

ARBITRAL AWARD

(BAT 1546/20)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Clifford J. Hendel

in the arbitration proceedings between

Mr. Vasileios Kavvadas

- Claimant 1 -

Starvision Enterprise Ltd.
6, Kolokotroni Str., 1101 Nicosia, Cyprus

- Claimant 2 -

both represented by Mr. Alexandros Vagiatas, attorney at law,
20 Omirou Avenue, 1097 Nicosia, Cyprus

vs.

AEK NEA KAE 2014
466 Irakleiou Ave, 14122 Athens, Greece

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. Vasileios Kavvadas (“the Player” or “Claimant 1”) is a Greek professional basketball player.
2. Starvision Enterprise Ltd. (“the Agency” or “Claimant 2”) is a company registered in Cyprus.

1.2 The Respondent

3. AEK NEA KAE 2014 (“the Club”, and together with the Claimants, “the Parties”) is a professional basketball club competing in the Greek professional basketball league.

2. The Arbitrator

4. On 14 May 2020, Mr. Ulrich Haas, the President of the Basketball Arbitral Tribunal (the "BAT"), appointed Mr. Clifford J. Hendel as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal in force as from 1 December 2019 (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

5. The relevant facts and allegations presented in the Parties’ written submissions and evidence are summarised below. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.

6. Although the Arbitrator has considered all the facts, allegations and evidence submitted by the Parties in the present proceedings, he refers in this Award only to those necessary to explain its reasoning.

3.1.1 The Agreements

7. On 27 November 2017, the Player, the Agency and the Club entered into an agreement, executed in the English language, whereby the latter engaged the Player for the 2017/18 and the 2018/19 seasons (the “Prior Agreement”).¹
8. According to Article 2 of the Prior Agreement:

“TERM OF AGREEMENT

The term of this Contract shall cover the 2017-2018 and 2018-2019 basketball seasons, starting on 27/11/2017 and ending on 15/06/2019 or one (1) day after the last official game of the Club, whichever comes first. [...]”.

9. With regard to the Player’s salary, Article 7 of the Prior Agreement provides:

“SALARY & SIGNING BONUSES COMPENSATION

a) The Club agrees to pay the Player for rendering his services to the Club the following NET amounts:

Season 2017-2018

€ 87.500 (*Euros eighty five thousand and five hundred*) [sic] net of Greek taxes, paid into 7 (ten) [sic] equal instalments of € 12.500 (*Euros twelve thousand and five hundred*) on the last day of each month, commencing with December 30th, 2017 and ending on June 30th 2018

Season 2018-2019

€ 165.000 (*Euros one hundred and sixty five thousand*) net of Greek taxes, paid into 10

¹ Exhibit 4 attached to the Request for Arbitration (“RfA”).

(ten) equal instalments of € 16.500 (Euros sixteen thousand and five hundred) on the last day of each month, commencing with September 30th, 2018 and ending on June 30th 2019.”

10. Further, Article 8 of the Prior Agreement provides:

“BONUSES

- a) *The Club agrees to pay the Player the following NET target bonuses for every season of this Contract:*
- *In case the Club reaches 2nd position after the play-offs, the Player shall receive the net amount of € 10.000*
 - *In case the Club wins the Championship, the Player shall receive the net amount of € 25.000*
 - *In case the Club wins the Greek cup, the Player shall receive the net amount of € 10.000*
 - *In case the Club qualifies for the semi-finals of the Basketball Champions League, the Player shall receive the net amount of € 10.000*
 - *In case the Club qualifies for the final of the Basketball Champions League, the Player shall receive the net amount of € 15.000*
 - *In case the Club wins the Basketball Champions League, the Player shall receive the net amount of € 25.000*
- b) *All bonuses are net and non-cumulative. The Player will be entitled to only the highest amount achieved in each competition. All bonuses are NET of Greek income taxes and social security charges. All bonuses, upon achieved, are guaranteed as part of salary and must be paid by the Club to the Player within Sixty (60) days of their achievement.”*

11. Article 10 of the Prior Agreement provides:

“TAXATION

All of the above said payments regarding paragraphs 7 (seven) and 8 (eight) of this Contract shall be NET of Greek income taxes. Club is responsible to pay all applicable taxes and charges on behalf of Player to the relevant authorities and shall furnish Player with all appropriate tax receipts and relevant documents at the end of each fiscal year and no later than 30/3 of the following year.”

12. With regard to the Agency's fees, Article 14 of the Prior Agreement provides:

“AGENT FEES

The Club agrees to pay as agent fees to the Player's Agents, the following amount (payments will be transferred to the Agent's designated bank accounts):

- **€ 8.750** (Euros eight thousand, seven hundred and fifty), plus VAT wired to the designated bank account of Starvision Enterprise LTD paid on March 1st 2018
- **€ 8.250** (Euros eight thousand, two hundred and fifty), plus VAT wired to the designated bank account of Starvision Enterprise LTD paid on December 1st 2018
- **€ 8.250** (Euros eight thousand, two hundred and fifty), plus VAT wired to the designated bank account of Starvision Enterprise LTD paid on February 1st 2019”

13. On 1 August 2018, the Parties entered into a new agreement by means of which they renegotiated (and reduced) the Player's compensation and the Agency's fees for the 2018/19 season (the “Posterior Agreement”).²

14. Article 2 of the Posterior Agreement provides:

“TERM OF AGREEMENT

The term of this Contract shall cover the 2018-2019 basketball season, starting in the first day of the pre-season until five (5) days after the last official game of the Club for season 2018/19. [...].”

15. With regard to the Player's salary, Article 7 of the Posterior Agreement provides:

“SALARY & SIGNING BONUSES COMPENSATION

a) The Club agrees to pay the Player for rendering his services to the Club the following NET amounts:

Season 2018-2019

-Club agrees to pay Player on the following pay schedule:

Euros 120.000 (Euros one hundred twenty thousand) net of Greek taxes, paid into 10 (ten) equal instalments of € 12.000 (Euros twelve thousand) on the last day of each month, commencing with September 30th, 2018 and ending on June 30th 2019.”

² Exhibit 5 attached to the RfA.

16. Further, Article 8 of the Posterior Agreement provides:

"BONUSES

- a) *The Club agrees to pay the Player the following NET target bonuses for every season of this Contract:*
- *In case the Club reaches 2nd position after the play-offs, the Player shall receive the net amount of € 10.000*
 - *In case the Club wins the Championship, the Player shall receive the net amount of € 25.000*
 - *In case the Club plays the Greek Cup Final, the Player shall receive the net amount of € 5.000*
 - *In case the Club wins the Greek cup, the Player shall receive the net amount of € 10.000*
 - *In case the Club qualifies for the semi-finals of the Basketball Champions League, the Player shall receive the net amount of € 10.000*
 - *In case the Club qualifies for the final of the Basketball Champions League, the Player shall receive the net amount of € 15.000*
 - *In case the Club wins the Basketball Champions League, the Player shall receive the net amount of € 25.000*
- b) *All bonuses are net and non-cumulative. The Player will be entitled to only the highest amount achieved in each competition. All bonuses are NET of Greek income taxes and social security charges. All bonuses, upon achieved, are guaranteed as part of salary and must be paid by the Club to the Player within Sixty (60) days of their achievement."*

17. Article 10 of the Posterior Agreement reads (in identical terms as the Prior Agreement) as follows:

"TAXATION

All of the above said payments regarding paragraphs 7 (seven) and 8 (eight) of this Contract shall be NET of Greek income taxes. Club is responsible to pay all applicable taxes and charges on behalf of Player to the relevant authorities and shall furnish Player with all appropriate tax receipts and relevant documents at the end of each fiscal year and no later than 30/3 of the following year."

18. With regards to the Agency's fees, Article 14 of the Posterior Agreement provides:

"AGENT FEES

The Club agrees to pay as agent fees to the Player's Agents, the following amount (payments will be transferred to the Agent's designated bank accounts):

- **€ 6.000** (Euros six thousand), plus VAT wired to the designated bank account of Starvision Enterprise LTD paid on December 15th 2018
- **€ 6.000** (Euros six thousand), plus VAT wired to the designated bank account of Starvision Enterprise LTD paid on March 15th 2019”

19. On 2 August 2018, essentially simultaneous with the execution of the Posterior Agreement revising the Parties' original agreement with respect to compensation for the 2018-2019 season, the Parties entered into a settlement agreement by means of which the Club acknowledged it owed certain amounts to the Player and the Agency for the 2017/18 season and agreed on a payment schedule (the “Settlement Agreement”).³

20. Article 1 of the Settlement Agreement provides:

“Club acknowledges the existence of the following financial obligations towards Player and Agent from the basketball season 2017/18:

A. *Towards Player:*

- *25.000 euros net that correspond to bonus payments from the basketball season 2017/2018.*
- *36.500 euros net that correspond to salaries from the season 2017/2018*

B. *Towards Agent:*

- *8.750 euros net that correspond to agent fees from basketball season 2017/18”*

21. According to Article 2 of the Settlement Agreement:

“In satisfaction of the CLUB's entire financial responsibilities to the Player and Agent as it relates to the Prior Contract (paragraphs 7, 8 and 14) for basketball season 2017/18, the Club will make the following payments:

A. *Towards Player:*

- *31.500 euros net on August 30th 2018.*
- *6.000 euros net on October 15th 2018.*
- *6.000 euros net on December 15th 2018.*

³ Exhibit 6 attached to the RfA.

- 6.000 euros net on January 15th 2019.
- 6.000 euros net on March 15th 2019.
- 6.000 euros net on April 15th 2019.

B. Towards Agent:

- 8.750 euros net on November 15th 2018.”

22. Finally, Article 3 of the Settlement Agreement provides for the Parties’ original agreement as to compensation for both contractual seasons to revive in the event of breach by the Club of the Settlement Agreement, in the following terms:

“In the event that any scheduled payments of this Settlement Agreement are not made by the Club within 10 days of the applicable payment date, the Player or Agent has to send written notice to the Club and if the Club does not fulfill its financial obligation towards Player or Agent in total within the following 5 days, the Posterior Contract will be considered null and void not procuring any legal effect while Prior Contract will be in full force and effect. In such event Player or Agent reserve the right to present a written termination notice to the Club, by fax or email, and upon presentation of this notice Club agrees herein to grant Player his unconditional release and allows him to sign with any club in the world with no restrictions, financial or otherwise, to the Club. Club shall take all necessary steps to issue a Letter of Clearance immediately. Forty eight (48) hours after such notice has been given, all monies due to Player and the Agent during the entire term of the Prior Contract shall become immediately due.”

3.1.2 Factual background of the dispute

23. On 27 November 2019, the Player’s agent sent an email to the Club requesting the payment of the amounts due to Claimants for the 2017/18 and the 2018/19 seasons:⁴

“In detail, the debts of your Club towards us, as Agents, are the following;

- *Agent fees for Kavvadas from basketball season 17/18: 8.750 EUR*
- *Agent fees for Kavvadas from basketball season 18/19: 12.000 EUR. In case of filing a Claim and annulling the Settlement Agreement, an additional amount of 4.500 EUR.*

⁴ Exhibit 12 attached to the RfA.

Moreover, the Club owes from the previous basketball seasons towards the Player Vasileios Kavvadas the following amounts:

- From the basketball season 17/18 30.000 EUR
- From the basketball season 18/19 71.000 EUR (21.000 EUR from the league contract and 50.000 EUR from our private agreement). In case of filing a Claim and annullung the Settlement Agreement, an additional 45.000 EUR.
- Remaining balance of taxation for fiscal year 2018. [...]"

24. On 14 January 2020, the Player's agent sent a further email to the Club requesting the payment of said amounts.⁵
25. There is no evidence on the record of any reply from the Club to the emails of 27 November 2019 and 14 January 2020.
26. On 10 April 2020, the Claimants, through counsel, addressed a warning letter to the Club (entitled "Written notice and official warning") under Article 3 of the Settlement Agreement:⁶

*"...since you failed to comply with the payment dates and time limits, this is the WRITTEN NOTICE as described in the Settlement Contract, according to which you will have to pay any and all due and outstanding amounts both to the Player (**101.000 EUR net of taxes + 8.368,67 EUR of taxes for 2018 + Taxes of income related to 2019**) and Starvision Enterprise Ltd (**20.750 EUR + VAT**) within the next 5 days.*

Failing to pay within the predicted time limit, the contract dated 1st August 2018 (Posterior Contract) will be considered null and void, and therefore (Prior) Contract dated 27/11/2017 will be in full force and effect, and consequently the financial difference between the two contracts will be added to the outstanding balances in favour of the Player (+45.000 EUR Net of Taxes) and the Agent (+4.500 EUR).

Reserving all our legal rights, this letter serves the purpose of an OFFICIAL WARNING to the Club."

27. There is no evidence on the record of any reply from the Club or any payments made to

⁵ Ibid.

⁶ See Exhibit 14 attached to the RfA.

the Claimants.

3.2 The Proceedings before the BAT

28. On 29 April 2020, the Claimants filed a Request for Arbitration dated 27 April 2020, in accordance with the BAT Rules, and the non-reimbursable handling fee in the amount of EUR 2,981.00 was received in the BAT bank account on 28 April 2020.⁷
29. On 18 May 2020, the BAT informed the Parties that Mr. Clifford J. Hendel had been appointed as the Arbitrator in this matter, invited the Respondent to file its Answer by 8 June 2020, and fixed the advance on costs to be paid by the Parties as follows:

<i>“Claimant 1 (Mr. Vasileios Kavvada)</i>	<i>EUR 5,019.00 [...]</i>
<i>Claimant 2 (Starvision Enterprise Ltd)</i>	<i>EUR 1,000.00</i>
<i>Respondent (AEK NEA KAE 2014)</i>	<i>EUR 6,000.00”</i>

30. On 19 and 20 May 2020, the BAT received an advance on costs paid by Claimants in the total amount of EUR 6,041.00.
31. On 15 June 2020, the BAT informed the Parties that the Respondent had failed to submit its Answer to the Request for Arbitration and to pay its share of the advance on costs. The Respondent was given a final opportunity until 22 June 2020 to pay its share of the advance on costs and to file an Answer to the Request for Arbitration. The Respondent was informed that, in accordance with Article 14.2 of the BAT Rules, if the Respondent fails to submit an Answer the Arbitrator may nevertheless proceed with the arbitration and deliver an award.

⁷ The applicable handling fee in this matter is EUR 3,000.00 pursuant to Article 17.1 of the BAT Arbitration Rules. The outstanding amount of EUR 19.00 was added to the Advance on Costs of the Claimants.

32. On 24 June 2020, the BAT informed the Parties that Respondent had failed to submit its Answer to the Request for Arbitration and to pay its share of the advance on cost, and invited the Claimants to substitute for the Respondent's share by 6 July 2020. In accordance with Article 9.3.1 of the BAT Rules, the BAT Secretariat decided to adjust the advance on costs as follows:

<i>"Claimant 1 (Mr. Vasileios Kavvada)</i>	<i>EUR 3,750.00</i>
<i>Claimant 2 (Starvision Enterprise Ltd)</i>	<i>EUR 750.00</i>
<i>Respondent (AEK NEA KAE 2014)</i>	<i>EUR 4,500.00"</i>

33. On 25 June 2020, the BAT received a further advance on costs paid by Claimants in the total amount of EUR 2,980.00.
34. On 30 June 2020, the Parties were notified that the exchange of submissions was closed in accordance with Article 12.1 of the BAT Rules. The Claimants were granted a deadline until 7 July 2020 to set out how much of the applicable maximum contribution to costs should be awarded to them and why, and to include a detailed account of their costs, including any supporting documentation in relation thereto.
35. The Claimants filed their costs submission by email dated 30 June 2020.

4. The Positions of the Parties

4.1 The Claimants' Position

36. In their Request for Arbitration, the Claimants requested the following relief:

" Claimant 1 requests:

2.1.- the amount of 36.500 EUR net of taxes, as per remaining balance of the Settlement Agreement dated 2nd August 2018, for salaries of 2017/2018 basketball season.

2.2.- 64.500 EUR net of taxes, for unpaid, due and outstanding salaries of Basketball

Season 2018/2019 (120.000-55.500).

2.3.- 45.000 EUR net of taxes for the difference between the Prior (27/11/2017) and Posterior (1/8/2018) contract, as per art.3 of Settlement Agreement, due to non-payment of the Settlement Agreement

2.4.- 7.813,20 EUR for the remaining taxation of 2018 Income, plus interest of Tax Authority

2.5.- 8.500,03 EUR for the taxation of 2019 Income

2.6.- Interest of 5% per year.

Especially, for the time limit before filing the Request of Arbitration, Claimant 1 requests the amount of 4.584,32 EUR, calculated in detail below.

2018/2019 season outstanding amount of 64.500EUR => Interest of 2.684,32 EUR (Calculation $64.500 \times 5\% = 3.225$ EUR, divided in 365 days is 8,83 EUR per day of delay since the 30/06/2019 [end of contract] X 304 days of delay).

Outstanding amount of 36.500 EUR related to Settlement Agreement dated 2/8/2018 => Interest of 1.900 EUR (Calculation: $36.500 \times 5\% = 1825$ EUR divided in 365 days is 5 EUR per day since 15/4/2019 [date of last scheduled payment of settlement agreement] X 380 days)

2.7.- Legal fees (4.760 EUR) plus FIBA Handling Fee plus all Arbitration expenses (Advance on Costs etc)

Claimant 2 requests:

2.8.- The amount of 8.750 EUR, as fee for basketball season 2017/2018

2.9.- The amount of 12.000 EUR, as fee for basketball season 2018/2019

2.10.- The amount of 4.500 EUR, as the difference between the Prior (27/11/2017) and Posterior (1/8/2018) Contract, as per Art.3 of the Settlement Agreement dated 2nd August 2018, since no payment was received from Respondent so far.

2.11.- Interest of 5% per year.

Especially for the time limit before filing the Request for Arbitration, Claimant 2 requests the interest of 1.362,51 EUR, which is calculated in the following way:

For the amount of 8.750 EUR, which were agreed to be paid on 15/11/2018 (Settlement Agreement): Interest of 631,89 EUR (Calculation: $8750 \times 5\% = 437,50$ EUR divided in 365 days is 1,19 EUR per day X 531 days of delay)

For the amount of 6.000 EUR, which were agreed to be paid on 30/9/2018: Interest of 481,34 EUR (Calculation $6000 \times 5\% = 300$ EUR, divided in 365 days is 0,82 EUR per day

X 587 days of delay)

For the amount of 6.000 EUR, which were agreed to be paid on 30/6/2019: Interest of 249,28 EUR (Calculation 6000 X 5% = 300 EUR, divided in 365 days is 0,82 EUR per day X 304 days)

2.12.- FIBA Handling Fee and all arbitration expenses

Total amount in dispute:

One hundred ninety three thousand five hundred ten EUR and six cents [193,510.06 EUR]"

4.2 Respondent's Position

37. The Respondent has not participated in this proceeding, but has been duly notified of its existence and has received copies of all submission of the Claimants and all communications of the BAT.

5. The jurisdiction of the BAT

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

39. 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).

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

41. The dispute is of a financial nature and is thus arbitrable within the meaning of Article

177(1) PILA⁸.

42. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under Article 18 of the Prior Agreement, Article 18 of the Posterior Agreement and Article 5 of the Settlement Agreement (all three identically drafted), which read as follows:

“Any dispute arising from or related to the present 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 Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties' domicile. The language of the arbitration of FIBA shall be English. The arbitrator shall decide the dispute ex aequo et bono.”

43. The Agreements are in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
44. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).
45. The jurisdiction of BAT over the Claimants' claims arises from the agreements. The wording “[a]ny dispute arising from or related to the present Contract [...]” clearly covers the present dispute.
46. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claim.

⁸ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

6. Other Procedural Issues

47. Article 14.2 of the BAT Rules specifies that “*the Arbitrator may [...] proceed with the arbitration and deliver an award*” if “*the Respondent fails to submit an Answer.*” The Arbitrator’s authority to proceed with the arbitration in case of default by one of the parties is in accordance with Swiss arbitration law and the practice of the BAT.⁹ However, the Arbitrator must make every effort to allow the defaulting party to assert its rights. This requirement is met in the present case. The Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator in accordance with the relevant rules. It was also given sufficient opportunity to respond to Claimants’ Request for Arbitration. Respondent, however, chose not to participate in this Arbitration.
48. None of the parties requested a hearing. In accordance with Article 13.1 of the BAT Rules, the Arbitrator will decide the Claimants’ claims based on the written submissions and the evidence on record.

7. Discussion

7.1 Applicable Law – *ex aequo et bono*

49. 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

⁹ See *ex multis* BAT cases 0001/07; 0018/08; 0093/09; 0170/11.

187(2) PILA is generally translated into English as follows:

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

50. Under the heading " Law Applicable to the Merits", Article 15 of the BAT Rules reads as follows:

“15.1 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.

15.2 If, according to an express and specific agreement of the parties, the Arbitrator is not authorised to decide ex aequo et bono, he/she shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to such rules of law he/she deems appropriate. In both cases, the parties shall establish the contents of such rules of law. If the contents of the applicable rules of law have not been established, Swiss law shall apply instead.”

51. Article 18 of the Prior Agreement, Article 18 of the Posterior Agreement and Article 5 of the Settlement Agreement (all three identically drafted) expressly provide that the Arbitrator shall decide the dispute *ex aequo et bono*.

52. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding.

53. 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*¹⁰ (Concordat),¹¹ under which Swiss courts have held that arbitration “*en équité*” is fundamentally different from

¹⁰ 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).

¹¹ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

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.”¹²

54. 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”.
55. In light of the foregoing considerations, the Arbitrator makes the findings below.

7.2 Findings

7.2.1 Player’s unpaid salaries for the 2017/18 season

56. Claimant 1 requests the amount of EUR 36,500.00, net of taxes, for his unpaid salaries for the 2017/18 season.
57. As set out above (Section 3.1.1), in Article 1 of the Settlement Agreement the “*Club acknowledges the existence of the following financial obligations towards Player and Agent from the basketball season 2017/18: Towards Player ... 36.500 euros net that correspond to salaries from the season 2017/2018 [...]*”.¹³
58. The Respondent not having participated in the proceeding, it is not disputed - and it appears indisputable - that the requested amount is due and owing by the Club.

¹² JdT 1981 III, p. 93 (free translation).

¹³ Exhibit 6 attached to the RfA.

59. Therefore, the Club shall pay the Player's outstanding salaries for the 2017/18 season in the amount of EUR 36,500.00 net.

7.2.2 Player's unpaid salaries for the 2018/19 season

60. Claimant 1 further requests the amounts of EUR 64,500.00, net of taxes, for his unpaid salaries for the 2018/19 season, plus EUR 45,000.00, net of taxes, for the difference between his agreed salary for the 2018/19 season under the Prior Agreement and the Posterior Agreement.

61. The Player claims a total of EUR 109,500.00 which amounts to his full salary for the 2018/19 season, as agreed under Article 7 of the Prior Agreement (EUR 165,000.00), minus EUR 55,500.00 that the Player acknowledges he has received from the Club.

62. By entering into the Posterior Agreement the Player agreed to a reduction of his salary for the 2018/19 season in the amount of EUR 45,000.00 (Article 7 of the Posterior Agreement). However, in Article 3 of the Settlement Agreement, the Player and the Club agreed that in the event that the Club failed to make any of the scheduled payments under the Settlement Agreement, the Posterior Agreement would be considered null and void and the Prior Agreement would be in full force and effect.

63. As set out above (Section 3.1.2), the Respondent failed to make payments due under Article 2 of the Settlement Agreement. The Player addressed the required written notice to the Club (the letter of 10 April 2020)¹⁴ in accordance with Article 3 of the Settlement Agreement. Still, the Respondent failed to make such payments.

64. Respondent's breach of its payment obligations under the Settlement Agreement

¹⁴ Exhibit 13 attached to the RfA.

renders the Posterior Agreement null and void and allows Claimant 1 to claim, under Article 3 of the Settlement Agreement, his full salary for the 2018/19 season as agreed in Article 7 of the Prior Agreement (see Section 3.1.1).

65. For these reasons, the Arbitrator finds that Claimant 1 shall be awarded a total of EUR 109,500.00 (EUR 165,000.00 minus EUR 55,500.00), net of Greek taxes, for his unpaid salaries for the 2018/19 season.

7.2.3 Player's unpaid income tax

66. Claimant 1 further requests the amounts of EUR 7,813.20, for unpaid income tax for the 2018 fiscal year, plus interest, and EUR 8,500.03 for unpaid income tax for the 2019 fiscal year.
67. As set out above (see section 3.1.1) under Article 10 ("Taxation") of both the Prior and the Posterior Agreements, all payments regarding salary or bonuses shall be made by the Club "net of Greek income taxes", and the Club shall be responsible to pay all applicable taxes on behalf of the Player as well as to provide the Player with all appropriate tax receipts and documents.
68. The evidence on the record (including tax certifications for 2018 and 2019 issued by the Greek tax authorities) shows that the Player was subject to income tax (on amounts of income effectively received and reported during the periods in question) in the amounts of EUR 20,151.53 for the 2018 fiscal year,¹⁵ and EUR 8,500.03 for the 2019 fiscal year.¹⁶
69. The Player claims that the Club has not paid any of the income tax due for the 2019 fiscal

¹⁵ Exhibit 7 attached to the RfA.

¹⁶ Exhibit 8 attached to the RfA.

year and has only partially paid the amount due for the 2018 fiscal year, owing the amount of EUR 7,813.20. The Respondent has not participated in the proceeding and therefore has not disputed that it failed to pay such amounts. There is no evidence on the file of any tax certificate or receipt provided to the Player by the Club.

70. In principle, in case the parties agree on net payments, the respective tax obligations must be discharged by the Club vis-à-vis the tax authorities directly. Consequently, a player cannot claim these amounts as salary payments. However, in case the tax authorities turn to the player for paying the taxes, the latter can claim these amounts from the club as damages. In the case at hand the Player has provided copies of notifications to pay tax by the tax authorities. For such reasons, the Arbitrator finds it fair and reasonable to award EUR 7,813.20, for unpaid income tax for the 2018 fiscal year, and EUR 8,500.03, for unpaid income tax for the 2019 fiscal year, to the Player.
71. With regard to the interest claimed on the EUR 7,813.20 (“plus interest of Tax Authority” as set out above), the Arbitrator notes that Claimant 1 has not identified the relevant period for such claim nor the applicable interest rate. Therefore, the claim for interest is dismissed.

7.2.4 Unpaid Agency fees for the 2017/18 season

72. Claimant 2 requests the amount of EUR 8,750.00 for its unpaid fees for the 2017/18 season.
73. As set out above (Section 3.1.1), in Article 1 of the Settlement Agreement the “Club acknowledges the existence of the following financial obligations towards Player and Agent from the basketball season 2017/18: ... Towards Agent: 8.750 euros net that

correspond to agent fees from basketball season 2017/2018.¹⁷

74. The Respondent not having participated in the proceeding, it is not disputed - and it appears indisputable - that the requested amount is due and owing by the Club.
75. Therefore, the Club shall pay the Agency's outstanding fees for the 2017/18 season in the amount of EUR 8,750.00.

7.2.5 Unpaid Agency fees for the 2018/19 season

76. Claimant 2 further requests the amounts of EUR 12,000.00 for its unpaid fees for the 2018/19 season, plus EUR 4,500.00 for the difference between its agreed fees for the 2018/19 season under the Prior Agreement and the Posterior Agreement.
77. Accordingly, Claimant 2 claims a total of EUR 16,500.00 which amounts to its full fee for the 2018/19 season, as agreed under Article 14 of the Prior Contract.
78. By entering into the Posterior Agreement the Agency agreed to a reduction of its fees for the 2018/19 season in the amount of EUR 4,500.00 (Agency would receive EUR 12,000.00 instead of EUR 16,500.00 as per Article 14 of the Posterior Agreement). However, in Article 3 of the Settlement Agreement, the Agency and the Club agreed that in the event that the Club failed to make any of the scheduled payments under the Settlement Agreement, the Posterior Agreement would be considered null and void and the Prior Agreement would be in full force and effect.
79. As set out above (Section 3.1.2), the Respondent failed to make payments under Article 2 of the Settlement Agreement. The Agency addressed the required written notice to the

¹⁷ Exhibit 6 attached to the RfA.

Club (the letter of 10 April 2020)¹⁸ in accordance with Article 3 of the Settlement Agreement. Still, the Respondent failed to make such payments.

80. Respondent's breach of its payment obligations under the Settlement Agreement renders the Posterior Agreement null and void and allows the Agency to claim, under Article 3 of the Settlement Agreement, its full agency fee for the 2018/19 as agreed in the Prior Agreement (Article 14, see Section 3.1.1).
81. For these reasons, the Arbitrator finds that Claimant 2 shall be awarded a total EUR 16,500.00 for its unpaid fees for the 2018/19 season.

7.2.6 Interest

82. Claimant 1 has requested "*interest of 5% per year*" on some of the amounts claimed, according to the following schedule:
 - On the amount of EUR 36,500.00, Claimant 1 requests interest at the 5% rate starting from 15 April 2019 (the date of the last scheduled payment under the Settlement Agreement);
 - On the amount of EUR 64,500.00, Claimant 1 requests interest at the 5% rate starting from 30 June 2019 (the date where the last salary payment for the 2018/19 season was due both under the Prior and Posterior Agreement).
83. Claimant 2 has requested "*interest of 5% per year*" on some of the amounts claimed,

¹⁸ Exhibit 13 attached to the RfA.

according to the following schedule:

- On the amount of EUR 8,750.00, Claimant 2 requests interest at the 5% rate starting from 15 November 2018 (the date the payment was due under the Settlement Agreement);
- On the amount of EUR 6,000.00, Claimant 2 requests interest at the 5% rate starting from 30 September 2018;
- On the further amount of EUR 6,000.00, Claimant 2 requests interest at the 5% rate starting from 30 June 2019.

84. Not having participated in the proceeding, the Respondent has not disputed the Claimants' request for interest.

85. The Agreements do not provide for interest. However, in accordance with consistent BAT jurisprudence, and deciding *ex aequo et bono*, the Arbitrator considers it fair and reasonable to award interest at the rate of 5% per annum, until complete payment, as follows:

- On the amount of EUR 36,500.00, Claimant 1 shall be awarded interest at the 5% rate starting from 16 April 2019 (the day after the last scheduled payment under the Settlement Agreement was due);
- On the amount of EUR 64,500.00, Claimant 1 shall be awarded interest at the 5% rate starting from 1 July 2019 (the day after the last salary payment for the 2018/19 season was due both under the Prior and Posterior Agreements).
- On the amount of EUR 8,750.00, Claimant 2 shall be awarded interest at the 5% rate starting from 16 November 2018 (the day after the payment was due under

the Settlement Agreement);

- On the amount of EUR 6,000.00, Claimant 2 shall be awarded interest at the 5% rate starting from 2 December 2018 (the day after the payment was due under the Prior Agreement);
- On the amount of EUR 6,000.00, Claimant 2 shall be awarded interest at the 5% rate starting from 30 June 2019 (as requested by Claimants).

8. Costs

86. In respect of determining the arbitration costs, Article 17.2 of the BAT Rules provides as follows:

“At the end of the proceedings, the BAT President shall determine the final amount of the arbitration costs, which shall include the administrative and other costs of the BAT, the contribution to the BAT Fund (see Article 18), the fees and costs of the BAT President and the Arbitrator, and any abeyance fee paid by the parties (see Article 12.4). [...]”

87. On 27 July 2020 2020, the BAT President determined the arbitration costs in the present matter to be EUR 7,987.50.

88. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 of the BAT Rules provides as follows:

“The award shall determine which party shall bear the arbitration costs and in which proportion. [...] When deciding on the arbitration costs [...], the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.”

89. Considering that the Claimants were the prevailing party in this arbitration, it is consistent with the provisions of the BAT Rules that costs of the arbitration be borne by the

Respondent alone. Given that the Claimants paid the entire Advance on Costs in the amount of EUR 9,021.00 (of which EUR 1,033.50 will be reimbursed to the Claimants by the BAT), Respondent shall reimburse EUR 7,987.50 jointly to the Claimants.

90. In relation to the Parties' legal fees and expenses, Article 17.3 of the BAT Rules provides that

“as a general rule, the award shall grant the prevailing party a contribution towards any reasonable legal fees and other expenses incurred in connection with the proceedings (including any reasonable costs of witnesses and interpreters). When deciding [...] on the amount of any contribution to the parties' reasonable legal fees and expenses, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.”

91. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses (in this case, Claimant 1 up to EUR 10,000.00 and Claimant 2 up to EUR 5,000.00).

92. The Claimants claim legal fees in the total amount of EUR 4,760.00. They also claim for the expense of the non-reimbursable handling fee (EUR 3,000.00).

93. Taking into account that the Claimants have succeeded in full with their prayers for relief, that they were represented by the same attorney, that the Respondent has not intervened in the proceeding, and that the Claimants' cost submission is sufficiently detailed and prudent, the Arbitrator considers it fair and reasonable to award the amount of EUR 4,760.00 in legal fees, as well as the payment of the non-reimbursable handling fee in the amount of EUR 3,000.00.

94. In summary, therefore, the Arbitrator decides that in application of Articles 17.3 and 17.4 of the BAT Rules:

- (i) The BAT shall reimburse EUR 1,033.50 to the Claimants, being the difference between the costs advanced by them and the arbitration costs fixed by the BAT



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President;

- (ii) The Club shall pay EUR 7,987.50 jointly to the Claimants, being the difference between the costs advanced by them and the amount they are going to receive in reimbursement from the BAT;
- (iii) The Club shall pay jointly to the Claimants EUR 4,760.00 representing the amount of their legal fees, as well as EUR 3,000.00 for the non-reimbursable handling fee.

9. AWARD

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

- 1. AEK NEA KAE 2014 shall pay Mr. Vasileios Kavvadas EUR 36,500.00, net of Greek taxes, as compensation for unpaid salaries for the 2017/18 season, plus interest at 5% per annum on such amount, commencing on 16 April 2019, until complete payment.**
- 2. AEK NEA KAE 2014 shall pay Mr. Vasileios Kavvadas EUR 109,500.00, net of Greek taxes, as compensation for unpaid salaries for the 2018/19 season, plus interest at 5% per annum on the amount of EUR 64,500.00, commencing on 1 July 2019, until complete payment.**
- 3. AEK NEA KAE 2014 shall pay Mr. Vasileios Kavvadas EUR 7,813.20, as compensation for unpaid income tax for the 2018 fiscal year.**
- 4. AEK NEA KAE 2014 shall pay Mr. Vasileios Kavvadas EUR 8,500.03, as compensation for unpaid income tax for the 2019 fiscal year.**
- 5. AEK NEA KAE 2014 shall pay Starvision Enterprise Ltd. EUR 8,750.00, as compensation for unpaid fees for the 2017/18 season, plus interest at 5% per annum on such amount, commencing on 16 November 2018, until complete payment.**
- 6. AEK NEA KAE 2014 shall pay Starvision Enterprise Ltd. EUR 16,500.00, as compensation for unpaid fees for the 2018/19 season, plus interest at 5% per annum**
 - on the amount of EUR 6,000.00, commencing on 2 December 2018, until complete payment.**
 - on the amount of EUR 6,000.00, commencing on 30 June 2019, until complete payment.**
- 7. AEK NEA KAE 2014 shall pay jointly to Mr. Vasileios Kavvadas and Starvision Enterprise Ltd. an amount of EUR 7,987.50 as reimbursement of their arbitration costs.**



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- 8. AEK NEA KAE 2014 shall pay jointly to Mr. Vasileios Kavvadas and Starvision Enterprise Ltd. an amount of EUR 7,760.00 as reimbursement of their legal fees and expenses (including the non-reimbursable handling fee).**
- 9. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 29 July 2020

Clifford J. Hendel
(Arbitrator)