



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0515/14)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Ulrich Haas

in the arbitration proceedings between

Mr. Javier Mojica

P.O. Box 362127, 00936 San Juan, Puerto Rico

- Claimant 1 -

Mr. José F. Paris

P.O. Box 362127, 00936 San Juan, Puerto Rico

- Claimant 2 -

both represented by Ms. Paula D. Espada, Paris Global Sports,
185 Candeler Drive FL 614, 00791 Humacao, Puerto Rico

vs.

Mr. José Carlos Pérez

Urb. Santa Juanita, AS-52 Calle 37,
Bayamón, 00956-4742, Puerto Rico

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. Javier Mojica (hereinafter the “Player” or “Claimant 1”) is a professional basketball player from Puerto Rico.
2. Mr. José F. Paris (hereinafter the “Agent” or “Claimant 2”) is a FIBA-licensed agent, who represents professional basketball players, among others Claimant 1.
3. The Player and the Agent are jointly referred to as “Claimants”.

1.2 The Respondent

4. Mr. José Carlos Pérez (hereinafter the “Club Owner” or “Respondent”) is the owner of the basketball club “Vasqueros de Bayamon” in Bayamon, Puerto Rico (hereinafter the “Club”).

2. The Arbitrator

5. By letter of 24 February 2014, the President of the Basketball Arbitral Tribunal (hereinafter the “BAT”), Prof. Richard H. McLaren, appointed Prof. Ulrich Haas as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). None of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

6. On an unspecified date, the Player and the Club Owner signed an employment agreement according to which the Player was engaged as a professional basketball player for the Club for the 2013 season (hereinafter the “Player Contract”).
7. According to Clause 2 of the Player Contract, the agreed “compensation base” for the Player was USD 115,000.00, to be paid in instalments commencing on 15 April 2013. According to Clause 3 of the Player Contract, the Player’s compensation was guaranteed by the Club Owner.
8. The Player played for the Club’s team until the last official match on 23 June 2013, when the team failed to qualify for the play-offs.
9. According to the Claimants’ submissions, the Player was not paid his full compensation as agreed under the Player Contract. Therefore, on 6 October 2013, the Agent sent an email to the Club Owner informing him that the Player would request the Puerto Rican basketball league “Baloncesto Superior Nacional de Puerto Rico” (hereinafter the “BSNPR”) to declare the Player a free agent.
10. By email of 7 October 2013, Claimants requested the intervention of the BSNPR, which initiated a case with the file number 2013-006. On 19 November 2013, the BSNPR Director, Mr. Fernando Quiñones, issued a decision titled “Resolution” (hereinafter the “BSNPR Resolution”), which in its relevant sections reads as follows:

“On the 6th of November a resolution was emitted where it was determined that the Vaqueros de Bayamon owed the Player Javier Mojica a total of \$87,883.00 for his participation in the 2013 season. [...]”

The term given to the Vaqueros de Bayamon expired on Saturday the 16th of November. On Monday the 18th November, the Player sent us, through his agent

José Paris, a notification stating that he did not receive the payment and requested to be made a free agent. The Club was granted an additional 24 hours to express their opinion concerning the request of the Player and to confirm if they complied with making the payment, the Club requested an additional 72 hours to meet with the agent and player to suggest a payment plan. The Player rejected the plan, as well as a second specific plan that was offered.

Having concluded the term given to the Vaqueros de Bayamon to make the payment in full to the Player Javier Mojica, since payment was not made, it is declared IN LIEU the Player's request to be a free agent. The Player Javier Mojica is at liberty to sign with any of the eleven (11) Clubs that compose the BSNPR for the 2014 season."

11. This dispute concerns the alleged failure to pay the rest of the Player's salary under the Player Contract.

3.2 The Proceedings before the BAT

12. On 22 January 2014, the BAT received the Claimants' Request for Arbitration dated the same date, which was filed by Claimants' counsel on their behalf. The non-reimbursable fee of EUR 1,981.00 was received in the BAT bank account on 3 February 2014.
13. By letter dated 4 March 2014, the BAT Secretariat confirmed receipt of the Request for Arbitration and informed the Parties of the appointment of the Arbitrator. Furthermore, a time limit was fixed for Respondent to file his answer in accordance with Article 11.2 of the BAT Rules (hereinafter the "Answer") by no later than 25 March 2014. The BAT Secretariat also requested the Parties to pay the following amounts as an Advance on Costs by no later than 14 March 2014:

<i>"Claimant 1 (Mr Mojita)</i>	<i>EUR 4,500</i>
<i>Claimant 2 (Mr Paris)</i>	<i>EUR 500</i>
<i>Respondent (Mr Pérez)</i>	<i>EUR 5,000"</i>

14. By letter dated 31 March 2014, the BAT Secretariat confirmed receipt of the Respondent's Answer, submitted on 25 March 2014. It also informed the Parties of the

receipt of Claimants' share of the Advance on Costs in the amount of EUR 4,979.50 and that Respondent had failed to pay his share. Therefore, the BAT invited Claimants to substitute for the Respondent's share of the Advance on Costs by no later than 10 April 2014.

15. By letter dated 28 April 2014, the BAT Secretariat acknowledged receipt of the full Advance on Costs in the total amount of EUR 9,959.00. In addition, it informed the Parties that the proceedings would now continue and that Claimants should be given the right to comment on the Respondent's objection to BAT jurisdiction in the Answer by no later than 12 May 2014.
16. By letter dated 19 May 2014, the BAT Secretariat acknowledged receipt of the Claimants' comments dated 7 May 2014 and informed the Parties that the Arbitrator would decide on the Respondent's objection to BAT jurisdiction in the final award. In addition, it informed the Parties that the Arbitrator had decided to declare the exchange of documents complete. The Parties were therefore invited to submit a detailed account of their costs by 26 May 2014.
17. By email of 21 May 2014, Claimants' counsel submitted a letter which reads in its main relevant sections as follows:

*"In response to your letter received 19 May 2014 requesting the Claimants to submit a detailed account of costs, we submit the following for Claimant 1, **Javier Mojica**:*

<i>Legal Fees, expenses and non-reimbursable handling fee:</i>	<i>7,500 Euros</i>
<i>Interest:</i>	<i>4,504 Euros</i>
<i>Respondent's share of advance on costs:</i>	<i>5,000 Euros</i>
<i>Claimant's share of advance on costs:</i>	<i>5,000 Euros</i>
<i>Arbitrator costs:</i>	<i>TBD</i>

*The Club made payment on full to Claimant 2, the Agent, **José F. Paris**. The only costs owed to him is already included in the Respondent's share of advance on costs."*

18. By letter dated 27 May 2014, the BAT Secretariat acknowledged receipt of the Claimants' account of costs and invited Respondent to submit his comments, if any, by no later than 2 June 2014. Respondent did not submit any account of costs and did not comment on the Claimants' account of costs.
19. By email of 17 June 2014, the Arbitrator invited the Agent to provide some clarifications with regard to last paragraph of the the costs submission filed with the BAT on 21 May 2014. The Agent provided the requested information by email dated the same day.
20. The Parties did not request the BAT to hold a hearing. The Arbitrator therefore decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to issue the award on the basis of the written submissions and evidence before him.

4. The Positions of the Parties

21. The following outline of the Parties' positions is illustrative only and does not necessarily refer to every single aspect or argument submitted by the Parties. The Arbitrator, however, has carefully considered all the submissions made by the Parties, even if there is no specific reference to them in the following summary.

4.1 Claimants' Position

22. Claimants submit the following in substance:
 - The Club "*established a pattern of non-payment*" and failed to pay compensation in the amount of USD 87,883.00 to the Player.
 - Clause 5 lit (f) of the Player Contract provides that in case the Player does not receive his full compensation for the 2013 season within 90 days after the last

official game, he will be a free agent. These 90 days expired on 23 September 2013 and consequently the BSNPR Resolution declared the Player a free agent.

- Clause 6 lit (b) of the Player Contract provides that if the dispute is not resolved within 30 days, the Parties agree that it shall be submitted to the BAT. Claimants requested intervention of the BSNPR on 7 October 2013 and the BSNPR Resolution was issued on 19 November 2013, i.e. 42 days later.
- Although the BSNPR Resolution was favourable for the Player insofar as he was declared a free agent, the BSNPR did not decide upon the outstanding payment.

4.2 Claimants' Request for Relief

23. In their Request for Arbitration, Claimants initially requested the following reliefs:

*"For the Player, **Javier Mojica** we request the total amount due per contract and resolution of \$87,883.00 USD. In addition we request the payment of 7% interest, which is \$6,151.81 USD and fees and expenses, which is \$5,000.00 USD. We also request the non-reimbursable handling fee of \$2,938.60 USD.*

The total amount requested for the Player is \$101,973.41.

*For the Agent, **José F. Paris** we request total amount due per contract of \$3,000.00 USD. In addition we request the payment of 7% interest, which is \$210.00 USD and fees and expenses, which is \$3,000.00 USD.*

The total amount requested for the Agent is \$6,210.00.

The Arbitrator costs are to be paid by the Respondent."

24. By email of 17 June 2014, Claimants' counsel expressly confirmed that the Agent no longer requests the payment of USD 6,210.00 (agent fee plus interest plus fees and expenses) and that the "only costs owed to him is [sic] already included in the Respondent's share of advance on costs" as claimed in the Claimants' account of costs.

25. The Respondent was granted the opportunity to comment on the Claimants' submissions of 21 May 2014, in which the Agent's amended request was reflected. The Respondent, however, did not submit any comments. Thus, the Arbitrator infers from this that the Respondent does not wish to contest the amendment of Claimants' requests. Consequently, the Arbitrator will consider only the amended Request for Relief.

4.3 Respondent's Position

26. Respondent submits the following in substance:

- The BAT lacks jurisdiction for the present dispute because it was already adjudicated by the BSNPR in its case number 2013-006. In addition, the BAT is primarily designed to resolve disputes between clubs, players and agents and the Respondent does not belong to any of these categories.
- The Respondent has tried several times to pay the Player, even before the BSNPR Resolution of 19 November 2013, but the Player rejected all proposed payment plans and respective checks for amounts to be set off against the debt.
- Since neither the Player Contract nor the BSNPR Resolution stipulates or mentions any interest to be paid to the Player, the Claimants' request for interest has to be denied.
- The Claimants' request for agent fee is unfounded because the Agent waived any respective claim as a result of phone conversions and personal meetings.

4.4 Respondent's Request for Relief

27. In the Answer, Respondent has not submitted any specific request for relief. However, it follows from the contents of the Answer that the Respondent objects to the BAT jurisdiction as well as to the claims submitted by the Claimants.

5. The Jurisdiction of the BAT

28. 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 (hereinafter “PILA”).

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

30. 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.

31. The jurisdiction of the BAT with respect to all parties of the present dispute results from the arbitration clause in Clause 6 lit (b) of the Player Contract, which reads as follows:

“FORUM: Any controversy that arises regarding the terms of this contract will in first instance go through all forums applicable, including but not limited to, BSNPR, Basketball Federation of Puerto Rico, Olympic Committee of Puerto Rico (and its competent forum Appellate and Arbitration Sports Tribunal “TAAD”), as well as International Sports Forums if applicable. The parts agree to exhaust all applicable sports forums before resorting to the Justice Tribunal. If the dispute is not resolved within 30 days the parts agree that the Contract shall be submitted to the FIBA 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 in 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.”

32. The Player Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
33. With respect to substantive validity, the Arbitrator has to consider three aspects, namely the Respondent's objection to the BAT jurisdiction (see para 5.1), the subjective scope of the arbitration agreement (see para 5.2), and further requirements provided for in order to resolve any dispute between the Parties according to the Player Contract (see para 5.3).

5.1 Respondent's objection to the BAT jurisdiction

34. The Respondent submits that the arbitration agreement in Clause 6 lit (b) of the Player Contract only provides for BAT arbitration if the dispute is not resolved within 30 days. According to the Respondent's submissions, the BSNPR Resolution already resolved the present dispute (*"a resolution where he totally adjudicated the present controversy"*). In addition, Respondent submits that he is neither a player nor a club or an agent and that, thus, the BAT Rules are not applicable to him.
35. The Arbitrator does not agree with the Respondent for the following reasons:
36. It is undisputed between the Parties that the Player has – so far – not been paid the outstanding salaries in the amount of USD 87,883.00. Since, however, the payment of the outstanding salaries is the matter in dispute between (some of) the Parties in this arbitration, it appears rather obvious to the Arbitrator that the proceedings before the BSNPR Resolution have not fully resolved the dispute.
37. Moreover, the BSNPR proceedings and the BAT arbitration deal with different issues. The purpose of the Claimants' request lodged with the BSNPR was to have the BSNPR declare him a free agent. Claimants' request to the BAT, by contrast, deals with the payment of (allegedly) outstanding remuneration in accordance with the Player

Contract. In the context of the BSNPR proceedings, the question of whether or not any payments were outstanding was only a preliminary issue in order to resolve the main matter in dispute before the BSNPR, i.e. whether or not the Player is a free agent. The BSNPR Resolution, in particular, did not issue an (enforceable) order for payment. The BSNPR Resolution, instead, only contains a formal finding in relation to the Player's status concerning the transfer market ("*it is declared IN LIEU the Player's request to be a free agent*" and "*is at liberty to sign with any of the eleven (11) Clubs*"). To conclude, therefore, the Arbitrator finds that the BSNPR Resolution did not resolve the dispute between the Player and the Respondent in respect of the matter in dispute at stake here.

38. With respect to the scope *ratione personae* of the BAT dispute resolution mechanism, the Arbitrator finds that the BAT has been created with a view to provide a dispute resolution mechanism to "*parties involved in disputes arising in the world of basketball*" (Preamble of the BAT Rules, in particular Article 0.1). It follows from the BAT Rules, therefore, that access to the BAT is not restricted to players, clubs and agents, but to any party forming part of the "world of basketball". By signing the Player Contract containing the arbitration clause (see below), the Respondent fulfils this requirement.

5.2 Parties to the arbitration agreement

39. The Player Contract, which contains the Parties' arbitration agreement in its Clause 6 lit (b), was signed by the Player and the Club Owner, but not by the Agent.
40. Although the Agent informed the BAT that he no longer requests payment of USD 6,210.00 as initially stated in the Request for Arbitration, the Agent maintains his claim for reimbursement of his advance on costs ("*only costs owed to him is [sic] already included in the Respondent's share of advance on costs*"). Thus, the Arbitrator must analyse whether he has jurisdiction to adjudicate the Agent's claims regarding costs, i.e., whether the Agent falls under the arbitration agreement.

41. With regard to the validity of the extension of arbitration agreements to third parties, the Swiss Federal Tribunal has held in a decision dated 16 October 2003 (BGE 129 III 727) that, while the validity of the arbitration agreement between the initial parties is subject to the formal requirements of Article 178 (1) PILA, the validity of its extension to third parties is not.¹ Therefore, once an arbitration agreement complies with the formal requirements with respect to its initial signatories, the extension of that arbitration agreement to other parties does not need to satisfy such requirements.²
42. However, an extension of the arbitration agreement requires a legal relationship between the third party and the initial parties to the arbitration agreement, which must be of a certain intensity. The Arbitrator finds this is the case here. The Preamble of the Player Contract expressly refers to the Agent as “Third Part” of the Player Contract and Clause 5 lit (i) of the Player Contract provides an express obligation to pay agent fees to him. The arbitration clause is worded in a broad way and refers to “[a]ny *controversy that arises regarding the terms of this contract*”. This covers also the claims of the Agent. Furthermore, the arbitration clause provides that “*the parts agree that the Contract shall be submitted to the FIBA Basketball Arbitral Tribunal (BAT) in Geneva*”, and the Agent is defined as a “Part” of the Player Contract. To conclude, therefore, the Arbitrator finds that the arbitration agreement in the Player Contract also applies to disputes between the Club Owner and the Agent insofar as the dispute relates to a “controversy” arising out of the Player Contract. This clearly is the case here.
43. Thus, the Arbitrator finds that he has jurisdiction over all Parties and is empowered to adjudicate the Claimants’ claims.

¹ Decision of the Swiss Federal Tribunal dated 16 October 2003, BGE 129 III 727, 735, cons. 5.3.1.

² PHILIPP FISCHER: When can an arbitration clause be binding upon non-signatories under Swiss law?, in: Jusletter of 4 January 2010.

5.3 Further requirements according to the Player Contract

44. According to the provisions of the Player Contract, certain conditions must be fulfilled prior to resorting to the BAT. These conditions are to be found in Clause 5 lit (g) and Clause 6 lit (b) of the Player Contract.
45. Clause 5 lit (g) of the Player Contract provides that *“[a]ny dispute derived or related to this contract will first go through the BSNPR”*. The Claimants complied with this prerequisite by requesting the BSNPR to intervene in the Parties’ dispute (the BSNPR opened a case under the number 2013-006, which was later concluded by the BSNPR Resolution of 19 November 2013). The Arbitrator finds that the purpose of this prerequisite is to provide the parties with the possibility of resolving the dispute internally, i.e. within the framework of Puerto Rican basketball, before bringing the case before the BAT. Because the Player’s outstanding compensation had still not been paid during the BSNPR proceeding, this internal procedure was concluded by the BSNPR Resolution, and the Parties were free to proceed with seeking recourse before BAT according to Clause 6 lit (b) of the Player Contract.
46. The first part of Clause 6 lit (b) of the Player Contract stipulates that *“[a]ny controversy that arises regarding the terms of this contract will in first instance go through all forums applicable, including but not limited to, BSNPR, Basketball Federation of Puerto Rico, Olympic Committee of Puerto Rico (and its competent forum Appellate and Arbitration Sports Tribunal “TAAD”), as well as International Sports Forums if applicable. The parts agree to exhaust all applicable sports forums before resorting to the Justice Tribunal.”* As already stated above, prior to Claimants’ claim with the BAT, a procedure within the BSNPR was completed. The Arbitrator finds that any further “first instance” proceedings would have been futile because the Parties had already failed to reach an amicable solution of their dispute. Moreover, Respondent did not submit to which other instance – apart from the BSNPR – the case should have been submitted in order to be settled. In addition, a comparison of the English translation and the Spanish original of

the Player Contract (attachment 1 to Claimants' Request for Arbitration), shows that the English term "Justice Tribunal" reads, in the original Spanish version, "los Tribunales de Justicia". As this clearly refers to the Puerto Rican state courts, the Arbitrator concludes that the agreement to exhaust "all applicable sports forums" is only applicable if a Party were to file a claim with the state courts.

47. The second part of Clause 6 lit (b) of the Player Contract contains the arbitration agreement and provides for the dispute resolution through the BAT "*if the dispute is not resolved within 30 days*". In other words, after a 30-day period the Player Contract provides for two options, either BAT arbitration or domestic state courts (the latter, however, only after exhausting all applicable sports forums). Once one of these options has been exercised, jurisdiction rests solely and exclusively with the forum elected.
48. When filing the Request for Arbitration with the BAT on 22 January 2014, the 30-day-period had long expired (the last official match of the 2013 season took place on 23 June 2013; the request for intervention with the BSNPR was filed by Claimants on 7 October 2013; and the BSNPR Resolution was issued on 19 November 2013, i.e. 42 days later). Consequently, the Claimants were formally entitled to file their claims with the BAT.

5.4 Conclusion

49. The Arbitrator considers that there is no further indication in the file that could cast any doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).
50. For the above reasons, the Arbitrator finds that he has jurisdiction to decide the present dispute and to adjudicate the Claimants' claims.

6. Applicable Law – *ex aequo et bono*

51. 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 reads as follows:

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

52. 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.”

53. The Player Contract is – at least at first sight – somewhat unclear. While Clause 12 of the Player Contract, on the one hand, states that “[t]he laws of the Commonwealth of Puerto Rico shall govern this agreement” and that “[t]he parts reserve their rights and protection under these laws”, Clause 6 lit (b) stipulates, on the other hand, that the dispute “shall be resolved in accordance with the BAT Arbitration Rules”, which is an unambiguous reference to Article 15.1 of the BAT Rules and the application of *ex aequo et bono*.

54. The Arbitrator interprets the above provisions of the Player Contract as the Parties’ express agreement that, when a dispute is submitted to BAT, it will be resolved *ex aequo et bono*. This is in line with BAT jurisprudence,³ and also corroborated by the fact that the Parties in the present arbitration proceedings did not submit any argument

³ See, *inter alia*, BAT 0382/13 (Arbitral award of 30 September 2013, para. 35 et seq.) and BAT 0391/13 (Arbitral award of 30 September 2013, para. 31 et seq.).

with regard to Puerto Rican law; and not even the Respondent contested the reference to the BAT Rules and *ex aequo et bono* but, rather, objected to the BAT jurisdiction based on the sole argument that the dispute had already been resolved by the BSNPR.

55. Consequently, by reference to Article 15 of the BAT Rules, the Parties have empowered the Arbitrator to decide the present matter *ex aequo et bono*.
56. 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 of 1969⁴ (Concordat),⁵ under which Swiss courts have held that “arbitrage en *équité*” is fundamentally different from “arbitrage 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.”*⁶

57. 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*”.
58. In light of the foregoing considerations, the Arbitrator makes the findings below.

7. Findings

59. The Player requests payment of outstanding compensation in the amount of USD 87,883.00 (see para 7.1) plus interest at a rate of 7% p.a. (see para 7.2).

⁴ This Swiss statute governed international and domestic arbitration prior to the enactment of the PILA (governing international arbitration) and the Swiss Code of Civil Procedure (governing domestic arbitration).

⁵ KARRER, in: Basel Commentary to the PILA, 2nd ed., Basel 2007, Article 187 PILA N 289.

⁶ JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

60. The Agent no longer requests payment of USD 6,210.00 but asks for a reimbursement of the advance on costs paid by him. This issue will be addressed in the Arbitrator's decision on costs (see para 8).

7.1 Outstanding compensation

61. Based on the Player Contract, the Player claims outstanding compensation for the 2013 season in the total amount of USD 87,883.00.
62. According to Clause 2 of the Player Contract, the Player was entitled to a "compensation base" of USD 115,000.00, to be paid in instalments on the 15th and 30th of each month commencing on 15 April 2013. The Arbitrator has not found any indication in the file that the Player did not fulfil his obligations arising out of the Player Contract. Considering also that the Player played for the Club's team up to the last official game on 23 June 2013, the Arbitrator finds that the Player is entitled to the full salary for the 2013 season.
63. Claimants submit that the Player was not paid his full compensation, which is supported by the documents relating to the proceedings before the BSNPR (Claimants' attachments). In addition, Respondent has not contested the Claimants' submission but, instead, has stated in his Answer that he and the Player "*are clear in the amount owed to the player*". All the above findings are strong indications that Respondent failed to pay the amounts due to the Player at the time of the BSNPR proceedings. Furthermore, the Arbitrator notes that the Respondent has failed to adduce any evidence in the present arbitration according to which the outstanding compensation has been paid in the meantime. In view of the above, the Arbitrator finds that the Player is entitled to the amount of USD 87,883.00.
64. According to Clause 3 of the Player Contract, the Player's compensation is guaranteed by the Club Owner. Clause 3 reads as follows:

“Compensation: *solely the Club owner guarantees this contract per BSNPR regulations. This guarantee does not cover bonuses. The Player and the Club recognize that the contract payment obligation is only and exclusively of the Club and owner, not BSNPR, and the Player as well as the Player and its owner exempt the BSNPR of any claim related to this contract.”*

65. The preamble of the Player Contract names the Respondent “*owner of the club Vaqueros de Bayamon*”. Hence, the wording “Club owner” and “owner” in Clause 3 of the Player Contract unambiguously refer to the Respondent. Moreover, in his Answer, Respondent expressly confirmed that “*he has guaranteed personally payment of the amount due to player*”.
66. The Player Contract does not contain any provision to the effect that the Player needs to request payment from the Club prior to claiming payment from Respondent. It follows from the wording “*contract payment obligation is [...] of the Club and owner*” (emphasizes added) that the Club and the Club Owner are jointly and severally liable for the outstanding payments.
67. Considering the above, the Arbitrator finds that Respondent is under a duty to pay the Player outstanding compensation in the amount of USD 87,883.00.

7.2 Default interest

68. The Player also requests default interest of 7% p.a., without stating as from which date interests are to be awarded.
69. The Player Contract does not provide for any interest payments. However, it is a generally accepted principle embodied in most legal systems and reflected in the BAT

jurisprudence⁷ that default interest can be awarded even if the underlying agreement does not explicitly provide for a respective obligation.

70. According to its Clause 5 lit (e), the Player Contract expired “*when the BSNPR 2013 season ends for the Club*”. The last official match of the Club’s team took place on 23 June 2013, when the team failed to qualify for the play-offs. Thus, the Player Contract terminated on 23 June 2013. In the absence of any specific provision in the Player Contract, the Arbitrator, deciding *ex aequo et bono*, finds that the full compensation became due on that date and that default interest on the outstanding compensation commences to accrue on the following day, i.e. 24 June 2013.
71. In line with constant BAT jurisprudence, the Arbitrator deems an interest rate of 5% p.a. appropriate and proper to prevent the Respondent from deriving any profit out of the non-fulfilment of his obligations. The Claimants have not submitted any valid reasons why they should be entitled to a higher interest rate. Thus, the Arbitrator dismisses the request for the payment of interests inasmuch as it exceeds the rate of 5% p.a.

7.3 Summary

72. The Player is entitled to the amount of USD 87,883.00 plus default interest of 5% p.a. as of 24 June 2013.

8. Costs

73. 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,

⁷ See, *ex multis*, BAT 0056/09 (Arbitral award of 25 November 2009, N 70f.); BAT 0092/10 (Arbitral award of 25 November 2010, N 82 ff.); BAT 0491/13 (Arbitral award of 3 June 2014), N 67ff.

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

74. On August 5, 2014 – 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*”; 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*”, and taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised – the BAT President determined the arbitration costs in the present matter to be EUR 9,959.00.
75. When determining which party shall bear the arbitration costs and in which proportion (Article 17.3 of the BAT Rules), the Arbitrator takes into consideration the outcome and the circumstances of the present case, inter alia, the fact that Claimant 2 withdrew his request for payment at a late stage of the proceeding. The Arbitrator finds it fair that 90% of the costs of the arbitration shall be borne by Respondent and 10% by Claimants. Given that Claimants paid the totality of the advance on arbitration costs, i.e. EUR 9,959.00 (amount received by the BAT), the Arbitrator decides in application of Article 17.3 of the BAT Rules and considering the above circumstances that Respondent shall pay EUR 8,963.10 to Claimants.
76. Furthermore, the Arbitrator considers it adequate for Claimants to be entitled to a contribution towards their reasonable legal fees and expenses incurred in connection with these proceedings, whereas Respondent has to bear his own legal costs (Articles 17.3 and 17.4 of the BAT Rules). The Claimants’ account of costs indicates legal fees and expenses (including the non-reimbursable handling fee) of EUR 7,500.00. However, according to the submissions on file, it appears that the Claimants’ counsel, Ms. Paula D. Espada, is not an external lawyer, but an employee or stakeholder of



BASKETBALL ARBITRAL TRIBUNAL

“Paris Global Sports”. Furthermore, it appears that Ms. Espada has not invoiced Claimants for her services. In the Arbitrator’s view, a strict standard must apply when it comes to the reimbursement of a party’s so-called internal costs; this is all the more true if the internal costs are not evidenced by any invoices or other documents.⁸ The contribution to legal fees and expenses is designed to compensate a party for actual and real expenses incurred, and not to enrich the (winning) party. In view of the above, the Arbitrator holds that – apart from the non-reimbursable handling fee in the amount of EUR 1,981.00 – the internal costs for the services of Ms. Espada are not reimbursable.

⁸ See BAT 0460/13 (Arbitral award of 4 April 2014, para. 67 et seq.).



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9. AWARD

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

1. **Mr. José Carlos Pérez is ordered to pay to Mr. Javier Mojica the amount of USD 87,883.00 plus interest of 5% p.a. as of 24 June 2013.**
2. **Mr. José Carlos Pérez is ordered to pay jointly to Mr. Javier Mojica and Mr. José F. Paris the amount of EUR 8,963.10 as a reimbursement of the advance on arbitration costs.**
3. **Mr. José Carlos Pérez is ordered to pay jointly to Mr. Javier Mojica and Mr. José F. Paris the amount of EUR 1,981.00 as a contribution towards their legal fees and expenses. Mr. José Carlos Pérez shall bear his own legal costs.**
4. **Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 20 August 2014

A handwritten signature in black ink, appearing to read 'U. Haas'.

Ulrich Haas
(Arbitrator)