

**ARBITRAL AWARD**

**(BAT 1802-1803/22)**

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Klaus Reichert**

in the arbitration proceedings between

**B.I.G. Management**  
Egnatia 29,  
Thessaloniki, Greece

**- Claimant -**

represented by Filip Medarski & Mr. Lazar Sandev, attorneys at law

vs.

**Mr. Dimitar Ivanov**

**- Respondent 1 -**

**Mr. Nikola Vasilevski**

**- Respondent 2 -**

both represented by Dr Ivan Todorović, attorney at law  
and  
Dr Velimir Zivković, MJur

## **1. The Parties**

### **1.1 The Claimant**

1. B.I.G. Management (“Agency”) is a Greek professional sports agency owned by Mr. Georgios Patapatiou, who is a FIBA registered agent with license no. 2012024868.

### **1.2 The Respondents**

2. Mr. Dimitar Ivanov (“Ivanov”) and Mr. Nikola Vasilevski (“Vasilevski”) are both North Macedonian professional basketball players. They are referred to collectively as “Players”, as the context may require herein.

## **2. The Arbitrator**

3. On 31 March 2022, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (the “BAT”), appointed Mr. Clifford J. Hendel as arbitrator pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (“BAT Rules”). None of the Parties has raised any objections to the appointment of Mr. Hendel or to his declaration of independence or to his conduct of these proceedings up to the date of his replacement. Mr. Hendel resigned and was replaced by Mr. Klaus Reichert (“the Arbitrator”) on 21 July 2022 following his appointment by the Vice-President of the BAT. None of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence or to his conduct of these proceedings following his appointment.

## **3. Facts and Proceedings**

### **3.1 Summary of the Dispute**

4. In or around July 2020, both Ivanov and Vasilevski each signed a representation agreement with Agency; each such representation agreement had a two-year duration.
5. In or around July 2021, both Ivanov and Vasilevski sent termination notices to Agency. Agency says that the Players were not entitled to do so as the respective representation

agreements (both virtually identical in all respects) contained a temporal restriction on when termination could validly occur (as might be generally known in the professional basketball context, the window period). Agency says that Players' respective termination notices occurred outside of the agreed window period, and this engages a contractual liability on their parts to pay specified damages.

6. Agency invokes the following provision of the representation agreements as the basis for its claims against Players (part of clause 3 as presented by Agency):

*"[...] Player is liable to fully compensate the Agent a/ if he chooses to prematurely terminate this Agreement, b/ if he signs a Club-Player contract either on his own or with the mediation of another agent, c/ reasons due to any Player's alleged breach of the Contract. In such case and in consideration of the Agent's services, the player shall pay to the Agent a 10% (plus VAT) of his gross annual salary and bonuses, payable in cash and in one instalment, either one week after Club or himself officially announce his signing or one week after Club's first game (friendly or official, whether he will participate or not) whichever comes first. [...]. Any compensation unpaid as of the due date shall accrue interest at an annual rate of seven percent (7%). [...]"*

7. In reliance on these provisions, Agency seeks EUR 200.00 against Ivanov and EUR 130.00 against Vasilevski being 10% of the respective values of the contracts Players signed with KK MZT Skopje Aerodrom subsequent to their termination of the representation agreements. Agency further seeks interest and costs.
8. Players deny in full the claims made against them and raise, amongst a number of points, jurisdictional issues which are discussed below.

### **3.2 The Proceedings before the BAT**

9. On 14 March 2022, Agency filed two Requests for Arbitration (of the same date) against each of Ivanov and Vasilevski in accordance with the BAT Rules and duly paid the non-reimbursable handling fees of EUR 1,000 for each arbitration on 17 March 2022.
10. On 21 April 2022, the BAT informed the Parties that Mr. Clifford J. Hendel had been

appointed in this matter, the two arbitrations were consolidated in accordance with Article 11.3 of the BAT Rules, and fixed the advance on costs to be paid by the Parties as follows:

*“Claimant (B.I.G. Management) EUR 3,000.00*

*Respondent 1 (Mr. Dimitar Ivanov) EUR 1,500.00*

*Respondent 2 (Mr. Nikola Vasilevski) EUR 1,500.00”*

IBC Balkan paid EUR 3,000.00 on 5 May 2022 and a further EUR 3,000.00 on 31 May 2022.

11. Players filed their Answer on 12 May 2022.
12. Agency filed its Reply on 14 July 2022.
13. On 28 July 2022, the Parties were informed that the Arbitrator had been appointed.
14. By Procedural Order dated 1 August 2022, the Arbitrator extended the time for Players to file their Rejoinder to 12 August 2022 and directed them to file answers to a set of questions on the issue as to how, exactly, the representation agreements came to be signed.
15. Players filed their Rejoinder on 12 August 2022.
16. On 25 August 2022, Agency filed its answers to the same set of questions (noted above at para. 14) concerning the issue as to how, exactly, the representation agreements came to be signed. On the same day, Agency filed an application to present further evidence concerning its legal status.
17. By Procedural Order dated 28 August 2022, the Arbitrator denied the Agency’s application to file further evidence, and, further, set out the following matters for the Parties:

*“The Arbitrator has reviewed each side’s factual account of signature. It is clear from both accounts that Mr. Trufunovski’s role in the matter is key. According to both sides, it is he who met the Respondents in person and presented them with the physical document to sign. The signature page presented by each side for each Respondent appears to the Arbitrator to be consistent; and the various exhibits represents an electronic PDF scan of the actual sheets of paper signed by each Respondent. What is different appears to be the preceding pages containing the contractual terms. The Arbitrator considers it, therefore, to be important to ascertain what were the actual preceding pages with the contractual terms which Mr. Trufunovski presented to each Respondent at the time of signature. In order to investigate this specific issue further the Arbitrator considers it necessary for him to contact Mr. Trufunovski directly and ascertain from him what he says he presented to the Respondents by way of contractual documents for signature and, insofar as he still has a soft copy of such documents (specifically, the pre-signature clean documents) these should be submitted to the Arbitrator in native format (PDF or Word or both). The Arbitrator also intends to ask Mr. Trufunovski exactly what, by way of scanned documents he sent to the Claimant and produce any covering email or other method of transmission. If the Parties have any reasoned objection to this proposed course of action then this should be set out by not later than Wednesday, 7 September 2022.”*

18. None of the Parties raised any objection to the Arbitrator’s proposed course of action and by Procedural Order dated 9 September 2022 he set out the text of the proposed letter he was intending be sent by the BAT to Mr. Trufunovski:

*“Dear Sir,*

*I am the Arbitrator in BAT case 1802/1803 between B.I.G. Management (Claimant) and Mr. Dimitar Ivanov & Mr. Nikola Vasilevski (Respondents). I write to you requesting your assistance in connection with a factual issue which has arisen in the course of the arbitration. Both sides in the arbitration have stated that you were the person who presented the contractual documents for signature to the Respondents (both are professional basketball players). There is no dispute as to the fact that both Respondents signed on the signature page in your presence. Where there is a dispute, and this is the purpose of this communication, is as to the content of the preceding pages, namely, the pages which contain the contractual terms. I am, therefore, seeking your assistance as to exactly that which you presented to each player for their signature and ask you the following questions.*

- 1. Did you personally prepare the document containing the contractual terms prior to meeting each player?*
- 2. Do you have a soft copy of the contractual terms document (i.e. the document prepared prior to printing and signature) and, if so, please send this to the BAT.*

3. *Once the contracts were signed by each player, by what means did you send the signed documents to the Claimant?*

4. *Please send to the BAT any and all messages/emails/communications in their original or native format which show how you sent the signed documents to the Claimant.*

5. *Did you retain an original of the documents signed by each player? If yes, please send these to the BAT both by means of scanned PDF and original by courier (your reasonable courier fees will be reimbursed by the BAT).*

*Please reply by not later than [7 day deadline] to the BAT and I thank you for your assistance.”*

19. On 13 September 2022, Agency confirmed that it had no objections to the proposed text of the Second Arbitrator's letter to Mr. Trufunovski.
20. On 15 September 2022, the BAT sent the Arbitrator's letter to Mr. Trufunovski.
21. On 22 September 2022, the BAT received a reply from Mr. Trufunovski.
22. On 26 September 2022, the BAT sent the following message to the Parties from the Arbitrator:

*“The Arbitrator has received the attached Answer and attachments in response to his request to Mr Trifunovski.*

*The Arbitrator invites, first, the Claimant to comment on the probative value of that which has been received. This opportunity to comment must be confined strictly to careful forensic points, and any form of speculation is not permitted.*

*In particular, as the Arbitrator has previously noted, there appears to be no dispute between the Parties as to the fact that each Respondent actually signed the signature page (i.e. the third page). Graphology investigations as to signatures appear, therefore, to be unnecessary and may not lead to anything of assistance to the present arbitration. The focus of forensic and evidential investigation for the Arbitrator is the preceding part of the documents, namely, the first and second pages containing the contractual text. A graphologist could not opine on these two pages as they do not bear any signatures, particularly of each of the Respondents. Thus, the comment which is now invited from the Claimant would be of most assistance to the Arbitrator if it were to focus on the pertinent issue, namely, what were the contents of the first two pages of the document as at the moment of*

*signature on the third page by each of the Respondents.*

*The **Claimant** is invited to file comments by not later than **30 September 2022.***

23. On 30 September 2022, Agency filed its comments, as per the Arbitrator's invitation recorded above at para. 22.
24. By Procedural Order dated 6 October 2022, the Arbitrator sent the following message to the Parties:

*“The Arbitrator sees from the evolution of his enquiries that there now appears to be some further precision in the factual background, namely, that it appears to be more likely than not that Mr. Trifunovski sent documents to the Claimant via WhatsApp and not by attachment to email or through the postal system. The Arbitrator appreciates that it is also likely not to be in the direct knowledge of the Respondents as to the method by which Mr. Trifunovski sent the documents to the Claimant once they had each signed their respective contract. Thus, as a matter of likelihood, and based on the position of the Claimant and Mr. Trifunovski, the Arbitrator considers that once the Respondents had each signed, in wet ink, their contract, they would then have no role in how such documents were transmitted to the Claimant. Given that Mr. Trifunovski has indicated that his communications with the Claimant were over the phone, Viber or WhatsApp, and he has not mentioned email or post, this gives the Arbitrator comfort in coming to the factual conclusion that the documents were sent to the Claimant via WhatsApp.*

*Mr. Trifunovski has stated that he does not have a back-up of those calls, chats or messages. The Claimant indicates that it has the WhatsApp messages and the Arbitrator notes that its exhibit 19 appears to be print-outs or scans of screen shots of the group chat.*

*The Arbitrator considers that the full details of such group chat, in their native or soft copy format, must be examined. This is to be undertaken as follows: both Mr. Patapatiou and Mr. Simonovski should each go to their WhatsApp programme on their respective smartphones and select the option for exporting the specific group chat (B.I.G. NMK), with attachments. Specifically, in Android, when one goes to a particular chat or group chat in WhatsApp, one sees three dots arranged vertically on the top right hand corner of the screen. Tapping on those three dots opens a series of options including “More”, which should then be tapped and this will open a number of further options including “Export chat”. This should be tapped, and “Include Media” must be selected. There will then be the option to send the chat and any attachments to another WhatsApp user. The same operation via an iPhone is slightly different as one starts by tapping the title of the group at the top of the screen, which will then open a number of options including the ability to export the chat.*

*By whichever route or system is used, this will allow the full content, with precise dates and times, along with the precise content of the attachments, to be viewed. These should then be sent to [...]at the BAT on her WhatsApp number as follows: [...]. This should be undertaken by not later than Thursday, 13 October 2022.”*

25. The BAT received the WhatsApp conversations from Mr. Patapatiou and Mr. Simonovski and these were relayed to the Arbitrator.
26. By Procedural Order dated 17 October 2022, the Arbitrator set out the following:

*“The Arbitrator has received, via the BAT, the exported WhatsApp group chat from both Mr. Patapatiou and Mr. Simonovski.*

*The chat text ranges over a large number of topics which do not concern this arbitration and the Arbitrator does not consider it necessary, or indeed appropriate for the entirety of that which the BAT has received to be circulated to the Parties. The text of interest is that which states to be connected with the communication of the signed contracts by Mr. Trifunovski. Thus, the Arbitrator has carefully extracted from the exported chat text the following exchanges.*

*From the exported group chat received from Mr. Simonovski*

*Concerning Mr. Ivanov*

*[27.6.20, 01:10:56] Mile Trifunovski: also just to keep you informed, meeting with player Dime Ivanov and his father went very well*

*[27.6.20, 01:11:05] Mile Trifunovski: I think they will sign as well*

*[27.6.20, 01:11:38] George Patapatiou: Ok*

*[27.6.20, 01:11:43] Mile Trifunovski: The player is talented and he is in the high school sports academy*

*[27.6.20, 01:12:08] Mile Trifunovski: and has contract with mzt*

*[27.6.20, 01:12:12] Mile Trifunovski: youth categories*

*[27.6.20, 01:12:20] Mile Trifunovski: 16 year old are both players*

*[27.6.20, 01:12:26] Mile Trifunovski: 2004*

*[3.7.20, 01:51:46] Mile Trifunovski: [message commences with other matters] 5. Dimitar Ivanov and his father are going to meet with me tomorrow again (I think this will be last meeting before they sign with us) [message concludes with other matters]*

*[6.7.20, 00:43:43] Mile Trifunovski: Dimitar Ivanov and his father will sign tomorrow*

*[6.7.20, 00:43:55] Mile Trifunovski: So we need to add them. To the platform*

*[6.7.20, 00:44:10] Mile Trifunovski: Do you need specs of them?*

*[6.7.20, 00:44:35] Mile Trifunovski: So you can add them on the platform. Or just put the names in, I will update all the info*

*[6.7.20, 00:48:02] George Patapatiou: Send me the info of the 2 young kids*



[6.7.20, 00:48:10] George Patapatiou: *So I can add them*  
[6.7.20, 00:48:19] George Patapatiou: *And you can enrich their profiles*  
[6.7.20, 00:50:41] Mile Trifunovski: *Ok*  
[8.7.20, 11:59:58] Mile Trifunovski: *BIG - Dimitar Ivanov.pdf • 4 pages <attached: 00002720-BIG - Dimitar Ivanov.pdf>*  
[8.7.20, 12:00:04] Mile Trifunovski: *dimitar ivanov new player*  
[8.7.20, 12:00:11] Mile Trifunovski: *signed by both him and his father*

*Accompanying this Procedural Order is the PDF which is the attachment referenced on 8.7.20, 11.59:58.*

*Concerning Mr. Vasilevski*

[3.7.20, 01:51:46] Mile Trifunovski: *[message commences with other matters] 4. Nikola Vasilevski representation contract will follow in a minute*  
[3.7.20, 01:55:45] Mile Trifunovski: *BIG Under 18 Representation Agreement 2020 - Nikola Vasilevski - SIGNED.pdf • 4 pages <attached: 00002435-BIG Under 18 Representation Agreement 2020 - Nikola Vasilevski - SIGNED.pdf>*

*Accompanying this Procedural Order is the PDF which is the attachment referenced on 3.7.20, 01.55:45.*

*From the exported group chat received from Mr. Patapatiou*

*Concerning Mr. Ivanov*

*26/6/20, 23:43 - Mile MK: also just to keep you informed, meeting with player Dime Ivanov and his father went very well*  
*26/6/20, 23:44 - Mile MK: I think they will sign as well*  
*26/6/20, 23:44 - Patapatiou Georgios I BIG: Ok*  
*26/6/20, 23:44 - Mile MK: The player is talented and he is in the high school sports academy*  
*26/6/20, 23:45 - Mile MK: and has contract with mzt*  
*26/6/20, 23:45 - Mile MK: youth categories*  
*26/6/20, 23:45 - Mile MK: 16 year old are both players*  
*26/6/20, 23:45 - Mile MK: 2004*

*The text of the group chat as received from Mr. Patapatiou then continues from 26 June 2020 to a message (on another matter) dated 30 June 2020. The next message is dated 2 August 2020 and no messages from July 2020 are recorded at all. Put specifically, so that there is no doubt, the text of the group chat as received from Mr. Patapatiou is as follows on those dates:*

*“30/6/20, 21:16 - Patapatiou Georgios I BIG: <Αρχείο παραλήφθηκε>*  
*2/8/20, 21:30 - Mile MK: Hi George. Please send list of available players position 4/5 around 3k-4k that can shoot well from 3, and also good in pick n roll situations.”*

*Concerning Mr. Vasilevski*

*Not recorded, particularly given that no entries or messages for July 2020 are recorded.*

\*\*\*\*\*

*To summarise the position which the Arbitrator's investigations have now reached:*

*- There is no dispute between the Parties that each of the Respondents signed, in wet ink, a signature page which was presented to them by Mr. Trifunovski. The dispute is as to the content of the preceding pages containing the contractual terms. Those preceding pages, whether as advocated for by the Claimant or as by the Respondents, were not signed or initialled by the Respondents so graphology investigations would not be of any assistance.*

*- Mr. Trifunovski has indicated that his communications with the Claimant were via WhatsApp. The Claimant agrees with that fact. The Respondents would not know how it was that Mr. Trifunovski communicated or sent the document they each signed as that would not have been their concern.*

*- Mr. Trifunovski no longer has the WhatsApp chat as he has stated that he switched his telephone.*

*- The exported chat received from Mr. Simonovski indicate that Mr. Trifunovski sent (on 3 and 8 July 2020) two PDFs which contain the contractual terms reflected on the documents attached to the Requests for Arbitration.*

*- The exported chat received from Mr. Patapatiou has no messages recorded in July 2020 and does not, therefore, demonstrate that Mr. Trifunovski sent any PDFs with the signed contracts.*

*The Parties will no doubt understand that the Arbitrator's specific task is to decide, based on the evidence, whether the content of the preceding pages containing the contractual terms is that as presented by the Claimant, or that as presented by the Respondents. It is, therefore, both essential and fair that each side has an opportunity to make submissions on that specific issue in light of the evolved state of the evidence following the Arbitrator's enquiries.*

*Thus, by **Monday, 24 October 2022**, each side is directed to file with the BAT a submission no longer than 3 pages which will address whether, whether, as a matter of the balance of probabilities, the content of the preceding pages containing the contractual text is that as advocated by them and not as advocated by the opponent."*

27. The Parties filed their submissions in accordance with the Arbitrator's direction (as recorded above at para. 26) on 24 October 2022. Each side was then afforded an opportunity to comment on the submissions of the other, and the Parties filed such comments on 27 October 2022.
28. On 31 October 2022, the Parties were invited to set out (by no later than 7 November 2022) how much of the applicable maximum contribution to costs should be awarded to them and why. The Parties were also invited to include a detailed account of their costs, including any supporting documentation in relation thereto. Finally, the Parties were also notified that the exchange of submissions was closed in accordance with Article 12.1 of the BAT Rules. The Parties filed their costs submissions on 7 November 2022.
29. On 8 November 2022, the BAT adjusted the Advance on Costs and directed the Parties to make further payments (as set out just below). Further, the BAT informed the Parties that the Vice-President of the BAT had decided, in accordance with Article 16.3(b) of the BAT Rules, that an award with reasons was to be rendered by the Arbitrator. The aforementioned further payments were as follows (EUR 1,000 was paid by Agency on 16 November 2022 and EUR 1,000 was paid by Ivanov on 18 November 2022):

*“Claimant (B.I.G. Management) EUR 1,000.00  
Respondent 1 (Mr. Dimitar Ivanov) EUR 500.00  
Respondent 2 (Mr. Nikola Vasilevski) EUR 500.00”*

30. The Parties were given an opportunity to update their claims for costs and they did so on 29 November 2022.

#### **4. The Positions of the Parties**

##### **4.1 Agency's Position**

31. While Agency's position, particularly insofar as jurisdiction is concerned is recorded in the quotations set out in the procedural history above, the Arbitrator now sets out a short description of its positions. In short, however, Agency says that both Players signed

contracts, of two years' duration, with specific "windows" for termination, and each containing BAT clauses. The person who actually met the Players (and their respective fathers, as they were both minors at the time of signature) was a Mr. Trifunovski. Mr. Trifunovski was Agency's "man on the ground" and, in essence, was the person who presented potential clients with the contracts on behalf of Agency. The procedural history above contains multiple references to Mr. Trifunovski which give a fuller understanding of his role, particularly as contained within the quotations from the Arbitrator's detailed communications with the Parties. Apart from jurisdiction, Agency's case is very simple, namely, Players did not avail themselves of the "window" for lawful termination and now owe Agency certain fees for contracts entered into after they had parted company.

#### **4.2 Players' Position**

32. Players' position, insofar as jurisdiction is concerned is quite simple: while they indeed signed contracts with Agency, the text of the contracts they actually signed did not have BAT clauses. Their position in that regard is steadfastly maintained throughout this arbitration. They also say that the contracts they actually signed contained very liberal and wide termination clauses of which they availed themselves. Thus, they owe Agency nothing.

#### **5. The jurisdiction of the BAT**

33. This arbitration presents a novel (in the Arbitrator's experience of over 13 years conducting FAT/BAT arbitrations) jurisdictional issue. Usually jurisdictional issues in BAT might involve what might be termed classical disputes as to whether a party ever entered into an arbitration agreement or rows about the scope of such a clause. The present case is completely different, namely, there is no dispute between the Parties but that Players each signed a contract. While Players say that they signed with "*George Patapatiou, B.I.G. director of N. Macedonia*" and not with Agency, that is not of immediate concern for the novel jurisdictional issue in play in this arbitration. The issue at hand is what is the operative text of the contracts as signed by Players, not the fact that they signed contracts.

34. Specifically, as can be seen from the evolution of the procedural orders and directions set out earlier in this Award, the Arbitrator considers that there is no dispute between the Parties but that Players each signed a page, namely the signature page, of a representation agreement. The signature pages presented by both sides in this arbitration are, in substance, identical and Players themselves each make clear that they both appended their signatures to such pages.
35. In passing the Arbitrator notes that each side has been making allegations of forgery and appears to have made complaints to local law enforcement authorities. Suggestions were also made about graphology expertise being deployed in this arbitration. The Arbitrator considers these allegations, and the notion of retaining a graphology expert, to be needless diversions of no forensic value. The Parties do not dispute that Players signed contracts so there is no conceivable benefit, which should be reasonably apparent to any counsel properly considering matters of proof, to expensively investigate a matter of common ground. It is, of course, a matter for local law enforcement agencies to determine whether any of forgery complaints made to them are an appropriate use of their resources.
36. The key point is this: each side has presented and relied on pages which precede the signature page (*i.e.* the pages which record the contractual terms) and which are not the same. Agency presents such pages as including a BAT clause and restrictions on early termination. Players present such pages with no reference to BAT at all, and a much less restrictive termination regime. This requires the Arbitrator to make a binary choice, either Agency is correct and the pages preceding the signature pages contain BAT clauses, or Players are correct and such pages do not contain BAT clauses.
37. It is also apparent from the record of this arbitration that Players did not initial or otherwise mark the “preceding pages” at the time of their respective signatures. They each only signed or made any marks on the signature page. This simple fact emphasises the obvious point that graphology and criminal complaints about forgery are both pointless and evidentially hollow in the context of this arbitration. All such allegations and the fact of such local criminal complaints are utterly irrelevant to the Arbitrator’s task at hand.

38. Having put the jurisdictional issue into context, the Arbitrator must now analyse and decide upon the issue.
39. The role of Mr. Trifunovski is central. As already noted above, at the time of Players' signatures he was Agency's "man on the ground" and was tasked with getting new clients to sign up for its services. There appears to be no dispute as to that fact. He was not a representative, in any way, of Players who had their respective fathers with them at the time of signature (as they were then minors). Thus, it must logically follow that Agency cannot ascribe or attribute to Players that which Mr. Trifunovski communicated back to Agency as he was not their representative. It is the probity of that which Mr. Trifunovski communicated to Agency which must be measured insofar as it can persuade the Arbitrator that Players signed contracts containing BAT clauses.
40. It is common ground that Mr. Trifunovski presented each of the Players (and their respective fathers) with the contract to sign, which they then did. No-one else from Agency was present at that moment. Those persons, and only those persons, are the direct witnesses with first-hand knowledge of that which was on the printed pages. If this was Agency's *modus operandi*, then that was a matter for it. It bears noting that each of these persons (*i.e.* Mr. Trifunovski and the Players) are adamant that the printed pages signed on those two occasions did not contain a BAT clause.
41. It is common ground between Agency and Mr. Trifunovski, following the Arbitrator's enquiries, that the latter communicated with the former via WhatsApp and that is how signed contracts were sent back to "HQ". The Arbitrator's understanding is that Mr. Trifunovski did not have the authority to sign contracts on behalf of Agency (*i.e.* to bind Agency there and then with his signature), rather his task was to get signatures of players on representation contracts which were then sent by him to Agency for Mr. Patapatiou's signature.
42. The Arbitrator, as noted earlier in this Award, requested of Mr. Trifunovski that he provide his communications with Agency at the relevant time but his answer was that he no

longer had access to the WhatsApp messages due to his changing mobile devices. That position does seem somewhat curious to the Arbitrator as it is a matter of basic knowledge that the mere changing of a mobile device does not inevitably mean that all prior WhatsApp messages vanish. However, Mr. Trifunovski's is not a party to this arbitration and he stated what he stated, so the Arbitrator will put it alongside all the other factors into the evidential mix giving it such weight and credibility as may, in the overall evidential mix, be appropriate.

43. The Arbitrator did receive WhatsApp group chat messages from both Mr. Simonovski and Mr. Patapatiou (as recorded above) who are on the Agency "side" of the stream of messages with Mr. Trifunovski.
44. Insofar as the messages which came from Mr. Simonovski's device are concerned, there appears to be communications from Mr. Trifunovski which enclose PDFs of the signed contracts bearing Players' signatures. Those PDFs are consistent with the contracts as presented by Agency, namely, with BAT clauses. That gave credence to Agency's position as that which was received from Mr. Trifunovski and that the applicable contractual terms were as argued for by Agency. However, the fact that Mr. Trifunovski sent documents with BAT clauses within their text to Agency is not proof that those were the documents actually signed by Players. The signature pages are the same, of which there is no dispute, but whether the preceding pages were those as actually presented to Players by Mr. Trifunovski is not established conclusively or persuasively by the messages extracted from Mr. Simonovski's device.
45. Moreover, Agency's position was clouded, considerably, by the fact that the WhatsApp messages received from Mr. Patapatiou were completely silent on that which was received from Mr. Trifunovski concerning Players' signed contracts. The trail of messages stops on 30 June and commences again on 2 August. It is scarcely credible that the very same group chat of WhatsApp messages which came from Mr. Simonovski and from Mr. Patapatiou could have such a gaping hole in the middle of the latter's record of the conversations. The Arbitrator also notes that when given the opportunity to comment on the content of the WhatsApp messages, the Claimant presented no

explanation as to this gaping hole in the messages received from Mr. Patapatiou, despite this issue having been clearly flagged in the Procedural Order of 17 October 2022.

46. The Arbitrator must, therefore, approach the probity and reliability of the two sets of WhatsApp messages with considerable caution when considering the outcome of the jurisdictional issue. This is discussed further below particularly when considering the suggestion of further IT investigations.
47. The next evidential factor to take into account is the stated position of Mr. Trifunovski, who by now has parted company from Agency, that the documents he prepared and presented to Players for signature contained the terms as argued for by them in this arbitration, *i.e.* without a BAT clause. It must, of course, be remembered that Mr. Trifunovski was at that time representing Agency and not Players, who were minors when signing. However, this must be counterbalanced by the scenario which appears to emerge from an overall appreciation of the evidence that Mr. Trifunovski did send something, at the very least, to Agency (even if there is a gaping hole in the WhatsApp messages of Mr. Patapatiou) which indicated BAT arbitration as agreed.
48. Finally, Players themselves state categorically that the documents they signed contained the terms which they argue for, and not the terms as argued for by Agency.
49. The aforementioned set of evidential circumstances has been carefully considered by the Arbitrator over a considerable period of time since the closing of the proceedings. The conclusion he has come to is that Agency has not proven that the preceding pages to the signature page as signed by each Player contain a BAT clause. The reasons for this outcome are as follows.
50. Mr. Trifunovski was Agency's "man on the ground" and he, in answer to the formal questions posed by the Arbitrator, has stated that the contractual terms he presented to Players were as per their position in this arbitration, namely, no BAT clause was present. Players' position, stated trenchantly in this arbitration, is consistent with Mr. Trifunovski. Agency had no-one else present on its behalf at the moment of Players' signatures and



it cannot point to any precisely contemporaneous (*i.e.* at the very moment of signature) evidence to gainsay the absence of BAT clauses on the printed sheets of paper presented to Players and their respective fathers. It is conceptually difficult, if not impossible for Agency to disavow the actions of its “man on the ground” and then tether third party minors absent compelling proof.

51. The best argument which Agency can mount is a circumstantial one, namely, that shortly after signature Mr. Trifunovski sent PDFs to it which indicate contractual terms including BAT clauses. However, as Mr. Trifunovski was not acting in any way as an agent or representative of Players at that moment, they cannot be taken to be bound by whatever it was he sent to Agency. Players were strangers to whatever it was passed between Mr. Trifunovski and Agency.
  
52. Agency’s circumstantial case is, however, undermined by the somewhat surreal disparity in the WhatsApp messages as between those which came from Mr. Simonovski and those which came from Mr. Patapatiou. Of course, the matter is not helped by Mr. Trifunovski’s position that his trail of messages is no longer available. The Arbitrator cannot, therefore, come to a definitive conclusion that Mr. Trifunovski did actually send such PDFs as there is a distinct question mark over the probity of the WhatsApp exchanges. Examining these exchanges via an expert of some kind would, in the Arbitrator’s view, not lead to anything of assistance, particularly given the obvious and gaping temporal hole in the trail of messages extracted from Mr. Patapatiou’s device. While Agency has sought to persuade the Arbitrator that the analysis of the “Expert Report” which accompanied its Reply should prompt further investigations, this is unavailing. In the first instance, there is a question of proportion: investigating with independent IT expertise the trail of WhatsApp correspondence would likely involve significant sums of money and time (bearing in mind also the claims being made) to a highly uncertain end. This is not an efficient use of resources and irreconcilable with the express philosophy of the BAT Rules to provide a simple, quick and inexpensive means to resolve these disputes. Further, even if such IT expertise was deployed, it would necessarily be confined to looking at the messages of Mr. Simonovski and that would have to be evidentially balanced against the complete absence of messages within

Mr. Patapatiou's records during the material time. Given that Agency made no effort, whatsoever, to even refer to or explain this surreal disparity in the two sets of WhatsApp messages puts the whole matter into evidential doubt insofar as the persuasiveness of Agency's case on jurisdiction is concerned.

53. Even if the Arbitrator was prepared to accept conclusively that Mr. Trifunovski sent Agency PDFs which contained BAT clauses, at the very best that could only give rise to matters as between Agency and its "man on the ground" at that time. That, in and of itself, does not prove which terms were printed on the sheets of paper which he presented to Players. If Mr. Trifunovski sent something to Agency which was different to that signed by Players, then that is something which is of no concern to the Sole Arbitrator. Rather, it is a matter between Agency and Mr. Trifunovski and any such row is not the subject of a BAT clause. One must always recall that Mr. Trifunovski was not acting as Players' agent or representative so whatever it was by way of documents he actually sent to Agency does not prove (given the entire circumstances discussed already above) that those documents were those actually signed by Players.
54. For the avoidance of any doubt, the Arbitrator has carefully balanced and weighed the credibility of all of the arguments put before him by the Parties, but also has necessarily considered the credibility of the person from whom assistance was sought during the course of the arbitration, namely, Mr. Trifunovski. While not conclusive for the overall assessment of the arguments and evidence, the Arbitrator does consider there to be frailties and inherent unreliability arising from: (a) Mr. Trifunovski's apparent sending to Mr. Simonovski by WhatsApp of documents indicating that Players agreed to BAT arbitration, yet then, by the time of this arbitration (and after his parting company with Agency, and is now, apparently, a competitor and represents Players) he posits something quite different; (b) Mr. Trifunovski's apparent inability to recover WhatsApp messages; (c) Mr. Patapatiou's somewhat surreal and gaping hole in his WhatsApp message trail which, even when made obvious in course of this arbitration, no attempt was made to try explain away; (d) Agency's present evidential and forensic necessity of reliance, in order to succeed on jurisdiction, on that which it contemporaneously received from its "man on the ground" (Mr. Trifunovski) in order to demonstrate that Players

actually agreed to BAT arbitration. Agency cannot impute to Players, as of the moment of signature whatever it was Mr. Trifunovski did vis-à-vis his principals in Agency. Anything which happened subsequent to Mr. Trifunovski's departure from Agency cannot be held to bind Players at the material point in time insofar as consent to BAT arbitration is concerned; and (e) collectively, the Arbitrator's impression is that conclusive reliance on either Agency's position or Mr. Trifunovski's present (or indeed what might be a past) position would be unsafe insofar as the narrow question is concerned of what was it the Players actually agreed when signing. There is a question, for the Arbitrator, of balancing and weighing matters of proof when it comes to proof by Agency of the fundamental issue, to which the Arbitrator now turns.

55. Notwithstanding the thicket of allegations and counter-allegations, the fundamental issue is whether it has been established by Agency that Players bound themselves to BAT arbitration (and thereby excluded their usual right to be sued before national courts of competent jurisdiction). Agency has not been able to persuade the Arbitrator that, at the moment of their signatures, the preceding pages to Players' signature pages contained text which included a BAT clause. This conclusion is made taking into due account all of the circumstances and weighing each carefully together. This is an evidential decision which is the Arbitrator's to make based on whether he has been persuaded that Players committed themselves in writing to BAT arbitration. No one particular aspect of the cumulative evidence and argument is compelling or determinative, and this is ultimately an issue for the Arbitrator, and the Arbitrator alone, to assess in the round. Recalling the Arbitrator's discussion above at para. 54 one asks the question as to whether it is more likely than not (which would put the standard of proof at its most indulgent to Agency) that Players actually signed documents containing a BAT clause. Even if it were the case that it was shown to be equally likely that Players signed contracts with a BAT clause or signed contracts without such a clause, such an equality would necessarily, in the Arbitrator's sole right to assess the evidence, compel the conclusion to deny jurisdiction. However, Agency's case has not risen to demonstrating even such an equally likely outcome.
56. Thus, the Arbitrator's finding, which is final as per Article 1.3 of the BAT Rules, is that

Players did not agree to BAT arbitration when signing their contracts with Agency.

57. For the above reasons, the Arbitrator declines jurisdiction to adjudicate Agency's claim.

## **6. Costs**

58. 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). [...]"*

59. On 5 January 2023, the BAT Vice-President determined the arbitration costs in the present matter to be EUR 11,000.00. An amount of EUR 3,000.00 was contributed to the arbitration costs by the BAT Fund, in accordance with Article 18.2 of the BAT Rules.

60. 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."*

61. Considering that Players prevailed in this arbitration, it is consistent with the provisions of the BAT Rules that the fees and costs of the arbitration be borne by Agency alone. Ivanov paid EUR 1,000.00 towards the Advance on Costs and there is no reason why he should not be compensated by Agency for that amount. Thus, Agency shall pay EUR 1,000.00 to Ivanov.

62. 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.”*

63. 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.
64. Players claim legal fees in the amount of EUR 1,000.00.
65. 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, and the specific circumstances of this case, the Arbitrator holds that EUR 1,000.00 represents a fair and equitable contribution by Agency to Players in this regard.
66. In summary, therefore, the Arbitrator decides that in application of Articles 17.3 and 17.4 of the BAT Rules:
  - (i) Agency shall pay EUR 1,000.00 to Ivanov in respect of the Costs of Arbitration; and
  - (ii) Agency shall pay Players EUR 1,000.00 representing a contribution by it to their legal fees and other expenses.

## **7. AWARD**

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

- 1. BAT jurisdiction is declined over the claims made by B.I.G. Management against Mr. Dimitar Ivanov and Mr. Nikola Vasilevski.**
- 2. B.I.G. Management is ordered to pay Mr. Dimitar Ivanov EUR 1,000.00 as reimbursement for his arbitration costs.**
- 3. B.I.G. Management is ordered to pay Mr. Dimitar Ivanov and Mr. Nikola Vasilevski EUR 1,000.00 by way of contribution to their legal fees and expenses.**

Geneva, seat of the arbitration, 17 January 2023

Klaus Reichert  
(Arbitrator)