

ARBITRAL AWARD

(BAT 0310/12)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Ms. Ebony Hoffman

- Claimant 1 -

Ms. Candice Wiggins

- Claimant 2 -

Mr. Vasilis Giapalakis

- Claimant 3 -

represented by Mr. Orlando J. Castaño, attorney at law,
4675 MacArthur Court, Suite 465, Newport Beach, CA 92660, USA

vs.

Besiktas Jimnastik Kulubu Dernegi
Suleyman Seba cadessi No. 48, Istanbul, Turkey

- Respondent -

represented by Mr. Emin Ozkurt, attorney at law, İnönü Caddesi,
Gözcü Apartmanı, No: 35, Kat: 2, Gümüşsuyu, Beyoğlu, Istanbul, Turkey

1. The Parties

1.1 The Claimants

1. Ms. Ebony Hoffman (hereinafter "Claimant 1") is a professional basketball player of US nationality, who contracted to play for the Respondent club during the 2011-2012 season.
2. Ms. Candice Wiggins (hereinafter "Claimant 2") is a professional basketball player of US nationality, who contracted to play for the Respondent club during the 2011-2012 season.
3. Mr. Vasilis Giapalakis (hereinafter "Claimant 3") is an agent of Greek nationality licensed by the Fédération Internationale de Basketball (hereinafter "FIBA"). His agent license number is 2007019472.
4. In these proceedings, the Claimants are represented by Mr. Orlando J. Castaño, Jr., attorney at law, of 4675 MacArthur Court, Suite 465, Newport Beach, CA 92660.

1.2 The Respondent

5. Besiktas Jimnastik Kulubu Dernergi (hereinafter the "Respondent") is a Turkish professional basketball club.
6. In these proceedings, the Respondent is represented by Mr. Emin Ozkurt, attorney at law, of İnönü Caddesi, Gözcü Apartmanı, No: 35, Kat: 2, Gümüşsuyu, Beyoğlu, Istanbul, Turkey.

2. The Arbitrator

7. On 6 September 2012, Professor 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 Basketball Arbitral Tribunal (hereinafter the "BAT Rules"). Neither of the Parties has raised any objection to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Background Facts

3.1.1 Claimant 1

8. On 18 November 2011, Claimant 1 entered into a contract of employment with the Respondent under which she was to play for the Respondent's team during the 2011-2012 season in return for a salary of USD 140,000 (hereinafter "Contract 1").
9. Article 4(A) of Contract 1 provides as follows:

"A. SALARY

*Player will receive a total base salary of **One Hundred Forty Thousand Dollars (\$140,000) United States Dollars ("USD")** net under this Agreement, to be paid according to the following schedule:*

<i>\$14,000.00 USD</i>	<i>Right after player successfully passes physical examination, no later than November 24th, 2011</i>
<i>\$28,000.00 USD</i>	<i>No later than December 15th, 2011</i>
<i>\$28,000.00 USD</i>	<i>No later than January 15th, 2012</i>
<i>\$28,000.00 USD</i>	<i>No later than February 15th, 2012</i>
<i>\$28,000.00 USD</i>	<i>No later than March 15th, 2012</i>
<i>\$14,000.00 USD</i>	<i>No later than April 15th, 2012"</i>

3.1.2 Claimant 2

10. On 13 December 2011, Claimant 2 entered into a contract of employment with the Respondent under which she was to play for the Respondent's team during the

2011-2012 season in return for a salary of USD 100,000 (hereinafter “Contract 2”).

11. Article 4(A) of Contract 2 provides as follows:

“A. SALARY

*Player will receive a total base salary of **One Hundred Thousand Dollars (\$100,000 United States Dollars (“USD”)** net under this Agreement, to be paid according to the following schedule:*

<i>\$20,000.00 USD</i>	<i>Right after player successfully passes physical examination, no later than December 16th, 2011</i>
<i>\$20,000.00 USD</i>	<i>No later than January 15th, 2012</i>
<i>\$20,000.00 USD</i>	<i>No later than February 15th, 2012</i>
<i>\$20,000.00 USD</i>	<i>No later than March 15th, 2012</i>
<i>\$20,000.00 USD</i>	<i>No later than April 15th, 2012”</i>

3.1.3 Claimant 3

12. Claimant 3 is party to Contract 1. Article 4(C) of Contract 1 provides as follows:

*“The Club recognizes **Vasilis Giapalakis** (FIBA License N°: 2007019472) as the sole and exclusive agent for the Player, solely for the purposes of this Agreement. The Club will have to pay the agent a 10% agency fee. The amount of 14.000 US Dollars will be paid to the agent upon Player passing the physical exam no later than November 30th, 2011. The agent will send an invoice for agency fee. Failure of the Club to pay this amount with 30 days of the receipt of invoice constitutes a reason to terminate this agreement.”*

13. Claimant 3 is also party to Contract 2. Article 4(C) of Contract 2 provides as follows:

*“The Club recognizes **Vasilis Giapalakis** (FIBA License N°: 2007019472) as the sole and exclusive agent for the Player, solely for the purposes of this Agreement. The Club will have to pay the agent a 10% agency fee. The amount of 10.000 US Dollars will be paid to the agent upon Player passing the physical exam no later than January 20th, 2011. Failure by the Club to pay this amount with 30 days of the due date constitutes a reason to terminate this agreement.”*

3.2 The Proceedings before the BAT

14. The Claimants filed a Request for Arbitration in accordance with the BAT Rules, which was received by the BAT Secretariat on 15 June 2012.
15. Claimant 3 paid the non-reimbursable handling fee of EUR 2,000 on 20 July 2012.
16. By letter dated 7 September 2012, the BAT Secretariat confirmed receipt of the Claimants' Request for Arbitration and invited the Respondent to submit its Answer by no later than 24 September 2012.
17. By the same letter, the BAT Secretariat directed the Parties to pay an advance on the costs of the arbitration under Article 9.3 of the BAT Rules (hereinafter the "Advance on Costs"). The Advance on Costs was divided as follows:

<i>"Claimant1 (Ms Hoffman)</i>	<i>EUR 1,750</i>
<i>Claimant2 (Ms Wiggins)</i>	<i>EUR 1,750</i>
<i>Claimant3 (Mr. Giapalakis)</i>	<i>EUR 1,000</i>
<i>Respondent (Besiktas Jimnastik Kulubu)</i>	<i>EUR 4,500"</i>

18. By payments dated 21 September 2012 and 4 October 2012, Claimant 1 paid EUR 1,740 in respect of her share of the Advance on Costs.
19. On 24 September 2012, the Respondent submitted its Answer to the Request for Arbitration.
20. On 1 November 2012, Claimant 2 paid EUR 1,733 in respect of her share of the Advance on Costs.
21. On 20 September 2012, Claimant 3 paid EUR 1,000 in respect of his share of the

Advance on Costs.

22. The Respondent failed to pay its share of the Advance on Costs.
23. By letter dated 8 November 2012, the BAT informed the Claimants that the Respondent had failed to pay its share of the Advance on Costs and invited the Claimants to pay the Respondent's share in accordance with Article 9.3 of the BAT Rules.
24. On 21 November 2012, Claimant 1 paid EUR 2,240 in respect of the Respondent's share of the Advance on Costs in accordance with Article 9.3 of the BAT Rules.
25. On 13 December 2012, the Claimants' counsel paid EUR 2,250 in respect of the Respondent's share of the Advance on Costs in accordance with Article 9.3 of the BAT Rules.
26. In summary, the Parties paid the Advance on Costs as follows:

Claimant 1	EUR 3,980
Claimant 2	EUR 1,733
Claimant 3	EUR 1,000
Claimants' counsel	EUR 2,250
Respondent	EUR 0

27. On 11 January 2013, the Arbitrator issued a procedural order addressed to Claimant 3 and the Respondent requesting additional information and documentation (hereinafter the "First Procedural Order"). Claimant 3 submitted his response on 14 January 2013. The Respondent submitted its response on 18 January 2013.

28. On 22 February 2013, the Arbitrator issued a second procedural order addressed to Claimant 1 and the Respondent requesting additional information and documentation (hereinafter the “Second Procedural Order”). Claimant 1 and the Respondent submitted their respective responses on 5 March 2013. Claimants 2 and 3 also submitted unsolicited responses on 5 March 2013.
29. On 30 April 2013, the Arbitrator issued a third procedural order addressed to Claimant 2 and the Respondent requesting additional information and documentation (hereinafter the “Third Procedural Order”). Claimant 2 submitted her response on 8 May 2013. The Respondent submitted its response on 13 May 2013.
30. On 3 June 2013, the Arbitrator issued a fourth procedural order to Claimant 1 requesting additional information and documentation (hereinafter the “Fourth Procedural Order”). Claimant 1 filed her response on 10 June 2013.
31. By a final procedural order dated 25 June 2013, the Arbitrator declared the exchange of documents complete and requested that the Parties submit a detailed account of their costs by no later than 2 July 2013.
32. On 30 June 2013, the Claimants submitted a detailed account of their costs as follows:

Claimant 1

Payments in respect of the Advance on Costs	EUR 3,980
Attorney / legal fees	USD 5,000

Claimant 2

Payments in respect of the Advance on Costs	EUR 1,733
Attorney / legal fees	USD 4,000

Claimant 3

Non-reimbursable handling fee	EUR 2,000
Payments in respect of the Advance on Costs	EUR 1,000
Attorney / legal fees	USD 6,000

Claimants' counsel

Payment in respect of the Advance on Costs	EUR 2,250
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33. On or about 2 July 2013, the Respondent submitted a detailed account of its costs as follows:

Legal representation costs	EUR 2,000
Miscellaneous expenses	EUR 200

34. By email dated 2 July 2013, the Arbitrator invited the Parties to submit any comments on the detailed accounts of costs filed in the proceedings by no later than 9 July 2013. None of the Parties submitted any comments.

35. Since none of the Parties requested a hearing, the Arbitrator decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to deliver the award on the basis of the written submissions of the Parties.

4. The Parties' Submissions

4.1 Claimant 1's claims

36. Claimant 1 claims that the Respondent failed to make certain salary payments under Contract 1 as follows:

- (i) the Respondent paid only USD 18,000 of an instalment of USD 28,000 due by

15 February 2012;

- (ii) the Respondent failed to pay an instalment of USD 28,000 due by 15 March 2012; and
- (iii) the Respondent failed to pay an instalment of USD 14,000 due by 15 April 2012.

37. In the Request for Arbitration, Claimant 1 requested the following relief:

“2. Request for Relief

[...]

Claimant(s) request(s):

Hoffman requests for the balance of \$10,000.00 USD payment due February 15, 2012, plus interest at the reasonable interest rate of 5%.

Hoffman requests for the \$28,000.00 USD payment due March 15, 2012, plus interest at the reasonable interest rate of 5%.

Hoffman requests for the \$14,000.00 USD payment due April 15, 2012, plus interest at the reasonable interest rate of 5%.

[...]

All Respondents [sic] collective requests for attorney fees and costs to be reimbursed by Club in submitting this claim to BAT.”

38. In the Answer, the Respondent admitted liability to pay Claimant 1 the sum of USD 42,000. It disputed Claimant 1’s claim for interest on the basis that Contract 1 does not contain any provision stipulating that Claimant 1 may make claims for payment of interest.

39. In the First Procedural Order, the Arbitrator noted that the amount for which the Respondent had admitted liability differed from the amount claimed by Claimant 1, and

invited the Respondent to explain how it had arrived at the figure of USD 42,000. In its response, the Respondent adjusted the amount for which it admitted liability to USD 49,889.69. It listed the salary payments it said it had made to Claimant 1 (hereinafter the "Payment Schedule"). The Payment Schedule included: (i) a payment of USD 29.89 dated 30 June 2012; and (ii) a payment of USD 2,080.42 dated 30 November 2012.

40. In the Second Procedural Order, the Arbitrator invited Claimant 1 to comment on the Payment Schedule. In her response, Claimant 1 disputed the Payment Schedule, stating in particular that she did not receive any payment of USD 29.89 on 30 June 2012 or any payment of USD 2,080.42 on 30 November 2012. She maintained that the sum of USD 52,000 remained outstanding under Contract 1.
41. In the Third Procedural Order, the Arbitrator invited the Respondent to provide any evidence in support of its position that it made salary payments under Contract 1 in the amount of USD 29.89 on 30 June 2012 and USD 2,080.42 on 30 November 2012. In its response, the Respondent clarified that it had been required to pay these amounts to third parties in connection with the vehicle that was provided for Claimant 1's use during the season. The Respondent provided receipts which showed that:
 - (i) the sum of USD 29.89 related to two traffic fines imposed on 3 May 2012; and
 - (ii) the sum of USD 2,080.42 related to vehicle maintenance and repair costs incurred on 1 August 2012.
42. In the Fourth Procedural Order, the Arbitrator invited Claimant 1 to comment on the Respondent's contention that it was entitled to deduct a total of USD 2,110.31 from her salary for traffic fines and maintenance and repair costs in connection with the vehicle that was provided for her use during the season. In her response, Claimant 1 disputed that the Respondent was entitled to make these deductions. She stated that in March

2012 she returned the vehicle to the Respondent and travelled back to the United States, and that the vehicle was in proper working condition at that time. She noted that the traffic fines were imposed two months after she returned the vehicle, and the maintenance and repair costs were incurred five months after she returned the vehicle.

4.2 Claimant 2's claims

43. Claimant 2 claims that the Respondent failed to make certain salary payments under Contract 2 as follows:

- (i) the Respondent paid only USD 10,000 of an instalment of USD 20,000 due by 15 January 2012;
- (ii) the Respondent paid only USD 10,000 of an instalment of USD 20,000 due by 15 February 2012; and
- (iii) the Respondent paid only USD 10,000 of an instalment of USD 20,000 due by 15 March 2012.

44. In the Request for Arbitration, Claimant 2 requested the following relief:

"2. Request for Relief

[...]

Claimant(s) request(s):

[...]

Wiggins requests for the balance of \$10,000.00 USD payment due January 15, 2012, plus interest at the reasonable interest rate of 5%.

Wiggins requests for the balance of \$10,000.00 USD payment due February 15, 2012, plus interest at the reasonable interest rate of 5%.

Wiggins requests for the balance of \$10,000.00 USD payment due March 15, 2012, plus

interest at the reasonable interest rate of 5%.

[...]

All Respondents [sic] collective requests for attorney fees and costs to be reimbursed by Club in submitting this claim to BAT.”

45. In the Answer, the Respondent admitted liability to pay Claimant 2 the sum of USD 42,000. It disputed Claimant 2's claim for interest on the basis that Contract 2 does not contain any provision stipulating that Claimant 2 may make claims for payment of interest.
46. In the First Procedural Order, the Arbitrator noted that the amount for which the Respondent had admitted liability differed from the amount claimed by Claimant 2, and invited the Respondent to explain how it had arrived at the figure of USD 42,000. In its response, the Respondent's position on this issue remained unclear.
47. In the Second Procedural Order, the Arbitrator asked the Respondent to confirm that the amount for which it admitted liability to Claimant 2 was USD 42,000, and if so, to explain how it had arrived at this figure. In its response, the Respondent clarified that it admitted liability for USD 30,000 only. Meanwhile, in an unsolicited response to the Second Procedural Order, Claimant 2 stated that she accepted and agreed with the Respondent that the amount due to her was USD 42,000.
48. In the Third Procedural Order, the Arbitrator invited: (i) Claimant 2 to explain the basis for her position that the Respondent was liable to her in the amount of USD 42,000; and (ii) the Respondent to explain the basis for its position that it was liable to Claimant 2 in the amount of USD 30,000. In their responses, Claimant 2 and the Respondent both submitted that the Respondent was liable to Claimant 2 in the amount of USD 30,000, not USD 42,000.

4.3 Claimant 3's claims

49. Claimant 3 claims that the Respondent failed to pay agency fees due to him under Contract 1 and Contract 2 as follows:

- (i) the Respondent failed to pay an agency fee of USD 14,000 due by 30 November 2011 pursuant to Contract 1; and
- (ii) the Respondent failed to pay an agency fee of USD 10,000 due by 20 January 2012 pursuant to Contract 2.

50. In the Request for Arbitration, Claimant 3 requested the following relief:

"2. Request for Relief

[...]

Claimant(s) request(s):

[...]

Agent-Vasilis Giapalakis requests for payment of agency fees due under the Hoffman Agreement in the amount of \$14,000.00 USD, due November 30, 2011, plus interest at the reasonable rate of 5%.

Agent-Vasilis Giapalakis requests for payment of agency fees due under the Wiggins Agreement in the amount of \$10,000.00 USD, due January 20, 2012, plus interest at the reasonable rate of 5%.

All Respondents [sic] collective requests for attorney fees and costs to be reimbursed by Club in submitting this claim to BAT."

51. In the Answer, the Respondent admitted liability to pay USD 14,000 to Claimant 3 under Contract 1. However, the Respondent disputed liability to pay USD 10,000 to Claimant 3 under Contract 2 on the basis that payment was conditional on receipt of an invoice, which the Respondent alleged it had not received. The Respondent also disputed Claimant 3's claims for interest on the basis that Contracts 1 and 2 do not

contain any provisions stipulating that Claimant 3 may make claims for payment of interest.

52. In the First Procedural Order, the Arbitrator asked Claimant 3 whether he had requested payment of his fees under Contract 2, and requested that Claimant 3 provide any evidence of any such request. The Arbitrator also asked the Respondent to explain on what basis it contended that its liability to pay Claimant 3's fees under Contract 2 was conditional on receipt of an invoice.
53. In his response to the First Procedural Order, Claimant 3 provided a copy of an email dated 3 January 2012 sent to Mr Can Koken of the Respondent, attaching an invoice for his agency fee under Contract 2.
54. In its response to the First Procedural Order, the Respondent stated again that it had not received an invoice from Claimant 3 and argued that, without an invoice containing account details for payment, it was not possible to make payment to Claimant 3.
55. In the Second Procedural Order, the Arbitrator invited the Respondent's comments on the evidence submitted by Claimant 3 in his response to the First Procedural Order. In its response, the Respondent argued that under Turkish tax regulations it required an original invoice (rather than a copy submitted by email) in order to make payment to Claimant 3.

5. Jurisdiction

56. 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).

57. 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

58. 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 agreements

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

"1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.

2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law."

60. Article 5 of Contracts 1 and 2 provides as follows:

"ARTICLE 5 – DISPUTE & ARBITRATION

Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT 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, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."

61. Contracts 1 and 2 are in written form and thus the arbitration clause in each fulfils the formal requirements of Article 178(1) PILA.

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

62. With respect to substantive validity, the Arbitrator considers that there are no indications which could cast doubt on the validity of the arbitration agreements under Swiss law (cf. Article 178(2) PILA). In addition, the Parties did not challenge the jurisdiction of BAT in their submissions.

63. In light of the above, the Arbitrator finds that the BAT has jurisdiction to hear this dispute.

6. Discussion

6.1 Applicable Law – ex aequo et bono

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

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

65. As set out in paragraph 60 above, Contracts 1 and 2 stipulate that “[a]ny dispute arising from or related to the present contract...shall be resolved in accordance with the BAT Arbitration Rules.” 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.”

66. Article 5 of Contracts 1 and 2 stipulates that “*The arbitrator shall decide the dispute ex aequo et bono.*”. Consequently, the Arbitrator will decide the issues submitted to him in

this proceeding *ex aequo et bono*.

67. 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*² (Concordat),³ 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."*⁴

68. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives "a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case."⁵
69. 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".
70. In light of the foregoing matters, the Arbitrator makes the following findings.

² 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).

³ P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

⁴ JdT 1981 III, p. 93 (free translation).

⁵ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

6.2 Findings

6.2.1 Claimant 1's claims

71. Claimant 1 claims that salary payments totalling USD 52,000 are outstanding under Contract 1. The Respondent contends that it is only liable to Claimant 1 in the amount of USD 49,889.69 because it was entitled to deduct a total of USD 2,110.31 from her salary for traffic fines and maintenance and repair costs in connection with the vehicle that was provided for her use during the season.
72. In its response to the Third Procedural Order, the Respondent provided receipts which showed that the traffic fines were imposed on 3 May 2012 and the vehicle maintenance and repair costs were incurred on 1 August 2012.
73. In her response to the Fourth Procedural Order, Claimant 1 argued that the Respondent should not be allowed to apply these deductions to her salary, noting that in March 2012 she returned the vehicle to the Respondent in proper working condition and travelled back to the United States.
74. The Arbitrator is persuaded by Claimant 1's submission. The Arbitrator considers that it is not appropriate for the Respondent to deduct these costs from Claimant 1's outstanding salary since the evidence suggests that they were incurred after her departure from Istanbul and there is no apparent connection between these costs and Claimant 1. The Arbitrator thus finds that the Respondent is not entitled to do so. Accordingly, the Arbitrator finds that the Respondent is liable to Claimant 1 in the amount of USD 52,000.
75. Claimant 1 has claimed interest at 5% per annum on her outstanding salary. The Respondent has disputed Claimant 1's claim on the basis that Contract 1 does not contain any provision stipulating that Claimant 1 may make claims for payment of

interest.

76. It is well established in BAT jurisprudence that interest may be awarded even where the relevant contract does not explicitly provide for payment of interest.⁶ The Arbitrator considers that it is just for the Respondent to pay interest on Claimant 1's outstanding salary in these circumstances, and that 5% per annum is a reasonable rate of interest.
77. Accordingly, the Arbitrator finds that the Respondent is liable to pay Claimant 1 interest from the date following the due date, as follows:
- (i) on USD 10,000, from 16 February 2012 at a rate of 5% per annum;
 - (ii) on USD 28,000, from 16 March 2012 at a rate of 5% per annum; and
 - (iii) on USD 14,000, from 16 April 2012 at a rate of 5% per annum.

6.2.2 Claimant 2's claims

78. In her response to the Third Procedural Order, Claimant 2 confirmed that her claim under Contract 2 is for outstanding salary of USD 30,000.
79. In its response to the Third Procedural Order, the Respondent accepted liability to pay Claimant 2 the sum of USD 30,000 under Contract 2.
80. Accordingly, the Arbitrator finds that the Respondent is liable to Claimant 2 in the amount of USD 30,000.

⁶ See, e.g., the awards rendered in BAT 0092/10 (*Ronci, Coelho vs. WBC Mizo Pecs 2010*); BAT 0069/09 (*Ivezic, Draskicevic vs. Basketball Club Pecs Noi Kosariabda Kft*); and BAT 0056/09 (*Branzova vs. Basketball Club Nadezhda*).

81. Claimant 2 has claimed interest at 5% per annum on her outstanding salary. The Respondent has disputed Claimant 2's claim on the basis that Contract 2 does not contain any provision stipulating that Claimant 2 may make claims for the payment of interest.
82. As mentioned above, it is well established in BAT jurisprudence that interest may be awarded even where the relevant contract does not explicitly provide for payment of interest. The Arbitrator considers that it is just for the Respondent to pay interest on Claimant 2's outstanding salary in these circumstances, and that 5% per annum is a reasonable rate of interest.
83. Accordingly, the Arbitrator finds that the Respondent is liable to pay Claimant 2 interest from the day following the due payment date, as follows:
- (i) on USD 10,000, from 16 January 2012 at a rate of 5% per annum;
 - (ii) on USD 10,000, from 16 February 2012 at a rate of 5% per annum; and
 - (iii) on USD 10,000, from 16 March 2012 at a rate of 5% per annum.

6.2.3 Claimant 3's claims

84. Claimant 3 claims that the Respondent failed to pay agency fees due to him under Contracts 1 and 2 as follows:
- (i) the Respondent failed to pay an agency fee of USD 14,000 due by 30 November 2011 pursuant to Contract 1; and
 - (ii) the Respondent failed to pay an agency fee of USD 10,000 due by 20 January 2012 pursuant to Contract 2.

85. In the Answer, the Respondent admitted liability to pay USD 14,000 to Claimant 3 under Contract 1. However, the Respondent disputed liability to pay USD 10,000 to Claimant 3 under Contract 2 on the basis that payment was conditional on receipt of an invoice, which the Respondent alleged it had not received.
86. The Arbitrator notes that Contract 2 does not stipulate that payment of Claimant 3's agency fee is conditional on receipt of an invoice. In any event, in his response to the First Procedural Order, Claimant 3 provided evidence that he sent an invoice to the Respondent under cover of an email dated 3 January 2012.
87. In its response to the Second Procedural Order, the Respondent argued that under Turkish tax regulations it required an original invoice (rather than a copy submitted by email) in order to make payment to Claimant 3. The Arbitrator is not persuaded by this argument. Any requirement as to the form of invoices under Turkish tax regulations has no bearing on the Respondent's contractual obligation under Contract 2 to pay Claimant 3 his agency fee. If the Respondent wished to include this requirement as a condition for payment, it should have ensured that the appropriate language were included in Contract 2.
88. Accordingly, the Arbitrator finds that the Respondent is liable to Claimant 3 in the amount of USD 24,000, comprising USD 14,000 under Contract 1 and USD 10,000 under Contract 2.
89. Claimant 3 has claimed interest at 5% per annum on his outstanding fees. The Respondent has disputed Claimant 3's claims on the basis that Contracts 1 and 2 do not contain any provision stipulating that Claimant 3 may make claims for payment of interest.
90. As mentioned above, it is well established in BAT jurisprudence that interest may be awarded even where the relevant contract does not explicitly provide for payment of

interest. The Arbitrator considers that it is just for the Respondent to pay interest on Claimant 3's outstanding fees in these circumstances, and that 5% per annum is a reasonable rate of interest.

91. Accordingly, the Arbitrator finds that the Respondent is liable to pay Claimant 3 interest from the day following the due payment date, as follows:
- (i) on USD 14,000, from 1 December 2011 at a rate of 5% per annum; and
 - (ii) on USD 10,000, from 21 January 2012 at a rate of 5% per annum.

7. Costs

92. Article 17.2 of the BAT Rules provides that "*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. Having those provisions in mind, on 18 October 2013 the BAT President determined the arbitration costs in the present matter to be EUR 8,963.
93. Article 17.3 of the BAT Rules provides that the Arbitrator shall determine in the award which party shall bear the costs of the arbitration and in what proportion.
94. The Arbitrator notes that the Claimants were successful in establishing their claims. Accordingly, the Arbitrator considers that it is fair that the costs of the arbitration be borne by the Respondent.
95. The Claimants paid the Advance on Costs in these proceedings in their entirety, in an

amount of EUR 8,963.

96. The Arbitrator considers that the Respondent shall fully reimburse the Claimants in respect of these payments.

97. Article 17.3 of the BAT Rules also provides that, as a general rule, the Arbitrator shall grant the prevailing party a contribution towards its reasonable legal fees and expenses. The Arbitrator considers it appropriate to take into account the non-reimbursable handling fee (EUR 2,000) when assessing the expenses incurred by the Claimants.

98. The Claimants have claimed the following in respect of legal fees and expenses:

Claimant 1	Legal fees: USD 5,000
Claimant 2	Legal fees: USD 4,000
Claimant 3	Legal fees: USD 6,000
	Non-reimbursable handling fee: EUR 2,000

99. The Arbitrator notes that the amounts claimed by Claimants 1 and 2 are within the relevant thresholds set out in Article 17.4 of the BAT Rules and are partly reasonable in this case, given the number of procedural orders issued in the proceedings, but also considering that most of the Claimants' claims were not disputed by the Respondent.

100. Therefore, the Arbitrator decides that:

- (i) the Respondent shall pay Claimants EUR 8,963 as reimbursement for the Advance on Costs paid by them; and
- (ii) the Respondent shall pay Claimants USD 8,000 and EUR 2,000 in respect of their legal fees and expenses respectively.

8. AWARD

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

- 1. 1. Besiktas Jimnastik Kulubu Dernergi is ordered to pay to Ms. Ebony Hoffman USD 52,000 as compensation for unpaid salary for the 2011-2012 season, together with interest payable at a rate of 5% per annum as follows:**
 - (i) on USD 10,000 from 16 February 2012;**
 - (ii) on USD 28,000 from 16 March 2012; and**
 - (iii) on USD 14,000 from 16 April 2012.**

- 2. Besiktas Jimnastik Kulubu Dernergi is ordered to pay to Ms. Candice Wiggins USD 30,000 as compensation for unpaid salary for the 2011-2012 season, together with interest payable at a rate of 5% per annum as follows:**
 - (i) on USD 10,000 from 16 January 2012;**
 - (ii) on USD 10,000 from 16 February 2012; and**
 - (iii) on USD 10,000 from 16 March 2012.**

- 3. Besiktas Jimnastik Kulubu Dernergi is ordered to pay to Mr. Vasilis Giapalakis USD 24,000 as compensation for unpaid agent fees together with interest payable at a rate of 5% per annum as follows:**
 - (i) on USD 14,000 from 1 December 2011; and**
 - (ii) on USD 10,000 from 21 January 2012.**

- 4. Besiktas Jimnastik Kulubu Dernergi is ordered to pay jointly to Ms. Ebony Hoffman, Ms. Candice Wiggins and Mr. Vasilis Giapalakis EUR 8,963 as reimbursement for the advance on BAT costs.**



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5. **Besiktas Jimnastik Kulubu Dernergi is ordered to pay jointly to Ms. Ebony Hoffman, Ms. Candice Wiggins and Mr. Vasilis Giapalakis USD 8,000 as reimbursement for their legal fees and EUR 2,000 as reimbursement for their legal expenses.**
6. **Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 6 November 2013.

Raj Parker
(Arbitrator)