



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1612/20)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Brianna Quinn

in the arbitration proceedings between

Mr. Kendrick Ray

- Claimant -

represented by Ms. Ntimi Papadopoulou, attorney at law,

vs.

AEK NEA KAE 2014 (AEK Athens BC)
466 Irakleiou Avenue, Athens, Greece

- Respondent -

1 The Parties

1.1 The Claimant

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

1.2 The Respondent

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

2 The Arbitrator

3. 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 Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3 Facts and Proceedings

4. 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.

5. 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

6. On 8 August 2019, the Player and the Club entered into an agreement whereby the Club engaged the Player for the season 2019-2020 (the "Agreement").
7. Articles 7 and 8 of the Agreement governed the Player's salary and bonuses entitlements and, relevantly to this arbitration, provided as follows:

"7. 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 200.000 (US dollars two hundred thousand) net of Greek taxes, paid into 10 (ten) equal installments of USD 20.000 (US dollars twenty thousand) on the last day of each month, commencing with September 30th, 2019 and ending on June 30th 2020.

8. BONUSES

a) The Club agrees to pay the Player the following NET target bonuses for every season of this Contract:

[...]

- In case the Club wins the Greek cup, the Player shall receive the net amount of USD 10.000

- In case the Club qualifies for the quarterfinals of the Basketball Champions League, 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."

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

"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."

3.1.2 The Settlement Agreement

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

10. As a result of this, on 4 May 2020, the Player and the Club signed a "Resolution of Agreement" (the "Settlement Agreement"), according to which:

(i) The Club agreed to pay:

a. the Player's salary instalment of 29 February 2020 (in the amount of USD 20,000) in full, no later than 15 May 2020 (Article 2a);

- b. The Player's bonus of USD 5,000 in relation to the Basketball Champions League Quarterfinals Qualification, no later than 30 June 2020 (Article 2b);
 - c. The Player's bonus of USD 10,000 in relation to the Greek Cup victory, no later than 15 October 2020 (Article 2c); and
 - d. The Player's salary instalment of 30 March 2020 (in the amount of USD 20,000) in full, no later than 15 November 2020 (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 20,000 each) (Article 3).
- (iii) The Club agreed to provide tax certificates for any payments made, upon request of the Player (Article 3).
11. The Settlement Agreement also governed the consequences of non-payment 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 Player's Requests for Payment

12. According to the Player, the Club never paid any of the instalments agreed upon in the Settlement Agreement.

13. As such, on 21 May 2020, the Player sent an email to the Club stating that:

"I am writing to provide official notice that mr. Kendrick John Ray's 20.000\$ (twenty thousand USD) payment of May 15th 2020, according to the RESOLUTION AGREEMENT signed by both mr. Ray and your Club on May 4th 2020, is more than 5 days late and he is entitled to his prior initial full contract, dated August 8th 2019, for all the remaining salaries and bonuses, unless the non payment is cured in the next 5 days, until May 25th 2020, according to article 4, of the RESOLUTION OF AGREEMENT."

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

15. On 2 June 2020, the Player sent the Club an additional email which stated as follows:

"I am writing to provide official notice that mr. Kendrick John Ray has opted to formally cancel the RESOLUTION OF AGREEMENT contract signed on May 4th 2020, due to the failure of the CLUB to fulfill its financial obligations towards the PLAYER within our initial notice 5 day period, dated May 21st 2020. According to article 4 of the RESOLUTION OF AGREEMENT, your club is financially responsible towards the PLAYER for the entire PRIOR CONTRACT, dated August 8th 2019, for all the remaining salaries of 100.000 \$ (one hundred thousand USD) and remaining bonuses of 15.000 (fifteen thousand USD)."

16. On 26 June 2020, the Player engaged a legal representative, who sent a formal and final claim to the Club for the amount of USD 55,000 (i.e. the amounts payable under the Settlement Agreement). This final notice sought payment by no later than 30 June 2020, and warned the Club that if it failed to pay, the Player would file a procedure before the BAT *"for the full salaries and bonuses of \$115,000"* as well as arbitration costs, legal fees and interest.

17. On 27 June 2020, the Club responded to the Player's lawyer, acknowledging receipt of the Player's correspondence and stating:

"Regarding your claims, please allow me to inform you about the situation so far.

The termination agreement we offered to Mr. Ray (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.”

18. On 28 July 2020, the Player wrote again to the Club, noting that he had not received any payment, nor further details in relation to the Club’s debt. The Player granted the Club a final opportunity to pay the (Settlement Agreement) amount of USD 55,000 in full, by no later than 31 July 2020, and notified the Club that if it failed to do so he would “*proceed with the BAT proceedings and claim full amounts as per the original agreement*”.
19. According to the Player, he did not receive any response, nor any payment, from the Club following this correspondence.

3.2 The Proceedings before the BAT

20. On 7 October 2020, the BAT received the Claimant’s Request for Arbitration (dated 20 August 2020), which was filed in accordance with the BAT Rules.
21. On 4 August 2020, the non-reimbursable handling fee of EUR 3,000 was received by the BAT.
22. 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 (Mr. Kendrick Ray)

EUR 4,000.00

Respondent (AEK NEA KAE 2014) EUR 4,000.00

23. 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*”.
24. On 17 November 2020, the BAT received the Player’s share of the advance of costs in the amount of EUR 4,000.
25. On 1 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 Respondent was granted a final opportunity until 8 December 2020 to do so, and reminded that if it failed to submit an Answer the Arbitrator could nevertheless proceed with the arbitration and deliver an award.
26. On 10 December 2020, the Parties were informed that the Respondent had failed to file its Answer or pay the advance on costs within the time limit. The Claimant was therefore invited to substitute for the Respondents’ share of the – adjusted – advance on costs and requested to pay the remaining amount of EUR 3,000.
27. On 21 January 2021, the BAT confirmed that the Claimant had paid the Respondent’s share of the – adjusted – advance of costs (i.e. EUR 3,000). In the same correspondence: (i) the Parties were advised that the proceedings would continue; and (ii) the Claimant was requested to answer specific questions from the Arbitrator – and provide further supporting documents – in relation to his claim by no later than 4 February 2021.
28. On 4 February 2021, the Claimant filed his response to the Arbitrator’s procedural order.

29. On 8 March 2021, the Respondent was invited to comment on the Claimant's response to the Arbitrator's procedural order, by no later than 18 March 2021.
30. On 1 April 2021, the BAT confirmed that the Respondent failed to reply to the Arbitrator's Procedural Order of 8 March 2021. In the same letter, and considering that neither party 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.
31. On 12 April 2021, the Claimant filed his costs submission. The Respondent did not submit an account of costs.

4 The Positions of the Parties

32. 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.
33. 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 Claimant's Position

34. The Claimant submits that: (i) the Club breached Article 2 of the Settlement Agreement by failing to pay any of the relevant instalments; (ii) he validly triggered Article 4 of the

Settlement Agreement; and (iii) as a result, he is entitled to payment of all remaining unpaid salary instalments and bonuses under the Agreement.

35. The Player suggests that he signed the amicable settlement with the Club in good faith, agreeing to a full reduction of his salary for April, May and June 2020, despite this not being provided for in the BAT COVID-19 Guidelines.
36. The Player further submits that the Settlement Agreement was drafted by the Club, after the league was suspended and the BAT COVID-19 Guidelines were published. As such, the Player argues that:
- (i) even if the Club fell behind on payments due to non-payment from their sponsors, this was a risk that the Club knowingly took in agreeing to Article 4 of the Settlement Agreement.
 - (ii) the Settlement Agreement is rebuttably presumed to have been executed by the Parties with a view to addressing the consequences of COVID-19 and such consequences may very well include issues with a sponsor.
 - (iii) the payment plan in the Settlement Agreement was suggested by the Club and tailored to the Club's own needs. The Player agreed to forego the salaries of April, May and June 2020 because he understood this was the only way that the Club could guarantee that the payments would be made within the given deadlines.
37. As far as the BAT COVID-19 Guidelines are concerned, the Player argues that they should not be applied to the present case because the dispute arises from a Settlement Agreement which was signed following the Lockdown Period and after the guidelines

had been issued. Thus, the Club's breach should be treated as a breach of any other agreement regardless of the COVID-19 situation, and the principle of *pacta sunt servanda* should be upheld.

38. Finally, the Player emphasised that he had tried to exhaust every other option prior to proceeding with the arbitration, and that the time given to the Club to cure the breach was more than fair and reasonable.
39. In his Request for Arbitration dated 20 August 2020, the Claimant requested the following relief:

"The Claimant requests an Award to be rendered according to which:

- 1. The Respondent shall pay the Claimant **\$115,000 NET** for salaries and bonuses;*
- 2. The Respondent shall provide the Claimant with **tax certificate** indicating that all applicable taxes have been paid;*
- 3. The Respondent shall pay the Claimant late payment interest of minimum 5% per annum on the sum of **\$115,000 from 25th of May 2020** until the date of payment (\$1,437.5 up to September 25th 2020);*
- 3. The Respondent shall reimburse the Claimant for all BAT expenses and Advance on Costs as these will be calculated by the Arbitrator as well as the non-reimbursable handling fee of **EUR 3,000** already paid by the Claimant;*
- 4. The Respondent shall reimburse the Claimant for incurred legal expenses (at this stage of the proceedings the legal fees amount to **EUR 3,900**) with the final amount depending on the submissions to be determined in the course of the proceedings.*

*Total amount in dispute: **\$116,437.**"*

40. In the Claimant's submission on costs of 12 April 2021, he ultimately claimed the following costs:

"The Claimant respectfully requests from the Arbitrator to include an aggregate amount of

EUR 10,000 for arbitration costs and expenses (handling fee included) and an additional amount of EUR 5,800 as contribution towards his legal fees, in the Award to be rendered.”

4.2 The Respondent's Position

41. 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 Claimant's second submission.

5 The Jurisdiction of the BAT

42. 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.¹
43. 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”).
44. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

¹ Judgement of the Swiss Federal Tribunal, 120 II 155, 162.

45. 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.²
46. The jurisdiction of the BAT in the present case results from the arbitration clauses contained under Article 18 of the Agreement and Article 6 of the 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.”

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.”

47. The Agreement and the Settlement Agreement are in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.

² Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

48. 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).
49. The jurisdiction of BAT over the Claimant's 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.
50. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimant's claims.

6 Other Procedural Issues

51. 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.³ However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.
52. 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 Claimant's Request for Arbitration and subsequent submission. The Respondent,

³ See *ex multis* BAT cases 0001/07; 0018/08; 0093/09; 0170/11.

however, chose not to file any submissions in these proceedings.

7 Discussion

7.1 Applicable Law – *ex aequo et bono*

53. 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 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”.

54. Under the heading “Law Applicable to the Merits”, Article 15.1 of the BAT Rules reads 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”.

55. The Agreement and the Settlement Agreement expressly provide that the Arbitrator shall decide the dispute *ex aequo et bono*.

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

57. 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'arbitrage⁴ (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

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

7.2 Findings

7.2.1 Salary instalments

60. As set out above, the Claimant submits that the Respondent owes him five salary instalments of USD 20,000.00 (net) each, for the period from February till June 2020, for

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).

a total amount of USD 100,000.00 (net).

61. According to the documents on file, the Respondent paid the relevant instalments for the first five months of the Agreement (i.e. September 2019 to January 2020).
62. However, according to the Player, the Respondent did not pay either: (i) the salary instalments for the remaining five months (as per the original Agreement); or (ii) the reduced amounts provided for in the Settlement Agreement.
63. The Arbitrator has no reason to doubt the correctness of this information. To the contrary: (i) the Settlement Agreement clearly indicates that the salary instalments of February and March 2020 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 Settlement Agreement.
64. The contents of Article 4 of the 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).”

65. As noted, the Arbitrator accepts the Claimant’s allegation that the Respondent failed to make any payment under the Settlement Agreement within the stipulated payment dates (or at all), thus the first condition of this provision is satisfied.
66. As far as the Claimant’s obligation to provide written notice of the breach is concerned, the Claimant has produced evidence that he requested payment of the outstanding

amounts in the Settlement Agreement on multiple occasions, and provided more than ample time for the Club to rectify its breach.

67. 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.
68. 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 Claimant that – on an *ex aequo et bono* assessment – there should be no further reduction of the amounts payable to the Claimant under the Agreement.
69. 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 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.
70. Additionally, the Arbitrator agrees with the Player that the principle in Article III.6 of the BAT 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 Settlement Agreement after the Lockdown Period had begun, and after the BAT COVID-19 Guidelines had been issued. The terms of the Settlement Agreement were generally favourable to the Club, and the Club expressly agreed that the terms of the original Agreement would be revived in case it failed to meet its obligations under the Settlement Agreement. Despite this, it failed to make any payment to the Player or even respond to his final request for payment.

71. 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.
72. Finally, the Arbitrator notes that Article 7 of the Agreement expressly provides that the relevant salary instalments are to be paid "*net of Greek taxes*", which is confirmed in Article 10 of the Agreement (and was also the case in the Settlement Agreement). The Claimant has indeed claimed the salary instalment amounts "*NET*" in his prayers for relief, which the Arbitrator understands to mean "*net of Greek taxes*".
73. In view of all of the above, the Arbitrator finds that the Club owes the Claimant the amount of USD 100,000.00, net of Greek taxes, in unpaid salary instalments for the 2019-20 season.

7.2.3 Bonus payments

74. In addition to the salary instalments, the Claimant also requests payment of the amount of USD 15,000.00 (net), for bonuses in relation to the Club's Basketball Champions League Quarterfinals Qualification and Greek Cup victory.

75. Such claim is, on its face, consistent with the terms of the Agreement (specifically Article 8) and the Claimant's entitlement to these amounts was confirmed in the Settlement Agreement.
76. 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 Claimant is entitled to payment of the relevant bonuses.
77. As with the Player's salary instalments, Articles 8 and 10 of the Agreement confirm that all bonuses are to be paid "*net of Greek taxes*" (which was also reflected in the Settlement Agreement). Once again, the Claimant has claimed the bonus amounts "*NET*" in his prayers for relief, which the Arbitrator understands to mean "*net of Greek taxes*".
78. In view of the above, the Arbitrator finds that the Club owes the Claimant an amount of USD 15,000.00, net of Greek taxes, in unpaid bonus payments for the 2019-20 season.

7.2.4 Request for a tax certificate

79. As part of the relief sought in this arbitration, the Claimant further requests that the Respondent be ordered to provide a "*tax certificate indicating that all applicable taxes have been paid*".
80. Such request is consistent with the terms of the Agreement, which expressly provides at Article 10 that the "*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" (an obligation which also featured in Article 3 of the Settlement Agreement).

81. Accordingly, the Arbitrator holds that the Club shall provide the Claimant with a tax certificate indicating that all applicable taxes have been paid.

7.2.6 Interest

82. Finally, the Claimant has claimed interest, at a rate of 5% per annum, on the amount of USD 115,000 from the date of 25 May 2020 (i.e. 10 days after the first instalment under the Settlement Agreement was due) until the date of payment.
83. 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.
84. The Arbitrator further notes that Article 4 of the 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*".
85. Whilst the Claimant has requested interest first start to run from 25 May 2020, the Arbitrator notes that the Player first requested payment of the outstanding amount on 21 May 2020. As such, the Arbitrator considers it appropriate, on an *ex aequo et bono* assessment, that interest commence from 27 May 2020 (i.e. the day following the expiry of the 5 day time limit for the Club to make payment to the Player).

86. Thus, the Arbitrator awards the Claimant interest at a rate of 5% per annum, from the date of 27 May 2020 until the date of payment.

8 Costs

87. 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). [...]”

88. On 5 July 2021, the BAT Vice-President determined the arbitration costs in the present matter to be EUR 5,600.

89. 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.”

90. Considering that the Claimant 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.

91. Accordingly, the Arbitrator finds that the Respondent shall bear the entirety of the costs of the arbitration. Given that the Claimant paid the entire Advance on Costs in the amount of EUR 7,000.00, the Club shall reimburse EUR 5,600 to the Claimant.

92. 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.”

93. 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.

94. The Claimant expressly requested payment of the Non-Reimbursable Handling Fee of EUR 3,000.00 in his Request for Arbitration and in his submission on costs.

95. The Claimant also claimed legal fees in the amount of EUR 5,800 (calculated on the basis of the costs relating to these proceedings but also “*Emails, Notices and general correspondence with the Respondent in request of payment*”). In his eventual submission on costs the Claimant requested the following:

*“The Claimant respectfully requests from the Arbitrator to include an aggregate amount of **EUR 10,000** for arbitration costs and expenses (handling fee included) and an additional amount of **EUR 5,800** as contribution towards his legal fees, in the Award to be rendered.”*

96. 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 Claimant's requests for costs are, in principle, a fair and equitable contribution.

97. The Arbitrator considers, however, that the requested legal fees should be subject to a slight reduction – for a total amount of EUR 5,000 – given the straightforward nature of

the proceedings, the fact that the Respondent did not participate in the arbitration, and the pre-arbitration work that appears to have been included in the Claimant's account of costs.

98. 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 5,600 to the Claimant, being the difference between the costs advanced by him and the amount he is going to receive in reimbursement from the BAT.
- (ii) The Club shall pay to the Claimant EUR 3,000.00 for the Non-Reimbursable Handling Fee, plus EUR 5,000 to the Claimant in legal fees and expenses.
- (iii) The BAT will reimburse EUR 1,400 to the Claimant, being the difference between the costs advanced by him and the arbitration costs fixed by the BAT 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. Kendrick Ray USD 100,000.00, net of Greek taxes, in unpaid salary instalments for the 2019-2020 season, together with interest of 5% per annum on such amount from the date of 27 May 2020 until payment.**
- 2. AEK NEA KAE 2014 (AEK Athens BC) shall pay Mr. Kendrick Ray USD 15,000.00, net of Greek taxes, in unpaid bonuses for the 2019-2020 season, together with interest of 5% per annum on such amount from the date of 27 May 2020 until payment.**
- 3. AEK NEA KAE 2014 (AEK Athens BC) shall provide Mr. Kendrick Ray with a tax certificate indicating that all applicable taxes have been paid.**
- 4. AEK NEA KAE 2014 (AEK Athens BC) shall pay Mr. Kendrick Ray an amount of EUR 5,600 as reimbursement for his arbitration costs. The balance of the advance on costs, in the amount of EUR 1,400, will be reimbursed to Mr. Kendrick Ray by the BAT.**
- 5. AEK NEA KAE 2014 (AEK Athens BC) shall pay Mr. Kendrick Ray EUR 8,000.00 as a reimbursement of his legal fees and expenses.**



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

Geneva, seat of the arbitration, 8 July 2021

Brianna Quinn
(Arbitrator)