BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1609/20)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Brianna Quinn

in the arbitration proceedings between

Mr. Harvey Jerai Grant

- Claimant 1 -

MB "Octagonas"
Italų g. 9A-2, Vilnius, Lithuania

- Claimant 2 -

both represented by Mr. Antanas Paulauskas, attorney at law

vs.

AEK NEA KAE 2014 (AEK Athens BC)
466 Irakleiou Avenue and Kuprou Herakleion Attica, Athens, Greece

- Respondent -

1. The Parties

1.1 The First Claimant

1. Mr. Harvey Jerai Grant (hereinafter also referred to as “the Player”) is an American professional basketball player.

1.2 The Second Claimant

2. MB “Octagonas” (hereinafter also referred to as “the Agent”, together with the Player, the “Claimants”) is a player’s agency, managed by the FIBA players’ agent Mr. Saulius Švetkauskas.

1.3 The Respondent

3. AEK NEA KAE 2014 (AEK Athens BC) (hereinafter also referred to as “the Club”, together with the Claimants, “the Parties”) is a basketball club competing in the Greek professional basketball league.

2. The Arbitrator

4. On 4 November 2020, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (the "BAT"), appointed Ms. Brianna Quinn as arbitrator (hereinafter the “Arbitrator”) pursuant to Articles 0.4 and 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules"). None of the Parties has raised any objections to

the appointment of the Arbitrator or to her declaration of independence.

3. Facts and Proceedings

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, she refers in this Award only to those necessary to explain its reasoning.

3.1 Summary of the Dispute

3.1.1 The Agreement

7. On 3 January 2020, the Claimants and the Respondent entered into an agreement whereby the Club engaged the Player for the season 2019-2020 (the "Agreement").

8. Upon signing the Agreement, the Player was represented by two agents, Mr. Georgios Panou and Mr. Saulius Švetkauskas, the latter being the *"holder of FIBA license* [with] *legal name MB "Octagonas"* (i.e. the Second Claimant). The two agents signed the Agreement.

9. As far as the remuneration owed to the First Claimant was concerned, Articles 6 and 7 of the Agreement governed the Player's salary and bonus entitlements and, relevantly

to this arbitration, provided as follows:

> *"6. SALARY & SIGNING BONUSES COMPENSATION*
>
> *a) The Club agrees to pay the Player for rendering his services to the Club the following NET amounts:*
>
> *Season 2019-2020*
>
> *USD 75.000 (US dollars seventy five thousand) net of Greek taxes, paid as described below.*
>
> *- USD 75.000 (US dollars seventy five thousand) paid into 5 (five) equal installments of USD 15.000 (US dollars fifteen thousand) on the 3rd day of each month, commencing with February 3rd 2020 and ending on June 3rd 2020*
>
> *- USD 500 (US dollars five hundred) for each additional day starting on June 4th 2020 and ending on the day of the last official game of the club for the 2019-2020 season*
>
> *7. BONUSES*
>
> *a) The Club agrees to pay the Player the following NET bonuses for every season of this Contract:*
>
> *[…]*
>
> *- In case the Club wins the Greek cup, the Player shall receive the net amount of USD 5.000*
>
> *[…]*
>
> *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."*

10. Article 10 of the Agreement governed "Taxation" and stated that:

> *"All of the above said payments regarding paragraphs 6 (six) and 7 (seven) 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."*

11. In addition to the Player's salary and bonuses, the Club also agreed in Article 11 to provide the Player with certain "Amenities" including:

> *"AIRTICKETS: The club will provide the player with 2 (two) round trip economy class air tickets for the members of his family for the route USA or France -Athens-USA plus one (1) additional round trip economy class air ticket for his arrival in Greece and his departure from Greece after the club's last official game for the 2019-2020 season"*

12. As far as the Second Claimant was concerned, Article 13 of the Agreement provided for the following compensation:

> *"The Club agrees to pay as agent fees to the Player's Agents, the following amount (payments will be transferred to the Agents' designated bank accounts):* […]
>
> *- USD 3750 (US dollars three thousand and seven hundred fifty) wired to the designated bank account of Saulius Svetkauskas, paid on March 30th 2020."*

3.1.2 The Player's Settlement Agreement

13. In March and April 2020, the Greek professional basketball league was suspended, and ultimately terminated, due to the COVID-19 outbreak.

14. As a result of this, on 30 April 2020, the Player and the Club signed a "Resolution of Agreement" (the "Player's Settlement Agreement"), according to which:

    (i) The Club agreed to pay:

a. the Player's salary instalment of "29 February 2020"[1] (in the amount of USD 15,000) in full, no later than 15 May 2020 (Article 2a);

b. The Player's bonus of USD 5,000 in relation to the Greek Cup victory, no later than 15 October 2020 (Article 2b);

c. the Player's salary instalment of "30 March 2020"[2] (in the amount of USD 15,000) in full, no later than 15 November 2020 (Article 2c); and

d. the reimbursement of the Player's flight back to the USA in March 2020 (in the amount of USD 2,058) by no later than 15 June 2020 (the Player being required under the agreement to "send the respective receipts to the Club") (Article 2d).

(ii) The Player agreed that, upon payment of these amounts, he would not seek further payment from the Club in relation to the Agreement (meaning he relinquished his right to claim three further salary instalments of USD 15,000 each) (Article 3).

(iii) The Club agreed to provide tax certificates for any payments made, upon request of the Player (Article 3).

15. The Player's Settlement Agreement also governed the consequences of non-payment

---

1 It appears that this is a typographical error in the Player's Settlement Agreement, as each of the Player's instalments were due to be paid on the 3rd day of the month.

2 It appears that this is a typographical error in the Player's Settlement Agreement, as each of the Player's instalments were due to be paid on the 3rd day of the month.

by the Club, with Article 4 expressly stating as follows:

> *"In the event that any scheduled payments of this RESOLUTION are not made by the Club within 5 days of the applicable payment date, the Player has to send written notice to the Club and if the Club does not fulfill financial obligation towards Player in total within 5 days, the entire PRIOR CONTRACT's financial responsibility of the CLUB towards the PLAYER will be due and payable immediately (minus any amounts already paid under this resolution)."*

3.1.3 The Agent's Settlement Agreement

16. On 28 April 2020, the Agent and the Club also entered into a "Resolution of Agreement" (the "Agent's Settlement Agreement"), according to which the Club confirmed it would pay the agent fee of USD 3,750 to the Agent (originally due on 30 March 2020) no later than 30 June 2020.

17. Article 4 of the Agent's Settlement Agreement governed the consequences of non-payment by the Club, expressly stating that:

> *"In the event that any scheduled payments of this RESOLUTION are not made by the Club within 5 days of the applicable payment date, the REPRESENTATIVES have to send written notice to the CLUB and the CLUB will have 5 days to fulfill the financial obligation towards REPRESENTATIVES."*

3.1.4 The Player's Initial Request for Payment

18. According to the Player, the Club never paid any of the instalments agreed upon in the Agreement or the Player's Settlement Agreement.

19. As such, on 22 May 2020, the Player sent an email to the Club as follows:

> *"Would like to demand the Club to resolve this matter in the next 5 days until 27th of May*

2020.

As you know, if such amount is not received promptly the Player and Agents will be left with little option but to proceed to the FIBA Basketball Arbitral Tribunal where the Player and Agents intend to pursue not only the Amounts signed in Resolution agreement but the amounts signed in PRIOR CONTRACT also interest on such amounts to the maximum extent permitted by law as well as all legal fees and other expenses incurred by the Player and Agents in connection with this matter."

20. According to the Player, he did not receive any response from the Club.

3.1.5 The Claimants' Joint Requests for Payment

21. On 10 June 2020, the Claimants engaged a legal representative, who sent a formal claim to the Club on behalf of the Player, and a warning to the Club on behalf of the Agent.

22. The Claimants' correspondence first noted that, as the Player had put the Club on notice of its breach of the Player's Settlement Agreement in writing, and as the Club had not paid the outstanding amounts, "*the Club has become liable to pay the Player the whole remaining amount under the Contract immediately*". The letter went on to say that:

"With respect to the abovementioned and on behalf of the Player we hereby kindly request the Club to pay the Player USD 67,058.00 net not later than until 17 June 2020.

It is also to be noted that in accordance with the Agreement 2 the Club has undertaken to pay the Agency USD 3,750.00 until 30 June 2020. In view that the Club has failed to pay the Player under the Agreement 1, the Agency has no ground to believe that the Club will honor its obligations under the Agreement 2.

Thus, should the Club fail to satisfy the aforementioned request within the term specified in this letter, we hereby underline that the Player and the Agency will seek legal remedies at the Basketball Arbitral Tribunal (BAT) in order to protect their violated rights. It is to be mentioned that due to the litigation in the BAT, the Club shall suffer additional costs including, but not limited to handling fee, advance on costs, legal fees and other arbitration costs."

23. On 25 June 2020, the Claimants wrote to the Club again requesting payment:

> *"More than a week passed since the deadline given in the claim of 10 June 2020 to satisfy the request of Mr. Harvey Jerai Grant and MB Octagonas.*
>
> *However, no action has been performed by AEK Basketball Club thus far. The club has even failed to reply to the claim.*
>
> *Nonetheless, my clients have decided to give AEK Basketball Club the last opportunity to satisfy their claims before submitting their request for arbitration to the Basketball Arbitral Tribunal. Please, make the requested payments not later than before 28 June 2020 in order to avoid costly arbitration proceedings."*

24. On 27 June 2020, the Club responded to the Claimants, stating as follows:

> *"regarding your claims, please allow me to inform you about the situation so far.*
>
> *The termination agreement we offered to Mr. Grant (same for all players on the roster) included paying the February 2020 salary on May 15th 2020. This structure was offered to him based on our agreement with our main sponsor for the payment of the January 2020 sponsorship installment that was agreed to be made in early May.*
>
> *Unfortunately, such installment has not been paid until today. At this point let me reassure you that, constantly and on a daily basis, we keep trying to find a solution with the aforementioned matter.*
>
> *We strongly believe that during the upcoming week we will be in a position to update you with more concrete details."*

25. Finally, on 10 September 2020, the Claimants wrote to the Club again with a final request, stating, *inter alia:*

> *"With respect to the abovementioned and on behalf of the Player and the Agency we hereby give the Club a final warning and request to pay USD 67,058.00 net to the Player and USD 3,750.00 to the Agency.*
>
> *Should the Club fail to satisfy the aforementioned request in full within before 17 September 2020, we hereby underline that the Player and the Agency will seek legal remedies at the Basketball Arbitral Tribunal (BAT) in order to protect their violated rights. It is to be mentioned that due to the litigation in the BAT, the Club shall suffer additional costs including, but not limited to handling fee, advance on costs, legal fees and other arbitration costs."*

26. According to the Claimants, they did not receive any response, nor any payment, from the Club following this correspondence.

3.2 The Proceedings before the BAT

27. On 30 September 2020, the BAT received the Claimant's Request for Arbitration (dated that same day), which was filed in accordance with the BAT Rules.

28. On 1 October 2020, the non-reimbursable handling fee of EUR 3,000 was received by the BAT.

29. On 5 November 2020, the BAT informed the parties that Ms. Brianna Quinn had been appointed as the Arbitrator in this matter and fixed the advance on costs to be paid by the Parties as follows:

"Claimant 1 (Mr Harvey Jerai Grant)	*EUR 3,000.00*
Claimant 2 (MB "Octagonas")	*EUR 500.00*
Respondent (AEK NEA KAE 2014)	*EUR 3,500.00"*

30. In the same letter, the Respondent was invited to file its Answer by no later than 27 November 2020, and informed that "*according to Article 14.2 of the BAT Rules, the Arbitrator may proceed with the Arbitration even if the Respondent fails to submit an Answer or fails to submit its Answer in accordance with Article 11.4 of the BAT Rules*".

31. On 10 November 2020, the BAT received the Player's share of the advance of costs in the amount of EUR 3,000.

32. On 11 November 2020, the BAT received the Agent's share of the advance of costs in the amount of EUR 500.

33. On 2 December 2020, the Parties were informed that the Respondent had failed to file its Answer, or to pay its advance of costs, within the respective deadlines. The Claimant was therefore invited to substitute for the Respondent's share of the advance of costs by no later than 14 December 2020.

34. In the same letter, the Respondent was granted a final opportunity until 10 December to file its Answer, and reminded that if it failed to do so the Arbitrator could nevertheless proceed with the arbitration and deliver an award.

35. On 26 January 2021, the BAT confirmed that the Claimants had paid the Respondent's share of the advance of costs – the First Claimant having paid EUR 3,000 and the Second Claimant EUR 500. In the same correspondence: (i) the Parties were advised that the proceedings would continue; and (ii) the Claimants were requested to answer specific questions from the Arbitrator – and provide further supporting documents – in relation to their claims by no later than 8 February 2021.

36. On 8 February 2021, the Claimants filed their response to the Arbitrator's procedural order.

37. On 5 March 2021, the Respondent was invited to comment on the Claimant's response to the Arbitrator's procedural order, by no later than 17 March 2021.

38. On 1 April 2021, the BAT confirmed that the Respondent failed to reply to the Arbitrator's Procedural Order of 5 March 2021. In the same letter, and considering that none of the Parties had requested a hearing, the Arbitrator declared the exchange of submissions

complete, and granted the Parties a deadline until 12 April 2021 to file a detailed submission on costs.

39. On 7 April 2021, the Claimants filed their costs submission. The Respondent did not submit an account of costs.

4. The Positions of the Parties

40. The following section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to summarise the Parties' main arguments.

41. In considering and deciding upon the Parties' claims, the Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the findings below.

4.1 The Claimants' Positions

4.1.1 The First Claimant's Position

42. The First Claimant submits that by failing to pay the agreed instalments in a timely manner, the Club has violated the Player's Settlement Agreement.

43. The Player further argues that he has validly triggered Article 4 of the Settlement Agreement, and, as a result, that he is entitled to payment of all remaining unpaid instalments under the Agreement as well as compensation for his travel costs.

44. Finally, the Player has emphasised that, prior to submitting his Request for Arbitration, he contacted the Respondent multiple times in an attempt to give the Club an opportunity to cover its debts in an amicable fashion. As the Club failed to do so, the Player proceeded with his claim at BAT.

45. As far as the BAT COVID-19 Guidelines are concerned, the Player argues that they should not be applied to the present case given that: (i) they are of an indicative and non-binding nature; (ii) the Guidelines provide that amicable agreements entered into by the Parties should be respected; (iii) Article 6 of the Guidelines provides that they do not apply, in principle, to contracts entered into after the Lockdown Period; and (iv) the Parties agreed on legal consequences in case of the Respondent's failure to comply with the terms of the Player's Settlement Agreement and such agreement should be upheld in accordance with BAT jurisprudence (BAT 0289/12; BAT 0294/12).

4.1.2 The Second Claimant's Position

46. The Second Claimant submits that by failing to pay the agreed agency fee in a timely manner, the Club has violated the Agent's Settlement Agreement.

47. As with the Player, the Agent emphasises that, prior to submitting his Request for Arbitration, he contacted the Respondent multiple times in an attempt to give the Club an opportunity to cover its debts in an amicable fashion. As the Club failed to do so, the Agent proceeded with his claim at BAT.

48. Finally, the Agent essentially relies on the same legal reasoning as the Player (as set out above) to suggest that the BAT COVID-19 Guidelines should not apply to the assessment of this case.

4.1.3 The Claimants' Prayers for Relief

49. In their Request for Arbitration dated 30 September 2020, the Claimants requested the following relief:

> *"With reference to all the facts and legal arguments set forth herein, the Claimants hereby request the Basketball Arbitral Tribunal:*
>
> *- To order the Respondent AEK NEA KAE 2014 (AEK Basketball Club) to pay the Claimant 1 Harvey Jerai Grant the amount of USD 67,058.00 (sixty-seven thousand fifty-eight euros) net of Greek social charges and taxes (employer and employee) plus interest at rate of 5 % per annum on this amount starting from submission of the present Request for Arbitration until its payment;*
>
> *- To order the Respondent AEK NEA KAE 2014 (AEK Basketball Club) to pay the Claimant 1 Harvey Jerai Grant interest in amount of USD 1,148.25 (one thousand one hundred and forty-eight US dollars tewnty-five cents);*
>
> *- To order the Respondent AEK NEA KAE 2014 (AEK Basketball Club) to pay the Claimant 2 MB "Octagonas" the outstanding agency fee of USD 3,750.00 (three thousand seven hundred and fifty US dollars) plus interest at rate of 5 % per annum on this amount starting from submission of the present Request for Arbitration until its payment;*
>
> *- To order the Respondent AEK NEA KAE 2014 (AEK Basketball Club) to pay the Claimant 2 MB "Octagonas" interest in amount of USD 46.75 (forty-six US dollars seventy-five cents);*
>
> *- To order the Respondent AEK NEA KAE 2014 (AEK Basketball Club) to pay legal fees and other expenses incurred by the Claimants in connection with the proceedings of arbitration."*

50. In the Claimants' submission on costs of 12 April 2021, they ultimately claimed the following costs:

> *"With reference to the foregoing and in accordance with Articles 17.3 and 17.4 of the BAT Arbitration rules, the claimants Harvey Jerai Grant and MB "Octagonas" hereby request the Basketball Arbitral Tribunal:*
>
> *- To order the respondent AEK NEA KAE 2014 (AEK Basketball Club) to pay Harvey Jerai Grant (Claimant 1) EUR 12,100.00 (twelve thousand one hundred euros) as reimbursement of his costs incurred in connection with these arbitration proceedings;*

- To order the respondent AEK NEA KAE 2014 (AEK Basketball Club) to pay MB "Octagonas" (Claimant 2) EUR 1,850.00 (one thousand eight hundred and fifty euros) as reimbursement of its costs incurred in connection with these arbitration proceedings."

4.2 The Respondent's Position

51. The Respondent did not participate in this arbitration, and did not respond to the Arbitrator's requests to file an Answer or respond to the Claimants' subsequent submission.

5. The Jurisdiction of the BAT

52. As a preliminary matter, since the Respondent did not formally participate in the arbitration, the Arbitrator will examine her jurisdiction *ex officio*, on the basis of the record as it stands.[3]

53. 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").

54. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence

[3] Judgement of the Swiss Federal Tribunal, 120 II 155, *162*.

of a valid arbitration agreement between the parties.

55. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[4]

56. The jurisdiction of the BAT in the present case results from the arbitration clauses contained under Article 17 of the Agreement, Article 6 of the Player's Settlement Agreement and Article 5 of the Agent's Settlement Agreement, which read as follows:

> ***Agreement***
>
> *"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."*
>
> ***Player's Settlement Agreement***
>
> *"Any dispute arising from or related to the present contract, shall be resolved by arbitration, and 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 (PIL), irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."*
>
> ***Agent's Settlement Agreement***
>
> *"Any dispute arising from or related to the present contract, shall be resolved by arbitration,*

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

and 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 (PIL), irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."

57. The Agreement, the Player's Settlement Agreement and the Agent's Settlement Agreement are in written form and thus the arbitration agreements fulfil the formal requirements of Article 178(1) PILA.

58. With respect to substantive validity, 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).

59. The jurisdiction of BAT over the Claimants' claims arises from the Agreement and the Settlement Agreement. The wording "[a]*ny dispute arising from or related to the present contract* […]" clearly covers the present dispute.

60. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claims.

6. Other Procedural Issues

61. 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.[5] However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.

62. 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. The Respondent was given sufficient opportunity to respond to the Claimants' Request for Arbitration and subsequent submission. The Respondent, however, chose not to file any submissions in these proceedings.

7. Discussion

7.1 Applicable Law – ex aequo et bono

63. 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 authorise the Arbitrator to decide "*en équité*" instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

> *"the parties may authorize the arbitral tribunal to decide ex aequo et bono".*

64. Under the heading "Law Applicable to the Merits", Article 15.1 of the BAT Rules reads

---

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

as follows:

> *"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".*

65. The Agreement, the Player's Settlement Agreement and the Agent's Settlement Agreement expressly provide that the Arbitrator shall decide the dispute *ex aequo et bono*.

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

67. 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[6] (Concordat)[7], 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".*[8]

68. 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

---

6 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).

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

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

particular national or international law".

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

7.2 Findings – the First Claimant

7.2.1 Salary instalments

70. As set out above, the First Claimant submits that the Respondent owes him four salary instalments of USD 15,000.00 (net) each for the period from February until June 2020, for a total amount of USD 60,000.00. The First Claimant claims such amounts "*net of Greek social charges and taxes (employer and employee)*".

71. According to the documents on file, the Respondent paid the first salary instalment payable under the Agreement (i.e. the January instalment).

72. However, according to the Player, the Respondent did not pay either: (i) the salary instalments for the remaining four months of the contract, as set out in the Agreement; or (ii) the reduced amounts provided for in the Player's Settlement Agreement.

73. The Arbitrator has no reason to doubt the correctness of this information. To the contrary: (i) the Settlement Agreement clearly indicates that salary instalments were not paid to the Player; and (ii) the Respondent did not dispute (in the correspondence between the Parties prior to this arbitration) that it failed to pay the Player the amounts specified in the Agreement or the Player's Settlement Agreement.

74. The contents of Article 4 of the Player's Settlement Agreement are clear, and expressly

provide that:

> *"In the event that any scheduled payments of this RESOLUTION are not made by the Club within 5 days of the applicable payment date, the Player has to send written notice to the Club and if the Club does not fulfill financial obligation towards Player in total within 5 days, the entire PRIOR CONTRACT's financial responsibility of the CLUB towards the PLAYER will be due and payable immediately (minus any amounts already paid under this resolution)."*

75. As noted, the Arbitrator accepts the First Claimant's allegation that the Respondent failed to make any payment under the Player's Settlement Agreement within the stipulated payment dates (or at all), thus the first condition of this provision is satisfied.

76. As far as the First Claimant's obligation to provide written notice of the breach is concerned, the Player has produced evidence that he requested payment of the outstanding amounts in the Player's Settlement Agreement on multiple occasions, and provided more than ample time for the Club to rectify its breach.

77. On that basis, the Arbitrator considers that Article 4 of the Settlement Agreement has been validly and effectively triggered, and that the Respondent is, in principle and consistent with the principle of *pacta sunt servanda*, liable to pay all unpaid salary instalments set out in the Agreement.

78. As far as the impact of the COVID-19 pandemic, and the applicability of the BAT COVID-19 Guidelines is concerned, the Arbitrator agrees with the First Claimant that – from an *ex aequo et bono* perspective – there should be no further reduction of the amounts payable to him under the Agreement.

79. Indeed, Articles II.2 and II.3 of the BAT COVID-19 Guidelines provide that "*Parties are under a duty to renegotiate in good faith the terms of their contract in order to resolve on an amicable basis contractual issues arising from the pandemic* [and] [a]*ny breach of this*

duty may be taken into account by the arbitrator when deciding the merits of the case and when deciding on arbitration costs, legal fees and other expenses". In the spirit of these provisions, and as part of her *ex aequo et bono* assessment in these proceedings, the Arbitrator has taken into account the Club's failure to pay any of the instalments it agreed upon in the context of the Player's Settlement Agreement, in particular in circumstances where the Player agreed to reductions above and beyond what was provided for in the BAT COVID-19 Guidelines.

80. Additionally, the Arbitrator agrees with the Player that the principle in Article III.6 of the BAT COVID-19 Guidelines should be applied in the present circumstances (i.e. that "[t]*he principles enshrined in these Guidelines do not apply, in principle, to contracts entered into after the beginning of the Lockdown Period. These contracts will be rebuttably presumed to have taken into account the effects of the COVID-19 crisis*"). The Club entered into the Player's Settlement Agreement after the Lockdown Period had begun, and after the BAT COVID-19 Guidelines had been issued. The terms of the Player's Settlement Agreement were generally favourable to the Club, and the Club expressly agreed that the terms of the Agreement would be revived in case it failed to meet its obligations under the Player's Settlement Agreement. Despite this, it failed to make any payment to the Player or even respond to his final request for payment.

81. In the above context, and on an *ex aequo et bono* assessment, the Arbitrator considers that the principle of *pacta sunt servanda* ought to be upheld and it would not be just or fair to reduce the Player's compensation any further.

82. Finally, the Arbitrator notes that Article 6 of the Agreement expressly provides that the relevant salary instalments are to be paid "*net of Greek taxes*", whilst Article 7 provides that the relevant bonuses are to be paid "*NET of Greek income taxes and social security charges*" and Article 10 of the Agreement refers to all payments under the Agreement

being "*net of Greek income taxes*". The Player's Settlement Agreement refers to the payment of salaries and bonuses being "*net of any Greek taxes*". The Arbitrator interprets these slightly different formulations to mean that all payments under Articles 6 and 7 of the Agreement (and Settlement Agreement) were intended to be paid "*net of Greek income taxes and social security charges".*

83. The First Claimant has indeed requested payment of the relevant amounts "*net of Greek social charges and taxes (employer and employee)*", which reinforces the Arbitrator's conclusion.

84. In view of all of the above, the Arbitrator finds that the Club owes the First Claimant the amount of USD 60,000.00, net of Greek income taxes and social security charges, in unpaid salary instalments for the 2019-20 season.

7.2.3 Bonus payments

85. In addition to the salary instalments, the First Claimant also requests payment of the amount of USD 5,000.00 (net), for a bonus earned in relation to the Club's Greek Cup victory.

86. Such claim is, on its face, consistent with the terms of the Agreement (specifically Article 7) and the First Claimant's entitlement to this amount was confirmed in the Settlement Agreement.

87. For the same reasons as set out above, and noting that the application of Article 4 of the Agreement triggers an entitlement to "*the entire PRIOR CONTRACT'S financial responsibility*", the Arbitrator considers that the First Claimant is entitled to payment of the relevant bonus.

88. As noted above, the Arbitrator considers that the Player's request for payment of the bonus amounts "*net of Greek social charges and taxes (employer and employee)*" is consistent with the concept of "*net of Greek income taxes and social security charges"* specified in Article 7 of the Agreement.

89. In view of the above, the Arbitrator finds that the Club owes the First Claimant an amount of USD 5,000.00, net of Greek income taxes and social security charges, in unpaid bonus payments for the 2019-20 season.

7.2.4 Request for compensation in relation to travel expenses

90. As part of the relief sought in this arbitration, the First Claimant has also requested that the Respondent be ordered to reimburse his travel expenses in the amount of USD 2,058.

91. Such request is consistent with the terms of the Agreement (Article 11 providing for the provision of flights to the Player as part of his "*Amenities*") and the Club acknowledged in the Player's Settlement Agreement the Player's right to claim the amount of USD 2,058 "*for the flight of him and his family back to USA in March 2020*"). Thus, the Arbitrator considers it established that the Player is entitled to this amount in principle.

92. The Arbitrator further notes that the Player's Settlement Agreement provided that "*the Player will have to send the respective receipts to the Club*", a condition which has been met by the Player during these proceedings.

93. Finally, the Arbitrator notes that, as a consequence of grouping together his requests for relief in relation to his unpaid salaries, unpaid bonus and reimbursement for his travel expenses, the Player appears to have requested compensation for his travel expenses

to be paid as a net amount. With that said, the Arbitrator notes that the "*Amenities*" in the Agreement are not specified as net amounts, nor is the Player's entitlement to travel expenses in the Player's Settlement Agreement. Accordingly, the Arbitrator considers that Player is not entitled to claim the travel expenses as net amounts.

94. In view of the above, the Arbitrator finds that the Club shall pay the First Claimant the amount of USD 2,058 as compensation for travel expenses.

7.2.6 Interest

95. Finally, the First Claimant has effectively claimed interest, at a rate of 5% per annum, on the amount of USD 67,058.00 from the date of 28 May 2020 (i.e. the day following the expiry of the first time limit the Player gave to the Club to rectify its breach) until the date of payment (the First Claimant requests interest both prior to, and after, the submission of the Request for Arbitration).

96. The Arbitrator notes that payment of interest is a customary and necessary compensation for late payment and there is no reason why it should not be awarded in this case. Moreover, the Arbitrator considers that a rate of 5% per annum is in accordance with well-established BAT jurisprudence and an *ex aequo et bono* assessment.

97. The Arbitrator further notes that Article 4 of the Player's Settlement Agreement clearly stated that if the Club failed to pay a relevant instalment, was notified of this, and did not rectify it within 5 days, "*the entire PRIOR CONTRACT's financial responsibility of the CLUB towards the PLAYER will be due and payable immediately*".

98. As the Player requested payment of the outstanding amount on 22 May 2020, the

Arbitrator agrees, on an *ex aequo et bono* assessment, that it is appropriate that interest commence from 28 May 2020.

99. Thus, the Arbitrator awards the Claimant interest at a rate of 5% per annum, from the date of 28 May 2020 until the date of payment.

7.3 Findings - The Second Claimant

100. The Second Claimant has requested payment of its agency fee of USD 3,750, arguing that by failing to pay the agreed agency fee in a timely manner, the Club has violated the Agreement and Agent's Settlement Agreement.

101. The Arbitrator has no reason to doubt the Agent's allegation that the Respondent never paid the agency fee due under the Agreement (and acknowledged to be due under the Agent's Settlement Agreement).

102. The contents of Article 4 of the Agent's Settlement Agreement are clear, and expressly provide that:

> *"In the event that any scheduled payments of this RESOLUTION are not made by the Club within 5 days of the applicable payment date, the REPRESENTATIVES have to send written notice to the CLUB and the CLUB will have 5 days to fulfill the financial obligation towards REPRESENTATIVES."*

103. In view of the above, the Arbitrator finds that the Club owes the Second Claimant the amount of USD 3,750 in unpaid agency fees for the 2019-20 season.

104. As with the Player, the Agent claims interest at a rate of 5%, this time from the date of 1 July 2020 (i.e. the day following the deadline for the Club to pay under the Agent's

Settlement Agreement) until the date of payment (the Second Claimant also requests interest both prior to, and after, the submission of the Request for Arbitration).

105. As above, the Arbitrator notes that payment of interest is a customary and necessary compensation for late payment and there is no reason why it should not be awarded in this case. Moreover, the Arbitrator considers that a rate of 5% per annum is in accordance with well-established BAT jurisprudence and an *ex aequo et bono* assessment.

106. The Arbitrator also notes that, in the case of the Agent, interest should in principle start to run from the date following the Club's deadline to pay in the Agent's Settlement Agreement. With that said, the Arbitrator also notes that Article 4 of the Settlement Agreement required the Agent to provide written notice to the Club of its default, following which the Club would have 5 days to cure such breach.

107. The Arbitrator notes in this respect that whilst the Claimants wrote to the Club in relation to the Agent's entitlement to fees on 10 June and 25 June 2020, such correspondence could only be considered to be a warning, as the Club's deadline to pay the Agent's fee had not yet passed. Therefore, it was not until the Claimants' letter of 10 September 2020 that the Club was properly put on notice of the Agent's claim. In view of this, and on an *ex aequo et bono* assessment, the Arbitrator therefore considers it appropriate that interest commence from 16 September 2020, i.e. the day following the 5th day after the Second Claimant's written notice of 10 September 2020.

108. Thus, the Arbitrator awards the Claimant interest at a rate of 5% per annum, from the date of 16 September 2020 until the date of payment.

8. Costs

109. 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). […]*

110. On 7 July 2021, the BAT Vice-President determined the arbitration costs in the present matter to be EUR 6,300.

111. As regards the allocation of the arbitration costs 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.*

112. Considering that the Claimants prevailed in full in this arbitration, it is consistent with the provisions of the BAT Rules that the fees and costs of the arbitration be borne by the Respondent alone.

113. Accordingly, the Arbitrator finds that the Respondent shall bear the entirety of the costs of the arbitration. Given that the Claimants paid the entire Advance on Costs in the amount of EUR 7,000.00, the Club shall reimburse EUR 6,300 jointly to the Claimants.

114. 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."*

115. 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.

116. The Claimants expressly requested payment of their "*legal fees and other expenses*" in the Request for Arbitration.

117. In their submission on costs, the Claimants specified their request as follows:

(i) The First Claimant requested payment of EUR 3,000 in relation to the Non-Reimbursable Handling Fee, as well as legal costs in the amount of EUR 3,100.

(ii) The Second Claimant requested payment of its legal costs in the amount of EUR 850.

118. Taking into account the factors required by Article 17.3 of the BAT Rules, the maximum awardable amount prescribed under Article 17.4 of the BAT Rules, the fact that the non-reimbursable handling fee in this case was EUR 3,000.00, and the specific circumstances of this case, the Arbitrator considers that the Claimants' requests for costs are a fair and equitable contribution and should be ordered in full.

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

(i) The Club shall pay EUR 6,300 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;

(ii) The Club shall pay to the First Claimant EUR 6,100.00 for the Non-Reimbursable Handling Fee and his legal costs.

(iii) The Club shall pay to the Second Claimant EUR 850 for his legal costs.

(iv) The BAT will reimburse EUR 700 jointly to the Claimants, being the difference between the costs advanced by them and the arbitration costs fixed by the BAT Vice-President.

9. AWARD

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

1. **AEK NEA KAE 2014 (AEK Athens BC) shall pay Mr. Harvey Jerai Grant USD 60,000.00, net of Greek income taxes and social security charges, in unpaid salary instalments for the 2019-2020 season, together with interest at a rate of 5% from 28 May 2020 until the date of payment.**

2. **AEK NEA KAE 2014 (AEK Athens BC) shall pay Mr. Harvey Jerai Grant USD 5,000.00, net of Greek income taxes and social security charges, in unpaid bonuses for the 2019-2020 season, together with interest at a rate of 5% from 28 May 2020 until the date of payment.**

3. **AEK NEA KAE 2014 (AEK Athens BC) shall pay Mr. Harvey Jerai Grant USD 2,058 in compensation for travel expenses, together with interest at a rate of 5% from 28 May 2020 until the date of payment.**

4. **AEK NEA KAE 2014 (AEK Athens BC) shall pay MB "Octagonas" USD 3,750 in unpaid agency fees, together with interest at a rate of 5% from 16 September 2020 until the date of payment.**

5. **AEK NEA KAE 2014 (AEK Athens BC) shall pay Mr. Harvey Jerai Grant and MB "Octogonas" jointly an amount of EUR 6,300 as reimbursement for their arbitration costs. The balance of the advance on costs, in the amount of EUR 700, will be reimbursed jointly to Mr. Harvey Jerai Grant and MB "Octogonas" by the BAT.**

6. **AEK NEA KAE 2014 (AEK Athens BC) shall pay Mr. Harvey Jerai Grant EUR 6,100.00 as a reimbursement of his legal fees and expenses.**

7. **AEK NEA KAE 2014 (AEK Athens BC) shall pay MB "Octagonas" EUR 850.00 as reimbursement of its legal fees and expenses.**

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

BASKETBALL
ARBITRAL TRIBUNAL

Geneva, seat of the arbitration, 9 July 2021

Brianna Quinn
(Arbitrator)