BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0841/16)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Mr. Oderah Anosike

- Claimant 1 –

represented by Mr. Branko Pavlovic, Brace Radovanovica 16,
11000 Belgrade, Serbia and Mr. Obrad Fimic, Zlota 11/2 street,
00-019 Warsaw, Poland

Sports International Group Inc.
267 Kentlands Blvd., Suite 105, Gaithersburg, MD 20878, USA

- Claimant 2 -

Sfera Sports Association
N. Plastira 45, 55132 Kalamaria, Thessaloniki, Greece

- Claimant 3 -

both represented by Jonathan A. Jordan, Sports International Group
267 Kentlands Blvd., Suite 105, Gaithersburg, MD 20878

vs.

AEK NEA K.A.E.
466 Irakleio Ave and Kuprou Herakleion Attica, 14122 Athens, Greece

- Respondent -

represented by Mr. Alexandros Alexiou,
attorney at law and chairman of AEK NEA K.A.E.

1. The Parties

1.1 The Claimants

1. Mr. Oderah Anosike (hereinafter "Claimant 1") is a professional basketball player from the USA.

2. Sports International Group Inc. (hereinafter "Claimant 2") is a professional basketball players' agency based in the USA.

3. Sfera Sports Association (hereinafter "Claimant 3" and together with Claimant 1 and Claimant 2, "the Claimants") is a professional basketball players' agency based in Greece.

1.2 The Respondent

4. AEK NEA K.A.E. (hereinafter the "Respondent") is a professional basketball club in Greece.

2. The Arbitrator

5. On 20 June 2016, 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").

6. 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

7. On 3 October 2015, the Claimants and the Respondent entered into an employment contract in relation to the 2015-2016 season (hereinafter the "Employment Contract"). Claimant 3 did not sign the Employment Contract.

8. The Employment Contract contains, among others, the following provisions:

> *"**I. EMPLOYMENT AND DUTIES***
>
> *The Club hereby employs the player as a skilled basketball player to perform his exclusive playing services for the club during the term of this contract.*
>
> *[…]*
>
> ***II. TERM OF CONTRACT***
>
> *The term of this contract shall be deemed to have commenced on the date of signature of this contract and shall continue for the period covering the 2015-16 basketball season.*
>
> *[…]*
>
> ***III. GUARANTEED NO-CUT CONTRACT***
>
> *This is a guaranteed no-cut contract. The club agrees that this contract is no-cut, which means that neither the Club, nor the league can terminate this contract should any injury or illness befall the player, or in the event the player fails to reach an expected level of performance.*
>
> ***IV. SALARY COMPENSATION***
>
> *The club agrees to pay the player for **2015-16 basketball season** a net of all Greek taxes salary of **200,000.00 USD** (two hundred thousand US Dollars). The parties agree to sign, immediately after the player passes the medical and physical tests, two contracts: one for 50,000.00$ (fifty thousand US Dollars) for his athletic services and one for 150,000.00$ (one hundred fifty thousand US Dollars) as Image Contract.*
>
> *The above mentioned amount will be payable as follows:*

1) *4,000.00$ (four thousand USD) payable upon players arrival in Greece and immediately after passing the medical and physical tests.*

2) *On October 31st 2015 - 24,500.00$ (twenty four thousand five hundred USD)*

3) *On November 30th 2015 - 24,500.00$ (twenty four thousand five hundred USD)*

4) *On December 31st 2015 - 24,500.00$ (twenty four thousand five hundred USD)*

5) *On January 31st 2016 - 24,500.00$ (twenty four thousand five hundred USD)*

6) *On February 29th 2016 - 24,500.00$ (twenty four thousand five hundred USD)*

7) *On March 31st 2016 - 24,500.00$ (twenty four thousand five hundred USD)*

8) *On April 30th 2016 - 24,500.00$ (twenty four thousand five hundred USD)*

9) *On May 31st 2016 - 24,500.00$ (twenty four thousand five hundred USD)*

In the event that the Club does not make payments within 25 (twenty five) days of the scheduled payment date, player has the right not to participate in the games, official and friendly, of the Club, as well as practice sessions and theoretical – educational sessions, and in any other event of the Club. In the event that the Club does not make payments within 40 (forty) days of the scheduled payment date, player shall immediately be entitled to the full salary and shall have no further obligation to the Club. The Club shall retain no rights to the player except for the obligation to pay all salaries and bonuses under the terms of this contract. Upon receipt of a request from the National Federation to issue the player's letter of clearance, the Club must authorize the Federation to do so unconditionally within 24 (twenty four) hours without charging a transfer fee.

All the above mentioned payments shall be net of Greek income taxes.

[...]

VII. PHYSICAL EXAMINATION

This is a fully guaranteed contract, which cannot be terminated for injury or lack of skill. Said guarantee shall be in force and effect after the player has passed a medical examination. The club has 3 (three) days after the player's arrival to give the player said medical examination. Unless the player and his agent are notified in writing that he has failed to pass the medical examination, all guarantees will be in place 3 (three) days after arrival and the contract terms will be in full force and effect. Should the player gets injured during a practice or game before he has completed his physical examination, this contract shall be fully guaranteed and all terms and condition shall be in effect as though he already passed his physical examination.

VIII. AGENT FEE

The Agent/Club Agreement is incorporated into this Agreement. Club agrees to pay Player's Agencies, a fee of 10 percent of Player's net salary ($20,000.00) for their services pertaining to the negotiation and procurement of the employment agreement by and between the player's agencies, ***SIG*** *and* ***Sfera Sports Association*** *by the player's arrival at Greece and upon passing the medical, physical and drug tests. The above amount of 20,000.00$ will be paid in two parts: 10,000.00$ on December 30th 2015 and 10,000.00$ on April 30th 2016 and be invoiced to the club the same dates.*

The payments should be made by the club by two separate bank transfers per each payment, of 5,000.00$ (five thousand USD) in each of the two agencies.

In the event the Club is 30 days or more late at any of the above mentioned payment, then the player will have no duties to perform under this and may cancel the agreement by written notice to the Club, in which case the Club agrees to release FIBA player Card immediately upon any request and all money due to the player and his agencies under this agreement will become due immediately.

[...]

X ARBITRATION

In case of disputes on the present agreement the parties will take all measures to solve them by negotiations. If the dispute between the parties is not resolved by way of negotiations then it should be resolved by mediation. If the dispute between the parties is not resolved by way of mediation then it should be resolved in accordance with the Basketball Arbitral Tribunal (BAT) by FIBA as follows:

Any dispute arising or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall

be resolved in accordance with the BAT Arbitration Rules by a single arbitrator, appointed by the BAT president. The seat of the arbitration shall be Geneva, Switzerland.

The language of the arbitration shall be English. Awards of the BAT can be appealed to the court of arbitration of sports (CAS), Lausanne, Switzerland."

9. On 5 October 2015, Claimant 1 and the Respondent entered into an athletic services contract in relation to the 2015-2016 season (hereinafter the "AS Contract"), which was backdated to 3 October 2015.

10. The AS Contract contains, among others, the following provisions:

"ARTICLE 1

1.a Upon drawing up of this contract, the Basketball Player agrees to provide his athletic services as a professional Basketball Player to the Company according to the applicable relevant legislation and the terms hereof.

ARTICLE 5 FINANCIAL TERMS

5.1. During the term hereof, the Company shall pay to the Basketball Player the following amounts of money:

A. Regular monthly salary:

The regular monthly salary of the Basketball Player is agreed to be the sum of 570,75 euros from 01/10/2015, to 30/06/2016 and shall be paid to him by the Company at the end of each month, during the whole term hereof.

[…]

5.2. The above pays, depending on their nature, are subject to legal deductions and the respective payments are made according to the applicable legislation. The Company is obliged to submit to HEBA the relevant document of the competent P.F.S., from which results the payment of the tax corresponding to the Basketball Player's pay, according to the relevant provisions of law. No further fee shall be paid to the Basketball Player, besides the pay and benefits agreed herein.

[…]

6.3. According to the applicable legislation, the sports, jurisdictional and arbitral bodies of HEBA and HBF (Hellenic Basketball Federation) shall be the competent bodies for the termination or cessation of the terms hereof.

6.4. Exclusively and only for the financial disputes that may arise out of the terms hereof between the Company and the Basketball Player, the following bodies shall be exclusively competent for their resolution:

~~a) the Courts of the City~~

or

b) the relevant committees for the resolution of financial disputes.

Section a or b must be selected in accordance with the agreement of the contracting parties. The relative deletion must be done.

[…]

11.2. The parties acknowledge, state and commit themselves to the fact that their relationship is regulated solely by the provisions hereof, and any prior written or oral agreement shall be null and void.

[…]"

11. The image contract (hereinafter the "Image Contract") referred to in the Employment Contract was drafted but not signed by the parties. The Image Contract contains, among others, the following provisions:

"The Club and the Player have already signed a General Agreement dated October 4, 2015 which is referred to the whole amount Player will receive according the total agreement with the Club and includes the royalties' amounts of the present contract.

[…]

ARTICLE 1 – SCOPE

1.1 In consideration of the remuneration to be paid to the player (or IRC to be named) pursuant to Article 5 of this Agreement, the Player (or IRC to be named) grants to Club the right and license during the Contract Period to use the Athlete's identification solely in connection with the advisement and promotion of Club's Services and Products within the Contract Territory.

[…]

1.3 The present Agreement shall be exclusive within the Contract Territory and for a term which is aligned to the term of the employment Agreement entered into between Club and Athlete.

ARTICLE 3 – CONTRACT PERIOD

3.1 The term of this Agreement shall be in alignment to the term of the employment contract signed between Club and Athlete for the provision of sports services and shall cover the Basketball Season 2015/2016.

[…]

ARTICLE 5 – CLUB OBLIGATIONS – PAYMENT OF CONSIDERATION

5.1 Club shall pay the Player (or IRC to be named) an amount of Royalties under the Agreement of 150.000,00 USD.

5.2 All Royalties amounts under this Agreement are understood to be net of taxes, which are for the account of the Club. For this purpose the Club will gross-up the respective payments for taxation purposes to arrive at net amounts agreed herein.

5.3 In case that the IRC will represent the Player, the IRC shall cooperate with the Club in the provision of all required documents issued by authorities in the IRC jurisdiction, which may assist the Club in achieving the reduction of the tax burden. In particular, at the Club's request, IRC shall be obliged to provide the Club with the appropriate form of a "Tax Residence Certificate", which will enable the Club to take advantage of the reduced WHT (Withholding Tax) Rate, provided under a Double Taxation Agreement between Greece and the jurisdiction of the IRC, if any.

5.4 In the event that the IRC, fails to provide the document referenced above under 4.3 or is unwilling to cooperate with Club in this regard, then IRC will be liable to pay the tax balance amount accrued as a different between domestic WHT rate and DTT WHT rate on Royalties, if any.

ARTICLE 6 – PAYMENT SCHEDULE

6.1 Royalty payments made under this agreement shall be made in installments and at the end of the following months:

(1) USD 18.750,00	*By October 30, 2015*
(2) USD 18.750,00	*By November 30, 2015*
(3) USD 18.750,00	*By December 30, 2015*
(4) USD 18.750,00	*By January 30, 2016*

(5) USD 18.750,00 *By February 29, 2016*

(6) USD 18.750,00 *By March 30, 2016*

(7) USD 18.750,00 *By April 30, 2016*

(8) USD 18.750,00 *By May 30, 2016*

[…]

ARTICLE 8 – RENEWAL OF AGREEMENT

8.1 The term of this agreement has been set out in Article 3 hereof. Any renewal of the present agreement between Club and IRC shall be conditioned on the renewal of the employment agreement signed between Club and Athlete for the provision of sports services.

ARTICLE 9 – TERMINATION BY CLUB

9.1 Club may terminate this agreement in the event of a repeated breach by IRC or the Athlete, respectively, in relation to the obligations set out in article 4 hereof. In such an event Club is entitled to terminate the agreement on a two-week's notice to IRC.

9.2 For the avoidance of doubt the definition of "repeated breach on the part of either IRC or Athlete for the purposes of this agreement shall be understood to mean any two consecutive and unjustified failures of IRC to secure the availability of Athlete or failure by Athlete to make appearances, as required under this agreement.

9.3 Without any prejudice to the foregoing Club may also terminate this agreement in the event that the employment agreement between Club and Athlete related to the provision of sports services is prematurely terminated for whatever reason.

ARTICLE 10 – TERMINATION BY PLAYER OR IRC

10.1 Player or IRC may terminate this agreement in the event that any payment mandated by this agreement in accordance with the schedule set out in article 6 hereof is past due for more than 15 days. In such a case, IRC shall submit a written notice of termination to the Club. The day of the order for the transfer is considered as the date of the payment.

ARTICLE 11 – DISPUTES/GOVERNING LAW

11.1 Any disputes arising from or related to the present Agreement 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 Geneva, Switzerland. Chapter 12 of the Swiss Act on Private International Law (PIL) shall govern the arbitration, irrespective of the parties' domicile. The language of the Arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."

12. Claimant 1 played for the Respondent at the start of the 2015-2016 season. In November 2015, the Respondent purported to terminate its relationship with Claimant 1. Claimant 1 rejected the Respondent's purported termination, then on 7 January 2016, the Claimant entered into a new contract with a basketball club in Brindisi, Italy (hereinafter the "Brindisi Contract") for the remainder of the 2015-2016 season.

3.2 The Proceedings before the BAT

13. On 2 May 2016, the BAT received EUR 5,500.00 from the Claimants towards the non-reimbursable handling fee. On 20 May 2016, the Claimants filed a Request for Arbitration in accordance with the BAT Rules.

14. By letter dated 27 June 2016, the BAT Secretariat informed the Claimants that the applicable handling fee was in fact EUR 3,000.00 and that the Claimants' overpayment of EUR 2,500.00[1] would be credited to Advance on Costs. By the same letter, the BAT Secretariat fixed a time limit until 18 July 2016 for the Respondent to file an Answer to the Request for Arbitration. Also by the same letter, and with a time limit for payment of 7 July 2016, the following amounts were fixed as the Advance on Costs:

"1st Claimant (Mr. Oderah Anosike)	*EUR 4,000.00*
(EUR [2],500[2] already received due to overpayment of NRF)	
2nd Claimant (Sports International Group Inc.)	*EUR 1,250.00*
3rd Claimant (Sfera Sports Association)	*EUR 1,250.00*
Respondent (AEK NEA K.A.E.)	*EUR 6,500.00"*

[1] The letter contained a clerical error, stating that the overpayment was EUR 1,500.00, not 2,500.00. This was corrected by the BAT Secretariat in a letter sent to the Parties on 26 June 2016.

[2] Ibid.

15. Following an appropriately justified request from the Respondent, the Arbitrator granted the Parties an extension for the payment of the Advance on Costs until 18 July 2016 and for the Respondent to file its Answer to the Request for Arbitration until 28 July 2016.

16. On 28 July 2016, the Respondent filed an Answer and a counterclaim.

17. The Parties failed to pay their full shares of the Advance on Costs by 18 July 2016, and so on 3 August 2016 the BAT Secretariat fixed a deadline of until 16 August 2016 for the Parties to pay their full shares of the Advance on Costs.

18. On 4 August 2016, Claimant 2 paid EUR 1.250,94 in respect of its share of the advance on costs. On 8 August 2016, Claimant 1 paid EUR 4.000,00 in respect of his share of the advance on costs. The BAT Secretariat deemed Claimant 3's share of the Advance on Costs paid in light of the Claimants' overpayment of the handling fee by EUR 2,500.00 and the BAT's correspondence of 27 June 2016 (see above).

19. By Procedural Order dated 10 August 2016 and in accordance with Article 16.2.1.b) of the BAT Rules, the Claimants were invited to choose whether to: (a) request the Arbitrator to issue an award without reasons; or (b) pay the Respondent's share of the Advance on Costs and request the Arbitrator to deliver an award with reasons.

20. On 16 August 2016, the Respondent sent an email to the BAT Secretariat stating that the Respondent's share of the Advance on Costs had in fact been wired to the BAT, however because of restrictions within the Greek banking system, the transfer of the funds required certain approvals which could take up to 40 days to obtain. The Respondent added that it would provide supporting evidence "*as soon as possible within the next few days*"

21. On 18 August, the BAT received part of the Respondent's share of the Advance on

Costs (EUR 1,250.00). On the same day, the Arbitrator sent a Procedural Order to the Parties, inviting the Respondent to provide the evidence it referred to in its email of 16 August 2016 by no later than 23 August 2016. By the same Procedural Order, the Arbitrator suspended the time-limit for the Claimants as set out in the Procedural Order dated 10 August 2016.

22. By Procedural Order dated 31 August 2016, the Arbitrator informed the Parties that the Respondent had failed to provide the evidence it referred to in its email of 16 August 2016. Accordingly, the Claimants were again invited to choose whether to: (a) request the Arbitrator to issue an award without reasons; or (b) pay the Respondent's share of the Advance on Costs and request the Arbitrator to deliver an award with reasons.

23. On 1 September 2016, the Respondent submitted evidence showing that it had instructed its bank in July 2016 to transfer the full amount of its share of the Advance on Costs. In light of this information, the Arbitrator issued a Procedural Order on 7 September 2016 stating that, in order to avoid delaying the proceedings any further, the Arbitrator would continue the arbitration without waiting for the Respondent's share of the Advance on Costs to be received by the BAT. However, if the Respondent's share of the Advance on Costs was not received by 30 September 2016, the Arbitrator would consider whether to offer the Claimants the choice of either: (a) requesting an award without reasons; or (b) to pay the Respondent's share of the Advance on Costs.

24. On 28 September 2016, the Respondent made an unsolicited submission in support of its Answer and also requested a hearing. At that stage of the proceedings, the Arbitrator considered that a hearing would be unlikely to assist him materially in determining this dispute and so decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing.

25. On 13 October 2016, the Arbitrator issued a Procedural Order: (i) confirming that the BAT had now received the Respondent's share of the Advance on Costs; (ii) informing

the Parties that the Arbitrator would therefore issue an award with reasons; and (iii) requesting that the Parties provide further information in relation to the dispute (hereinafter the "Primary Procedural Order").

26. The Claimants submitted their response to the Primary Procedural Order on 3 November 2016. The Respondent submitted its response to the Primary Procedural Order on 4 November 2016.

27. On 25 November 2016, the Arbitrator issued a Procedural Order requesting further information from the parties (hereinafter the "Secondary Procedural Order"). In light of several factors, including proceedings that were taking place before the Greek Committee for the Resolution of Financial Disputes of Professional Basketball Players (hereinafter the "EEODAK"), the Arbitrator granted the Parties until 4 January 2017 to respond to the Secondary Procedural Order.

28. The Claimants submitted their response to the Secondary Procedural Order on 28 December 2016. The Respondent submitted its response to the Secondary Procedural Order on 5 January 2017 and provided translations of certain evidence on 13 January 2017.

29. By Procedural Order dated 7 February 2017, the Arbitrator declared the exchange of documents complete, and requested that the Parties submit detailed accounts of their costs by 14 February 2017. Furthermore, the Parties were informed that the Advance on Costs was adjusted to an overall amount of EUR 15,996 but that no further payments needed to be made because of the Claimants' overpayment on the initial Advance on Costs. All of the Parties failed to submit their account of costs by 14 February 2017.

30. By Procedural Order dated 7 March 2017, the Arbitrator requested the Respondent to pay an additional Advance on costs of EUR 2,500. After the Respondent had failed to

make the requested payment, the Claimant was invited to substitute for the Respondent by Procedural Order dated 6 April 2017. The Claimant subsequently paid an amount of EUR 2.497,09 into the BAT bank account.

4. The Parties' Submissions

4.1 Claimants' Request for Arbitration

31. In their Request for Arbitration, the Claimants submitted, *inter alia*, that:

i. Around mid-November, the Respondent orally informed Claimant 2 that it intended to terminate the Employment Agreement. Soon after, the Respondent: (a) asked Claimant 1 to return his car to be swapped for a worse model; (b) cut Claimant 1 from the team; (c) required Claimant 1 to attend practices sessions on his own; and (d) failed to fulfil any further salary payment obligations to Claimant 1. Around the same time, the Respondent signed new foreign players such that more were in its side than it could field pursuant to Greek basketball league regulations. On 17 November 2015, Claimant 2 sent a letter to the Respondent outlining its concern at the above events, noting that Claimant 2 had rejected the Respondent's proposals to terminate the Employment Agreement and explaining that Claimant 1 intended to fulfil his obligations under the Employment Agreement.

ii. On 18 November 2015, the Respondent sent an email to Claimant 2, stating that it had paid Claimant 1's salary and that Claimant 1 remained one of its players.

iii. On 18 and 19 November 2015, Claimant 1 went to the Respondent's gym for the recently scheduled individual practice sessions, however there was no one at the gym.

iv. On 19 November 2015, Claimant 2 wrote to the Respondent, stating that two of Claimant 1's salary payments were, in fact, still overdue and that Claimant 1 would exercise his right under clause IV of the Employment Contract such that he would not attend any individual practice sessions, but that he would attend team practice sessions.

v. On 26 November 2015, the Respondent sent Claimant 3 a notice requiring Claimant 1 to return the keys to his accommodation and car to the Respondent and stating that it had grounds to terminate AS Contract for the following reasons:

a. Claimant 1 was given a medical injection prior to joining Respondent, in order reduce the impact of an injury. However, Claimant 1 failed to disclose this to the Respondent.

b. Claimant 1 attended practices after 16 October 2015 "*with* reduced *performance*" and exhibiting "*provocatively indifferent behaviour*".

c. On 24 October 2015, Claimant 1 did not play in a game, claiming that he was in pain.

d. On 4 November 2015, Claimant 1 "*created disruption*" before a game by indicating he had discomfort in his left ___ during the warm-up. Then when the team doctors could find no injury, he decided to play two minutes before tip-off.

e. On 21 November 2015, Claimant 1 did not show up to the team bus prior to a game and so missed the game.

f. On 24 November 2015, Claimant 1 said that he was too tired or sick to practice, which hampered the Respondent's preparation for a game.

vi. On 7 December 2015, Claimant 1's legal representative wrote to the Respondent stating:

a. Claimant 1 did not accept any of the allegations set out in the Respondent's notice of 26 November 2015.

b. The Respondent had no grounds to unilaterally terminate the Employment Contract.

c. However, Claimant 1 would agree to negotiate the mutual termination of the Employment Contract if the Respondent paid Claimant 1 overdue past and future salary payments totalling USD 200,000.

vii. The Respondent did not respond to the letter and on 7 January 2016, Claimant 1 entered into the Brindisi Contract, pursuant to which he earned USD 56,000.00 for the remainder of the 2015-2016 season. Claimant 2 earned USD 2,800.00 under the Brindisi Contract, but Claimant 3 did not earn anything because Claimant 3 was a domestic Greek agency and the Brindisi Contract was signed with an Italian club.

viii. Claimant 1 was in excellent shape and had no injuries at the time of the medical examination on joining the Respondent. The Respondent was aware of any previous injuries and Claimant 1 passed the medical.

32. Claimant 1 further argues, *inter alia*, that:

i. The allegations described at paragraph 31v.b - 31v.d above are untrue. Moreover, the allegations could not lead to unilateral termination as they were never notified to him. In this regard, Claimant 1 cites paragraph 47 of the award in BAT 0640/14 as authority for the proposition that disciplinary offences that

could lead to a contract termination should be notified to the employee and he should be given a chance to defend himself (regardless of whether any internal regulations of the club require formal written warning).

ii. In relation to the allegation described at paragraph 31v.e above, Claimant 1 was not included in the roster for the game and therefore, he did not show up to the team bus.

iii. In relation to the allegation described at paragraph 31v.f above, Claimant 1 (a) was not admitted to team practices but was given an individual training schedule; and (ii) in any event had a contractual right to miss practice sessions, pursuant to article IV of the Employment Agreement on the basis that certain salary payments were overdue for more than 25 days.

33. The Claimants claim that the Respondent unilaterally terminated the Employment Contract without just cause. The Claimants claim as compensation:

i. All accrued salary payments owing to Claimant 1 at the time of the Respondent's termination (26 November 2015) of the Employment Contract, including a pro-rata amount for the 26 days in November prior to the termination.

ii. All future salary payments due to Claimant 1 under the Employment Contract (i.e. USD 150.166,67) less the USD 56,000.00 that Claimant 1 earned pursuant to the Brindisi Contract.

iii. Unpaid agency fees owing to Claimant 2 and Claimant 3 in relation to the Employment Contract.

34. The Claimants' request for relief states:

"Mr. Anosike seeks a decision in the hereby arbitration awarding him;

a) a total of $ $ 49.733,33 as compensation earned while serving the Club with interests requested below;

$ 4.000,- net with an interest of 5% per annum starting from 11 October 2015

$ 24.500,- net with an interest of 5% per annum starting from 1 November 2015

$ 21.233,33 net with an interest of 5% per annum starting from 28 November 2015

b) a total of $ 94.166,67 net as compensation for the damage suffered due to unjustified termination with an interest of 5% per annum starting from 28 November 2015.

c) all costs and legal expenses related to the hereby arbitration

Mr. Anosike alternatively seeks a decision in the hereby arbitration awarding him;

a) a total of $ $ 28.500,-net as compensation earned while serving the Club with interests requested below;

$ 4.000,- net with an interest of 5% per annum starting from 11 October 2015

$ 24.500,- net with an interest of 5% per annum starting from 1 November 2015

b) a total of $ 115.000,- net as compensation for the damage suffered due to unjustified termination with an interest of 5% per annum starting from 28 November 2015.

c) all costs and legal expenses related to the hereby arbitration

Sports International Group Inc. and Sfera Sports Association seeks a decision in the hereby arbitration awarding them jointly;

a) a total of $ $ 20.000,-net as Agency Fees with interests requested below;

$ 10.000,- net with an interest of 5% per annum starting from 30 December 2015 $ 10.000,- net with an interest of 5% per annum starting from 30 April 2016

b) all costs and legal expenses related to the hereby arbitration."

4.2 The Respondent's Answer

35. The Respondent essentially made seven arguments in its Answer.

36. First, the Respondent argued that the contract which governed the relationship between it and Claimant 1 was the AS Contract. This has two effects:

    i. BAT does not have jurisdiction to determine the dispute between the Parties because there is no BAT jurisdiction clause in the AS Contract. Instead, EEODAK has jurisdiction and (at the time of the Answer being submitted) was determining a dispute regarding the termination of the AS Contract.

    ii. Even if BAT did have jurisdiction, the maximum amount that Claimant 1 could claim from the Respondent is USD 50,000.00 because that is the total amount payable by the Respondent to Claimant 1 under the AS Contract. While the Image Contract provides that the Respondent will pay Claimant 1 USD 150,000.00, the Image Contract was not signed by any of the Parties and so is not valid or binding.

37. Second, the Respondent submitted that Claimant 1 was the only Claimant to have signed any of the relevant contracts. The version of the Employment Contract exhibited with the Claimant's Request for Arbitration bears Claimant 2's signature, however the Responded submitted that this was added recently and was not signed at the time by Claimant 2. Hence Claimant 2 and Claimant 3 do not have the appropriate contractual relationship to bring a claim against the Respondent. Moreover, the Respondent would have been unable to pay them because neither Claimant 2 nor Claimant 3 submitted invoices.

38. Third, the Respondent adopted the allegations set out at paragraph 31v above, and argued that the termination of the AS Contract was due to the exclusive fault of Claimant 1.

39. Fourth, the Respondent did raise Claimant 1's previous ___ and ___ injuries with Claimant 1, however, Claimant 1 *deliberately* concealed the fact that his previous team had given him a medical injection to reduce the impairment caused by these injuries. On 14 October 2016, having become aware of the injuries and the injection, the Respondent sent Claimant 3 a proposed "appendix" which referred to both the Employment Contract and the AS Contract (hereinafter the "Appendix)". The Appendix stated that, because of the injuries and the injection, if Claimant 1 is unable to play in at least two games because of the injuries, the Employment Contract and the AS Contract would be terminated automatically and without penalty.

40. In the cover email to the Appendix, the chairman of the Respondent said "*George check the Appendix and sign… I think the Appendix is OK and fair and ready to be signed immediately by both parties*" (George is the first name of the principle of Claimant 3). The Respondent submits it "*never received a negative answer*" to its email. However the Claimants began negotiations regarding the Appendix in order to gain time in which to secure the "contract" (presumably a reference to satisfying any conditions precedent in the Employment Contract and/or the AS Contract).

41. Fifth, the Respondent submitted that it had in fact paid the Claimant USD 28,500.00. The Respondent claims that it made the payments of USD 4,000.00 and USD 24,500.00, acting in good faith and expecting the Claimants to sign the Image Contract and the Appendix.

42. Sixth, the Respondent claimed that its gym was open on 17 and 18 November 2016, but Claimant 1 simply did not turn up for training.

43. Finally, the Respondent submits that Claimant 1's salary with Brindisi was not USD 56,000.00 but USD 108,000.00.

4.3 The Respondent's Counterclaim

44. The Employment Contract provides that the Respondent will pay Claimant 1 USD 200,000.00. The AS Contract provides that the Respondent will pay one quarter of that amount to Claimant 1, and the Image Contract provides that the Respondent will pay three-quarters of that amount to Claimant 1.

45. In its Answer, Respondent submits that the Image Contract was not signed by the Parties and so is not binding (nor are the payment provisions contained therein). Therefore, in paying Claimant 1 USD 28,500.00, the Respondent overpaid Claimant 1. The Respondent therefore claims three-quarters of USD 28,500.00 (i.e. the difference between the amount payable under the AS Contract and the amount actually paid by the Respondent) by way of counterclaim from Claimant 1.

5. The Parties' Further Submissions

5.1 The Respondent's unsolicited submission

46. On 29 September 2016, the Respondent supplemented its Answer with an unsolicited submission stating that: (i) it had arraigned the Employment Contract and the AS Contract before the EEODAK; (ii) a hearing had been held on 13 September 2016 and (iii) the EEODAK's decision was pending.

5.2 The Primary Procedural Order

47. In response to the Primary Procedural Order, the Claimants submitted that:

i. In the interests of time, the Employment Contract was signed by Claimant 1, but not Claimant 2 or Claimant 3, then sent to the Respondent for execution.

ii. At the relevant time, the Claimants and the Respondent considered the Employment Contract to be the relevant contract with governed the Parties' relationship. This is clear because:

a. The AS Contract was a standard form agreement produced by the Greek basketball authorities, in relation to which the parties are unable to change several terms of the agreement (including the jurisdiction clause). Consistent with the UNIDROIT Principles of International Commercial Contracts (2010 Edition) Article 2.1.21, where a conflict exists between a standard term (i.e. one in the AS Contract) and a term which is not a standard term (i.e. the Employment Contract), then the non-standard term prevails.

b. The AS Contract was only signed because it was mandatory to do so in order to register the Claimant with the Greek Basketball Federation. The fact that the Image Contract was not signed by any of the parties, despite the fact that it provided for the payment of USD 150,000.00 of Claimant 1's USD 200,000.00 remuneration, underlines the fact that the Parties considered the Employment Contract to be the operative agreement.

c. The payments which the Respondent did make to Claimant 1 are too high to be consistent with the payment provisions of the AS Contract. Claimant 1 submits that he received from the Respondent USD 2,818.00 on 20 November 2015 and USD 27,040.44 on 24 December 2015 (hence the total

amount received in relation to the 2015-2016 season was USD 29,858.44).

iii. The Claimants did not make any submissions in the proceedings before the EEODAK. The EEODAK relates to the AS Contract only, and not to the Employment Contract. The dispute before the EEODAK concerns a different subject matter to the dispute before the BAT because the EEODAK dispute appears to relate to the Respondent's provision of accommodation and a car to Claimant 1 and whether the AS Contract has been terminated, whereas the BAT dispute relates to the Claimants' claim for remuneration and damages.

48. In response to the Primary Procedural Order, the Respondent submitted that:

i. The Image Contract was supposed to be signed on 11 October 2015, but it was never sent back to the Respondent, signed by Claimant 1. This was due to Claimant 1's "negligence and omission".

ii. Claimant 1 was in fact represented by Claimant 3 in the EEODAK proceedings.

iii. The AS Contract and Image Contract were not signed for tax reasons, but to express the reality of the Parties' relationship and for legal reasons.

5.3 The Secondary Procedural Order

49. In response to the Secondary Procedural Order, the Claimants submitted, *inter alia*, that:

i. Claimant 1 was not represented by Claimant 3 in the EEODAK proceedings.

ii. Claimant 1 did not hide any information from the Respondent regarding his health. Moreover, Claimant 1's fitness to play is confirmed by the fact that he

went on to play the rest of the 2015-2016 season for Brindisi without any injury problems.

iii. When Claimant 1 went to the Respondent's gym on 19 November to attend a personal training session and no-one else showed up, Claimant 1 took videos to prove that he was the only person in the gym. Claimant 1 submitted copies of the videos to the BAT.

iv. The Claimants never agreed to the Appendix and the offer contained within it was in fact withdrawn by the Respondent.

v. The Respondent did not notify Claimant 1 that it considered he had breached the AS Contract in the manner described at paragraph 31 above until after it officially requested termination of the AS Contract through the EEODAK procedure. He did not, therefore, have a right to respond to the allegations.

vi. Neither Claimant 2 nor Claimant 3 sent an invoice to the Respondent because the Employment Contract provides that the invoice should be sent on the date that the payment is made. This cannot be a reason for the Respondent's failure to pay agents' fees.

vii. Claimant 3 did not attend the EEODAK hearing held on 13 September 2016.

viii. The Claimants submitted a revised request for relief as follows:

> *"Mr. Anosike seeks a decision in the hereby arbitration awarding him;*
>
> *a) a total of $ 19.874,89 as compensation earned while serving the Club with an interest of 5% per annum starting from 28 November 2015*
>
> *b) a total of $ 94.166,67 net as compensation for the damage suffered due to unjustified termination with an interest of 5% per*

annum starting from 28 November 2015.

c) all costs and legal expenses related to the hereby arbitration

Mr. Anosike alternatively seeks a decision in the hereby arbitration awarding him

a) a total of $ 113,641.56,-net as compensation for the damage suffered due to unjustified termination with an interest of 5% per annum starting from 28 November 2015.;

b) all costs and legal expenses related to the hereby arbitration

Sports International Group Inc. and Sfera Sports Association seeks a decision in the hereby arbitration awarding them jointly;

a) a total of $$ 20.000,-net as Agency Fees with interests requested below;

$ 10.000,- net with an interest of 5% per annum starting from 30 December 2015

$ 10.000,- net with an interest of 5% per annum starting from 30 April 2016

b) all costs and legal expenses related to the hereby arbitration."

50. In response to the Secondary Procedural Order, the Respondent submitted, *inter alia*, that:

i. The Respondent transferred USD 30,500.00 to Claimant 1. The reason it did so was as compensation and "pay-off" for the arraignment of the AS Contract. The fact that it was transferred to Claimant 1 after the arraignment of the AS Contract proves that the payment was a compensation payment, and not a payment made in accordance with the Image Contract.

ii. Claimant 1 failed the medical examination that the Respondent gave him and the Respondent informed him of this orally. It is also why the Appendix was proposed and sent to Claimant 1 on 14 October 2015.

iii. The Respondent notified Claimant 1 that the allegations described in paragraph 31v above could result in the termination of his contract after each offence was committed.

6. Jurisdiction

51. 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).

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

53. 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.[3]

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

> *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."*

55. The Respondent has disputed the jurisdiction of the BAT. The Respondent argues that the AS Contract effectively replaced the Employment Contract and that the Image Contract was not signed by any of the Parties, so is not valid. The Respondent submits that, consequently the AS Contract is the only agreement that governs the relationship between the Claimants and the Respondent. The AS Contract does not contain a BAT jurisdiction clause and therefore, according to Respondent, the Arbitrator does not have jurisdiction to determine a dispute between the Claimants and the Respondent.

56. The Arbitrator accepts that the AS Contract was signed after the Employment Contract and that the Image Contract was not signed by any of the Parties. The Arbitrator also accepts that the AS Contract does not contain a jurisdiction clause in favour of the BAT and instead provides that disputes should be determined by the relevant committees of HEBA and HBF. Nonetheless, the Arbitrator still finds that the BAT has jurisdiction to determine this dispute. This is because the Employment Contract is the agreement that governs the relationship between the Parties and the Employment Contract has a valid jurisdiction clause in favour of the BAT (see below).

57. The Arbitrator considers that the AS Contract did not replace or invalidate the Employment Contract and that the Employment Contract governs the Parties' relationship for the following reasons:

    i. The Employment Contract expressly contemplates (indeed, it requires) that the Parties will sign the AS Contract and Image Contract immediately after Claimant 1 passes the Respondent's medical examination. However, the Employment Contract does not state that it will lapse once the AS Contract and Image Contract are signed. Indeed, despite envisaging that the AS Contract and Image Contract would be signed, clause II of the Employment Contract states: "*The term*

of this contract shall be deemed to have commenced on the date of signature of this contract and shall continue for the period covering the 2015-16 basketball season." Furthermore, it contains various provisions intended to regulate the Parties' relationship throughout the 2015-2016 season. For example, the Employment Contract provides for bonuses that Claimant 1 can earn if the Respondent wins the Greek league. Such provisions would not make sense if the Parties had intended the Employment Contract to fall away once the AS Contract was signed.

ii. The Image Contract refers expressly to the Employment Contract in a manner which strongly implies that the Employment Contract was intended to continue in force, alongside the Image Contract (and therefore AS Contract as well). For example, the Image Contract states at clause 3.1: "*The term of this Agreement shall be in alignment to the term of the employment contract signed between Club and Athlete for the provision of sports services and shall cover the Basketball Season 2015/2016*." Clause 9.3 of the Image Contract states "*Without any prejudice to the foregoing Club may also terminate this agreement in the event that the employment agreement between Club and Athlete related to the provision of sports services is prematurely terminated for whatever reason*." This clause would not make sense if the Parties had intended the Employment Contract to fall away once the AS Contract was signed.

iii. Claimant 2 and Claimant 3 are not parties to the AS Contract or Image Contract. If it were intended that the Employment Contract would be replaced or invalidated by the AS Contract and/or Image Contract, then Claimant 2 and Claimant 3 would have no right to any agents' fees and the provisions in the Employment Contract which relate to the payment of their fees would be meaningless.

iv. The Respondent submitted in response to the Primary Procedural Order that, "[a]*ccording to Greek Law, the* [AS] *Contract is required and from this contract*

only the insurance contributions arise, which are paid for by our company…" The AS Contract is a standard form contract in which the Respondent and Claimant were required to simply delete clauses as applicable. For example, there are only two options within the AS Contract for the parties to choose a jurisdiction clause: "*(a) the Courts of the City of… or (b) "the relevant committees for the resolution of financial disputes*". It is not uncommon for national federations to require basketball players to sign standard form contracts for registration and other purposes. Consistent with BAT jurisprudence (such as BAT 0424/13), in such circumstances, it does not always follow that the standard form contract will replace a similar contract signed previously between the same parties.

v. In its Answer, the Respondent admitted to having paid Claimant 1 payments of USD 4,000.00 and USD 24,500.00. Those payments mirror the first two payment provisions of the Employment Contract exactly. However, the two payments are wholly inconsistent with the payment provisions of the AS Contract (which provides that the Respondent will pay Claimant 1 a monthly salary of EUR 570.75). On this basis alone, it would appear that the Parties were performing their obligations under the Employment Contract and not under the AS Contract. The Respondent contented that it made these payments because it expected the Claimants to sign the Image Contract and the Appendix, not because it was performing obligations under the Employment Contract. The Arbitrator rejects this argument. Firstly, the two payments do no correspond to the payment provisions of either the Image Contract or the Appendix. Secondly, the purpose of the Appendix was to terminate the Respondent's relationship with the Claimants. It makes no sense that the Respondent would have, at any one time, expected the Claimants to sign *both* the Image Contract (which required the Respondent to make payments throughout the 2015-2016 season) *and* the Appendix (which would have allowed Respondent to terminate the relationship early in the 2015-2016 season).

58. Clause X of the Employment Contract stipulates:

> *"Any dispute arising or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator, appointed by the BAT president. The seat of the arbitration shall be Geneva, Switzerland.*
>
> *The language of the arbitration shall be English. Awards of the BAT can be appealed to the court of arbitration of sports (CAS), Lausanne, Switzerland."*

59. The Employment 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 Agreement*" clearly covers the present dispute.

60. The Respondent also argued that BAT should not determine the dispute because of the concurrent proceedings before the EEODAK. The issue of *lis pendens* must be examined in the context of Article 186 PILA, which states:

> *"1 The arbitral tribunal shall itself decide on its jurisdiction.*
>
> *1bis It shall decide on its jurisdiction notwithstanding an action on the same matter between the same parties already pending before a State Court or another arbitral tribunal, unless there are serious reasons to stay the proceedings.*
>
> *[…]".*

61. The Arbitrator notes that the subject matter of the present dispute is similar to those in the proceedings which took place before the EEODAK. The Arbitrator also notes that the EEODAK had now rendered its decision and the Respondent has stated its intention to appeal the EEODAK decision.

62. From the written decision of the EEODAK, it is apparent that the EEODAK was asked

by the Respondent to declare the AS Contract terminated because of Claimant 1's alleged breaches. The EEODAK rejected the Respondent's claim for such a declaration on the basis that the Respondent was unable to prove that it summoned Claimant 1 to account for the alleged breaches, and therefore failed to comply with the "*necessary statutory pre-trial procedure*".

63. The Arbitrator finds that while the present dispute is related to the EEODAK proceedings, the subject matter of the two disputes is sufficiently different that there is no risk of the Parties suffering double jeopardy, or of the same issue being decided twice by two separate judicial bodies because:

    i. The EEODAK proceedings concern the termination of the AS Contract, whereas the BAT proceedings concern the financial obligations of the Respondent arising out of the Employment Contract.

    ii. Claimants 2 and 3 are not parties to the EEODAK proceedings.

64. In view of the circumstances of the present case, the Arbitrator is not persuaded that there are serious reasons within the meaning of Article 186(1) *bis* PILA to stay or terminate these BAT proceedings. The Arbitrator therefore finds that the present dispute can be heard, despite the existence of the EEODAK proceedings.

65. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claim.

7. Other Procedural Matters

7.1 Hearing

66. The Respondent requested a hearing. Article 13 of the BAT Rules reads as follows:

> *"13.1 No hearings are held in arbitration proceedings under these Rules unless the Arbitrator decides to hold a hearing after consultation with the parties. Hearings before the BAT shall be in private.*
>
> *13.2 The Arbitrator shall determine in his/her sole discretion whether a hearing is to be held by telephone or video conference or whether and where a hearing in person is to be held."*

67. The Arbitrator considered that a hearing was not necessary to determine this dispute. The Parties provided voluminous written evidence and submissions. In light of this and because of the nature of the dispute and the issues in contention, it is unlikely that a hearing would have been of material assistance to the Arbitrator.

8. Discussion

8.1 Applicable Law – ex aequo et bono

68. 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".*

69. The Employment Contract does not expressly state which governing law should apply to disputes between the Parties. However, clause X of the Employment Contract states that any dispute shall be resolved in accordance with the BAT Arbitration Rules. Under the heading "Applicable Law", Article 15.1 of the BAT Rules reads as follows:

> *"Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law."*

70. In light of the above, the Arbitrator will decide the issues submitted to him in these proceedings *ex aequo et bono*.

71. The concept of *équité* (or *ex aequo et bono*) used in 187(2) PILA originates from Article 31(3) of the *Concordat intercantonal sur l'arbitrage*[4] (Concordat),[5] under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

> *"When deciding ex aequo et bono, the arbitrators pursue a 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]

72. 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*".[7]

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

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

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

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

73. 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*".

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

8.2 Findings

8.2.1 Termination of the Employment Contract

75. At the heart of this case is a dispute as to whether Claimant 1 was in breach of his contractual obligations to the Respondent, such that the Respondent was entitled to terminate the Employment Contract.

76. The Respondent alleges that Claimant 1 breached his contractual obligations in various ways:

i. Claimant 1 failed to disclose, prior to joining Respondent, that he was given a medical injection, in order reduce the impact of an injury. In relation to this allegation, the Arbitrator notes that there was no contractual requirement for Claimant 1 to make this disclosure prior to joining Respondent and, even if such requirement could be otherwise inferred, there is no evidence that Claimant 1 deliberately misled the Respondent. In any event, the Respondent was safeguarded against the risk of Claimant 1 carrying an injury by clause VII of the Employment Contract, which states:

> "*This is a fully guaranteed contract, which cannot be terminated for injury or lack of skill. Said guarantee shall be in force and effect after the player has passed a medical examination. The club has 3 (three) days after the player's arrival to give the player said medical examination. Unless the player and his agent are notified in writing that he has failed to pass the*

medical examination, all guarantees will be in place 3 (three) days after arrival and the contract terms will be in full force and effect."

The exact date on which Claimant 1 arrived with the Respondent is unclear, however he had clearly arrived by 9 October 2015 at the latest because that was the date on which his medical examination took place. The report of Claimant 1's medical examination clearly states that Claimant 1 received the injection to alleviate pain. The report also describes Claimant 1's injury and states that it could cause pain and affect his ability to play. The Respondent was therefore made aware of the injury and the injection as of 9 October 2015. Therefore, pursuant to Clause VII of the Employment Contract, the Respondent had until 12 October 2015, at the latest, to inform Claimant 1 and his agent that he had failed the medical, otherwise all terms of the Employment Contract would be in full force. The Respondent submitted evidence showing that it contacted Claimant 1's agent on 14 October 2015, proposing the Appendix. Fundamentally, the Respondent did not inform Claimant 1 that it had failed the medical examination within three days of the medical examination. Indeed, the Respondent continued to select Claimant 1 in matches and require that he attend practices (both team practices and additional, individual practice sessions), not just after the medical examination, but also after the Respondent proposed the Appendix. The Respondent also paid Claimant 1 in accordance with the Employment Contract. It is clear therefore that the Respondent did not invoke its right under clause VII of the Employment Contract to terminate the Employment Contract as a result of the medical examination. Consequently, the Arbitrator finds that there was no breach of contract by Claimant 1 in this respect.

ii. Claimant 1 attended practices after 16 October 2015 "*with reduced performance*" and exhibiting "*provocatively indifferent behaviour*". The Arbitrator finds that Respondent has not provided sufficient evidence to prove that Claimant 1 behaved in this manner, nor has it identified how such behaviour would constitute a breach of the Employment Contract. The Respondent has merely asserted that

Claimant 1's performance in practice was "*reduced*" and that he "*caus*[ed] *problems in the practices*". The Respondent has not articulated the manner in which his behaviour was "provocative" or problematic. The only evidence the Respondent submitted in support of this assertion is a copy of the arraignment of the AS Contract submission that was prepared by the Respondent after its dispute with Claimant 1 had arisen. The submission simply repeats the wording on this issue that is found in the Respondent's Answer. The Respondent did not, for example, produce a witness statement of an individual who witnessed Claimant 1's behaviour.

iii. On 24 October 2015, Claimant 1 declined to play in a game, claiming that he was in pain. Again, the Respondent has not identified how such behaviour would constitute a breach of the Employment Contract. If a player is unable to play due to injury, it is appropriate for him to inform his club accordingly, although the Arbitrator accepts that if a player is injured, he should usually still present himself for practices, games and medical examination. However, the Respondent has submitted no evidence to suggest that Claimant 1 failed to present himself for the game on 24 October 2015, just that he declined to play in the game. The Arbitrator notes clause VII of the Employment Contract, which states "[t]*his is a fully guaranteed contract, which cannot be terminated for injury or lack of skill*."

iv. On 4 November 2015, Claimant 1 "*created disruption*" before a game by indicating he had discomfort in his left ___ during the warm-up. Then when the Respondent's doctors could find no injury, he decided to play two minutes before the tip-off. In relation to this allegation, the Arbitrator finds that Respondent has not provided any evidence that Claimant 1 behaved in this manner deliberately or in bad faith. Indeed, Claimant 1's behaviour during this period appears consistent with the player carrying an ____ injury. In any event, the Respondent has failed to identify how such behaviour would constitute a breach of the Employment Contract considering that Claimant 1 eventually played.

v. On 21 November 2015, Claimant 1 did not show up to the team bus prior to a game and so missed the game. Claimant 1 submits that he was not selected for the team for that particular game, which is why he did not join the team on the bus to the game. In the circumstances, the Arbitrator finds that misconduct of this nature may well breach internal disciplinary rules of the Respondent, however, by itself it does not amount to a breach of the Employment Contract to a degree that would justify termination of the Employment Contract in response.

vi. On 24 November 2015, Claimant 1 said that he was too tired or sick to practice, which hampered the Respondent's preparation for a game. The Respondent alleges that Claimant 1 was "*pretending to be tired*". The Arbitrator finds that Respondent has not provided any evidence that Claimant 1 behaved in this manner, other than a copy of the arraignment submission, which the Arbitrator finds carries limited weight because it was prepared by the Respondent for the purposes of a dispute similar in nature to the present BAT proceedings. As such, the Respondent has not provided sufficient evidence to prove that Claimant 1 was essentially lying.

77. In view of the findings above, the Arbitrator considers that Claimant 1 did not breach his contractual obligations to the Respondent, such that the Respondent was entitled to terminate the Employment Contract (which was the contract which governed the Parties' relationship).

78. Clearly, the Employment Contract has, as a matter of fact, been terminated. The Respondent has made only two payments under the agreement and Claimant 1 joined a new club in January 2016. Neither Claimant 1 nor the Respondent performed any of their obligations under the Employment Contract after 26 November 2015. The Respondent did not have just cause to stop paying Claimant 1, to withhold Claimant 2 and Claimant 3's agency fees, or effectively, to terminate the Employment Contract. It therefore falls to the Arbitrator to determine the level of compensation payable to the

Claimants.

8.2.2 Claimant 1's compensation

79. Under the Employment Contract, Claimant 1 was entitled to a total of USD 200,000.00 in salary payments for the 2015-2016 season. The Respondent has submitted evidence to show that it paid Claimant 1 USD 2,850.00 on 11 November 2015 and USD 27,080.44 on 24 December 2015. Claimant 1 claimed that it received USD 72.00 less than this due to bank charges being applied, however Claimant 1 did not submit any evidence to support that claim and so the Arbitrator accepts the Respondent's submission that it has paid a total of USD 29,930.44 in relation to the 2015-2016 season.

80. In relation to unpaid salary that had accrued when the Employment Contract had terminated, Claimant 1 has claimed:

    i. The USD 4,000.00 payable under the Employment Contract immediately on passing the medical examination.

    ii. His monthly salary for October 2015 of USD 24,500.00.

    iii. A pro-rata contribution of USD 21,233.33 towards his November 2015 salary, which reflects the fact that he only played and trained with the Respondent for 26 days in November 2015.

81. Claimant 1 accepts that the payments made by the Respondent should be set-off against these sums. Adding these sums together and subtracting the USD 29,930.44 paid to Claimant 1 by the Respondent gives a figure of USD 19,802.89. The Arbitrator therefore finds that the Respondent should pay USD 19,802.89 to Claimant 1 in relation to unpaid salary that had accrued by the time the Employment Contract had

terminated. For the sake of completeness, the Arbitrator notes that Claimant 1 plead an alternative (secondary) request for relief in the event that the Arbitrator did not accept his claim for a pro-rata contribution in relation to the November 2015 salary payment. The Arbitrator has accepted the claim for a pro-rata contribution, and so the secondary request for relief does not need to be addressed.

82. Claimant 1 has also claimed USD 150,166.67 in relation to his remaining salary for the 2015-2016 season, less the USD 56,000.00 that he earned under the Brindisi Contract. The Respondent submitted that Claimant 1 in fact earned USD 108,000.00 under the Brindisi Contract. However, the Respondent did not submit any evidence to support this claim. Claimant 1 submitted a copy of the Brindisi Contract showing that he earned USD 56,000.00 in salary payments for the 2015-2016 season.

83. The Arbitrator accepts that: (i) Claimant 1 is entitled to compensation in relation to his remaining salary for the 2015-2016 season; (ii) USD 150,166.67 was outstanding at the point in time that the Employment Contract was terminated; and (iii) Claimant 1 was required to mitigate his losses by joining a new club.

84. However, the Arbitrator does not consider that securing a contract under which Claimant 1 earned USD 56,000.00 is sufficient mitigation in these circumstances. In particular, the Arbitrator notes that Claimant 1's monthly salary (or equivalent) under the Brindisi Contract was less than half the size as that under the Employment Contract. The Arbitrator recognises the difficulties in obtaining a contract during the course of a season, compared to the off-season, however the Arbitrator also notes that Claimant 1 left the Respondent relatively early during the season and indeed had notice that the Respondent wanted to terminate the Employment Contract at least as early as 14 October 2015, because that was the date on which the Respondent proposed the Appendix. In the circumstances, the Arbitrator considers *ex aequo et bono* that Claimant 1 ought to have been able to find a new contract for the remainder of the 2015-2016 season under which he would have earned an amount approximately

equal to 55% of the amount of salaries payable under the Employment Contract for the rest of the season. Hence the Arbitrator finds that a fair amount of compensation for the Respondent to pay Claimant 1 in relation to the remaining salary for the 2015-2016 is USD 65,000.00.

8.2.3 Claimant 2 and Claimant 3's compensation

85. Claimant 2 and Claimant 3 claim agents' fees from the Respondent for the 2015-2016 season. As explained above, the agreement which governed the relationship between the Respondent and the Claimants was the Employment Contract. Clause VIII of the Employment Contract provides that the Respondent will pay Claimant 2 and Claimant 3 a total agents' fee of 10% of Claimant 1's salary (i.e. USD 20,000.00), comprising payments of USD 5,000.00 to each of Claimant 2 and Claimant 3 on 30 December 2015 and on 30 April 2016.

86. Clause VIII of the Employment Contract states that the agents' fees are to be invoiced to the Respondent on the payment dates mentioned above. The Respondent argues that it has not received invoices from either Claimant 2 or Claimant 3, so it has not made payment.

87. The Arbitrator accepts that neither Claimant 2 nor Claimant 3 issued invoices in respect of the agents' fees. This is perhaps to be expected given that the Employment Contract was effectively terminated before the first payment date arose. Notwithstanding this, the Arbitrator considers, *ex aequo et bono*, that Claimant 2 and Claimant 3 should be compensated for the services that they provided. Those services are specifically stated in clause VIII of the Employment Contract to include "*services pertaining to the negotiation and procurement of the employment agreement*", which were performed prior to the termination of the Employment Contract.

88. The Arbitrator notes that the payment dates for the agents' fees were split over the course of the season. This indicates that they were intended to reflect, in part, on-going services to be provided by Claimant 2 and Claimant 3 throughout the course of the season. Given that Claimant 2 and Claimant 3 did not provide services throughout the course of the season (because Claimant 1 left the Respondent), the Arbitrator considers that that Claimant 2 and Claimant 3 should not be awarded the full agents' fees payable under the Employment Contract as compensation. Instead, the Arbitrator considers, *ex aequo et bono*, that a fair amount of compensation is USD 3,200.00 for Claimant 2 and USD 6,000.00 for Claimant 3. The reason that Claimant 2 has been awarded a lower sum is that it is Claimant 1's international agent and therefore had a greater prospect of mitigating its losses by earning another agent's fee in arranging a contract with a new club for Claimant 1. Claimant 3, on the other hand, was Claimant 1's domestic agent for Greece and so its opportunities for mitigating its losses were more limited because they would only arise in situations where Claimant 1 signed for a new Greek club. The Arbitrator notes that, in the circumstances, Claimant 2 did in fact mitigate its losses by arranging for Claimant 1 to join a new club in Italy. Under the Brindisi Contract, Claimant 2 earned USD 2,800.00 in agent's fees.

8.2.4 The Respondent's counterclaim

89. The Respondent's counterclaim (described at paragraph 44 above) is for sums that were "overpaid" by the Respondent to Claimant 1. The counterclaim is founded entirely on the premise that the Employment Contract did not govern the relationship between the Respondent and Claimant 1. However, as explained at paragraph 57 above, the Employment Contract did govern the Parties' relationship and so the Arbitrator finds that the counterclaim must fail. The Arbitrator notes that, in any event, the sums that the Respondent sought by way of counterclaim were fairly and duly earned by Claimant 1.

8.2.5 Interest

90. The Claimants have requested interest on the sums that they have claimed from the Respondent. Although the Employment 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.

91. Claimant 1 has claimed interest on his salary from 28 November 2015 (both the salary that had accrued but was unpaid at the time the Employment Contract was terminated, and salary that had not accrued at that point). The Arbitrator has found that neither Claimant 1 nor the Respondent were performing their obligations under the Employment Contract after 26 November 2015 and so it was effectively terminated before 28 November 2015. In light of this, the Arbitrator finds that interest is payable by the Respondent to Claimant 1 at a rate of 5% per annum on the amount of USD 84,802.89 (i.e. the total amount awarded to Claimant 1) from 28 November 2015.

92. The agents' fees were due on 30 December 2015 and on 30 April 2016. Claimant 2 and Claimant 3 have claimed interest on their unpaid agents' fees from those dates. Given that the agents' fees were payable in two equal sums, the Arbitrator considers it appropriate that interest should be paid on two equal parts of the compensation being awarded to Claimant 1 and Claimant 2. However, in accordance with BAT jurisprudence, the interest should run from the day after the date on which the sums were due. Accordingly, the Respondent is ordered to pay: (a) interest to Claimant 2 at a rate of 5% per annum on the amount of USD 1,600.00 from 31 December 2015 and on

the amount of USD 1,600.00 from 1 May 2016; and (b) interest to Claimant 3 at a rate of 5% per annum on the amount of USD 3,000.00 from 31 December 2015 and on the amount of USD 3,000.00 from 30 April 2016.

9. Costs

93. 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.

94. On 10 July 2017 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 17,998.03.

95. Article 17.3 of the BAT Rules provides that, as a general rule, the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings. In doing so, "*the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and financial resources of the parties.*"

96. The Arbitrator notes the large volume of submissions and evidence produced by each of the Parties in this case, as well as the high number of Procedural Orders and other directions issued. In large part, this reflects: (i) the complexity of the case; (ii) the high

number of legal and factual issues that were in dispute; (iii) the existence of concurrent proceedings before the EEODAK, which both Claimant 1 and the Respondent provided updates on; and (iv) the conduct of the Parties, which included the Respondent making unsolicited submissions. These issues have undoubtedly had an effect on the costs of this arbitration.

97. Considering the total amount that each Party claimed in this arbitration and given that Claimant 1 was awarded approximately 75% of the sum that he claimed; Claimant 2 was awarded 32% of the sum that it claimed; Claimant 3 was awarded 60% of the sum that it claimed; and the Respondent was not awarded any of the sums that it claimed, the Arbitrator considers it is fair in the circumstances of the case and in application of Article 17.3 of the BAT Rules, that the costs of the arbitration should be borne 25% by the Claimants and 75% by the Respondent.

98. Consequently, considering that the Claimants paid a total of EUR 9,000.94 and the Respondent EUR 8,997.09 as Advance on Costs, the Arbitrator decides as follows: Respondant shall pay jointly to Claimants EUR 4,501.03 as reimbursement for their advance on arbitration costs.

99. None of the Parties submitted an account of costs and so the Arbitrator makes no award as to the Parties' legal fees and expenses, including the non-reimbursable handling fee.

10. AWARD

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

1. **AEK NEA K.A.E. is ordered to pay to Mr. Oderah Anosike USD 84,802.89 as compensation for unpaid salary, together with interest of 5% per annum from 28 November 2015 until payment.**

2. **AEK NEA K.A.E. is ordered to pay to Sports International Group Inc. USD 3,200.00 as compensation relating to unpaid agent's fees, together with interest of 5% per annum on USD 1,600.00 from 31 December 2015 until payment and interest of 5% per annum on USD 1,600.00 from 1 May 2016 until payment.**

3. **AEK NEA K.A.E. is ordered to pay to Sfera Sports Association USD 6,000.00 as compensation relating to unpaid agent's fees, together with interest of 5% per annum on USD 3,000.00 from 31 December 2015 until payment and interest of 5% per annum on USD 3,000.00 from 1 May 2016 until payment.**

4. **AEK NEA K.A.E. is ordered to pay to the Claimants EUR 4,501.03 as reimbursement of the advance on arbitration costs.**

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

Geneva, seat of the arbitration, 1 August 2017

Raj Parker
(Arbitrator)