



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0337/12)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Quentin Byrne-Sutton

in the arbitration proceedings between

Mr. Engin Atsur

represented by Mr. Togay Baki, attorney at law,
Osmaniye Mah Mine Sok. Emre Konutlari, A Blok D:26,
34144 Bakirkoy-Istanbul, Turkey

- Claimant -

vs.

Fenerbahçe Spor Kulübü

Lefter Küçükandonyadis Tesisleri Münir Nurettin Selcuk Cad.,
34726 Istanbul, Turkey

- Respondent -

represented by Mr. Özge Torkanli, attorney at law

1. The Parties

1.1 The Claimant

1. Mr. Engin Atsur is a professional basketball player from Turkey (hereinafter referred to as “the Player” or “Claimant”).

1.2 The Respondent

2. Fenerbahçe Spor Kulübü (hereinafter also referred to as “the Club” or “the Respondent”) is a professional basketball club in Turkey.

2. The Arbitrator

3. On 21 October 2012, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (the “BAT”), appointed Mr. Quentin Byrne-Sutton 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

4. On 16 June 2010, the Player and the Club signed a fully guaranteed employment contract (the “Contract”), whereby the Player was engaged for the 2010/2011 and 2011/2012 seasons.
5. According to clause IV/A of the Contract, the Club undertook to pay the Player a total amount of EUR 500,000 in salary for the 2010/2011 season, by means of monthly

installments to be paid between 5 September 2010 (first installment) and 5 June 2011 (last installment). The total salary and monthly payment schedule for the second season was the same, with payments starting on 5 September 2011 and ending on 5 June 2012.

6. Clause X of the Contract – entitled “*Playing for the National Team*” – stipulates that:

“... The club allows to the player to participate training camp, friendly games and official games for the national team of Turkey, confirming that the club will fulfill all the obligations towards the player from this contract during the player’s absence due to his presence in national team of Turkey, even if (sic) the event that player got injured during his practicing and/or playing games for national team of Turkey”.

7. On 7 August 2010, while playing a game with the Turkish national team against New Zealand in preparation for the FIBA 2010 World Championship, the Player suffered a _____ [injury], which was confirmed by means of an official injury report of the same date.
8. On 9 August 2010, the Player underwent surgery.
9. On 28 September 2010, the Turkish Basketball Federation (“TBF”) forwarded to the Player for him to complete and sign, a form entitled “*Notification of Accident*” on a joint letterhead of *FIBA Europe/Arch Europe/Private Broking*, which concerned “*Total temporary disablement policy Nr. 002554/01/2010 – FIBA Europe*”; which he duly returned on 5 October 2010.
10. On 14 October 2010, as a member of the Turkish national team, the Player received from the TBF an amount of 471,700 TL as a bonus within the distribution of premiums paid to 68 persons (including 16 players) in connection with the national team’s success (silver medal) at the FIBA 2010 World Championship.
11. On 22 October 2010, the Club paid the Player a salary installment of EUR 50,000, corresponding to the amount owed for his first monthly salary under the contractual schedule of payments for the 2010/2011 season.

12. Thereafter, the Club did not make any further salary payments to the Player during the 2010/2011 season.
13. On 27 January and 7 February 2011, the player's FIBA-licensed agent, Mr Miodrag Raznatovic ("Agent"), enquired with the Club by email why the Player had only received one salary to date.
14. On 20 April 2011, the Player had to undergo further surgery because his injury had not properly healed.
15. Due to the injury and resulting surgeries, the Player missed the entire 2010/2011 season; however, he recuperated well over the summer of 2011 and successfully played more than 35 games for the Club during the 2011/2012 season.
16. On 25 October 2011, at the beginning of the new season, the Agent wrote a letter to the Club stating:

"I was really patient, waiting for your club to solve the problem with Turkish basketball federation about payments of Engin Atsur for the last playing season. As you know, the Club supposed to pay the player 500,000 Euro, and only amount of 50,000 Euro has been paid. The Player got final answer from Federation and Insurance company, that they will cover only 150,000 Euro, and this money should probably wired to you. The Player, who s (sic) healthy now, and ready to play insist of fulfilling your obligation to him, and immediate payment of remaining salary from last year. One more time, I would remind you on the article X of his contract ...".

17. On 1 November 2011, the Agent followed up by email, stating:

"I will be in Istanbul Tuesday and Wednesday (15 and 16th of November). Would you be so kind to fix the meeting with your Lawyers and/or people from Managing board to have a final conclusion about Engin Atsur?".

18. On 21 November 2011, the Agent alerted the TBF to the need to resolve the matter, stating:

"I am writing this email, in behalf of MR Engin Atsur, as his representative. Last week, I was in Istanbul for 6 days, trying to have a meeting with you, but I have been informed that you out of Turkey. As you probably now, Fenerbahce Ulker permanently refusing to pay Atsur s last year salary, with excuse that he got injured during the training camp of

the national team, and that salary should be covered by Federation through insurance company. The player had a lot of patience, but now he needs to react, because from injury it passed more than 1 year, and owed amount is big – contract has been signed on 500.000 Euro for last year. With this letter I kindly ask you to do the payment for MR Atsur in next 15 days, or to give us any other proposition what you have. We are not ready and we can not accept silence anymore, because, as I said, it's already 15 months from the injury and even more. We need to have a clear answer from Turkish basketball federation - do you ready to pay his contract, and if yes, when ...". [sic]

19. On 9 February 2012, the Agent wrote to the Club again indicating that it had to take its contractual responsibilities because the Player could not remain in limbo between the Club and the TFB without any payments:

"Herewith (below) is the email, which I sent to TFB (MR Ali Ozsoy) concerning the problem of insurance payment to Engin Atsur. They have never replied. Last time, when I was in Istanbul, I was asking for the meeting (2 weeks ago) and they refused to talk with me. It's obvious that they are not interested in any communication with me, because they said we are not in any contractual relationship. I have no any other choice than to inform you that Club needs to fulfill (sic) obligations towards Engin and after that to race for the money from Federation of insurance. The Player received only 10 percents of his salary last year and 450,000 Euro is missing. The contract is clear. It's not possible that every time when we talk about this problem (Engin and me are very polite and patient), Club has no any answer or solution. Probably everybody understands that nobody will give up of 450.000 Euro, clearly written in the contract..."

20. Thereafter, the TBF confirmed its offer to pay the Player compensation for lost salaries in an amount of EUR 150,000.
21. Given that the Player had only received one monthly salary of EUR 50,000 from the Club at the beginning of the prior season, he understood that if he accepted the offer from the TBF, the Club would still need to cover an outstanding amount of EUR 300,000 in salary, representing the difference between the total contractually guaranteed salary of EUR 500,000 for the season and the amount which he would have received (EUR 50,000 + 150,000).
22. In view of this situation – and preoccupied by the fact if the Player accepted the offer from the TBF which did not cover the contractually guaranteed salary, the Club might deem him responsible for the loss (difference in amount) – the Agent enquired with the Club on 6 March 2012 whether it would agree to the Player accepting the

compensation of EUR 150,000 despite the fact that a large outstanding amount of salary would still be owed by the Club.

23. In that email, he enquired with the Club as follows:

"We have to do something with Atsur last season payments. Herewith all paperwork from Insurance company, and they offer 150,000 Euro to paid to Engin. We need to give them answer. What do you want from us to do? I believe is better to take 150,000 E, than nothing but is up to you ... We need to have answers in 7 days". [sic]

24. On 21 March 2012, the Agent sent a further notice along the same lines to the Club, stating:

"... I already sent e mail to MR Nedim Karakas on the 6th of March 2012 asking about club s clear instruction about accepting or not accepting offer from TBF and insurance (offered amount 150.000,00 Euro). My client is afraid that if he does not give answer to the offer, he could pas dead line, and be in situation, that offer would not be valid anymore. In the other hand, he does not want possible future misunderstanding with the club, if he accepts this. The problem is, as you know, that unpaid salary is 450,000 Euro, and offer covers only 150.000 Euro. That s the reason, that with this letter, I kindly ask you to give us clear instruction about accepting or not-accepting the offer till the 31st March 2012. If you do not give us direction, my client would decide on his best knowledge but you will not be in position later on to complain for it. My client would like to keep good relationship and waiting for decission". [sic]

25. On 2 April 2012, the Agent sent a final reminder to the Club with the same request for it to provide directions regarding its preferred approach to solving the non-payment issue.
26. On 10 August 2012, the Player was sent by the TFB a release letter to sign, whereby, in exchange for the payment of EUR 150,000, he would "irrevocably release TBF and FIBA-Europe in the largest sense" from any further compensation obligations arising from the insurance policy.
27. Having never received any instructions or assurances from the Club regarding how any payment from the insurance would be coordinated with the payment by the Club of the outstanding difference with his contractually-guaranteed salary, the Player resolved to file an arbitration claim with the BAT to request payment of all of the outstanding

salaries due for the 2010/2011 season and the final salary that had not been paid at the end of the 2011/2012 season.

3.2 The Proceedings before the BAT

28. On 23 October 2012, the Claimant filed a Request for Arbitration in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 3,978 on 16 October 2012.
29. On 27 November 2012, the BAT informed the Parties that Mr. Quentin Byrne-Sutton had been appointed as the Arbitrator in this matter and fixed the advance on costs to be paid by the Parties as follows:

<i>“Claimant (Mr. Engin Atsur)</i>	<i>EUR 6,000</i>
<i>Respondent (Fenerbahce Spor)</i>	<i>EUR 6,000”</i>
30. On 4 December 2012, the Claimant paid his share of the advance on costs.
31. On 19 December 2012, the Respondent submitted its Answer.
32. On 24 December 2012, the Claimant substituted for the Respondent in paying its share of advance on costs.
33. By Procedural Order of 16 January 2013, the Claimant was requested to answer questions addressed to him by the Arbitrator.
34. On 30 January 2012, the Claimant filed his answers to the questions.
35. By Procedural Order of 7 February 2013, the Respondent was given leave to comment, in the form of a rejoinder, on the Claimant’s answers.
36. The Respondent refrained from submitting a rejoinder.

37. By Procedural Order of 15 February 2013, the proceedings were closed and the Parties invited to submit their statements of costs.
38. On 22 February 2013, the Parties submitted their respective statement of costs. The Claimant requested the amount of EUR 18,000 for attorney fees and the Respondent the amount of EUR 750.
39. On 25 February 2013, the Parties were invited to file any observations they might have on the other party's statement of costs.
40. On 1 March 2013, the Respondent objected to the Respondent's attorney fees stating that "*There's no information about details (calculation of the amount, hourly fees, total time involved etc.)*".
41. On 4 March 2013, the Claimant was invited to submit details regarding its statement of costs, which it did on 6 March 2013.
42. On 8 March 2013, the Respondent replied as follows:

"Attorney's fee (hourly rate) requested by the Claimant is too high. This amount is much higher than the current value in Turkey and additionally this case has not been a long time in process. Therefore; we do not accept the requested amount."

4. The Positions of the Parties

4.1 The Claimant's Position

43. In a nutshell and in substance, the Player contends that:
 - Under the express wording of clause X of the Contract, the Club guarantees his contractual rights even if he gets injured while playing for the Turkish national team.
 - Consequently, and because under clause V/B of the Contract, the Club guarantees

his entire salary even in the case of an injury, the Club has the obligation to pay his outstanding salaries for the 2010/2011 season, amounting to EUR 450,000, despite the fact that he got injured during a game with the national team.

- Furthermore, the fact that the TBF, via FIBA Europe, benefits from an insurance scheme providing national team players with the right to certain amounts of compensation for lost earnings in case of injury, does not detract from the Club's primary contractual obligation to pay him, among others because the Player is not a party to the insurance policy in question and is not being offered full compensation for the lost earnings.
- The Club was therefore obligated to pay him his full salary for the season, while he would assign to the Club any overlapping compensation received from the TBF thanks to the insurance scheme organized by FIBA Europe.
- If the Club had confirmed that accepting from the TBF any insurance compensation was without prejudice to his salary rights and any non covered salaries, he would have been willing to claim from the Club only the difference in amount between his contractually guaranteed salary and the compensation being offered to him by the TBF. However, despite numerous requests to the Club for such confirmation, he never received any assurances or instructions.
- The bonus that he received from the TBF for his participation in the national team in connection with the FIBA 2010 World Championship forms part of a distribution of premiums to national team officials and team members that is independent from and has nothing to do with his salary rights under the Contract with the Club. Consequently, the Club has no right to reduce by a corresponding amount the salaries contractually owed to him for the 2010/2011 season.
- He is contractually entitled to be paid his outstanding monthly salary of EUR 50,000 still owed to him for the last instalment of June 2012 relating to the 2011/2012

season.

- In total the Club therefore owes him EUR 500,000, plus interest.

44. In his Request for Arbitration of 23 October 2012, the Claimant requested the following relief:

“a) To award claimant Mr. Engin Atsur with amount of 500,000.00 Euro plus interest at applicable Swiss statutory rate as follows:

- amount of 50.000,00 Euro from the 5th of October 2010*
- amount of 50.000,00 Euro from the 5th of November 2010*
- amount of 50.000,00 Euro from the 5th of December 2010*
- amount of 50.000,00 Euro from the 5th of January 2011*
- amount of 50.000,00 Euro from the 5th of February 2011*
- amount of 50.000,00 Euro from the 5th of March 2011*
- amount of 50.000,00 Euro from the 5th of April 2011*
- amount of 50.000,00 Euro from the 5th of May 2011*
- amount of 50.000,00 Euro from the 5th of June 2011*
- amount of 50.000,00 Euro from the 5th of June 2012*

b) To award claimant with the full covered the costs (sic) of this Arbitration.”

4.2 Respondent's Position

45. In a nutshell and in substance, the Respondent contends that:

- Because the Player got injured while playing for the Turkish national team, he was unable to fulfil his contractual obligations towards the Club for the entire 2010/2011 season.
- Moreover, the Player is covered for lost earnings relating to such injury by the

TBF's insurance in his favour, but he has failed to make any corresponding claim for compensation/indemnification as he had the duty to do.

- Thus, the Club has no duty to pay the Player until he has received the compensation he is entitled to under the TBF insurance coverage and the amount of such indemnity can be deducted from any payments made by the Club. Otherwise, the Player would be unjustly enriched by overlapping payments.
- In addition, in the circumstances, the Club should not be obliged to pay the Player any salaries for the 2010/2011 season because the share of bonuses he received from the TBF for his participation in the national team add up to much more than his contractual salary.

46. In its Answer dated 19 December 2012, the Club requested as relief: “... *that, in line with above explanations, ungrounded and unfair requests of the petitioner be overruled and all legal expenses and attorney’s fees be borne by the claimant party*”.

5. The Jurisdiction of the BAT

47. 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).

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

49. 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.¹

50. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under clause XI of the Contract, which reads as follows:

“Any dispute arising from or related to the present contract shall be submitted to the Basketball 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 English. The arbitrator shall decide the dispute ex aequo et bono.”

51. The foregoing arbitration agreement is in written form and thus fulfils the formal requirements of Article 178(1) PILA.
52. The arbitration agreement leaves no doubt that the parties intended their contractual disputes to be resolved under the aegis of the “*FIBA Arbitral Tribunal*” created by the *Fédération Internationale de Basketball* (“FIBA”), which is now referred to with the acronym “BAT” but under the previous version of its procedural rules was named the “FAT”.
53. The modified name and acronym for the arbitral tribunal were adopted in 2011, however the institution remains the same, as do its procedural rules except for their updating on various points. The standard BAT (previously FAT) arbitration clause was amended accordingly.
54. Moreover, Article 18.1 of the updated applicable BAT (previously FAT) Arbitration Rules stipulates that “*These Rules enter into force on 1 April 2011 and are applicable to Requests for Arbitration received by the BAT Secretariat or by FIBA on or after such date*”, while Article 18.2 specifies that “*Any reference to BAT’s former name “FIBA*

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

Arbitral Tribunal (FAT)” shall be understood as referring to the BAT”.

55. Consequently and given the fact that the Request for Arbitration was filed in October 2012, the reference to the “FAT” and its arbitration rules under article XI of the Contract must have been intended by the parties thereto as a reference to the arbitral tribunal currently named the “BAT” and to the version of its Arbitration Rules applicable from 1 May 2012 onwards.
56. 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).
57. Moreover, the arbitration agreement covers all aspects of the dispute being raised in this proceeding and the jurisdiction of the BAT has not been challenged by the Club.
58. For the above reasons, the Arbitrator has jurisdiction to adjudicate the claims submitted by the Player against the Club.

6. Discussion

6.1 Applicable Law – ex aequo et bono

59. 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”.

60. 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."

61. Article XI of the Contract provides that if and when any dispute between the parties hereto is submitted to the BAT: *"The arbitrator shall decide the dispute ex aequo et bono"*.

62. Consequently, the Arbitrator shall decide *ex aequo et bono* the claims brought by the Player against the Club in this arbitration in front of the BAT.

63. 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'arbitrage² (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

64. 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

65. This is confirmed by Article 15.1 of the BAT Rules in fine, according to which the

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 Poudret/Besson, Comparative Law of International Arbitration, London 2007, No. 717. pp.625-626.

Arbitrator applies “*general considerations of justice and fairness without reference to any particular national or international law*”.

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

6.2 Findings

67. Concerning the salary of June 2012 in an amount of EUR 50,000, which the Player alleges remains unpaid in relation to the 2011/2012 season, during which he was able to play again, thanks to the recovery from his injury, the Club has neither contended that it paid such amount, nor contested that part of the Player’s claim or provided any reasons for which such sum would not be owed to him in accordance with the Contract.

68. Consequently, the Player’s claim for payment of EUR 50,000, corresponding to the contractual monthly salary instalment owed to him in June 2012, will be admitted.

69. With respect to the nine contractual monthly salary instalments running from 5 October 2010 until 5 June 2011, amounting to a total amount of EUR 450,000, it is uncontested that they remain unpaid by the Club.

70. Furthermore, it is undeniable that under the clear wording of article V/B of the Contract – which provides that all remaining salaries for the season will be paid in full in case of an injury – and of article X of the Contract – which provides that the Club undertakes to fulfil all its contractual obligations towards the Player even if he is injured during a game with the Turkish national team – the Club has the contractual obligation to fully pay that total amount, unless there exists some justified reason to admit an exception.

71. Essentially, the Club is invoking two reasons for not paying such amount.

72. One reason the Club is invoking to justify the non-payment of the Player’s outstanding salaries relating to the 2010/2011 season is that he already received from the TBF, within the same season, a bonus for his participation in the Turkish national team which

surpasses the sum of his outstanding salaries.

73. The Arbitrator finds that, irrespective of the amount of the bonus the Player was paid by the TBF – which according to the documents adduced was 471,000 TRY (Turkish Lira), i.e. a sum which is much lower than the Player's outstanding salary – there is no contractual basis or reasons of fairness or justice to deem that all or part of any such bonus should be deducted from the contractual salaries owed to him by the Club.
74. The Player earned that bonus from the TBF thanks to his merit of being selected for and subsequently playing for the Turkish national team in preparation for the FIBA 2010 World Championship, meaning that it is owed to him by a different entity (the TBF) and on a completely different and independent basis, i.e. as his portion of the success premium paid to the Turkish national team officials and players for their services to the national team.
75. Thus, the receipt of this bonus from the TBF by the Player cannot justify the non-payment by the Club of any part of his outstanding salary of EUR 450,000 pertaining to the 2010/2011 season.
76. The other reason invoked by the Club to justify the non-payment of the Player's outstanding salary relating to the 210/2011 season, is that the Player's contractual right against the Club was suspended and/or extinguished by his right to claim compensation for corresponding lost earnings from the TBF based on its insurance policy covering the risk of injury during practices and games with the Turkish national team. In this connection, the Club also alleges that the Player unduly failed to make the necessary insurance claim.
77. In the circumstances of this case, the Arbitrator finds that there is no contractual basis or reasons of fairness or justice to consider that the Player's contractually-guaranteed right to be paid his monthly salary instalments by the Club was suspended or extinguished due to the existence of the TBF's insurance coverage; or that the Player failed in his duties to make an insurance claim.

78. Generally speaking, where players' salaries are involved, it is important and fair that they be paid in a timely manner since they represent a player's livelihood; and subjecting the performance of salary payments to the successful filing of insurance claims for lost earnings would put both the principle and timeliness of their payment at risk. Thus, any intended exceptions allowing the interruption/suspension of salary payments should be expressly written into the language of the contract.
79. Here, the provisions of the Contract do not indicate or imply any right of the Club to withhold salary payments owed to the Player pending the resolution of an insurance claim in any form.
80. On the contrary, clauses V/B and X of the Contract combined make it quite clear that the Club runs the primary contractual risk of having to pay the Player's entire guaranteed salary even if he is injured during practice or a game with the Turkish national team.
81. Thus, the Club must pay the Player's contractually-due salaries according to schedule, pending the possible reimbursement by the Player or direct payment from the third-party/insurance of any corresponding compensation for lost earnings subsequently covered by the insurance.
82. Any other solution would be unfair and contrary to the wording and rationale of the Contract, since under the Contract the Player's salary is fully guaranteed even in case of an injury incurred while practising/playing with the national team and because, albeit being a beneficiary of the TBF's insurance coverage, the Player is not a party to the insurance policy and has very little control, if any, over the timing and extent of coverage of his lost earnings by the insurance in question.
83. In addition, it stems from the evidence on record that the Player did in fact cooperate with the TBF and did duly make an insurance claim, in keeping with the forms/requests received, while patiently and regularly asking the Club, without success, to provide instructions as to whether or not he could accept the incomplete lost-earnings

compensation (EUR 150,000) being offered by the insurance without prejudice to the Club's contractual obligation to pay the remaining outstanding salaries (amounting to EUR 300,000) not covered by the insurance. In this connection, the Player even went so far as to explicitly state to the Club that he would assign his insurance compensation rights to the Club.

84. The Arbitrator finds it was understandable in the circumstances – among others in light of the very general release sought by the TBF and FIBA Europe in exchange for the payment of the insurance benefit of EUR 150,000 – that the Player felt he needed to obtain confirmation from the Club that accepting the insurance payment would be without prejudice to his underlying guaranteed salary rights; and it would not have been difficult for the Club to provide that reassurance. The arguments raised in defence by the Club in this proceeding also indicate that the Player's caution was reasonable.
85. For the above reasons, the Arbitrator finds that the Club has no valid justification for not paying the Player his outstanding guaranteed salary in an amount of EUR 450,000 relating to the 2010-2011 season, and that the Player cannot be deemed to have contributed in any fashion to the Club's delay in making such payment or to have behaved in a manner which forfeited his right to claim interest for late payment on the amounts owed.
86. Although the Contract does not expressly regulate interest for late payments, it is a generally recognized principle embodied in most legal systems, which is underpinned by motives of equity, that late payments give rise to interest – in order that the creditor be placed in the financial position she/he would have been in had payments been made on time.
87. Therefore, and despite the Contract not specifying an interest rate, it is normal and fair that interest is due on the late payments owed to the Player. In this case, the Arbitrator finds it fair and reasonable to award interest at a rate of 5% per annum, in line with BAT jurisprudence.

88. It is an established principle that interest runs from the day after the date on which the principal amounts are due.
89. Consequently, it is fair that, with respect to the monthly salaries provided under the Contract, the amounts owed to the Player will bear interest at 5% per annum from the day after their due date stipulated in the Contract.

7. Costs

90. 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.
91. On 22 March 2013 - 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 11,000.00
92. Considering the Claimant entirely prevailed in his claim, it is fair that the fees and costs of the arbitration be borne by the Respondent and that it be required to cover its own legal fees and expenses as well as make a contribution to those of the Claimant.
93. Given that the Claimant paid advances on costs of EUR 12,000 as well as a non-reimbursable handling fee of EUR 4,000 (which will be taken into account when

determining the Claimant's legal fees and expenses), while the Respondent failed to pay any advance on costs, the Arbitrator decides that in application of Article 17.3 of the BAT Rules:

- (i) BAT shall reimburse EUR 1,000 to the Claimant, being the difference between the costs advanced by him and the arbitration costs fixed by the BAT President;
- (ii) The Respondent shall pay EUR 11,000 to the Claimant, being the difference between the costs advanced by him and the amount he is going to receive in reimbursement from the BAT;
- (iii) The Respondent shall pay to the Claimant EUR 10,000 (4,000 for the non-reimbursable fee + 6,000 for legal fees, given the complexity of the matter and the number of submissions required) representing the amount of the Respondent's contribution to the Claimant's legal fees and other expenses. This amount is in line also with the maximum contribution to a party's reasonable legal fees and other expenses established in Article 17.4 of the BAT Rules for cases of such value.

8. AWARD

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

- 1. Fenerbahçe Spor Kulübü shall pay Mr. Engin Atsur the following amounts as compensation for unpaid salaries:**
 - EUR 50,000 Euro, plus interest at 5% p.a. from 6 October 2010
 - EUR 50,000 Euro, plus interest at 5% p.a. from 6 November 2010
 - EUR 50,000 Euro, plus interest at 5% p.a. from 6 December 2010
 - EUR 50,000 Euro, plus interest at 5% p.a. from 6 January 2011
 - EUR 50,000 Euro, plus interest at 5% p.a. from 6 February 2011
 - EUR 50,000 Euro, plus interest at 5% p.a. from 6 March 2011
 - EUR 50,000 Euro, plus interest at 5% p.a. from 6 April 2011
 - EUR 50,000 Euro, plus interest at 5% p.a. from 6 May 2011
 - EUR 50,000 Euro, plus interest at 5% p.a. Euro from 6 June 2011
 - EUR 50,000 Euro, plus interest at 5% p.a. Euro from 6 June 2012
- 2. Fenerbahçe Spor Kulübü shall pay Mr. Engin Atsur an amount of EUR 11,000 as reimbursement for his arbitration costs.**
- 3. Fenerbahçe Spor Kulübü shall pay Mr. Engin Atsur an amount of EUR 10,000 as a contribution to his legal fees and expenses.**
- 4. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 26 March 2013.

Quentin Byrne-Sutton
(Arbitrator)