BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1854/22)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Amani Khalifa

in the arbitration proceedings between

Mr. Travis Warech

- Claimant -

represented by Mr. Roi Rozen, Mr. Yuval Shadmi, Mr. Mohamed Rizka, Mr. Shay Kadosh, and Mr. Amit Akiva, attorneys at law,
7 Messada Street (B.S.R tower, 14th floor), Bnei-Brak, 5126112, Israel

vs.

Ironi Nahariya Basketball B.C, Israel
Bialik St. 7, Nahariya, 2232411, Israel

- Respondent -

represented by Mr. Joseph Gayer and Mr. Omri Applebaum, attorneys at law,
Vitania Tel-Aviv Tower, 20 HaHarash Street, TLV, 6761310, Israel

1 The Parties

1.1 The Claimant

1. Mr. Travis Warech (hereinafter also referred to as “the Claimant”) is an American/Israeli/German professional basketball player.

1.2 The Respondent

2. Ironi Nahariya Basketball B.C (hereinafter also referred to as “the Respondent”, together with the Claimant, “the Parties”) is a professional basketball club competing in the Israeli Basketball National League (second division) and, at the time of the dispute, in the Israeli premier league (first division).

2 The Arbitrator

3. On 12 October 2022, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal (the "BAT"), appointed Ms. Amani Khalifa 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

3.1 Summary of the Dispute

4. On 19 June 2019, the Claimant and the Respondent entered into an agreement whereby the latter engaged the Claimant for the season 2019-2020 (the "Agreement").

5. Article 2 of the Agreement provides that:

> "*2.1 Once the player has passed the medical examinations and received the international clearance, the player shall be entitled to a fully guaranteed salary of US $ 100,000 net dollars, paid to him in 10 payments by the table below:*

Dates	Payments
Upon passing physical	4,000 USD
September 20, 2019	6,000 USD
October 20, 2019	10,000 USD
November 20, 2019	10,000 USD
December 20, 2019	10,000 USD
January 20, 2020	10,000 USD
February *20*, 2020	10,000 USD
March 20, 2020	10,000 USD
April 20, 2020	10,000 USD
May 20, 2020	10,000 USD
June 20, 2020	10,000 USD

> *The team shall bear the bank monthly fees and costs of salary money wires to player's American bank account.*
>
> *2.3 Bonus payments:*

Club agrees to pay to the player the following bonuses, in addition to all other optional team bonuses paid during the season. All amounts are Net of taxes:

Israeli League bonuses:
If Club reaches playoff $2,000 USD
If Club reaches to the final four playoff game/series $5,000 USD
If Club reaches to the final championship game/series: $7,500 USD
If Club Wins the Championship: $10,000 USD
All bonuses are not accumulated.
State Cup bonuses:
If Club reaches to the state cup final: $2,500 USD
If Club wins the state cup: $5,000 USD
All bonuses are not accumulated.

"

6. Article 3.1 of the Agreement provides:

"All payments according to this agreement are calculated based on the US$ rate which shall be valid on the payment date according to this agreement or on actual date of payment made by the team, the higher sum of which."

7. The Agreement also includes the following term at Article 3.2:

"*3.2 The team and the player agree that any delay of any payment which the team shall owe the player and his agents according to this agreement, for a time period longer than 15 days, shall reward the player and/or agents the full right for a 100$ per / day for the period which shall pass from the set date for the payment according to the agreement and until the actual full payment date, all without influencing any right the player and/or agents have according to the agreement and/or according to any laws. In addition to the above said, in case of any delay of payment by the team, lasting for more than 30 days, all payments still owed by the agreement to the player and agents and up to the contract full worth shall have to immediately be paid by the team, and it is agreed as, that failure by the team to pay all contract worth within 7 more days shall constitute a fundamental breach of contract by the team, rewarding the player and/or agents the right to stop and / or end the agreement immediately, causing all not yet paid money according to the agreement to be immediately paid by the team. If this agreement is terminated because of a fundamental breach by the team, the player will be entitled to receive his immediate letter of clearance and shall be entitled to play anywhere else, either in Israel of anywhere in the world. No deduction or offset for any such new contract will be given for a termination under this*

provision."

8. Article 3 of the Agreement further provides:

> "*In case of a 'work injury according to law, team agrees to continue paying the player's salary, so as not to leave the player without incomes and until the Israeli National Insurance ("bituach leumi") admits the injury and/or illness claim, and begins to pay. The player agrees to help the team and fill every needed document, so as to assist the team to receive every paid brut salary and/or money and or any other benefit (apartment, car etc.) paid to the player by the team. As a result, the player will pay the team any money given to him by the Israeli National Insurance- including any salary –"dmey pgiaa" and/or temporary disability payments, up to the total of all salaries, payments and benefits paid and given to the player by the team starting on his injury and/or malady date.*
>
> ***The Team shall be entitled to deduct any insurance payment (including national insurance payments) made directly to the Player up to the salary payment made by the Team to the Player***." (Emphasis in the original)

9. Article 6 of the Agreement provides:

> "*CAR, APARTMENT, INSURANCE AND EQUIPMENT*
> *The team shall provide the player with a fully furnished apartment in* ***NAHARIYA****, apartment owner allow the player to have a Dog Including 2 bedrooms, living room, kitchen with stove, oven, , dryer, a refrigerator, colored TV set with a valid connection to cables, internet and air condition with heat and cold options, for his sole personal usage (with spouse). The team shall cover a two – month max Nis 800 bill of electricity (player shall pay for any monthly additional payment on top of 400 Nis).*
>
> *The TEAM shall provide the apartment starting from player's arrival (The Player can stay in an hotel for no more than 10 days from the day he arrives to Israel) date and until one week after season ends. The team shall pay rent for the said apartment. THE TEAM shall also pay tax charges, municipal taxes and water fees.*
> *[…]*
>
> *Medical expenses: THE TEAM agrees to provide and pay for all medical care required by the player while in Israel during the agreement season and beginning on the date of his arrival in Israel.*
>
> **The apartment will include a washing machine, dryer, and dishwasher**" (Emphasis in the original)

10. In September 2019, the Claimant joined the pre-season training session. The Claimant thereafter played regularly for the Respondent from the beginning of the season until January 2020.

11. On the Claimant's case, the Respondent stopped covering the payments worth USD 4,699.00 associated with the Claimant's apartment from December 2019 to February 2020. The Respondent made a partial payment of USD 1,939.00 to the Claimant months later.

12. On 27 January 2020, the Claimant was diagnosed with a _____.[1] The Respondent provided for the Claimant's medical needs, by scheduling his appointments, paying his medical bills and taking him to the doctor.[2]

13. During this period, the Respondent continued to pay the Claimant's salary. Simultaneously, the Claimant filed an insurance claim with Israeli National Insurance, and the Respondent filed all the necessary supporting documents.

14. On 13 February 2020, the Respondent qualified for the State Cup Final. The Claimant participated in the Respondent's first three qualification games. However, he could not participate following his _____ on 27 January 2020. In accordance with Article 2.3 of the Agreement, the Claimant states that he was entitled to a net bonus payment of USD

[1] Appendix E, Request for Arbitration.

[2] Exhibit 1, Respondent's Answer to the Request for Arbitration.

2,500.00. However, the Claimant did not receive the payment.

15. On 17 February 2020, the Claimant's agent, Mr. Uri Barnea (the "Agent") sent an email to the Respondent's chairman at the time, Mr. Nissim Alfasi, with the subject title "Travis Property Tax". There was no text in the body of the email.[3]

16. On 26 February 2020, the Claimant returned to play. On 11 March 2020, the Claimant _____. He filed another claim with Israeli National Insurance. The Respondent did not pay the Claimant's further medical expenses, in the amount of USD 1,656.00.

17. The Respondent paid the Claimant the following sums under the Agreement:

20 September 2019	USD 10,000.00
20 October 2019	USD 10,000.00
20 November 2019	USD 10,000.00
20 December 2019	USD 10,000.00
20 January 2020	USD 10,000.00

[3] Appendix C, Claimant's Reply to the Respondent's Answer.

20 February 2020	USD 10,000.00
20 March 2020	USD 2,975.00
Total	USD 62,975.00

18. The Claimant also recovered insurance amounts of NIS 215,924.00 and NIS 89,605.00, i.e., a total of USD 87,294.00 (assuming NIS 3.50 = USD 1.00).[4] The sums were directly received in the Claimant's bank account. The Respondent was not aware of the insurance amounts recovered until much later.

19. On 12 March 2020, all games and practice in Israel were suspended due to the Covid-19 pandemic. On 13 March 2020, the Israeli Basketball Association and the Administration of the Israeli SuperLeague announced that the League and all basketball activities including training were suspended until further notice.

20. On 13 March 2020, the Respondent issued notices of unpaid leave of absence effective on 13 March 2020 to all its players and employees. Accordingly, the Respondent also advised the Claimant that he would be placed on unpaid leave from 13 March 2020 to 31 May 2020.

[4] Exhibit 6, Respondent's Answer to the Request for Arbitration.

21. On 23 March 2020, the Agent exchanged WhatsApp messages with Mr. Alfasi.[5] The Agent states:

> "*I want Travis to leave Israel as soon as possible. I regret the rent of 4500 per month he pays and the 3500 you have to refund him and additional bills.*
> *We have to finish _____ and National Insurance (Bituah Leumi) As soon as possible, Dudu has cancelled appointment for tomorrow because he can't come with him.*
> *Try to hasten the process, thank you*".

22. On 24 March 2020, the Claimant wanted to leave Israel. He requested the Respondent to purchase tickets to the United States of America for him and his wife, which the Respondent provided.[6]

23. On 26 April 2020, the Agent sent an email to Mr. Alfasi.[7] The Agent stated:

> "*In a previous mail I have attached all the references, total invoice for Travis for electricity for the entire period is 3285, water 290, 371 multiplied by 8, 2969 home committee/management fees, 6153 property tax ("arnona"), he has currently been charged for 8 months, hope he will not be charged more.*
>
> *12,697 you have transferred 6237 to him 6460 are left.*
>
> *House rent you have transferred 3500 per month multiplied for 5 months, I assume we will agree for 8 with the apartment owners, at the beginning of the year we agreed on 9, what's left is 3500 for 3 months, 10,500*
>
> *10,500+6460 makes total 16,960*
>
> *Travis has left the country, I want to make a deal with the apartment owner, I will be*

[5] Appendix D, Claimant's Reply to the Respondent's Answer.

[6] Exhibit 3, Respondent's Answer to the Request for Arbitration.

[7] Appendix I, Claimant's Reply to the Respondent's Answer.

happy if you gave the bills a priority even before the salaries"

24. Around mid May 2020, negotiations took place between the Israel Basketball Players Organization and all of the SuperLeague teams. The parties signed a collective agreement according to which 25% would be deducted from their annual salary (the "Collective Agreement").[8] The Claimant maintains that he is not bound by the Collective Agreement.

25. In May 2020, Mr. Alfasi asked the Agent to inform the Claimant that he would be required to return to Israel to finish the season. The Respondent also informed the Agent and all other players that all contracts will be adjusted by an agreement that will apply collectively to all teams and players. The Claimant returned to Israel in May 2020.

26. The Claimant claims that on 20 May 2020, he entered into a new, separate agreement with the Respondent (the "2020 Arrangement"), which was different from the Agreement and the Collective Agreement. In this regard, the Claimant refers to the following WhatsApp communications:

    i. WhatsApp correspondence between the Agent and Mr. Alfasi dated 20 May 2020.[9] Mr. Alfasi stated that the payments for rent and bills related to the previous apartment would be transferred to the Claimant no later than a month after landing in Israel.

[8] Exhibit 4, Respondent's Answer to the Request for Arbitration.

[9] Appendix N, Request for Arbitration.

ii. WhatsApp correspondence between the Claimant and Mr. David ("Dudu") Lamberg dated 13 and 19 May 2020.[10] On 13 May 2020, the Claimant stated to Mr. Lamberg that Mr. Alfasi told the Agent about a pay cut, and he would return to Israel when there was a clear contract on the table. On 19 May 2020, Mr. Lamberg responded that the Respondent is obligated to all its commitments signed in the past. He further stated that if the Claimant decided not to return to Israel, it would be considered a breach of the contract.

27. Following the Claimant's return to Israel, the Respondent made a payment of USD 1,939.00 to the Claimant. No further payments were made by the Respondent.

28. On 8 June 2020, the Agent sent a WhatsApp message to Mr. Alfasi,[11] stating that he has sent him an email regarding the Claimant's rent and bills.

29. On 5 July 2020, the Agent sent a WhatsApp message to Mr. Alfasi,[12] stating that he had promised to refund the Claimant's rent and bills a week after he returned to Israel, which had not been done.

30. On 11 July 2020, the Claimant played the final game of the season for the Respondent.

31. In August 2020, the Claimant signed a new contract to play for Hapoel Be'er Sheva B.C.

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[10] Appendices M and O, Request for Arbitration.

[11] Appendix J, Claimant's Reply to the Respondent's Answer.

[12] Appendix J, Claimant's Reply to the Respondent's Answer.

The Respondent refused to agree to the transfer and the Claimant filed a declaratory arbitration claim for release on 16 September 2020, which was subsequently granted. On 22 September 2020, the Respondent signed the Claimant's release.

32. On 11 September 2020, Mrs. Ofek Avital, the Claimant's landlord, issued a letter.[13] Mrs. Avital acknowledged that she received, from the Claimant, the rent payments for 8 months, i.e., 20 September 2019 to 22 May 2020, including all utility city taxes, electric bills, gas and water and building tax.

33. On 7 June 2021, the Agent sent an email to Mr. Shai Segalovich.[14] The Agent states:

> *"Out of 16,960, Nahariya has transferred 7000, 9960 left, Travis had to add another 3500 to 9960, 13,460 NIS left".*

34. On 5 and 6 October 2021, the Agent and Mr. Zviel Rubin, the Respondent's chairman, exchanged WhatsApp messages.[15] The communication relates the Agent's request for a meeting, to which Mr. Rubin agreed.

35. On 1 and 2 December 2021, the Agent and Mr. Rubin exchanged WhatsApp messages relating to logistics for a meeting regarding the Claimant.[16]

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[13] Appendix V, Claimant's Reply to the Respondent's Answer.

[14] Appendix I, Claimant's Reply to the Respondent's Answer.

[15] Appendix K, Claimant's Reply to the Respondent's Answer.

[16] Appendix L, Claimant's Reply to the Respondent's Answer.

36. Between 25 January and 10 February 2022, the Agent and Mr. Rubin exchanged WhatsApp messages.[17] The Agent states as follows in the relevant excerpts of the communication:

> "*I have sent to your mail a receipt about Clark Rozenberg*
> *Uri Barnea*
> *The Beinleumi Bank, branch 005*"
>
> "*Inform me when can you set (a meeting) this week with your lawyers.*
> *Reminder*
> *Transfer Clark Rosenberb(g)*".

Mr. Rubin responded as follows:

> *"Expecting an answer from a lawyer, will inform when performing a transfer"*

37. Between 21 March and 17 May 2022, the Agent and Mr. Rubin exchanged further WhatsApp messages.[18] The Agent requested him to confirm when the Agent could arrange a meeting with him and the lawyer about the Claimant.

3.2 The Proceedings before the BAT

38. On 29 September 2022, the Claimant filed a Request for Arbitration in accordance with

[17] Appendix M, Claimant's Reply to the Respondent's Answer.

[18] Appendix N, Claimant's Reply to the Respondent's Answer.

the BAT Rules and duly paid the non-reimbursable handling fee of EUR 4,000.00 on 16 September 2022 (EUR 2,985.00) and 27 September 2022 (EUR 1,015.00).

39. By letter dated 12 October 2022, the BAT Secretariat: (a) informed the parties that Ms. Amani Khalifa had been appointed as the Arbitrator in this matter; (b) invited the Respondent to file its Answer to the Request for Arbitration in accordance with Article 11.4 of the BAT Rules by no later than 2 November 2022; and (c) fixed the Advance on Costs to be paid by the Parties as follows:

Claimant (Mr. Travis Warech)	EUR 4,000.00
Respondent (Ironi Nahariya BC)	EUR 4,000.00

40. On 26 October 2022, the Respondent's representatives wrote to the BAT Secretariat and informed that it would not be paying its share of the Advance on Costs. The Respondent requested that the Respondent's time limit for filing its Answer should be re-fixed only after the Claimant paid the full Advance on Costs.

41. By letter dated 26 October 2022, the BAT Secretariat: (a) granted an extension of time for the Respondent to file its Answer on 17 November 2022 (irrespective of the payment of the Advance on Costs); and (b) invited the Claimant to pay the Respondent's share of the Advance on Costs by 9 November 2022.

42. On 15 November 2022, the Respondent submitted its Answer to the Request for Arbitration.

43. By way of letter dated 23 November 2022, the BAT Secretariat: (a) acknowledged receipt of the full Advance on Costs, the Respondent's share having been paid by the Claimant; and (b) granted the Claimant the right to comment on the Answer by 7 December 2022.

44. On 23 November 2022 the Claimant requested an extension of time to file his Reply. By email dated 24 November 2022, the Arbitrator granted an extension of time for the Claimant to file his Reply by 21 December 2022.

45. A request for a further 48-hour extension was sent by the Claimant on 20 December 2022, which was duly granted by the Arbitrator.

46. The Claimant filed his Reply on 23 December 2022. The BAT Secretariat invited the Respondent to file its Rejoinder by 20 January 2023.

47. On 16 January 2023, the Respondent requested for an extension to file the Rejoinder, which was duly granted by the Arbitrator. The BAT Secretariat therefore invited the Respondent the to file its Rejoinder y 6 February 2023.

48. On 31 January 2023, the Respondent submitted its Rejoinder.

49. On 2 February 2023, the BAT Secretariat: (a) acknowledged the receipt of the Respondent's rejoinder; and (b) requested the parties to submit additional Advance on Costs by 13 February 2023, as follows:

Claimant (Mr. Travis Warech)	EUR 1,000.00
Respondent (Ironi Nahariya BC)	EUR 1,000.00

50. On 7 February 2023, the Arbitrator closed the proceedings.

51. On 10 February 2023, the Claimant paid his share of the additional Advance on Costs.

52. On 13 February 2023, the Claimant and the Respondent submitted their respective costs submissions.

53. The Respondent failed to submit his share of the additional Advance on Costs. On 15 February 2023, the BAT Secretariat noted that the Claimant has the right to pay the Respondent's share of the additional Advance on Costs and granted him time until 28 February 2023 for the purpose.

54. The Claimant submitted the Respondent's share of additional Advance on Costs on 28 February 2023.

4 The Positions of the Parties

4.1 The Claimant's Position

55. The Claimant claims USD 48,941.00 under the Agreement and the 2020 Arrangement on the basis that the Respondent has breached its obligation by failing to pay the amounts set out below:

Payment Type	**Amount**	**Legal Basis**
Salary (March 2020)	USD 2,025.00	Pursuant to Article 2 of the Agreement
State Cup Final Bonus	USD 2,500.00	Pursuant to Article 2.3 of the Agreement
Medical Expenses	USD 1,656.00	Pursuant to Article 6 of the

		Agreement.
Pending Accommodation Amenities	USD 2,760.00	Pursuant to Article 6 of the Agreement.
Salaries (April – July 2020)	USD 40,000.00	Pursuant to the 2020 Arrangement[19]
Total	USD 48,941.00	

56. The Claimant also claims USD 28,500.00 in delayed payment fees pursuant to Article 3.2 of the Agreement at a rate of USD 100.00 per day from the 15th day after payment was due until 30 days after payment is due at which point the entire value of the contract becomes payable:

Payment not made	**Date Due**	**Late Payment Trigger Date**	**Late Payment Fee Total**

[19] Request for Arbitration, para 96, p 16.

Unpaid March Salary under the Agreement	20 March 2020	4 April 2020	USD 1,500.00
Unpaid April Salary under the 2020 Arrangement[20]	20 April 2020	5 May 2020	USD 12,000.00[21]
Unpaid May Salary under the 2020 Arrangement[22]	20 May 2020	4 June 2020	
Unpaid June Salary under the 2020 Arrangement[23]	20 June 2020	5 July 2020	
Unpaid July Salary under	30 April 2021	30 May 2021	

[20] Request for Arbitration, para 103, p 17.

[21] The basis for the Claimant's calculation of the delayed payment penalty is unclear.

[22] Request for Arbitration, para 103, p 17.

[23] Request for Arbitration, para 103, p 17.

the 2020 Arrangement[24]			
Penalty due to Unpaid Accommodation Amenities			USD 9,000.00[25]
Penalty due to Unpaid Cup Bonus			USD 3,000.00[26]
Penalty due to Unpaid Medical Expenses			USD 3,000.00[27]
Total			USD 28,500.00

57. Further, the Claimant claims USD 10,000.00 for the emotional distress and loss of reputation caused by the Respondent's breach of its obligations. The Claimant therefore

[24] Request for Arbitration, para 103, p 17.

[25] The basis for the Claimant's calculation of the delayed payment penalty is unclear.

[26] The basis for the Claimant's calculation of the delayed payment penalty is unclear.

[27] The basis for the Claimant's calculation of the delayed payment penalty is unclear.

claims an amount of USD 87,441.00.

58. The Claimant also claims interest from July 2020 being the date the final salary payment was due, stated as USD 8,253.00, taking the total amount to USD 95,694.00. The Claimant has not stated the rate of interest which he claims to be applied to the sums due from the Respondent.

59. The Claimant denies that he received Israeli National Insurance payments while the Respondent paid his salaries and/or other payments it committed to pay to the Claimant. Therefore, the Claimant claims there is no basis on which the Respondent could deny the obligation to make the payments due to him under the Agreement and the 2020 Arrangement.

60. The Claimant argues that the Collective Agreement does not apply to him as he is a naturalized citizen and therefore not part of the Israeli Basketball Players Organization. Accordingly, he is not bound by the Collective Agreement, which he did not agree to. The Claimant instead negotiated a separate agreement (the 2020 Arrangement) with the Respondent after the Collective Agreement was signed. Thus, the Claimant's position is that the Respondent was fully aware that the Collective Agreement does not apply to the Claimant in any way.

61. In this regard, the Claimant relies upon the WhatsApp correspondence between the Agent and Mr. Alfasi dated 20 May 2020[28] and the WhatsApp correspondence between

[28] Appendix N, Request for Arbitration.

the Claimant and Mr. Dudu Lamberg dated 13 and 19 May 2020.[29] The Claimant argues that he noted to Mr. Lamberg that he would return to Israel when there was a relevant and concrete proposal on the table, which Mr. Lamberg understood. Pursuant to this, the Agent and Mr. Alfasi negotiated a new "agreement". The Claimant argues that Mr. Lamberg made a similar commitment to him in the parallel, whereby he stated that the Respondent is "*obligated to all the commitment that* [it] *signed in past and again* [it is] *standing behind it.*"

62. The Claimant maintains that he and the Agent took steps throughout the period from March 2020 until June 2022 to reach a financial settlement with the Respondent. The Claimant was keen to avoid the stress of legal proceedings but his position regarding the outstanding payments was made clear to both Mr. Alfasi and Mr. Rubin both of whom actively negotiated with the Claimant and the Agent since the missed salary payments in March 2020.

63. On 6 September 2020, the Claimant's legal representative sent a letter to the Respondent claiming that the Respondent had breached the Agreement and the 2020 Arrangement and requesting that the Respondent sign the Claimant's transfer forms to allow him to play for Hapoel Be'er Sheva. The Claimant claims that this letter is evidence that he had put the Respondent on notice of the same claims and demands that were made in the Request for Arbitration.

64. In response to the Respondent's argument that the principle of "*Verwirkung*" should be

[29] Appendices M and O, Request for Arbitration.

applied to his claim, the Claimant has provided copies of correspondence as evidence that he has diligently pursued his claim and sought to seek a resolution with the Respondent.[30] The Claimant argues that he attempted to settle the matter of debt arising from unpaid salaries, amenities, bonus and medical expenses with Mr. Alfasi and Mr. Rubin. The Claimant submits that in June 2022, the Claimant and the Agent spoke to Mr. Rubin in person for the last time, after which they concluded that the Respondent was not interested in reaching a settlement.

65. The Claimant has also provided an affidavit from the Agent,[31] in which the Agent states that Mr. Alfasi and Mr. Rubin were aware of the Claimant's claims and that they were negotiating the claims since the beginning until the filing of the Request for Arbitration. The Claimant's Agent also states that he contacted Mr. Alfasi on numerous occasions during the "*Pre-Lockdown, Lockdown and Post-Lockdown periods*" in order to try and seek a resolution regarding the outstanding payments due to the Claimant, and that it was not until June 2022 when the Claimant realised that the Respondent was not likely to agree to a commercial settlement. The Agent further stated that the efforts to exhaust all options before resorting to judicial procedures have put a heavy financial burden on the Claimant and him.

66. In his Request for Arbitration dated 29 September 2022, the Claimant requested the following relief:

> *"95. In light of the above, The Honored Tribunal is hereby requested to determine that*

[30] Appendices I, J, K, L, M and N, Claimant's Reply to the Respondent's Answer.

[31] Appendix O, Claimant's Reply to the Respondent's Answer.

the Respondent materially breached both Agreements.

Unpaid Salaries

96. *Given the terms of the Agreements between the Player and the Respondent, The Honored Tribunal is hereby requested to determine that the Claimant is entitled to the full payment of the salaries until the end of the Agreement (relative March 2020 salary and total April- July 2020 salaries) in the sum of* ***42,025 US Dollars Net.***

Unpaid Cup Bonus

97. *In addition, The Honored Tribunal is hereby requested to determine that the Claimant is entitled to the full bonus for the team qualification to the State Cup Final in the sum of* ***2,500 US Dollars Net.***

Unpaid Medical Expenses

98. *Moreover, The Honored Tribunal is hereby requested to determine that the Claimant is entitled to restitution for medical expenses since the Claimant was forced to pay in the sum of* ***1,656 US Dollars Net.***

Unpaid Accommodation Current Expenses/Amenities

99. *Furthermore, The Honored Tribunal is hereby requested to determine that the Claimant is entitled to restitution for the remaining debt for the Player's current expenses/amenities in the sum of* ***2,760 US Dollars Net.***

Agreed Penalties Due Unpaid Payment (article 3.2 of the Agreement)

Penalty Due Unpaid Salaries

100. *According to the Agreement, in a case of delay of any payment (including salary), the Player shall be rewarded the right for* ***100 US Dollars Net*** *for each day past the 15th day from the set date of the payment.*

101. *In addition, in case of any delay in payment by the Club, lasting for more than 30 days, all payments still owed by the Agreement to the Player up to the contract total worth shall have to be paid by the Club immediately.*

102. *For delaying the Player's relative March 2020, the Player is entitled to the sum of* ***1,500 US Dollars Net****.*

103. *For delaying the Player's April-July 2020 salaries, the Player is entitled to the sum of* ***12,000 US Dollars Net****.*

Penalty Due Unpaid Accommodation Current Expenses/Amenities

104. *For delaying the Player's December 2019-February 2020 current expenses/amenities payments, the Player is entitled to the sum of **9,000 US Dollars Net.***

Penalty Due Unpaid Cup Bonus

105. *For delaying the Player's bonus for the team qualification to the State Cup Final, the Player is entitled to the sum of **3,000 US Dollars Net**.*

Penalty Due Unpaid Medical Expenses

106. *For delaying the Player's restitution for medical expenses, the Player is entitled to the sum of 3000 US Dollars Net.*

Other (Additional) Compensations

107. *To carry out all the social provisions required by the Agreement and the law, including the payments for the Player's pension fund, as required. For the avoidance of any doubt, according to Israeli law, any employee who is an adult is entitled to a pension provision by the employer.*

108. *The Honored Tribunal is hereby requested to determine that the Claimant is entitled to compensation for non-pecuniary damages, including emotional distress and loss of reputation, in the sum of **10,000 US Dollars.***

109. *Without derogating from the above, the Honorable Tribunal is further requested to hold the Respondent responsible for the payment of the Claimant's **legal expenses** (including additional expenses such as translation and transcription) in respect of this procedure.*

110. *The sums, as defined below, in connection with the Agreements and damages, **total the amount of 87,441 US Dollars Net** (plus annual interest from July 2020).*

111. *To Such a total amount ($87,441), interest percent should be added from the date the last payment should have been paid (July 2020). Therefore, The Claimant will claim that the total amount the Respondent should pay (due unpaid payments) is **95,694 US Dollars**, which indicates $87,441 plus $8,253 (interest since July 2020).”*

4.2 Respondent's Position

67. The Respondent submits that it paid Claimant's salaries from September 2019 to February 2020. These salaries were fully paid, on time. In addition, in March 2020, the Claimant received USD 2,975.00 from the Respondent, making the total undisputed amount the Claimant received from the Respondent USD 62,975.00.

68. The Respondent submits that the events giving rise to the dispute, i.e., non-payment of the amounts due to the Claimant starting March 2020 until July 2020, occurred over 2 years before the date of the Request for Arbitration. During this time, the Claimant did not make any relevant demands of the Respondent and remained silent.

69. The Respondent submits that it paid salaries to the Claimant during the period of _____, i.e., January and February 2020. However, the Claimant also received insurance payments for those months. In this regard, the Respondent relies upon the "Summary of Annual Payments – 2020" of the National Insurance Institute dated 26 October 2022.[32] The letter indicates that the Claimant received total payments of NIS 215,924.00 and NIS 89,605.00 towards work _____ payment, respectively (i.e., a total sum of USD 87,294.00, assuming NIS 3.50 = USD 1.00). The letter further indicates that the periods of incapacity covered by the allowance are 28 January 2020 to 10 March 2020 and 12 March 2020 to 11 May 2020.

70. The Respondent submits that no new agreement was signed between the Parties and

[32] Exhibit 6, Respondent's Answer to the Request for Arbitration.

specifically denies that the WhatsApp correspondence comprising the 2020 Arrangement is a new agreement. It submits that the messages exchanged between Mr. Dudu Lamberg and the Claimant did not create a new agreement or supersede the Collective Agreement, which binds all the employees of the Respondent, including the Claimant. The Respondent submits that the WhatsApp communication with Mr. Lamberg did not include any clear or explicit agreement to amend or cancel the Collective Agreement. The Respondent further submits that Mr. Lamberg did not have the role of a CEO or manager of the Respondent, and only authorized representatives of the Respondent can enter into new agreements.

71. The Respondent submits that the Claimant demanded payment of bonus, interests or penalty for late payments for the first time over two years after the end of the season. The Respondent refers to the various WhatsApp communications between the Agent, Mr. Alfasi and Mr. Rubin to support its contention that the Claimant did not make any such demand. It further claims that there is no evidence of any meeting between the Agent/Claimant and Mr. Rubin regarding financial matters.

72. The Respondent argues that sending WhatsApp or email reminders does not satisfy the Claimant's obligation to file his claims in a timely manner. The Respondent submits that the Claimant did not file any evidence showing that he made any claims or demands from the Respondent for his unpaid salaries.

73. The Respondent submits that the Claimant's entire claim should therefore be dismissed on the basis of the principle of *Verwirkung*. The Respondent argues that there are two prerequisites for applying the principle of *Verwirkung*: (i) that the creditor has failed during a significant period of time to exercise his right and (ii) that the debtor had reasonable grounds to rely on the assumption that the creditor would not avail himself of his right or claim in the future.

74. Regarding the first prerequisite, the Respondent relies upon award BAT 0107/10, in which the Arbitrator held in paras. 56-57 that:

> "*The principle of "Verwirkung" requires two prerequisites: (a) that the creditor has failed during a significant period of time to exercise his right and (b) that the debtor had reasonable grounds to rely on the assumption that the creditor would not avail himself of his right or claim in the future. Regarding the "significant period of time", in general a stringent standard has to be applied. In an environment in which contracts are rather short-lived and players move quickly from one club to the other, the period of one year could - in principle - be seen as a limit. Accordingly, a party to the contract that does not avail itself of a right or claim for a period of one year after the end of the contract could be perceived by the other contracting party as having accepted the status quo. In any event, the individual circumstances of each case will have to be taken into account."*

75. The Respondent also relies on award BAT 0480/13, in which the Arbitrator stated in paras. 89-91 as follows:

> *"The Arbitrator finds that with regards to the "significant period of time…The Arbitrator notes that in football-related cases the principle of "Verwirkung" only kicks in "if more than two years have elapsed from the event giving rise to the dispute." The Arbitrator finds this an equitable concept and, thus, deems that – in principle – for the condition of "significant period of time" to be fulfilled a minimum of two years must have elapsed from the occurrences that gave rise to the present dispute until the filing of the Request for Arbitration. The Arbitrator would, however, be prepared to accept a lesser period of time in truly exceptional circumstances, in particular in a case where there was no exchange of correspondence between the claimant(s) and the respondent, i.e., if a respondent is taken by complete ambush when notified of the filing of the Request of Arbitration through the BAT."*

76. The Respondent submits that over two years had elapsed for the Claimant to assert the rights that he was allegedly entitled to. Taking into account the Claimant's complete silence and the amount of time that had passed since the parties' contractual relationship ended, it is easily established that a "*significant period of time*" has passed in the context of the first prerequisite of the *Verwirkung* principle.

77. Regarding the WhatsApp and email reminders issued by the Agent to the Respondent, the Respondent submits that Claimant did not make any demand for salary payments, but only for reimbursement of expenses related to rent and amenities.

78. Regarding the second prerequisite of *Verwirkung* principle, the Respondent relies upon the BAT jurisprudence settled in award BAT 0593/14 at para 47, where it was held that *"if a professional basketball player leaves a club and makes no demands, or no demands even if made have been proven, for a period of two years, it is entirely reasonable for such club to presume that it will not be pursued for any remaining matters associated with that player".* Accordingly, the Respondent had every reason to rely on the logical assumption that it will not be sued by the Claimant and that the Claimant is aware that he is not entitled to anything.

79. Regarding the Claimant's claim for bonus in the amount of USD 2,500.00, the Respondent submits that a player is not entitled to bonus if he does not participate in the game of the achievement. Moreover, the Claimant did not raise the issue during the entire season.

80. While the Respondent was responsible to pay medical expenses, the Claimant never mentioned any such expenses incurred in March 2020 before filing the Request for Arbitration.

81. Regarding insurance claims, the Respondent refers to Article 3 of the Agreement, which provided that the "*team shall be entitled to deduct any insurance payment (including national insurance payments) made directly to the Player up to the salary payments made by the team to the Player*". The Respondent paid the insurance premiums for the Claimant and when the Claimant _____, the Respondent signed all necessary documents and provided all the required information. Accordingly, the Claimant received several payments from the insurance in the total amount of NIS 305,529.00, which is

approximately USD 87,294.00.[33]

82. The Respondent submits that the the insurance payments were intended to substitute for its obligation to pay him a salary (to the extent the obligation exists), as stipulated in Article 3 of the Agreement.

83. According to the Collective Agreement, the annual salary for the 2019/20 season of all the players in each club was reduced by 25%. Accordingly, the Claimant was entitled to receive an annual salary of USD 75,000.00 throughout the contract (instead of USD 100,000.00). The Respondent submits that it already paid the Claimant USD 62,975.00 in salary for the season and since the Claimant received over USD 87,000.00 in insurance payments, it was entitled fully to deduct them from the remaining salary payment of USD 12,025.00, in accordance with Article 3 of the Agreement.

84. Accordingly, the Respondent did not pay the Claimant any additional salary payments. According to the Respondent, the Claimant unlawfully enriched himself by receiving a total of USD 150,269.00 instead of his contractual salary of USD 100,000.00 or the reduced salary of USD 75,000.00.

4.2.1 Respondent's alternative defences

85. Regarding the reimbursement of rent, the Respondent relies on the email from the Agent

[33] Assuming NIS 3.50 = USD 1.00.

to Mr. Alfasi dated 7 June 2021[34] in support of its submission that it already reimbursed the Claimant for 7 months of rent. It also relies on the letter from the Claimant's landlord dated 11 September 2020[35] to support its contention that the Claimant paid only 8 months of rent. It claims that it therefore does not owe the Claimant more than NIS 3,500.00, which must be deducted from the insurance amounts that the Claimant owes the Respondent.

86. Regarding amenities, the Respondent submits that the basis of the Claimant's calculations is unclear, and he has failed to mention the bills that have been reimbursed. Regarding electricity, the Respondent submits that it undertook to cover a two-month maximum bill of NIS 800.00.[36] Moreover, it was only obligated to reimburse the Claimant after receipt of proof of payment. However, the Claimant has failed to provide any evidence that he provided any proof of payment to the Respondent. Further, the electricity bills provided by the Claimant amount to NIS 2,294.00. The Respondent submits that any amounts found to be due must be deducted from the insurance amounts that the Claimant owes the Respondent.

87. Regarding medical expenses in the amount of USD 1,656.00, the Respondent admits its obligation to pay the same. However, the Respondent submits that the Claimant did not make any request for the medical expenses in the two years prior to the filing of the

[34] Appendix P, Claimant's Reply to Respondent's Answer.

[35] Appendix V, Claimant's Reply to Respondent's Answer.

[36] Article 6 of the Agreement.

Request for Arbitration.

88. In its Answer dated 15 November 2022, the Respondent requested the following relief:

> *"113. For the reasons set forth above, the Respondent respectfully requests the Arbitrator to:*
>
> *113.1. To apply the "Verwirkung" doctrine on the Claimant's entire claim resulting in a full dismissal of the Claim before even examining the merits of the matter.*
>
> *113.2. **Alternatively**, to declare that the Respondent did not breach the agreement and does not owe any outstanding amount or compensation to the Claimant, and dismiss the claim in its entirety to the merits of the matter.*
>
> *113.3. **Alternatively to the Alternative**, and in case the Arbitrator shall decide that the Claimant is entitled to any amounts from the Respondent – to declare that all the amounts the Player received from the insurance are deductible from those amounts and fully cover such amounts.*
>
> *113.4. To declare that the Claimant is not entitled to any interests.*
>
> *113.5. **In any event**, to Order the Player to reimburse the Respondent for all legal fees, arbitration fees, and any other expenses that occurred in these proceedings."*

5 The jurisdiction of the BAT

89. 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).

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

91. 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.[37]

92. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under Article 9 of the 2019 Agreement, which reads as follows:

> *"Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitration 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."*

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

94. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).

95. The jurisdiction of BAT over the Player's claim arises from the Agreement. The wording "*[a]ny dispute arising from or related to the present contract […]*" clearly covers the present dispute. In addition, the Respondent has not objected to the jurisdiction of BAT.

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

96. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimant's claim.

6 Discussion

6.1 Applicable Law – ex aequo et bono

97. 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".*

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

> *"15.1 The Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.*
>
> *15.2 If, according to an express and specific agreement of the parties, the Arbitrator is not authorised to decide ex aequo et bono, he/she shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to such rules of law he/she deems appropriate. In both cases, the parties shall establish the contents of such rules of law. If the contents of the applicable rules of law have not been established, Swiss law shall apply instead."*

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

100. The concept of "équité" (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l'arbitrage[38] (Concordat)[39], 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.*"[40]

101. 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".

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

6.2 Findings

103. The Claimant claims USD 87,441.00 in unpaid salary payments, bonus payments and penalties under the Agreement and the 2020 Arrangement, as well as, other expenses, such as medical and accommodation expenses and compensation for emotional distress and loss of reputation. Additionally, the Claimant claims the amount of USD 8,253.00 in

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38 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). .

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

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

interest.

104. The Respondent argues that the principle of *Verwirkung* applies because the Claimant did not raise any claims for a period of two years and therefore the Claimant is barred from recovering any amounts due.

105. The Arbitrator notes that there is extensive BAT case law regarding the principle of *Verwirkung*. In BAT case 0107/10, the Arbitrator held:

> *"The principle of "Verwirkung" requires two prerequisites: (a) that the creditor has failed during a significant period of time to exercise his right and (b) that the debtor had reasonable grounds to rely on the assumption that the creditor would not avail himself of his right or claim in the future. Regarding the "significant period of time", in general a stringent standard has to be applied. In an environment in which contracts are rather short-lived and players move quickly from one club to the other, the period of one year could - in principle - be seen as a limit. Accordingly, a party to the contract that does not avail itself of a right or claim for a period of one year after the end of the contract could be perceived by the other contracting party as having accepted the status quo. In any event, the individual circumstances of each case will have to be taken into account."*

106. The Arbitrator has also found that the summary of BAT jurisprudence in BAT 0593 was particularly helpful as well as awards related to this issue[41]:

> "*These awards have broadly established that the principle of Verwirkung, in the context of BAT arbitration, require there to be a failure by a claimant to assert contractual rights over a significant period of time, and there also being reasonable grounds for a respondent to believe that those rights will not be pursued. There is some divergence as to what constitutes a significant period of time, with between one and two years discussed in the awards.*"

[41] BAT 0674, BAT 0726, BAT 0753, BAT 0777, BAT 0803 and BAT 0806

107. The Israel Premier League season ended when the final game took place on 30 July 2020. According to the Claimant, the latest of his claims in respect of "April – July Salaries" for USD 42,025[42] fell due in July 2020. These proceedings were commenced by the Claimant on 29 September 2022, which is a gap of more than two years. Based on consistent BAT case law upholding the *Verwirkung* principle, because of the Claimant's failure to commence BAT proceedings in the intervening period, his claims have lapsed.

108. The Arbitrator has considered the Claimant's assertion that the Parties entered into a new agreement in May 2020 and concludes that there is no evidence to support a conclusion that any new agreement was reached. The messages referred to by the Claimant regarding the 2020 Arrangement are factual in nature and refer expressly to performance of the Agreement. Therefore, the Arbitrator accepts the Respondent's submission that there was no new contract. It follows that the Claimant's claims arise out of the Agreement and, for the purposes of analysing the Respondent's *Verwirkung* defence, the obligations fell due to be performed on the dates set out in therein. In all cases, even if a new agreement had been reached, unless it altered the time for performance of the Respondent's obligation to pay the relevant salaries, this would not impact the Arbitrator's conclusions on *Verwirkung*.

109. As alluded to above, the Arbitrator is satisfied that both limbs of the '*Verkirwung'* test are satisfied in this case, since the Claimant did not file the Request for Arbitration for the

[42] Request for Arbitration, para 96, p. 16.

more than two years after his claims crystallised.

110. As explained above, the first limb of *Verwirkung* requires a failure by the claimant to exercise rights for "a significant period of time". As correctly argued by the Respondent, a "rule of thumb" has emerged in BAT case law that in the context of international basketball contracts, in many cases, this is a two-year period. More than two years lapsed between the last day of the season 2019-2020 (30 July 2020) and the date the Claimant filed the Request for Arbitration (29 September 2022). The Arbitrator therefore concludes that this limb is satisfied.

111. The second limb requires the Respondent to have reasonable grounds to assume the claimant will not pursue their rights. During the intervening period, the Claimant did not demand any payment for his salary, bonus, medical expenses, or late payment penalties. The WhatsApp correspondence dated 19 May 2020[43] and 20 May 2020[44] relied upon by the Claimant do not support his contentions that he pursued these claims at all. The correspondence merely indicates that the Claimant made some requests for payment in respect of rent and amenities. However, given that the Claimant received more than USD 87,000 from insurance, it was legitimate for the Respondent to assume that the Claimant would not pursue these claims further, having already been amply compensated.

112. The Arbitrator therefore considers the Respondent had reasonable grounds to assume the Claimant would not pursue the claims brought in this arbitration further in all the

[43] Appendices M and O, Request for Arbitration.

[44] Appendix N, Request for Arbitration.

circumstances, that the second limb of *Verwirkung* is satisfied and the Claimant's claims have lapsed.

113. In passing, the Arbitrator notes that it is highly regrettable that the Claimant elected not to disclose the receipt of the payments already made to him by the Israeli National Insurance. This was a material fact given the Respondent's clear right in Article 3.2 of the Agreement to deduct such payments from the Claimant's salary. The Arbitrator considers that the fact that the Claimant received almost 50% more than he bargained for under the agreement is wholly consistent with his failure to pursue a claim against the Respondent for salaries until he commenced these proceedings. In reality, he had already been amply compensated for any loss of income.

7 Costs

114. 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). […]"*

115. On 11 April 2023, the BAT President determined the arbitration costs in the present matter to be EUR 8,900.00

116. 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."*

117. Considering that the Respondent is the prevailing party 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 Claimant alone. Given that the Claimant paid the entire Advance on Costs in the amount of EUR 10,000.00, EUR 1,100.00 will be reimbursed to the Claimant by the BAT.

118. 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."*

119. 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. Based on the total value of the Claimant's claims against the Respondent, which is USD 95,694.00, the maximum contribution to the Respondent's legal fees is EUR 7,500.00.

120. The Respondent requests the Arbitrator to grant the maximum contribution towards its legal fees and expenses applicable to the sum of the dispute which it claims is EUR 10,000.00. The Respondent claims that it has already incurred EUR 14,640.00 in legal fees and would incur additional legal fees in the subsequent months.

121. The Arbitrator notes that the Claimant failed to disclose key facts that were relevant to his claims, in particular, the receipt of compensation from the Israeli National Insurance. Under ethical rules in many jurisdictions, counsel has a duty not to mislead the Arbitrator

in this way. Moreover, the Claimant made unsupported claims that there was a new agreement entered into, which unnecessarily complicated these proceedings. Article 17.3 of the BAT Rules, the Claimant's conduct is relevant to the determination of his liability for the Respondent's legal fees and expenses.

122. 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 a total of EUR 7,500.00 represents a fair and equitable contribution by the Claimant to the Respondent in respect of its attorney's fees.

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

(i) The BAT shall reimburse EUR 1,100.00, being the difference between the costs advanced by the Claimant and the arbitration costs fixed by the BAT President;
(ii) The Claimant shall pay to the Respondent EUR 7,500.00, representing the amount of its legal fees and other expenses.

8 AWARD

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

1. **The claims of Mr. Travis Warech against Ironi Nahariya Basketball B.C are dismissed.**

2. **The costs of the present proceedings shall be borne by Mr. Travis Warech alone.**

3. **Mr. Travis Warech shall pay Ironi Nahariya Basketball B.C an amount of EUR 7,500.00 as reimbursement for its legal fees and expenses.**

4. **Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 26 April 2023

Amani Khalifa
(Arbitrator)