



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0385/13)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Mr. Alexandros Liatsos

- Claimant 1 -

Mr. Athos Antoniou

- Claimant 2 -

both represented by Mr. Polyvios Panayides, attorney at law,
Chrysses Demetriades & Co, LLC, 13 Karaiskakis Street,
Office 228, 2nd floor, 3032 Limassol, Cyprus

vs.

BC AEL Limassol
Georgiou Thirotou 1, 3012 Limassol, Cyprus

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. Alexandros Liatsos (hereinafter "Claimant 1") is a professional basketball player from Cyprus.
2. Mr. Athos Antoniou (hereinafter "Claimant 2" and together with Claimant 1, "the Claimants") is a professional basketball players' agent from Cyprus.
3. In these proceedings, both of the Claimants are represented by Mr. Polyvios Panayides of Chrysses Demetriades & Co, LLC, 13 Karaiskakis Street, Office 228, 2nd floor, 3032 Limassol, Cyprus.

1.2 The Respondent

4. BC AEL Limassol (hereinafter the "Respondent") is a professional basketball club in Cyprus.
5. The Respondent is not represented by legal counsel in these proceedings.

2. The Arbitrator

6. On 7 May 2013, 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 Basketball Arbitral Tribunal (hereinafter the "BAT Rules").

7. None of the Parties have raised objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Background Facts

8. On 21 October 2010, the Claimants and the Respondent entered into a contract in relation to the 2010-2011, 2011-2012 and the 2012-2013 seasons (hereinafter the "Contract").
9. The Contract contains, among others, the following provisions:

"Article 3. Salary Obligations of the club to the Player:

The Club will pay the Player for his services the total amount of €103,000 (One Hundred Three Thousand Euros) (NET and after deducting all taxes, social insurance etc.) for the seasons 2010-2011, 2011-2012 and 2012-2013 as follows:

*(a) For the Season **2010-2011**, the amount of **€30,000 (Thirty Thousand Euros) NET**, in six equal payments of **€5000 (Five Thousand Euros) NET** and after deducting all social insurance and taxes at the end of every month starting from October 30th 2010 until March 31st 2011.*

*(b) For the Season **2011-2012**, the amount of **€34,000 (Thirty Four Thousand Euros) NET**, in Seven equal payments of **€4857 (Four Thousand Eight Hundred and Fifty-Seven Euros) NET** and after deducting all social insurance and taxes at the end of every month starting from September 30th 2011 until March 31st 2012.*

*(c) For the Season **2012-2013**, the amount of **€39,000 (Thirty Nine Thousand Euros) NET**, in seven equal payments of **€5571 (Five Thousand Five Hundred and Seventy-One Euros) NET** and after deducting all social insurance and taxes at the end of every month starting from September 30th 2012 until April 30th 2013.*

[...]

Article 6. Medical Health Insurance:

6.1 *The Club guarantees to provide the Player with free medical insurance coverage in accordance with the league's regulations.*

6.2 *Plastic surgery shall not included in the medical insurance coverage, whereas dental coverage shall not be included unless such dental work is required as result of injury due to the Player's activity as a basketball player in which case the Club shall be responsible for all costs.*

Article 7. Guarantee of contract:

[...]

7.2 *This is a no cut, 100% fully guarantee contract.*

Article 8. Disputes:

8.1 *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 and the seat of arbitration shall be Geneva, Switzerland.*

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

8.3 *The arbitrator shall decide the dispute ex eaquo [sic] et bono. In case of a dispute, the Club is responsible to cover financially all lawyers or FAT expenses/fees.*

8.4 *It is hereby confirmed and declared by each of the parties of this agreement that the FAT jurisdiction clause as specified in this agreement shall prevail and govern any other tribunal jurisdiction whether in Cyprus or elsewhere and disregard any future agreement signed by the parties for local authorities.*

Article 9. Breach and remedies:

9.1 *In the event that the Club fails to make any scheduled payment to the Player and/or his Agent on the date mentioned under this agreement, with a grace period of maximum twenty (20) days then the Player shall have the following absolute rights:*

a. *To stop practicing or playing basketball for the Club until such*

outstanding payment is made and

b. To terminate or cease his performance obligations whereas in this case he shall have the right to leave the Club, which is obliged to give him a FIBA letter of Clearance and the Player shall be at liberty to play basketball anywhere in the world

c. To terminate the present agreement and claim against the Club the full amounts as provided by the present agreement and/or any other amounts which are payable by this agreement..

It is understood that the duties and liabilities of the Club under this Agreement to the Player shall continue in full force and effect.

Article 10. Agents' fees – Representation:

10.1 The club will pay agents' fee to the player's agent for the following amounts:

a) For the season 2010-2011 the amount of €1,500 (One Thousand Five Hundred Euro) NET payable to Athos Antoniou, upon signing

b) For the season 2011-2012 the amount of €3,400 (Three Thousand Four Hundred Euro) NET payable to Athos Antoniou, on September 30th 2011.

c) For the season 2012-2013 the amount of €3,900 (Three Thousand Nine Hundred Euro) NET payable to Athos Antoniou, on September 30th 2012.

10.2 The Player's representative agrees to provide ongoing support, advice, and participation throughout the contract period and to negotiate any future deals between the Club and Mr. Liatsos Alexandros."

10. Claimant 1 played for the Respondent during the 2010-2011 and 2011-2012 seasons. On 27 June 2012, the Claimants' legal representative sent a letter to the Respondent (hereinafter the "Termination Letter"). The Termination Letter stated that the Respondent had breached the Contract by failing to pay to Claimant 1 certain salary payments and medical costs. The Termination Letter gave notice that Claimant 1 was terminating the Contract as a result of the aforementioned breaches.

3.2 The Proceedings before the BAT

11. On 27 December 2012, the BAT received the non-reimbursable handling fee of EUR 2,000.00 from the Claimants. On 28 February 2013, the Claimants filed a Request for Arbitration in accordance with the BAT Rules.

12. By letter dated 7 May 2013, the BAT Secretariat fixed a time limit until 28 May 2013 for the Respondent to file its Answer to the Request for Arbitration. By the same letter, and with a time limit for payment of 17 May 2013, the following amounts were fixed as the Advance on Costs:

<i>“Claimant 1 (Mr Alexandros Liatsos)</i>	<i>EUR 3,000</i>
<i>Claimant 2 (Mr Athos Antoniou)</i>	<i>EUR 1,000</i>
<i>Respondent (AEL Limassol)</i>	<i>EUR 4,000”</i>

13. The Respondent did not file an Answer.

14. Claimant 1 paid his share of the Advance on Costs on 22 May 2013. Claimant 2 and the Respondent both failed to pay their share of the Advance on Costs before 28 May 2013. On 2 July 2013, Claimant 1 paid EUR 3,000.00 of the Respondent’s share of the Advance on Costs. On 19 July 2013, Claimant 2 paid his share of the Advance on Costs and EUR 1,000.00 of the Respondent’s share of the Advance on Costs.

15. On 30 July 2013, the Arbitrator issued a Procedural Order (hereinafter the “First Procedural Order”) in which he: (i) requested further information from the Claimants; and (ii) provided the Respondent with a further opportunity to make any submissions in relation to the Claimants’ claim.

16. The Claimants submitted their response to the First Procedural Order on 12 August 2013. The Respondent did not submit a response to the First Procedural Order.

17. By Procedural Order dated 14 August 2013, the Arbitrator declared the exchange of

documents complete, and requested that the Parties submit detailed accounts of their costs by 22 August 2013.

18. On 20 August 2013, the Claimants submitted the following account of costs:

“COSTS

Date	Amount (€)	Paid by	Description
20.12.2012	2,000.00	Liatsos Alexandros	Handling Fee
22.05.2013	3,000.00	Liatsos Alexandros	Advance on Costs (Claimant 1)
02.07.2013	3,000.00	Liatsos Alexandros	Advance on Costs (Respondent's Share)
19.07.2013	1,000.00	GPK Sports Management Ltd (for Claimant 2)	Advance on Costs (Claimant 2)
19.07.2013	1,000.00	GPK Sports Management Ltd (for Claimant 2)	Advance on Costs (Respondent's Share)

TOTALS

Claimant 1: 8,000.00 €

Claimant 2: 2,000.00 €

LEGAL FEES

DESCRIPTION	AMOUNT (€)
Meetings and discussions with Claimants 1 and 2 and review of documents	1,500
Preparation and submission of Request for Arbitration	3,000
Communications with BAT and review of BAT's Directions	2,000
Plus 18% V.A.T.	1,170

TOTAL: 7,670 €”

19. The Respondent did not submit an account of costs.
20. By email dated 23 August 2013, the BAT Secretariat sent the Claimants' account of costs to the Respondent and requested that the Respondent submit any comments on the Claimants' account of costs by no later than 30 August 2013. The Respondent did not submit any such comments.
21. Since none of the Parties filed an application for 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 claim

22. The Claimants assert that Claimant 1 played for the Respondent during the 2010-2011 and the 2011-2012 seasons, pursuant to the Contract.
23. Claimant 1 claims that there was a shortfall in the salary paid to him of EUR 10,430.00 in relation to the 2010-2011 season, and of EUR 26,000.00 in relation to the 2011-2012 season.
24. Claimant 1 submits that he terminated the Contract at the end of the 2011-2012 season and that his salary for the 2012-2013 season (totalling EUR 39,000.00) is due and payable.

25. Claimant 1 claims interest on each of the above amounts.
26. Claimant 1 further submits that he is entitled to be reimbursed for dental work carried out following an injury he sustained whilst playing for the Respondent.

4.2 Claimant 2's claim

27. Claimant 2 asserts that he is entitled to the following agent's fees: (i) EUR 1,500.00 in relation to the 2010-2011 season; (ii) EUR 3,400.00 in relation to the 2011-2012 season; and (iii) EUR 3,900.00 in relation to the 2012-2013 season.
28. Claimant 2 submits that the Respondent failed to pay any of the above agent's fees. Claimant 2 claims compensation for each of the unpaid agent's fees, together with interest.
29. The Claimants' request for relief states:

"Request for Relief

[...]

Claimant 1:

- (a) €10.430 representing late salaries to the player for the season 2010-2011,*
- (b) €26.000 representing late salaries to the player for the season 2011-2012,*
- (c) €39.000 representing the salaries for the season 2012-2013*
- (d) €2.150 medical costs for a surgery and a treatment Claimant 1 had undergone after being injured whilst providing his services to the Club.*

Claimant 2:

- (a) €1.500 representing unpaid agent's fees for the season 2010-2011
- (b) €3.400 representing unpaid agent's fees for the season 2011-2012
- (c) €3.900 representing unpaid agent's fees for the season 2012-2013

Claimants 1 and 2:

- (a) €2.000 handling fee
- (b) Cost of the arbitration
- (c) Interest, legal fees and other costs.”

4.3 The Respondent's Answer

30. Despite several invitations by the BAT, the Respondent neither engaged in the arbitration proceedings at hand, nor did it make any submissions within the time limits set by the Arbitrator in accordance with the BAT Rules.

5. Jurisdiction

31. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not participate in this arbitration, he will examine his jurisdiction *ex officio* on the basis of the record as it stands.

32. Pursuant to Article 2.1 of the BAT Rules, “[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland”. Hence, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

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

5.1 Arbitrability

34. The Arbitrator 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

35. 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.

3 The validity of an arbitration agreement may not be contested on the grounds that the principal contract is invalid or that the arbitration agreement concerns a dispute which has not yet arisen."

36. Article 8 of the Contract stipulates:

"Article 8. Disputes:

8.1 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 and the seat of arbitration shall be Geneva, Switzerland.

8.2 The arbitration shall be governed by chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of parties domicile and the language of arbitration shall be English.

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

8.3 *The arbitrator shall decide the dispute ex eaquo et bono. In case of a dispute, the Club is responsible to cover financially all lawyers or FAT expenses/fees.*

8.4 *It is hereby confirmed and declared by each of the parties of this agreement that the FAT jurisdiction clause as specified in this agreement shall prevail and govern any other tribunal jurisdiction whether in Cyprus or elsewhere and disregard any future agreement signed by the parties for local authorities."*

37. 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).
38. The Contract is in written form and thus the arbitration clause fulfils the formal requirements of Article 178(1) PILA. 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) of the PILA). In particular, the wording "[a]ny dispute arising from or related to the present contract" clearly covers the present dispute. In addition, the Respondent did not object to the jurisdiction of BAT.
39. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claim.

6. Other Procedural Issues

40. Article 14.2 of the BAT Rules, which the Parties have declared to be applicable in the arbitration agreement, specifies that "*the Arbitrator may nevertheless proceed with the arbitration and deliver an award*" if "*the Respondent fails to submit an Answer.*" The Arbitrator's authority to proceed with the arbitration in case of default by one of the

parties is in accordance with Swiss arbitration law and the practice of the BAT.² However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.

41. This requirement is met in the current case. The Respondent was duly informed of the initiation of the proceedings and of the appointment of the Arbitrator according to the relevant rules. It was also given opportunity to respond to Claimants' Request for Arbitration, the First Procedural Order and to Claimants' account of costs. Still, the Respondent has chosen not to respond within the time limits set by the Arbitrator according to the BAT Rules.

7. Discussion

7.1 Applicable Law – ex aequo et bono

42. 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".

43. Under the heading "Applicable Law", Article 15.1 of the BAT Rules reads as follows:

² See *ex multis* FAT 0001/07; FAT 0018/08; FAT 0093/09; BAT 0170/11.

“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.”

44. Article 8.3 of the Contract states “[t]he arbitrator shall decide the dispute ex aequo [sic] et bono”.

45. In light of the above, the Arbitrator will decide the issues submitted to him in this proceeding *ex aequo et bono*.

46. 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*³ (Concordat),⁴ under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

*“When deciding ex aequo et bono, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”*⁵

47. 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”.⁶

48. This is confirmed by Article 15.1 of the BAT Rules *in fine* according to which the arbitrator applies “general considerations of justice and fairness without reference to

³ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

⁴ P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

⁵ JdT 1981 III, p. 93 (free translation).

⁶ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

any particular national or international law”.

49. In light of the foregoing matters, the Arbitrator makes the following findings.

7.2 Findings

7.2.1 Claimant 1’s unpaid salary for the 2010-2011 and 2011-2012 seasons

50. Claimant 1 claims unpaid salary totalling EUR 10,430.00 in relation to the 2010-2011 season, and totalling EUR 26,000.00 in relation to the 2011-2012 season. Claimant 1 played for the Respondent during both of those seasons.

51. Article 9 of the Contract provides that Claimant 1 is entitled to terminate the Contract *“in the event that the [Respondent] fails to make any scheduled payment to [Claimant 1] or [Claimant 2] on the date mentioned under this agreement, with a grace period of maximum twenty (20) days [...]”*

52. On 27 June 2012, Claimant 1 terminated the Contract pursuant to Article 9 of the Contract, on the grounds that the Respondent had failed to pay to Claimant 1 EUR 26,000.00 of salary in relation to the 2011-2012 season as well as certain medical expenses. Claimant 1 has submitted evidence of this in the form of the Termination Letter.

53. The Respondent has not disputed that it failed to pay Claimant 1 EUR 10,430.00 in relation to the 2010-2011 season, and EUR 26,000.00 in relation to the 2011-2012 season. Nor has the Respondent disputed that Claimant 1 validly terminated the Contract on 27 June 2012.

54. On the basis of the record before him, the Arbitrator finds that the Respondent failed to

pay the above amounts to Claimant 1 in breach of the Contract. Furthermore, the Arbitrator finds that Claimant 1 was entitled to terminate the Contract on 27 June 2012.

55. Accordingly, the Respondent shall pay to Claimant 1 as compensation for unpaid salary: EUR 10,430.00 in relation to the 2010-2011 season; and EUR 26,000.00 in relation to the 2011-2012 season.

7.2.2 Claimant 1's unpaid salary for the 2012-2013 season

56. Claimant 1 claims the full amount of his salary for the 2012-2013 season (EUR 39,000.00). The Arbitrator notes that Claimant 1 terminated the Contract before the 2012-2013 season began and that Claimant 1 did not play for the Respondent during the 2012-2013 season.

57. Article 9.1(c) of the Contract provides:

“Article 9. Breach and remedies:

9.1 In the event that the Club fails to make any scheduled payment to the Player and/or his Agent on the date mentioned under this agreement, with a grace period of maximum twenty (20) days then the Player shall have the following absolute rights:

[...]

c. To terminate the present agreement and claim against the Club the full amounts as provided by the present agreement and/or any other amounts which are payable by this agreement.

It is understood that the duties and liabilities of the Club under this Agreement to the Player shall continue in full force and effect. ”

58. The Arbitrator therefore finds that Claimant 1 is entitled to compensation for salary relating to the 2012-2013 season. However, the Arbitrator considers that Claimant 1 has a duty to mitigate his loss in relation to the 2012-2013 season. This approach is consistent with BAT jurisprudence (see, for example, BAT 0283/12).

59. In the First Procedural Order, the Arbitrator asked Claimant 1 to provide details of his attempts to gain new employment for the 2012-2013 season, together with any supporting evidence. In response, Claimant 1 provided a list of five different clubs that he stated were contacted. Claimant 1 submitted that he was unable to gain new employment for the 2012-2013 season, despite approaching these clubs.
60. *Ex aequo et bono*, the Arbitrator considers that Claimant 1 is entitled to some compensation in relation to its salary for the 2012-2013 season, but not the full amount prescribed under the Contract because he failed to mitigate his losses. The Arbitrator determines that the Respondent shall pay to Claimant 1 EUR 13,000.00 as compensation. In determining this level of compensation, the Arbitrator considered the following factors:
- (i) Claimant 1 did not play for the Respondent for any part of the 2012-2013 season.
 - (ii) Claimant 1 terminated the Contract as a result of multiple breaches by the Respondent.
 - (iii) Claimant 1 terminated the Contract on 27 June 2012, and so was able to look for new employment during the off-season.
 - (iv) Claimant 1 is of sufficient standard to have played for the Cyprus national team.
 - (v) Claimant 1 provided no written evidence of his attempts to gain new employment, other than his submissions in his response to the First Procedural Order.

7.2.3 Claimant 1's unpaid medical costs

61. Claimant 1 claims a total of EUR 2,150.00 in dental treatment costs. Article 6 of the Contract provides:

"Article 6. Medical Health Insurance:

6.1 The Club guarantees to provide the Player with free medical insurance coverage in accordance with the league's regulations.

6.2 Plastic surgery shall not [sic] included in the medical insurance coverage, whereas dental coverage shall not be included unless such dental work is required as result of injury due to the Player's activity as a basketball player in which case the Club shall be responsible for all costs."

62. Claimant 1 submits that the dental treatment he received was required as a result of an injury he sustained on 8 April 2011, during the second game of the Cyprus league finals. Claimant 1 has submitted receipts of payment in relation to the dental treatment.

63. The Respondent has not disputed that Claimant 1 is entitled to compensation for the dental treatment.

64. The Arbitrator finds that the dental treatment was required as a result of an injury sustained while playing for the Respondent and, as such, the Respondent is liable to pay for the treatment, pursuant to Article 6 of the Contract. The Respondent is therefore ordered to pay EUR 2,150.00 to Claimant 1 as compensation for medical costs.

7.2.4 Claimant 2's unpaid agent's fees

65. Claimant 2 claims from the Respondent all agent's fees payable under the Contract. Article 10 of the Contract provides that the Respondent will pay Claimant 2 agent's fees as follows: EUR 1,500.00 upon Claimant 1's signing with the Respondent;

EUR 3,400.00 on 30 September 2011; and EUR 3,900.00 on 30 September 2012.

66. The Respondent has not disputed that Claimant 2 is entitled to the agent's fees, or that they are still outstanding.
67. The Arbitrator notes that Claimant 1 played for the Respondent during the 2010-2011 and 2011-2012 seasons. Accordingly, the Arbitrator finds that the Respondent shall pay compensation to Claimant 2 for unpaid agent's fees of EUR 1,500.00 in relation to the 2010-2011 season and EUR 3,400.00 in relation to the 2011-2012 season.
68. In respect of the agent's fee for the 2012-2013 season, the Arbitrator notes that Claimant 1 did not play for the Respondent during that season. Furthermore, Article 10.1 of the Contract specifically states that the agent's fee payable on 30 September 2012 is "*for the season 2012-2013*". Article 10.2 of the Contract states that Claimant 2 "*agrees to provide ongoing support, advice, participation throughout the contract period [...]*". The Arbitrator considers that one of the reasons the agent's fees are payable in three annual instalments is so that Claimant 2 is remunerated for his services in relation to each of the three individual seasons.
69. Claimant 1 left the Respondent before the start of 2012-2013 season and he terminated the Contract on a date (27 June 2012) which is approximately 3 months before the date on which the agent's fee for the 2012-2013 season was due (30 September 2012). In light of this (and the considerations outlined in the above paragraph), the Arbitrator finds that Claimant 2 is not entitled to the full amount of the agent's fee for the 2012-2013 season. This notwithstanding, the Arbitrator notes that the Contract was terminated because of the Respondent's multiple breaches of it. *Ex aequo et bono*, the Arbitrator finds that the Respondent should pay EUR 1,300.00 to Claimant 2 as compensation for unpaid agent's fees relating to the 2012-2013 season.

7.2.5 Interest

70. The Claimants have requested interest on the unpaid salaries and agent's fees owed to them by the Respondent. Although the Contract does not provide for the payment of default interest, this is a generally accepted principle which is embodied in most legal systems. Indeed, payment of interest is a customary and necessary compensation for late payment, and the Arbitrator considers that there is no reason why the Claimants should not be awarded interest in this case. Also, according to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. The Arbitrator further considers, in line with the jurisprudence of the BAT, that 5% per annum is a reasonable rate of interest and that such rate should be applied in this case.

71. The Arbitrator finds that interest should be awarded as follows:

- (i) Claimant 1 has claimed interest on his salary relating to the 2010-2011 season from 31 March 2011. This is the date on which his last salary payment for the 2010-2011 season was due. Consistent with BAT jurisprudence, the Arbitrator considers that interest should accrue from the day after this due date. Therefore, the Respondent is ordered to pay interest at a rate of 5% per annum on the amount of EUR 10,430.00 from 1 April 2011.
- (ii) Claimant 1 has claimed interest on his salary relating to the 2011-2012 season from 31 March 2012. This is the date on which his last salary payment for the 2011-2012 season was due. Consistent with BAT jurisprudence, the Arbitrator considers that interest should accrue from the day after this due date. Therefore, the Respondent is ordered to pay interest at a rate of 5% per annum on the amount of EUR 26,000.00 from 1 April 2012.
- (iii) Claimant 1 has claimed interest on his salary relating to the 2012-2013

season from 25 February 2013. The Arbitrator notes that the Contract was terminated on 27 June 2012 (on the grounds of the Respondent's breach). Pursuant to Article 9 of the Contract, all sums payable under the Contract become payable upon termination. Therefore, Claimant 1's salary relating to the 2012-2013 season had become payable by the date on which Claimant 1 claims interest. Accordingly, the Respondent is ordered to pay interest at a rate of 5% per annum on the amount of EUR 13,000.00 from 25 February 2013.

- (iv) Claimant 1 has not claimed interest in relation to the medical costs.
- (v) Claimant 2 has claimed interest on agent's fees relating to the 2010-2011 season from 21 October 2010. This is the date on which the fees were due. Consistent with BAT jurisprudence, the Arbitrator considers that interest should accrue from the day after this due date. Therefore, the Respondent is ordered to pay interest at a rate of 5% per annum on the amount of EUR 1,500.00 from 22 October 2010.
- (vi) Claimant 2 has claimed interest on agent's fees relating to the 2011-2012 season from 30 September 2011. This is the date on which the fees were due. Consistent with BAT jurisprudence, the Arbitrator considers that interest should accrue from the day after this due date. Therefore, the Respondent is ordered to pay interest at a rate of 5% per annum on the amount of EUR 3,400.00 from 1 October 2011.
- (vii) Claimant 2 has claimed interest on agent's fees relating to the 2012-2013 season from 30 September 2012. The Arbitrator notes that the Contract was terminated on 27 June 2012 (on the grounds of the Respondent's breach). Pursuant to Article 9 of the Contract, all sums payable under the Contract become payable upon termination.

Therefore, Claimant 2's agent's fees relating to the 2012-2013 season had become payable by the date on which Claimant 2 claims interest. Accordingly, the Respondent is ordered to pay interest at a rate of 5% per annum on the amount of EUR 1,300.00 from 30 September 2012.

8. Costs

72. 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.
73. On 25 September 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 at EUR 8,000.00.
74. The Arbitrator notes that the Claimants were successful in establishing the majority of their claims. The Arbitrator also notes that the Respondent failed to pay its share of the Advance on Costs. Thus, the Arbitrator decides that in application of Article 17.3 of the BAT Rules, and in light of the circumstances of the case, the Respondent shall bear the costs of the arbitration.

75. The Claimants have claimed EUR 9,670.00 in legal fees and expenses (including the non-reimbursable fee of EUR 2,000.00). The Arbitrator considers that such fees and costs are excessive for this case, given the volume and content of submissions that were required to be made and having in mind also the maximum contribution set out in Article 17.4 of the BAT Rules. In the circumstances, the Arbitrator finds that it would be reasonable for the Respondent to pay to the Claimants EUR 5,000.00 as a contribution towards the Claimants' legal fees and expenses.

76. Therefore, the Arbitrator decides:

- (i) The Respondent shall pay to Claimant 1 EUR 6,000.00, as reimbursement of arbitration costs advanced by Claimant 1;
- (ii) The Respondent shall pay to Claimant 2 EUR 2,000.00, as reimbursement of arbitration costs advanced by Claimant 2;
- (iii) The Respondent shall pay to the Claimants EUR 5,000.00, as a contribution towards the Claimants' legal fees and expenses.

9. AWARD

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

- 1. BC AEL Limassol is ordered to pay to Mr. Alexandros Liatsos EUR 10,430.00 as compensation for unpaid salary relating to the 2010-2011 season, together with interest payable at a rate of 5% per annum from 1 April 2011 until the date that payment is made.**
- 2. BC AEL Limassol is ordered to pay to Mr. Alexandros Liatsos EUR 26,000.00 as compensation for unpaid salary relating to the 2011-2012 season, together with interest payable at a rate of 5% per annum from 1 April 2012 until the date that payment is made.**
- 3. BC AEL Limassol is ordered to pay to Mr. Alexandros Liatsos EUR 13,000.00 as compensation for unpaid salary relating to the 2012-2013 season, together with interest payable at a rate of 5% per annum from 25 February 2013 until the date that payment is made.**
- 4. BC AEL Limassol is ordered to pay to Mr. Alexandros Liatsos EUR 2,150.00 as compensation for unpaid medical costs.**
- 5. BC AEL Limassol is ordered to pay to Mr. Athos Antoniou EUR 1,500.00 as compensation for unpaid agent's fees relating to the 2010-2011 season, together with interest payable at a rate of 5% per annum from 22 October 2010 until the date that payment is made.**
- 6. BC AEL Limassol is ordered to pay to Mr. Athos Antoniou EUR 3,400.00 as compensation for unpaid agent's fees relating to the 2011-2012 season, together with interest payable at a rate of 5% per annum from 1 October 2011 until the date that payment is made.**
- 7. BC AEL Limassol is ordered to pay to Mr. Athos Antoniou EUR 1,300.00 as compensation for unpaid agent's fees relating to the 2012-2013 season, together with interest payable at a rate of 5% per annum from 30 September**

2012 until the date that payment is made.

- 8. BC AEL Limassol is ordered to pay to Mr. Alexandros Liatsos EUR 6,000.00 as reimbursement of the advance on BAT costs.**
- 9. BC AEL Limassol is ordered to pay to Mr. Athos Antoniou EUR 2,000.00 as reimbursement of the advance on BAT costs.**
- 10. BC AEL Limassol is ordered to pay jointly to Mr. Alexandros Liatsos and Mr. Athos Antoniou the amount of EUR 5,000.00 as a contribution towards their legal fees and expenses.**
- 11. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 22 January 2013.

Raj Parker
(Arbitrator)