

## **ARBITRAL AWARD**

**(BAT 0830/16 & 0853/16)**

by the

### **BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Stephan Netzle**

in the arbitration proceedings between

**Mr. Bambale Mbulatale Emmanuel Osby**

**Mr. Evaldas Rimkus**

**- Claimant 1 -**

**- Claimant 2 -**

both represented by Mr. Nilo Effori, attorney at law,  
421a Finchley Road, London, NW3 6HJ, United Kindom

vs.

**Afyon Belediye Spor Kulübü**

Hoca Ahmet Yesisleri Mah.Yeşirmak Cad. Eski (Et Balık Kurumu),  
Afyon Belediyesi Tesisleri No: 3-4 PK: 303030, Afyonkarahisar, Turkey

**- Respondent -**

represented by Mr. Eyüp Selman Yavuz, Basketball Branch Manager

## **1. The Parties**

### **1.1. The Claimants**

1. Mr. Bambale Mbulatale Emmanuel Osby (hereinafter the “Player”) is a professional basketball player of U.S. nationality.
2. Mr. Evaldas Rimkus (hereinafter the “Agent”) is a FIBA-certified agent of Lithuanian nationality.

### **1.2. The Respondent**

3. Afyon Belediye Spor Kulübü (hereinafter the “Club”) is a professional basketball club located in Afyonkarahisar, Turkey.

## **2. The Arbitrator**

4. On 21 April 2016, the President of the Basketball Arbitral Tribunal (hereinafter the “BAT”), Prof. Dr. Richard H. McLaren, appointed Dr. Stephan Netzle as arbitrator (hereinafter the “Arbitrator”) in the case BAT 0830/16 (Player vs. Club) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). On 24 June 2016 the Arbitrator was also appointed in case BAT 0853/16 (Agent vs. Club). Neither of the Parties has raised any objections to the appointments of the Arbitrator or to his declarations of independence.

## **3. Facts and Proceedings**

### **3.1. Background Facts**

5. On 6 November 2015, the Player and the Club entered into an employment agreement (hereinafter “the Player Contract”) for the remaining season (2015-2016). The salary of the Player was agreed at an amount of USD 60,000.00 net, payable in 6 monthly in-

stalments of USD 10,000.00, due on the 25<sup>th</sup> day of each month, starting on 25 December 2015. An additional amount of USD 6,000 was to be paid to the Player “*after passing the physical tests*” and another amount of USD 6,000 on 30 November 2015 as a salary for that month. These sums amount to a total salary amount of USD 72,000.00. The Player was promised certain amenities, notably “*one round-trip economic class airline Ticket, between the Player’s Residence in the USA and Turkey*” and health insurance coverage.

6. The Player Contract, which was also signed by the Agent, provided for an Agent Fee of USD 7,200.00 payable until 1 December 2015.
7. On 24 November 2015, the Player suffered an injury during a match. On 30 November 2015, after the pains had increased, the Player went to hospital for [...].
8. During December 2015, the Player had several appointments with various doctors, including [...]. His health condition worsened but the doctors did not see a need for surgery. The Player performed individual training sessions with the coach but he could not train with the team.
9. By letter of 24 December 2015, the Club informed the Player by email that it had decided to terminate the Player Contract mainly because of his misconduct at the workouts and the team’s matches, e.g. by not wearing the Clubs sportswear during training, his repeated delays and his provocative use of the mobile phone which distracted the other team members. Since that date, the Player did not participate in any training or match with the Club.
10. By letter dated 18 January 2016, the Player terminated the Player Contract because the Club had not paid his salary since more than thirty days.
11. The Agent claimed payment of his Agent Fee related to the transfer and contracting of the Player in the amount of USD 7,200. On 27 July 2016, the Club transferred this amount to the Player and the Claimants’ counsel confirmed that the Agent Fee was no longer due.

12. The Parties are in dispute on whether the Player Contract was legitimately terminated and whether the Player and the Agent are entitled to any compensation.

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

13. On 14 April 2016, the Player filed a Request for Arbitration in accordance with the BAT Rules.

14. The non-reimbursable handling fee of EUR 2,000.00 had been received in the BAT bank account on 1 April 2016.

15. By Procedural Order of 25 April 2016, the BAT Secretariat confirmed receipt of the Player's Request for Arbitration and informed the Parties about the appointment of the Arbitrator. Furthermore, a time limit was fixed for the Club to file its Answer in accordance with Article 11.2 of the BAT Rules by no later than 23 May 2016. The BAT Secretariat also requested that the Parties pay the following amounts as Advance on Costs by no later than 9 May 2016:

*"Claimant (Mr Bambale Mbulatake Osby) EUR 6.500.00*

*Respondent (Afyon Belediye Spor Kulübü) EUR 6,500.00"*

16. The Player paid his share of the Advance on Costs (i.e. EUR 6,421.55) on 10 May 2016.

17. On 22 June 2016, the Agent filed a Request for Arbitration in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 1,500.00 had been received in the BAT bank account on 21 June 2016. In his Request, the Agent asked for consolidation of his case BAT 0830/16 with the Player's case BAT 0853/16. The Club was invited to comment on the consolidation request and did not object thereto.

18. On 5 July 2016, the Club provided its Answer to the Player's Request for Arbitration.

19. By Procedural Order of 7 July 2016, the BAT Secretariat confirmed receipt of the Agent's Request for Arbitration, of the appointment of the Arbitrator and of the decision by the Arbitrator to consolidate the proceedings under the number BAT 0830/16 & 853/16. Furthermore, a time limit was fixed for the Club to file its Answer to the consolidated claim in accordance with Article 11.2 of the BAT Rules by no later than 18 July 2016. The BAT Secretariat also requested that the Parties pay the following amounts as Advance on Costs by no later than 9 May 2016:

*"Claimant (Mr Bambale Mbulatake Osby) EUR 6.500.00 (received)*  
*Respondent (Afyon Belediye Spor Kulübü) EUR 6,500.00"*

20. By Procedural Order of 5 August 2016, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs and the Club's Answer to the Player's Request for Arbitration. It requested the Club to submit its comments also to the claim of the Agent and to provide English translations of the documents submitted in Turkish language by no later than 19 August 2016.
21. On 15 September 2016, after reviewing the documents and noting the absence of the Club's Answer to the Agent's claim, the Arbitrator declared the exchange of documents complete. In addition, he requested the Parties to submit detailed statements of their respective accounts of costs by 22 September 2016. The accounts of costs of both parties were filed on 22 September 2016 but were not commented upon further.
22. On 26 October 2016, the Arbitrator asked the Parties whether the Agent Fee had been paid meanwhile. On 27 October 2016, the Claimants' counsel confirmed receipt of the Agent Fee and on 31 October 2016, the Respondent submitted a copy of the bank statement which indicated the payment of USD 7,200 to the Player.

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

##### **4.1. The Claimants' Positions**

23. The Claimants submit the following in substance:

- a) On 18 January 2016, the Player terminated the Player Contract because the Club had failed to pay his salary by more than 30 days. Such a delay entitled him to terminate the Player Contract based on Article XV c).
- b) The difficulties between the Player and the Club began on 24 November 2015, when the Player suffered from an injury during a match. He underwent several medical examinations but continued exercising. The pain worsened. In particular, [...]. No surgical intervention was recommended though.
- c) The Player resumed individual training but that only worsened his medical condition. By email of 24 December 2015, the Club expressed its wish to terminate the Player Contract because it did not want the Player being part of the team anymore. The Club was however not entitled to terminate the Player Contract because of the Player's injury.
- d) The Player underwent further medical examinations. On or around 11 January 2016, when he returned from another medical examination, his belongings had been removed from his hotel room. The Player booked into another hotel and stayed there for another three nights before he left to Athens and eventually returned to the U.S.
- e) The Club has failed to pay the Player's salaries. It has not provided the accommodation that was promised in the Player Contract by removing the Player from the Hotel without his consent. It also failed to pay the costs of certain medical examinations and other related costs. In addition, the Club did not provide the Player with the Club's internal rules to be read, signed and agreed upon.
- f) Finally, the Club also failed to settle the agreed Agent Fee. The Agent Fee has however been paid meanwhile.

#### 4.2. The Claimants' Request for Relief

24. The Player's Request for Arbitration of 14 April 2016 contains the following Request for Relief:

*"The Player respectfully requests the BAT makes the following orders:*

- a) that the Club's non-payment of salaries was unlawful and in breach of the Contract;*
- b) that the Player was entitled to terminate the contract;*
- c) that the Club must pay the Player his fully guaranteed salary of USD 66,000.00;.*
- d) that the Club must pay the Player all his medical costs and other costs related to the termination of the contract in the amount of USD 2,118.85;*
- e) that the Club must pay the Player interest on the above sum;*
- f) that the Player are entitled to his legal and other costs in bringing these proceedings, details of which shall be provided to the BAT upon request.*

25. The Agent's Request for Arbitration of 22 June 2016 contains the following Request for Relief:

*"The Agent respectfully requests the BAT makes the following orders:*

- a) that the present claim will be joint to the proceedings BAT;*
- b) that the Club must pay the Agent his commission of USD 7,200;*
- c) that the Club must pay the Player the interest on the above sum;*
- d) that the Player are entitled to his legal and other costs in bringing these proceedings, details of which shall be provided to the BAT upon request.*

#### 4.3. The Respondent's Position

26. With regard to the merits of the claim, the Club submits the following:

- a) The termination of the contract on 24 December 2015 was not based on the injury suffered by the Player but on his undisciplined behaviour, such as lack of punctuality, abusive use of his mobile phone during the training sessions, categorical refusal to wear the Club's sportswear and lack of motivation to participate in team training. The Player Contract was therefore terminated in compliance with Article XI.

- b) Since the Club terminated the Player Contract already on 24 December 2015, it was impossible for the Player to terminate that contract on 18 January 2016 which did no longer exist.
- c) The Club cannot place any trust in the Player anymore and considers any kind of collaboration to be impossible.
- d) The Club arranged for the removal of the Player's belongings from the hotel because the Player had left the city and the Club felt responsible towards the hotel manager to vacate the room.
- e) Although the Club has offered the Player the possibility to exercise with an athletic coach during his recovery, the Player left the country between 7 and 13 January 2016. The Player also failed to keep the Club manager informed about his health status. This behaviour led the Club to believe that the Player had accepted the termination of the Contract.

#### **4.4. The Respondent's Request for Relief**

27. The Respondent has not expressed a formal request of relief. The Arbitrator concludes from the Club's written submissions that the Club requests full dismissal of the Player's claim while the Agent's claim has been paid meanwhile and is no longer an issue in this arbitration.

#### **5. Jurisdiction**

28. Pursuant to Article 2.1 and 2.2 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).
29. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement by the Parties.



30. The Arbitrator finds that both dispute referred to him are of a financial nature and are thus arbitral within the meaning of Article 177(1) PILA.
31. The jurisdiction of the BAT over the dispute results from the arbitration clause contained in Article XVIII of the Player Contract which reads as follows:

*“XVIII. ARBITRATION*

*Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The 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 shall be English. The arbitrator shall decide the dispute ex aequo et bono.”*

32. The Player Contract is in writing and thus the formal requirements for an arbitration agreement under Article 178(1) PILA are met. The Arbitrator also considers that there is no indication in the file which could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording “[a]ny unresolved dispute arising from or related to the present contract” in Article IX of the Player Contract covers the present dispute. In addition, neither party objected to the jurisdiction of BAT.
33. The Player Contract has also been signed by the Agent. The arbitration agreement therefore is binding upon all parties to this dispute.
34. For the above reasons, the Arbitrator finds that he has jurisdiction to adjudicate the dispute between the Parties.

**6. Applicable Law – ex aequo et bono**

35. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the Parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the Parties

may authorize the Arbitrators to decide “*en équité*” instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

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

36. Under the heading "Applicable Law", Article 15.1 of the BAT Rules reads as follows:

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

37. In the arbitration agreement in Article XVIII of the Player Contract, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* with the ordinary reference to Swiss law. Consequently, the Arbitrator will decide the issues submitted to him *ex aequo et bono*.

38. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives

*“the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand”.*<sup>1</sup>

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

## **7. Findings**

### **7.1. Agent Fee**

40. Initially, the Agent requested payment of the Agent Fee of USD 7,200. Upon inquiry of the Arbitrator, the Club provided a bank statement which indicated a payment of USD 7,200 to the Player on 27 July 2016. The payment had not been made to the Agent as

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<sup>1</sup> POUURET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

agreed by Article XIV of the Player Contract. However, since the Claimants' counsel explicitly confirmed that the claimed Agent Fee had been received, the Arbitrator understands that the Player accepted the payment on behalf of the Agent. The Club has therefore fulfilled its payment duty towards the Agent and the respective claim does no longer exist.

## **7.2. Payments requested by the Player**

### **7.2.1. Termination of Contract**

41. The parties agree that the Player Contract is no longer effective but they disagree about the reasons and the date of termination. According to the Club, the Player Contract was terminated by notice of 24 December 2015 because of the Player's lack of discipline and bad behaviour. According to the Player, the Player Contract was terminated on 18 January 2016 because of the Club's delay in paying his salaries and further compensations.
42. The Parties rely on different grounds to justify the early and unilateral termination of the Player Contract: While the Club seems to base its termination right on the Player's breach of contract because of his undisciplined behaviour, the Player refers to Article XV c) of the Player Contract (payment delay exceeding 30 days).

### **7.2.2. Termination of the contract by the Club due to the Player's breach?**

43. On 24 December 2015 the Club sent the notice by which it expressed its intention to terminate the Player Contract to the Agent. It lists the reasons why the Club wished to separate from the Player, in particular because of his undisciplined behaviour when he was injured and could not practice but was still obliged to be present at the training sessions and team meetings. For example, he refused to wear the team uniform at the training sessions and constantly used his mobile phone when the team was practicing and also at the team meetings, when the president of the Club was addressing the players.

44. However, it is not clear from the Club's letter of 24 December 2015 whether the Player Contract was considered to be terminated with immediate effect, whether the Club had a later termination date in mind or whether this letter expressed the Club's mere intention to terminate the Player Contract and would then be followed either by negotiations on the terms of an early termination or by a formal notice letter which would address the modalities of termination of the Player Contract. The fact that the Club tried to get in contact with the Player also after 24 December 2015 as demonstrated by the various "Minutes of Proceedings" between 5 and 13 January 2016 indicates that also the Club itself must have been of the opinion that the Player Contract was not terminated by the notice of 24 December 2015.
45. If the notice of 24 December 2015 would still be regarded as termination letter with immediate effect, the question arises whether the reasons mentioned therein justified a unilateral, early termination. The Arbitrator finds that they do not. The Player Contract has been qualified as a "guaranteed no-cut agreement" which means that certain termination grounds such as injury, illness or lack of sporting skills are explicitly excluded and unilateral termination is only allowed under certain circumstances defined in the Player Contract (e.g. payment delay by the Club or serious crime committed by the Player). On the other hand, however, also a severe and incurable breach of contract shall entitle a party to unilaterally terminate the Player Contract. A less severe breach of Contract may exceptionally be considered as a reason for early termination only if the other party has explicitly been warned and given a fair chance to repair the breach.
46. In the present case, the Arbitrator accepts that the Club did not intend to terminate the Player Contract because of the injury but because of the Player's repeated undisciplined behaviour. This is a textbook example of a breach of the Player's contractual duties which would in any event require a warning and an appropriate deadline to demonstrate improvement. No such warning is on record. Considering also the rather unclear language, the Arbitrator therefore finds that the Player Contract was not terminated by the Club's notice of 24 December 2015.

### **7.2.3. Termination of the Player Contract because of unpaid salary?**

47. On the other hand, the Player's letter of 18 January 2016 undoubtedly reflects the Player's intention to terminate the Player Contract and also indicates the reason, namely the unpaid salaries as addressed by Article XV c) of the Player Contract. Accordingly, the Player may

*“void/terminate this agreement in the event that any payment mandated by this Agreement (salaries, bonuses and/or any and all agent fee payments as agreed herein) is past due more than 30 (thirty) full calendar days. In such case, Player and/or agent may then present a written termination notice to the Club, by fax or by email and upon presentation of this notice, Club agrees herein to grant Player his unconditional release and allows him to sign with any club in the world with no restrictions, financial or otherwise, to the Club. Club shall take all necessary steps to issue a Letter of Clearance immediately. Forty Eight (48) hours after such notice has been given, all monies due to Player and the agent during the entire term of this Contract shall become immediately due.”*

48. According to Article V of the Player Contract, the salary for November 2015 was due on 30 November 2015. Until 18 January 2016, no salary had been paid. According to Article XV, the Player was entitled to terminate the Player Contract on or after 30 December 2015, given that no salary had been paid by that date. The Club does not contest that the claimed salary for November 2015 remained unpaid. The Arbitrator therefore considers the termination of the Player Contract by letter of 18 January 2016 to be valid. In other words, the Player Contract was validly terminated by the Player's letter of 18 January 2016.

### **7.2.4. Consequences of the termination of the Player Contract by the Player**

49. The termination of the Player Contract based on Article XV c) entitles the Player to all other payments due under the Player Contract.

#### **7.2.4.1. Outstanding salaries**

50. Firstly, the Player is entitled to his salaries due until the termination date (i.e. 18 January 2016). In addition he is also entitled to all future salaries and all other monies due under the Player Contract ( Article XV c):

*“Forty Eight (48) hours after [the termination notice] has been given, all monies due to Player and the agent during the entire Contract shall become immediately due”.*

51. The November 2015 salary amounts to USD 6,000.00 and the salaries for the months of December 2015 to May 2016 amount to USD 10'000.00 per month, totalling to USD 66,000.00.

#### **7.2.4.2. Travel costs**

52. According to Article X of the Player Contract, the Player is entitled to one economy class round trip airline ticket to his residence in the USA. That does not include the costs of travelling to other destinations or hotel costs. The Arbitrator finds however that the flight costs to the USA should also be covered if the Player left from another European airport than Ankara, including the costs for one continental flight from Ankara to the European airport from which he left to the USA (here: Reykjavik) and the extra baggage charge. On the other hand, traveling to Romania before is not covered by Article X of the Player Contract. Since only the flight costs from Ankara to Athens and from Reykjavik to the USA are indicated, the Arbitrator, deciding ex aequo et bono, finds that the Club shall make a contribution to the Player's travel costs in the rounded up amount of EUR 500.

#### **7.2.4.3. Cost for the Player's friends Airplane Tickets**

53. The Player claims reimbursement of the travel costs of his friend's visit in Afyon because he needed help to carry his luggage. Such costs are not covered by the Player Contract and the Arbitrator rejects this claim.

#### **7.2.4.4. Various medical and related costs**

54. The Player requests reimbursement of the following medical costs:

<i>“Appointment with Dr. Cosay</i>	<i>USD 135.00</i>
<i>2 MRI Exams</i>	<i>USD 480.00</i>
<i>EMG Exam</i>	<i>USD 205.00</i>
<i>Chiropractor</i>	<i>USD 42.00</i>
<i>Appointment with Dr. Zafer</i>	<i>USD 197.53</i>
<i>Night in Izmir</i>	<i>USD 39.73”</i>

55. According to Article IV of the Player Contract, the Club is obliged to provide the Player with

*“a full health insurance policy [...], for the term of his Contract, according to the regulations of the Turkey basketball league”*

56. The Player submits however, that certain examinations had been ordered by the Club and that the Club had agreed to cover the costs related to the medical examinations. There is no evidence of such consent on record but the Club does not contest the Player’s respective submission. The Arbitrator finds therefore that the Player is entitled to reimbursement of the costs for the medical examinations but not for the accommodation costs which leads to a total amount of USD 1,059.33.

#### **7.2.5. Deductions from the compensation due by the Club**

##### **7.2.5.1. Alternative salary earned by the Player**

57. There is no indication that the Player benefited from any alternative income during the remaining term of the Player Contract which would have to be deducted from the compensation due by the Club. He has not been registered with another Club which is not surprising considering his health problems at the time.

#### **7.2.5.2. Costs of a replacement player**

58. The Club claims that because of the Player's leave it had to acquire a replacement player which led to additional costs of USD 33,500 plus agent fees of USD 5,000. The termination of the Player Contract and the Player's "unconditional release" was caused by the Club's delay in payment of the Player's salary and could have been avoided by the Club's compliance with the Player Contract. In addition, when signing a guaranteed, no-cut agreement which excludes dismissal because of injury or illness, the Club always bears the risk that an injured player must be replaced at the Club's costs. Hence, the Arbitrator dismisses the Club's claim for a deduction of the costs of a replacement player.

#### **7.2.5.3. Agent Fee**

59. The Club also requests that the Player should bear the Agent Fee for his own agent. The Arbitrator dismisses this claim as well: Again, the Player was entitled to terminate the Player Contract and to be "unconditionally released" because of the Club's failure to timely pay the monthly salaries. The Player Contract explicitly provides that in such a case, the Club remains obliged to pay the Agent Fee which also means that these costs cannot be recovered from the Player.

#### **7.2.5.4. Adjustment of the compensation because of the Player's misconduct**

60. The Arbitrator understands from the Club's submissions that it does not agree with the financial consequences of the Player's leave. The Arbitrator takes this as an opportunity to review whether the financial consequences of the termination of the Player Contract for the Club are proportionate and fair under the circumstances.

61. The Club's repeated allegations that the Player demonstrated undisciplined behaviour when he was injured have not been disputed by the Player. Undisciplined behaviour is especially unacceptable in team sports, where the team discipline is a component of professional behaviour and success, irrespective of whether that has explicitly been put down in the Club's internal regulations. The Player's argument that he was not served



with such regulations is of no avail. While undisciplined behaviour did not entitle the Club to terminate the Player Contract without any prior warning, it may still justify an adjustment of the financial consequences of the termination of the Player Contract by the Player. It seems that the Club accepted that the Player was injured and incapable to train and play for a while. What was however difficult to accept was the undisciplined behaviour of the Player when he was not working out or playing, especially when he demonstrated his lack of interest in the team's workout and did not pay attention to the Club's president's speech to the team. The Arbitrator finds *ex aequo et bono* that the described behaviour which remained uncontested was indeed disturbing and irritating for the team and that the Player contributed to the Parties' discord which shall be reflected by a deduction of the otherwise due compensation by USD 15,000.

#### 7.2.6. Summary

62. The Club shall compensate the Player as follows:

• Outstanding salary:	USD	66,000.00
• Travel Costs	USD	500.00
• Medical costs	USD	1,059.53
• Reduction <i>ex aequo et bono</i>	USD	- 15,000.00
• <b>Total before interest</b>	<b>USD</b>	<b>52,559.53</b>

#### 7.2.7. Interest

63. The Claimants request default interest at an annual rate of 5% according to Swiss contract law. According to standing BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. This is a generally accepted principle which is embodied in most legal systems. However, it is also generally accepted that the obligee has to request payment of interest from the obligor if not agreed in the underlying agreement in advance or where the contract doesn't make clear that the parties intended that performance take place at or before a precise point in time.

#### **7.2.7.1. Interests on the unpaid Agent Fee**

64. The Agent did not ask for interest in his reminder of 29 January 2016 but only in his Request for Arbitration. The Arbitrator therefore finds that default interest shall be due from the day following the date of the Request for Arbitration until payment of that amount, i.e. from 23 June to 27 July 2016. To the extent default interest is awarded, the Arbitrator, deciding *ex aequo et bono*, follows consistent BAT jurisprudence and considers interest rate at 5% p.a. to be fair and equitable also in the present case.

#### **7.2.7.2. Interest on unpaid Player salaries**

65. Considering the detailed payment schedule in the Player Contract, the Arbitrator finds that default interest shall be due from the day following the agreed payment dates. To the extent default interest is awarded, the Arbitrator, deciding *ex aequo et bono*, follows consistent BAT jurisprudence and considers interest at 5% p.a. to be fair and equitable also in the present case.

66. The Club is therefore liable to pay interest at 5% p.a. for the salaries for November and December 2015 from the day following the respective payment date. All other payments became due after 48 hours upon notification of termination of the Player Contract :

<b>Amounts</b>	<b>Interest due since</b>
November salary (USD 6,000)	1 December 2015
December salary (USD 10,000)	26 December 2015
All salary payments due after the termination of the contract	21 January 2016 (48 hours after notice of termination)

### **8. Costs**

67. Article 17 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule,

shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

68. On 19 December 2016 – considering that pursuant to Article 17.2 of the *BAT Rules* “the BAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator”, and that “[t]he fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the BAT President from time to time”, taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised – the BAT President determined the arbitration costs in the present matter to be EUR 10,250.00. Since Claimants prevailed by approximately 80% of their claims (which includes the payment of the Agent Fee during the arbitration), the Arbitrator holds it fair that 80% of the fees and the costs of this arbitration shall be borne by the Club and 20% by the Claimants (Article 17.3. of the *BAT Rules*).
69. Given that the Advance on Costs of EUR 12,921.55 was paid by the Claimants to an amount of EUR 6,421.55 and by the Respondent to an amount of EUR 6,500.00, in application of Article 17.3 of the *BAT Rules* the Arbitrator decides that the amounts of EUR 2,671.55 will be reimbursed to the Claimants by the BAT. In addition, the Respondent shall pay an amount of EUR 1,700.00 to the Claimants as a (partial) reimbursement of the advance on arbitration costs.
70. The Claimants have submitted an account of costs of EUR 11,400 (plus the non-reimbursable handling fee of EUR 3,500), while the Respondent does not claim legal costs. Considering the amount in dispute, the outcome of this arbitration and Art. 7.4 of the *BAT Rules* which determine the maximum contribution to a party’s reasonable legal fees and other expenses, and in view of the above analysis regarding arbitration costs, the Respondent shall pay EUR 6,500 to the Claimants.

## **9. AWARD**

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

- 1. Afyon Belediye Spor Kulübü is ordered to pay to Mr. Bambale Mbulatale Emmanuel Osby the net amount of USD 52,559.53 plus interest of 5% p.a.**
  - on USD 6,000.00 since 1 December 2015,
  - on USD 10,000.00 since 26 December 2015 and
  - on USD 35,000.00 since 21 January 2016.
- 2. Afyon Belediye Spor Kulübü is ordered to pay to Evaldas Rumkus interest of 5% p.a. on USD 7,200.00 from 23 June 2016 until 27 July 2016.**
- 3. Afyon Belediye Spor Kulübü is ordered to pay jointly to Mr. Bambale Mbulatale Emmanuel Osby and Mr. Evaldas Rumkus the amount of EUR 1,700.00 as a reimbursement of the advance on arbitration costs.**
- 4. Afyon Belediye Spor Kulübü is ordered to pay jointly to Mr. Bambale Mbulatale Emmanuel Osby and Mr. Evaldas Rumkus the amount of EUR 6,500.00 as a contribution to their legal fees and expenses.**
- 5. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 5 January 2017

Stephan Netzle  
(Arbitrator)