principal.*"

4.2 The Respondent's Submissions

37. The Respondent acknowledges that it has paid only EUR 160,266.67 to Claimant 1 to date. However, the Respondent submits that it is liable to Claimant 1 in the amount of EUR 88,052.80 rather than the amount of EUR 89,733.33[1] claimed by Claimant 1. The Respondent accounts for this difference in the amount owed to Claimant 1 as follows:

    (i) The Respondent submits that it is entitled to exercise a right of set-off in the amount of EUR 847.20 for traffic tickets and vehicle repair costs incurred by

[1] In its Answer to the Request for Arbitration, the Respondent submitted a figure of EUR 88,054.15. However, in its reply to the First Procedural Order, the Respondent acknowledged that this figure was a miscalculation and that the correct figure was EUR 88,052.80.

Claimant 1 and paid by the Respondent. In its response to the Second Procedural Order, the Respondent itemised such costs as follows:

> *"- EUR 47,81 (TRY 105,00) relates to traffic ticket,*
> *- EUR 22,08 (TRY 49,50) relates to traffic ticket,*
> *- EUR 19,85 (TRY 49,50) relates to traffic ticket,*
> *- EUR 757,51 (TRY 1.888,77) relates to vehicle service, repair and workmanship costs for the damage following the accident and all of the above were paid in the name of the player and a deduction was applied to his salary later on."*[2]

(ii) The Respondent submits that it is entitled to exercise a further right of set-off in the amount of EUR 833.33 for a disciplinary fine for Claimant 1's alleged breach of Article 21 of the Besiktas Jimnastik Kulübü Derneği Basketball Branch Senior Basketball Teams Discipline and Punishment Regulations (hereinafter, the "Disciplinary Regulations").

38. The Respondent accepts liability to make payment to Claimant 2 in the amount of EUR 25,000.00.

39. The Respondent submits that the rate of interest of 5% claimed by the Claimants on the amounts owed by the Respondent is *"excessive and should be denied."*

5. Jurisdiction

5.1 The Jurisdiction of the BAT

40. 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

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[2] The Arbitrator notes that these items total EUR 847.25 rather than EUR 847.20. However, given that (i) the difference between the two figures is *de minimis*; and (ii) the discrepancy came to light in the last round of submissions that were requested by the Arbitrator, the Arbitrator has not investigated the discrepancy further.

arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

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

5.2 Arbitrability

42. 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) PILA.[3]

5.3 Formal and substantive validity of the arbitration agreement

43. 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 chose by the parties or to the law governing the subject-matter of the dispute, in particular the main Contract, or to Swiss law.*"

44. Clause XV of the Agreement provides 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 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. Awards of the FAT can be appealed to the Court of Arbitration for Sport (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*

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

Arbitration for Sport (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."

45. The Arbitrator notes that the FIBA Arbitral Tribunal was renamed the Basketball Arbitral Tribunal on 1 April 2011 (see also Article 18.2 of the BAT Rules).

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

47. With respect to substantive validity, the Arbitrator considers that there are no indications that might cast doubt on the validity of the arbitration agreement under Swiss law (cf. Article 178(2) PILA).

48. Neither of the Parties challenged the jurisdiction of the BAT in their submissions.

49. For the above reasons, the Arbitrator finds that the BAT has jurisdiction to determine the present dispute.

6. Other Procedural Issues

6.1 Submissions made after the exchange of documents had been declared complete

50. On 18 June 2012, Claimant 1 made an unsolicited submission to the BAT containing comments on the Respondent's response to the Second Procedural Order. The submission was made after the Third Procedural Order had been sent to the Parties, and so after the Arbitrator had declared the exchange of documents complete.

51. Article 12.1 of the BAT Rules provides:

> "*After the filing of the Request for Arbitration and the Answer, the Arbitrator shall determine in his/her sole discretion whether a further exchange of submissions is necessary. Unless he/she decides that it is necessary, further submissions will not be taken into account.*"

52. Claimant 1's submission was unsolicited and was made after the exchange of documents had been declared complete. Accordingly, the Arbitrator has not taken account of Claimant 1's unsolicited submissions. The Arbitrator notes that, even if the Arbitrator had taken account of the submissions, it would not have affected his decision.

7. Discussion

7.1 Applicable law – *ex aequo et bono*

53. With respect to the law governing the merits of the dispute, Article 178(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 authorise 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:

> *"[T]he parties may authorise the arbitral tribunal to decide ex aequo et bono."*

54. Clause XV of the Agreement provides: "*The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono*."

55. However, Clause XIII of the Agreement provides: *"This Agreement shall be governed by the laws of Turkey."*

56. Reviewing Clauses XV and XIII, the Arbitrator considers that the common intention of the Parties when agreeing Clause XIII, was that Turkish law should govern non-contentious matters under the Agreement, but that any disputes arising out of the Agreement, should be determined *ex aequo et bono* and without reference to Turkish law. In this regard, the Arbitrator refers to BAT decision 0172/11 (*Jusup and Ivic v Kosarkaskog Kluba "Zadar"*), in which the relevant agreement stipulated that the governing law of the agreement was Croatian law and that any dispute arising from or related to the agreement should be decided *ex aequo et bono.* In that case, the Arbitrator found that the common intention of the parties was to distinguish between the applicable law in relation to non-contentious and contentious matters.

57. Finally, the Arbitrator notes that none of the Parties referred to Turkish law in their respective submissions, or submitted that Turkish law should be the law governing the merits of the dispute.

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

59. 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*[4] (Concordat)[5], 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 concept of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*[6]

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4 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).

5 P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

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

60. In substance, it is generally considered that an arbitral tribunal deciding a dispute ex aequo et bono has *"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."*[7]

61. This is confirmed by Article 15.1 of the BAT Rules in fine, which provides that the Arbitrator should apply *"general considerations of justice and fairness without reference to any particular national or international law."*

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

7.2 Findings

63. It is not in dispute between Claimant 2 and the Respondent that the Respondent is liable to Claimant 2 in the amount of EUR 25,000.00 pursuant to Clause XII of the Agreement.

64. It is also not in dispute between Claimant 1 and the Respondent that the Respondent has paid only EUR 160,266.67 to Claimant 1, in spite of its obligation to pay a total of EUR 250,000.00 to Claimant 1 pursuant to Clause IV of the Agreement.

65. Accordingly, only two questions fall for determination by the Arbitrator.

(i) whether the outstanding salary payments due to Claimant 1 (EUR 89,733.33) should be subject to the following deductions:

(a) EUR 89.74 to cover traffic tickets paid by the Respondent;

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

(b) EUR 757.51 to cover vehicle repair costs paid by the Respondent; and

(c) EUR 833.33 for a disciplinary fine for Claimant 1's alleged breach of Article 21 of the Disciplinary Regulations;

(ii) whether the Respondent should be required to pay interest to the Claimants on the respective amounts due and, if so, at what rate.

7.2.1 Traffic fines

66. The Respondent claims that the outstanding salary payments due to Claimant 1 should be subject to deductions for three traffic fines incurred by Claimant 1 and paid by the Respondent. As evidence, the Respondent has provided a variety of invoices, 'decision minutes' and an 'Official Report'. The particulars of the alleged traffic fines, set out in the Answer to the Request for Arbitration and the evidence submitted by the Respondent in response to the Second Procedural Order, are as follows:

(i) A traffic ticket dated 27 January 2011 for failure to stop at a red light: EUR 47.81 (TL 105.00) (hereinafter, the "First Traffic Fine");

(ii) A traffic ticket dated 13 March 2011 for parking in a prohibited area: EUR 22.08 (TL 49.50) (hereinafter, the "Second Traffic Fine");

(iii) A traffic ticket dated 17 August 2011 for parking in a prohibited area: EUR 19.85 (TL 49.50) (hereinafter, the "Third Traffic Fine");

67. Claimant 1 does not accept that the proposed deductions identified by the Respondent are applicable. In his reply to the First Procedural Order, Claimant 1 states that the traffic fines are *"obviously being put forward in tempore suspecto and*

are highly questionable when invoked for the first time more than one year after the facts."

68. After consideration of the relevant arguments and evidence presented, the Arbitrator finds as follows.

69. In accordance with its obligations as set out in the "Official Contract Appendix", the Respondent provided Claimant 1 with a Toyota Corolla with plate number 34 VT 4676. Claimant 1 acknowledged receipt of this vehicle (by signature) in an "Official Report" dated 3 September 2010. This number plate is recorded in both: (i) the decision minutes dated 27 January 2011 and the invoice dated 10 March 2011 for the First Traffic Fine; and (ii) the decision minutes dated 16 March 2011 and the invoice dated 17 May 2011 for the Second Traffic Fine. In respect of the Third Traffic Fine, however, the number plate provided in the invoice (34 VT 4676) does not correlate with the number plate listed in the corresponding decision minutes (34 VT 4682).

70. In the light of the above, the Arbitrator is not satisfied that it has been established that a deduction is applicable in respect of the Third Traffic Ticket to amounts owed by the Respondent to Claimant 1 in respect of the 2010-2011 season pursuant to the Agreement. However, the Arbitrator is satisfied that such a deduction is appropriate in respect of the First and Second Traffic Tickets.

7.2.2 Vehicle repair costs

71. The Respondent claims that the outstanding salary payment due to Claimant 1 should be subject to a deduction for vehicle repair costs in the amount of EUR 757.51 arising from a traffic accident involving Claimant 1 and paid by the Respondent. By way of supporting evidence, the Respondent has submitted an invoice detailing such costs.

72. As set out above, the Official Contract Appendix provides that the Respondent shall be responsible *"for all repairs and maintenance, while the Player is responsible for gasoline, oil and all traffic fines"*. However, the Official Contract Appendix contains a special provision governing circumstances in which costs are incurred as a consequence of an accident involving the vehicle:

> *"In case of an accident in which it is determined to be the fault of the player due to intoxication or gross misconduct (specifically described in the insurance policy) and therefore not covered by insurance (note that the insurance policy is no fault and that all accidents either fault or no fault should be covered) then the player is responsible for the payment of all costs."*

73. The Respondent claims that Claimant 1 was guilty of *"gross misconduct"* for failing to take certain measures at the scene of the accident. In its response to the Second Procedural Order, the Respondent states:

> *"[w]e have not been able to claim for the repair costs under the vehicle insurance policy as the player did not take minutes or had the traffic police take the same for the accident although he was legally bound to do so."*

74. Claimant 1 does not accept the proposed deduction. The Respondent states that Claimant 1 *"was notified that he was responsible…with a minute he signed on 03.09.2010."*

75. The Respondent claims that Claimant 1's failure to take minutes at the scene of the accident or ensure that traffic police did so amounted to *"gross misconduct"* under the terms of the Official Contract Appendix, because it prevented the Respondent from making an insurance claim. The Arbitrator considers that the Parties' intention is clear in the wording of the Official Contract Appendix: Claimant 1 should be liable for vehicle repair costs only *"[i]n case of an accident in which it is determined to be the fault of the player* ***due to*** *intoxication or gross misconduct"* (Emphasis added). Any alleged misconduct in the aftermath of the accident does not fall within the scope of this provision.

76. For this reason, the Arbitrator considers that the vehicle repair costs identified by the Respondent may not be deducted from the amounts owing to Claimant 1 pursuant to Clause IV of the Agreement.

7.2.3 Disciplinary fine

77. The Respondent claims that the outstanding salary payment due to Claimant 1 should be subject to a deduction for a disciplinary fine in the amount of EUR 833.33 imposed on Claimant 1 during the 2010/2011 season.

78. As evidence, the Respondent has submitted a copy of the Disciplinary Regulations, as signed by Claimant 1, and a notice informing Claimant 1 of the disciplinary fine and certified by the second notary public of Besiktas on 26 November 2010.

79. The notice records that a fine has been imposed on Claimant 1 for a violation under Article V(21) of the Disciplinary Regulations for kicking the ball in protest at a referee's decision during a match between the Respondent and Bornova Muncipality on 6 November 2010 and thereby incurring a technical foul against the team.

80. Article V(21) provides that an "Act requiring Punishment" covers:

> *"Any occurrence where the sportsman(woman) is punished with the punishments of technical foul, unsportsmanlike foul and/or disqualification or performs any act which is included in the scope of "acts contrary to the sportsmanship", "racist expression", "assault and battery" or "deliberate action" as included in the Discipline Instructions of the Turkish Basketball Federation and/or FIBA, FIBA Europe, ULEB and the other instructions regarding discipline; […]"*

81. Article VI of the Disciplinary Regulations provides that:

> *"If the sportsman(woman) performs any act which is contrary to the Beşiktaş Jimnastik Kulübü Derneği Basketball Branch Senior Teams Discipline and Punishment Regulations, then he/she will be punished as specified in the following articles of these Regulations."*

82. The Respondent claims that:

> *"[A]ccording to the resolution by the Board of Directors of Beşiktaş Jimnastik Kulübü Derneği dd. 22.11.2010 and no. 2010/047, a disciplinary punishment/penalty of Euro 833.33 was imposed on the player that sum to be deducted from his receivables arising from the contract. The abovementioned disciplinary punishment/penalty was communicated to the player through a protest letter attested by 2nd Notary Public of Beşiktaş on 26.11.2010 under journal entry number 16834."*

83. Claimant 1 does not accept the proposed deduction and argues, in his response to the First Procedural Order, that *"any proof is lacking regarding the fact that Claimant 1 was duly heard by the Respondent as well as regarding the fact that the disciplinary decision was duly notified to Claimant 1."*

84. The Arbitrator notes that Claimant 1 has not disputed that he breached the Disciplinary Regulations, nor that a disciplinary fine was imposed on him as a result. Instead, Claimant 1's objection is that he was not *"duly heard"* and the disciplinary fine was not *"duly notified to Claimant 1."* However, the Arbitrator finds that there is no obligation on the Respondent - in the Agreement, in the Disciplinary Regulations or in any other evidence submitted to the Arbitrator - which provides that Claimant 1 be *"duly heard"*. Furthermore, the Arbitrator finds that Claimant 1 was notified of the fine by the Respondent by means of the notice dated 26 November 2010, but failed to mention in response to such notice any of the objections that he has raised in these proceedings. The Arbitrator considers that he cannot now claim that he was not *"duly heard."*

85. The Arbitrator finds that the Respondent has calculated the value of the disciplinary fine (EUR 833.33) correctly in accordance with Articles VII and VIII of the Discipline and Punishment Regulations. It was Claimant 1's first violation of Article V(21) and he was therefore fined one day's wages (calculated as follows: 'total cost' of the sportsman (EUR 250,000.00) / (number of seasons specified in sportsman's contract x 300) (1 x 300) = EUR 833.33).

86. The Respondent did not deduct the disciplinary fine from Claimant 1's next salary payment, in accordance with Article X of the Disciplinary Regulations. In its

response to the Second Procedural Order, the Respondent explained its reasons for failing to do so:

> *"The disciplinary fine on Claimant 1 was notified to him through a notice certified by the 2nd Notary Public of Beşiktaş on 26.11.2010 under journal entry number 16834 and he was informed that the fine would be deducted from the payables to the player. Yet, given the fact that the league and competitions continued on the date of the disciplinary fine was imposed, it was deemed suitable to wait until the league ended and the fine was deducted from the last salary of the player so that it did not have a negative effect on his morale and motivation."*

87. The Arbitrator notes that Claimant 1 was notified of the disciplinary fine on 26 November 2010 and, as part of that notification, was informed that the fine would *"be collected from the amounts payable to yourself under your contract."* Accordingly, Claimant 1 was aware that deductions would be made and, further, that those deductions would not necessarily come from the next salary payment in strict compliance with Article X of the Discipline and Punishment Regulations.

88. In the circumstances, the Arbitrator finds, *ex aequo et bono*, that the Respondent is entitled to deduct the amount of the disciplinary fine from the amounts owing to Claimant 1 and accordingly, the fine should be deducted from the outstanding salary payment owed by the Respondent. In light of the deductions from the outstanding salary in relation to the First Traffic Fine, the Second Traffic Fine, and the disciplinary fine, the Arbitrator finds that the Respondent shall pay EUR 88,830.11 to Claimant 1 as compensation for unpaid salary payments for the 2010-2011 season.

7.2.4 Interest

89. The Claimants claim interest on the outstanding salary payments and agent's fee at an annual rate of 5%. The Respondent considers this rate to be *"excessive"* and

notes that *"there is no provision stipulating that the player or his agent can make a claim for payment of interest amounts at the same time."*

90. According to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest[8]. The Arbitrator finds that payment of interest is a customary and necessary compensation for late payment and there is no reason why the Claimants should not be awarded interest in relation to the amounts awarded. The Arbitrator also considers that 5% per annum is a fair and reasonable rate of interest that conforms with BAT jurisprudence.

91. Claimant 1 has claimed interest on the outstanding salary payments from 31 May 2011. Given that the Respondent was due to make its last salary payment to Claimant 1 on 30 May 2011 pursuant to the Agreement, the Arbitrator finds that interest shall be awarded from 31 May 2011. Claimant 2 has claimed interest on the agent's fee from 1 October 2010. Given that the agent's fee was due on or before 30 September 2010 pursuant to the Agreement, the Arbitrator finds that interest shall be awarded from 1 October 2010.

8. Costs

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

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

93. On 27 August 2012, considering that pursuant to Article 17.2 of the BAT Rules "the BAT President shall determine the final amount of the costs of BAT and the fees and costs of the BAT President and the Arbitration" 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 9,000.00.

94. The Arbitrator notes that Claimant 1 prevailed in the vast majority of his claim and Claimant 2 prevailed in the entirety of his claim, the Arbitrator considers that the costs of the arbitration should be borne by the Respondent.

95. The Arbitrator notes that the Respondent did not pay its share of the Advance on Costs and that Claimant 1 paid an advance on costs in the total amount of EUR 7,000.00 (including EUR 3,500.00 on behalf of the Respondent) and Claimant 2 paid an advance on costs in the total amount of EUR 2,000.00 (including EUR 1,000.00 on behalf of the Respondent).

96. The Arbitrator notes further that Claimant 1 and Claimant 2 paid a non-reimbursable handling fee of EUR 3,000.00 and considers it appropriate to take this into account when assessing the legal expenses incurred by the Claimants in connection with these proceedings. The Respondent has objected to the account of costs submitted by the Claimants, on the basis that "*no documents or instruments were submitted to us which prove that such sums were actually incurred in connection with the action*". However, the Arbitrator notes that: (i) the Claimants' account of costs was submitted by the Claimants' legal counsel; (ii) the Claimants' legal counsel has provided a reasonably detailed breakdown of how the costs were incurred (including reference to hours spent on the case and tasks completed – see paragraph 28 above); and (iii) the breakdown was sent to the Respondent on 27 June 2012.

97. In light of the above, the Arbitrator decides that in application of Article 17.3 of the BAT Rules:

(i) The Respondent shall pay to the Claimants EUR 9,000.00, being the arbitration costs advanced by the Claimants; and

(ii) The Respondent shall pay EUR 7,500.00 to the Claimants, as a contribution towards the Claimants' legal fees and expenses.

9. AWARD

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

1. **Besiktas Jimnastik Kulübü shall pay Mr. Michal Ignerski an amount of EUR 88,830.11 for unpaid salary payments for the 2010-2011 season, together with interest at a rate of 5% per annum, payable from 31 May 2011.**

2. **Besiktas Jimnastik Kulübü shall pay Mr. Robert Stanley an amount of EUR 25,000.00 for unpaid agent's fees, together with interest at a rate of 5% per annum, payable from 30 September 2010.**

3. **Besiktas Jimnastik Kulübü shall pay Mr. Michal Ignerski and Mr. Robert Stanley, together, an amount of EUR 9,000.00 as reimbursement for their arbitration costs.**

4. **Besiktas Jimnastik Kulübü shall pay Mr. Michal Ignerski and Mr. Robert Stanley, together, an amount of EUR 7,500.00 as reimbursement for their legal fees and expenses.**

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

Geneva, seat of the arbitration, 3 September 2012

Raj Parker
(Arbitrator)