

ARBITRAL AWARD

(BAT 1879/22)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Corey Akmal Manigault

- First Claimant -

Mr. Fenton Pete Mickeal

- Second Claimant -

both represented by Mr. Vassil Dimitrov, attorney at law,

vs.

Erdenet Miners
Mongolia

- Respondent -

1. The Parties

1. Mr. Corey Akmal Manigault (hereinafter referred to as the "Player" or "First Claimant") is a US-American basketball player.
2. Mr. Fenton Pete Mickeal (hereinafter referred to as the "Agent" or "Second Claimant") is the agent of the Player.
3. Erdenet Miners (hereinafter referred to as the "Club" or "Respondent") is a professional basketball club participating in the Mongolian professional basketball league.

2. The Arbitrator

4. On 16 November 2022, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal (hereinafter referred to as the "BAT"), appointed Mr. Stephan Netzle as arbitrator (hereinafter referred to as the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter referred to as the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

5. On 18 and 29 August 2022, respectively, the Player and the Club signed an employment agreement for the 2022/2023 season (hereinafter referred to as the "Employment Contract"). The Agent signed the Employment Contract, too.

6. According to Article 6 Employment Contract, the Club was obliged to pay the Player a salary for the 2022/2023 season in a total of USD 54,000.00.
7. Pursuant to Article 4 Employment Contract, the Club was obliged to pay the Agent a fee of USD 5,400.00 (the "Agent Fee").
8. After the Club had paid the first two instalments in the total amount of USD 6,000.00 to the Player, it terminated the Employment Contract with immediate effect on 14 September 2022 without giving any explanation. The Club did not pay the Agent Fee.
9. The Player claims the outstanding salary of USD 48,000.00 and the Agent claims the entire Agent Fee of USD 5,400.00.

3.2 The Proceedings before the BAT

10. On 24 October 2022, the Player and the Agent filed a Request for Arbitration against the Club in accordance with the BAT Rules (received by the BAT on the same day) and paid the non-reimbursable handling fee of EUR 4,000.00 (received in the BAT bank account on 7 November 2022).
11. On 17 November 2022, the BAT informed the Parties that Mr. Stephan Netzle had been appointed as the Arbitrator, 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 8 December 2022 and fixed the Advance on Costs to be paid by the Parties by 28 November 2022 as follows:

<i>"Claimant 1 (Mr. Corey Akmal Manigault)</i>	<i>EUR 3,500.00</i>
<i>Claimant 2 (Mr. Fenton Pete Mickeal)</i>	<i>EUR 500.00</i>
<i>Respondent (Erdenet Miners)</i>	<i>EUR 4,000.00"</i>

12. On 9 December 2022, the BAT acknowledged receipt of the Claimants' shares of the Advance on Costs, noted that the Respondent failed to submit an Answer to the Request for Arbitration or pay its share of the Advance on Costs and granted the Respondent a final deadline until 16 December 2022 to pay its share of the Advance on Costs and to submit an Answer to the Request for Arbitration.
13. As the BAT was unable to deliver the Procedural Order of 9 December 2022 to the Respondent within the time-limit set therein, on 28 December 2022, the BAT gave the Respondent a final deadline to pay its share of the Advance on Costs and to submit an Answer to the Request for Arbitration by 18 January 2023.
14. By letter dated 20 January 2023, the BAT informed the Parties that the Respondent had failed to file an Answer to the Request for Arbitration and to pay its share of the Advance on Costs. Furthermore, the BAT adjusted the Advance on Costs as follows:

<i>"Claimant 1 (Mr. Corey Akmal Manigault)</i>	<i>EUR 3,000.00</i>
<i>Claimant 2 (Mr. Fenton Pete Mickeal)</i>	<i>EUR 250.00</i>
<i>Respondent (Erdenet Miners)</i>	<i>EUR 3,250.00"</i>
15. In the same Procedural Order, the Claimant was invited to pay the remaining Advance on Costs in the amount of EUR 2,500.00 by 27 January 2023.
16. On 24 January 2023, the Claimant paid the outstanding Advance on Costs.
17. By letter dated 30 January 2023, the BAT invited the Claimants to provide evidence for their attempt to settle the dispute amicably, as provided by the arbitration clause in the Employment Contract, and to inform the BAT whether the Player had signed a new employment contract with another club in the meantime.
18. On the same day, the Claimants submitted the requested information.

19. On 31 January 2023, the BAT invited the Respondent to comment on the Claimant's submission by no later than 14 February 2023.
20. On 15 February 2023, the BAT informed the Parties that the Respondent had failed to submit any comments, that the Arbitrator had declared the exchange of submissions complete and that the final award would be rendered as soon as possible. Finally, the BAT granted the Parties a deadline until 22 February 2023 to provide a detailed account of their costs.
21. On the same day, the Claimants submitted their cost statement. The Respondent failed to submit a detailed account of its costs.
22. On 30 March 2023, the BAT informed the Parties that additional information was required from the Player in order to issue a final award and that the proceedings had to be re-opened for that purpose. Since according to publicly available sources, the Player had entered into an employment relationship with the Mexican club Zonkeys de Tijuana, the Player was invited to provide the BAT with the new employment contract by no later than 6 April 2023.
23. On 31 March 2023, the Player submitted the new employment contract.

4. The Positions of the Parties

4.1 The Claimants' position

24. According to Articles 2 and 6 Employment Contract, the Player is entitled to a yearly salary of USD 54,000.00. As the Club only paid the first two instalments in the amount of USD 6,000.00 and terminated the Employment Contract without just cause and

without providing any explanation, the Player is entitled to the outstanding salary of USD 48,000.00.

25. The Employment Contract is a "guaranteed" contract. Based on BAT jurisprudence, "guaranteed" means that *"the agreed salary payments are in principle due and cannot be reduced by the Club because the player is unable to provide his services because of sickness or injury or because the Player's performance did not meet the Club's expectations or because of lack of success of the Club's team"*.¹
26. According to BAT jurisprudence, a compensation for an unjustified termination is calculated on the basis of all the amounts the claimant would have received if the contract had been fully executed by the respondent. In addition, the respondent has to pay all the amounts which have become due under the contract until its termination.² Therefore, the Player is entitled to outstanding salaries in the total amount of USD 48,000.00.
27. Pursuant to Article 4 Employment Contract, the Agent is entitled to an agent fee of USD 5,400.00. The unjustified termination of the Employment Contract by the Club led to the immediate maturity of the Agent Fee. The Agent Fee is part of the payments which are guaranteed as stipulated by Article 2 Employment Contract.
28. In the Request for Arbitration of 24 October 2022, the Player and the Agent request the following relief:

"1. To order the Respondent to pay to the First Claimant the sum of 48,000 USD (forty-eight thousand US dollars) net, as guaranteed salaries and/or as financial compensation for breach of contract without just cause committed by the Respondent plus 5 per cent yearly interest as from the date of the contract termination 14 September 2022;

¹ BAT 0644/15, para. 31.

² BAT 0008/08, para. 76.

2. To order the Respondent to pay to the Second Claimant the sum of **5,400 USD (five thousand four hundred US dollars) net, as outstanding agency fee, plus 5 per cent yearly interest as from the date of the contract termination 14 September 2022;**

3. To order the Respondent to cover all legal and other expenses of the Claimant [sic] related to the present case, in an amount not less than 4,000 EUR (four thousand Euros).

5. [sic] To order the Respondent to cover all arbitration costs related to present proceedings.

Total amount in dispute: 55 039 EUR (equal to 53,400 USD)

Total amount of interest calculated at the beginning of the case: 270 EUR"

4.2 The Club's Position

29. The Respondent did not make any submissions in this arbitration.

5. The jurisdiction of the BAT

30. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not participate in the arbitration, he will examine his jurisdiction ex officio, on the basis of the record as it stands.³

31. 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).

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

32. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
33. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.⁴
34. The Employment Contract contains the following dispute resolution clause:

"Article 9: Applicable law

As far as possible, any dispute concerning the present contract will be settled by mutual agreement between the parties. The parties will not take any legal actions before having had, at least, one meeting in order to try to settle the dispute.

However, if mutual agreement can't be reached, the dispute 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 (PIL), irrespective of the parties' domicile.

The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."

35. The dispute resolution clause is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
36. However, the question arises whether the Claimants complied with the pre-arbitration negotiation requirement mentioned in the arbitration clause.
37. Upon request by the Arbitrator, the Claimants responded that they had attempted to resolve the matter amicably in September 2022, which is evidenced by text messages and e-mails. As the Respondent ignored the messages sent by the Claimants, it was not

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

possible to find a solution. According to the Claimants, the Respondent had also refused any phone calls from the Claimants since then, so that no meeting could be arranged.

38. On 14 September 2022, the Agent sent the following text message to a representative of the Club:

"You don't speak to the player about the contract.

You speak with me. Corey [Player] has told me you want him to leave tomorrow. You cannot do that without speaking to me.

If you do. I will take the next steps with FiBA [sic] BAT today"

39. The Club's representative answered "Cool. Good luck".

40. On the same date, the Agent sent the following e-mail to the Club:

" _____ , this letter serves as an official warning for your club. As my player Corey Manigault has signed an official contract with your club the miners from Mongolia and has now been in Serbia in pre-season training for 10 days. After our conversation yesterday the club expressed to me that you would like to release the player. But as he has a fully guaranteed contract that will not be possible with full salary to the player and the full agent fee. My player just told me you told him to take a taxi to the airport tomorrow which I don't approve of and you have taken the liberty to do this behind my back and not talk to me who is his official agent. If I'm not able to speak with you then I have no choice but to take my next action."

41. It is obvious to the Arbitrator that the Agent tried to prevent the termination of the Employment Contract with these messages, however, without success. Although no meeting took place between the Parties as required by Article 9 Employment Contract, the Arbitrator has jurisdiction to decide this matter for the following reasons:

42. According to the equitable principle that a condition is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith, the Respondent cannot (and did not) challenge the jurisdiction of the BAT because a precondition for the initiation of arbitration proceedings had not been met.

43. It would have been the obligation of the Club to agree to settlement talks as described in Article 9 Employment Contract. However, the Club declined to talk to the Claimants. Due to the Club's blanket refusal, it was simply not possible for the Claimants to organise a meeting as required by the arbitration clause. To be able to protect their rights, the Claimants had no other choice but to initiate arbitration with the BAT.
44. The jurisdiction of BAT over the Player's and the Agent's claims arise from the Employment Contract. The wording "*any dispute concerning the present contract*" clearly covers the present dispute.
45. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Player's and the Agent's claims.

6. Other Procedural Issues

46. Article 14.2 of the BAT Rules specifies that "*the Arbitrator may [...] proceed with the arbitration and deliver an award*" if "*the Respondent fails to submit an Answer*". The Arbitrator's authority to proceed with the arbitration in case of default by one of the parties is in accordance with Swiss arbitration law and the practice of the BAT.⁵ However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.
47. This requirement is met in the present case. The Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator in accordance with the relevant rules. It was also given sufficient opportunity to respond to Claimant's

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

Request for Arbitration. The Respondent, however, chose not to participate in this arbitration.

7. Discussion

7.1 Applicable Law – *ex aequo et bono*

48. 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".

49. Under the heading "Law Applicable to the Merits", Article 15 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."

50. As seen above, Article 9 Employment Contract stipulates that: "[t]he arbitrator shall decide the dispute *ex aequo et bono*".

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

52. 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'arbitrage⁶ (Concordat)⁷, under which Swiss courts have held that arbitration "en équité" is fundamentally different from arbitration "en droit":

*"When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*⁸

53. This is confirmed by Article 15.1 BAT Rules, according to which the Arbitrator applies "*general considerations of justice and fairness without reference to any particular national or international law*".

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

7.2 Findings

7.2.1 Player's claims based on the Employment Contract

55. According to Article 6 Employment Contract, the Player is entitled to the following salary payments:

"As remuneration for his activities on behalf of the Club, the Player shall receive a NET salary of 8000USD per month starting from November 1st. The salary shall be paid by the following schedule:

*(3000 USD) August 28th-September 18th ,2022
(3000 USD) September 18th-November 1st,2022
November 8000USD 2022
December 8000USD 2022
January 8000USD 2023*

⁶ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

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

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

February 8000USD 2023
March 8000USD 2023
April 8000USD 2023
[...]"

56. Article 2 Employment Contract provides the following:

"This shall be deemed a guaranteed contract after having a positive medical exam which will be set by the Club within 3 days after Player's arrival to Mongolia. If medical examination is not given within 3 days, the Player shall be deemed to have passed the medical examination and the contract becomes fully guaranteed. [...]"

57. The Employment Contract contains two different Articles 7, which provide different possibilities to terminate the Employment Contract. The first Article 7 Employment Contract reads as follows:

"a) The Club can terminate present contract in case Player's behavior doesn't conform to the common standards for a professional basketball player, such as the Player's use of alcoholic beverages, illegal drugs, on or off court behavior damaging the good name and the brand of the Club in public and mass media.

b) In case the Player is fined by Mongolian Basketball Federation or FIBA, the Club has the right to withhold the fines and procedural costs from the Player's salary.

c) However, both parties may cancel this contract at anytime upon mutual agreement.

d) In case of player's termination of contract, agent must act and replace the player within 5-7 working days."

58. The second Article 7 Employment Contract provides the following possibilities to terminate the Employment Contract:

"a) The Club can terminate present contract in case Player's behavior doesn't conform to the common standards for a professional basketball player, such as the Player's use of alcoholic beverages, illegal drugs, on or off court behavior damaging the good name and the brand of the Club in public and mass media. Social drinking is acceptable.

b) Lack of ability, illness or injury of the Player is not considered cause for termination of the contract.

c) *In the event the Club is more than ten working days late on any payment to the Player, the Player has the right to void the contract by so indicating in a registered letter to the Club. In this case Club's financial obligations to the Player stay applicable. Club shall immediately grant Player's letter of clearance to the Mongolian Basketball Federation upon request.*

d) *In case the Player is fined by Mongolian Basketball Federation or FIBA, the Club has the right to withhold the fines and procedural costs from the Player's salary.*

e) *However, both parties may cancel this contract at anytime upon mutual agreement."*

59. According to BAT jurisprudence, termination of an employment contract serves as the *ultima ratio* in solving problems within the parties' contractual relationship.⁹
60. The Club failed to offer any explanation for the early termination of the Employment Contract on 14 September 2022. It also failed to provide an Answer to the Request for Arbitration. It is therefore inevitable that the Arbitrator must conclude that on 14 September 2022, the Club terminated the Employment Contract without just cause, which leads to the necessary consequence that the Player is, in principle, entitled to the outstanding salary of USD 48,000.00 net (see Article 6 Employment Contract).
61. However, the question remains whether the Player fulfilled his duty to mitigate the Club's damages, which the Arbitrator will examine *ex officio*.¹⁰ According to BAT jurisprudence, a player has a duty to mitigate if the employment contract has been terminated without his or her fault, and who is then entitled to compensation for the remaining term of the contract. The Arbitrator has to take into account what the player has earned or could reasonably have earned otherwise in the remaining term of the contract to avoid unjust

⁹ See e.g. BAT 1545/20, para. 61.

¹⁰ See e.g. BAT 0826/16, at para. 28.

enrichment.¹¹ It then remains to the Arbitrator to determine *ex aequo et bono*, which amount earned otherwise must be shared with the Club.

62. Based on publicly available information, in January 2023, the Player participated in a ten-day tryout with the German basketball club Eisbären Bremerhaven.¹² However, when asked by the Arbitrator, on 30 January 2023, the Player's counsel replied that the Player had not signed a new employment contract, and there is no reason to doubt this statement. In any event, the Player's engagement in the ten-day tryout demonstrates that he is motivated and willing to find a new employment.
63. Upon request by the Arbitrator, the Player confirmed during the BAT proceeding that he had signed a new employment contract with the Mexican club Zonkeys de Tijuana on 24 February 2023 for the 2023 season. According to the employment contract with Zonkeys de Tijuana, the Player is entitled to a monthly net base salary of USD 7,700.00. According to this contract, "[d]uring the *PRE-SEASON* his salary will be 50% of the base salary. *PRE-SEASON* will be from the day the player practice in the city of Tijuana to March 7, 2023". Therefore, the pre-season salary was USD 3,850.00 per month.
64. There is no indication in the file when the Player arrived in Tijuana. Considering the fact that Zonkeys de Tijuana played its first game in the 2023 season on 8 March 2023, the Arbitrator assumes that the Player arrived a couple of days before in Mexico, i.e. at the beginning of March 2023. During the pre-season, i.e. from 1 to 7 March 2023, the Player is entitled to a *pro rata* pre-season salary of USD 869.35 (USD 3,850.00 / 31 x 7). For the remaining month of March 2023 (i.e. from 8 until 31 March 2023), the Player is

¹¹ See e.g. BAT 1496/20, para. 71.

¹² <https://www.dieeisbaeren.de/aktuell/news/spieltag/2022/2023/vorbericht-nuernberg-a/>.

entitled to a salary of USD 5,961.29 (USD 7,700.00 / 31 x 24). Therefore, the Player is entitled to a total salary for March 2023 of USD 6,830.64 (USD 869.35 + USD 5,961.29).

65. Since the Employment Contract would have lasted until the end of April 2023, the Arbitrator also takes the salary to which the Player was entitled under the new contract in April 2023 (i.e. USD 7,700.00) into account. The alternative salary of the Player during the remaining term of the Employment Contract therefore amounts to USD 14,530.64, which shall be deducted from the compensation due by the Club (i.e. USD 48,000.00, net), which results in an amount of USD 33,469.36, net.

6.2.2 Agent's claims based on the Employment Contract

66. According to Article 4 Employment Contract, the Agent is entitled to the following compensation:

"The Agent fee for full season of 5.400 USD has to be paid before November 15th, and 10% of the Corey Manigault's playoff salary will be paid before the 2022-2023 season ends."

67. Article 5 (on the second page) Employment Contract describes the Agent's obligations as follows:

"Agent has to represent player Corey Akmal Manigault during 2022-2023 Mongolian basketball season, and make sure Corey Akmal Manigault is injury free and ready to play, players behaviour has to be positive and work with coaching stuff with good manner."

68. Based on BAT jurisprudence, an agent fee can be drafted as a signing fee for the successful closing of an employment contract or as a service fee, which requires further services of the agent to be provided during the term of an employment contract.¹³

¹³ See e.g. BAT 1713/21 and BAT 1718/21, paras. 125 et seq.

69. The services of the Agent are described in Article 5 Employment Contract and consist of the assistance in the contract negotiation, but also include the obligation to "*represent player Corey Akmal Manigault during 2022-2023 Mongolian basketball season, and make sure Corey Akmal Manigault is injury free and ready to play, players behaviour has to be positive and work with coaching staff with good manner*". The Agent Fee therefore contains elements of both, success fee and service fee. While it is true that the Agent could not provide any services after termination of the Employment Contract, it was not his fault that the Employment Contract came to a sudden end. In fact, the Club's unjustified termination of the Employment Contract deprived him of the possibility to offer his services and to be compensated for them. In addition, there is no further information on record about other services provided by the Agent than his endeavours to prevent an unjustified termination of the Employment Contract. The Arbitrator therefore concludes that the Club must pay the full Agent Fee to the Agent.
70. Article 4 Employment Contract does not specify whether the Agent Fee of USD 5,400.00 is due net or gross. Since this amount represents 10% of the Player's annual net salary of USD 54,000.00 (see Article 6 Employment Contract), the Arbitrator concludes that the Agent Fee of USD 5,400.00 is also due net.

6.2.3 Interest

71. Both, the Player and the Agent, request the BAT to order "*5 per cent yearly interest as from the date of the contract termination 14 September 2022*".
72. The Employment Contract does not provide a regulation concerning interest. 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. As requested by the Player and the Agent and in correspondence with the standing BAT jurisprudence the default interest rate is of 5% per annum.

73. As to the date from which the interest for the outstanding amount starts to run, the Arbitrator notices that with the termination of the Employment Contract on 14 September 2022 all obligations became immediately due, including the Agent Fee, for which the Employment had provided a maturity date of 15 November 2022. Therefore, the starting date for the interest for the outstanding salaries for the Player and the Agent Fee is on 15 September 2022.

8. Conclusion

74. Based on the foregoing, and after taking into due consideration all the evidence submitted and all arguments made by the Parties, the Arbitrator finds that the following payments are owed:

- The Club shall pay the Player USD 33,469.36 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) from 15 September 2022 until payment in full.
- The Club shall pay the Agent USD 5,400.00 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) from 15 September 2022 until payment in full.

9. Costs

75. In respect of determining the arbitration costs, Article 17.2 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). [...]"

76. On 25 March 2023, the BAT President determined the arbitration costs in the present matter to be EUR 6,500.00.

77. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 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."

78. Considering the requests for relief and the outcome of the case, it turns out that the Agent received the full amount requested (i.e. 100% successful), whereas the Player prevailed by about 70 % (i.e. $100 / \text{USD } 48,000.00 \times \text{USD } 33,469.36$). The Arbitrator therefore concludes that 85% of the arbitration costs (i.e. EUR 5,525.00) shall be borne by the Respondent and 15% (i.e. EUR 975.00) shall be borne by the Claimants. Given that the Claimants paid the entire Advance on Costs in the amount of EUR 6,500.00, the Respondent shall reimburse EUR 5,525.00 to the Claimants.

79. In relation to the Parties' legal fees and expenses, Article 17.3 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."

80. Moreover, Article 17.4 BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses. The maximum contribution for an amount in dispute from EUR 30,001.00 to EUR 100,000.00 (in casu USD 79,000.00, which is approx. EUR 72,177.80 on the date when the Request for Arbitration was filed) is EUR 7,500.00.

81. The Claimants claim legal fees in the total amount of EUR 4,000.00. They also claim for the expense of the non-reimbursable handling fee in the amount of EUR 4,000.00. The Club did not submit a cost statement.
82. Taking into account the factors required by Article 17.3 BAT Rules, the maximum awardable amount prescribed under Article 17.4 BAT Rules, the limited work done by the counsel and the specific circumstances of this case, the Arbitrator holds that it is fair and equitable that the Respondent shall pay a contribution of EUR 3,000.00 plus the non-reimbursable handling fee of EUR 4,000.00 to the Claimants. The Respondent shall bear its own legal costs and fees.

10. AWARD

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

- 1. Erdenet Miners shall pay Mr. Corey Akmal Manigault a compensation of USD 33,469.36 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 15 September 2022 until payment in full.**
- 2. Erdenet Miners shall pay Mr. Fenton Pete Mickeal an Agent Fee of USD 5,400.00 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 15 September 2022 until payment in full.**
- 3. Erdenet Miners shall pay Mr. Corey Akmal Manigault and Mr. Fenton Pete Mickeal an amount of EUR 5,525.00 as reimbursement for their arbitration costs.**
- 4. Erdenet Miners shall pay Mr. Corey Akmal Manigault and Mr. Fenton Pete Mickeal an amount of EUR 7,000.00 as a contribution towards their legal fees and expenses.**
- 5. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 11 April 2023

Stephan Netze
(Arbitrator)