BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1886/22)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Rhodri Thomas

in the arbitration proceedings between

Mr. William Mosley

- Claimant 1 -

Lanshire Group LLC Corp
c/o Iman Shokuohizadeh, 3109 Newsom Ridge Drive,
Mansfield, Texas, 76063, USA

- Claimant 2 -

both represented by Mr. Juan de Dios Crespo Pérez and
Mr. Alessandro Mosca, attorneys at law,

vs.

Basketball Club KK Mornar
Bulevar Revolucije 85, SC Topolica, 85000 Bar - Crna Gora, Montenegro

- Respondent -

represented by Mr. Saša Pavlišić Bekić, attorney at law,

1. The Parties

1.1 The Claimants

1. Mr. William Mosley (hereinafter "Claimant 1") is an American professional basketball player.

2. Lanshire Group LLC Corp (hereinafter "Claimant 2" and, together with Claimant 1, hereinafter "the Claimants") is an American company with its registered address in Texas, USA. A representative of Claimant 2, Mr. Iman Shokuohizadeh, is the agent of Claimant 1.

1.2 The Respondent

3. Basketball Club KK Mornar (hereinafter the “Respondent”) is a professional basketball club in Bar, Montenegro. The Respondent competes in the Montenegrin Basketball League and the ABA League.

2. The Arbitrator

4. On 16 November 2022, Prof. Ulrich Haas, President of the Basketball Arbitral Tribunal (hereinafter the “BAT”), appointed Mr. Rhodri Thomas as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal in force as of 1 January 2022 (hereinafter the “BAT Rules”).

5. Neither of the Claimants or the Respondent (hereinafter 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

6. The relevant facts and allegations presented in the Parties' written submissions and evidence are summarised below. Additional facts and allegations are set out, where relevant, in connection with the legal discussion that follows.

7. Although the Arbitrator has considered all the facts, allegations and evidence submitted by the Parties in the present proceedings, he refers in this Award only to those necessary to explain his reasoning.

3.1.1 The Contract and The Termination Agreement

8. On 15 October 2021, the Claimants, the Respondent and another agent of Claimant 1, who is not a party to this arbitration, entered into a player contract for the remainder of the 2021/2022 season (hereinafter the "Contract"). The Contract contains, among others, the following provisions:

> *"*[…]
>
> ***2.*** *The total net of taxes value of the base salary in this Agreement shall be* ***Three hundred and twenty Thousand Dollars NET ($320,000USD)*** *for 2021-2022 basketball season, to be paid as following:*

October 25th 2021 (after medical)	*$82,000 USD (Eighty-Two Thousand US Dollars) NET*
November 15th 2021	*$ 34.000 USD (Thirty-Four Thousand US Dollars) NET*
December 15th 2021	*$ 34.000 USD (Thirty-Four Thousand US Dollars) NET*
January 15th 2022	*$ 34.000 USD (Thirty-Four Thousand US Dollars) NET*
February 15th 2022	*$ 34.000 USD (Thirty-Four Thousand US Dollars) NET*
March 15th 2022	*$ 34.000 USD (Thirty-Four Thousand US Dollars) NET*
April 15th 2022	*$ 34.000 USD (Thirty-Four Thousand US Dollars) NET*
May 15th 2022	*$ 34.000 USD (Thirty-Four Thousand US Dollars) NET*

> - *The Players daily rate is $.1.333.00 USD NET for any day beyond June 15th 2022.*
>
> *BONUSES*
>
> *ABA & Montenegro League*
> *ABA league Top 6 finalist: USD 5.000*
> *Montenegro Champion: USD 5.000*

Montenegro CUP Champion: USD 2.500

3. *All amounts described in Article.2 shall be paid in U.S. Dollars within the next salary payment after being earned. All amounts are net of taxes and are guaranteed, vested and owed upon execution of this Agreement. The CLUB shall be responsible for all appropriate taxes, customs, duties and other withholdings. In the event that the PLAYER sustains an incapacitating injury or illness, with the exception of the actions stated in the team rulebook as prohibited, the term of this agreement that renders the PLAYER incapable of performing in some or all of the CLUB's remaining games, the CLUB agrees to meet all payment obligations as though the PLAYER had fully performed in all games. Should the CLUB elect to replace the PLAYER with another player (foreign or otherwise) at any time during the term of this Agreement, the CLUB shall continue to pay the PLAYER his guaranteed salary payment for the full term of this Agreement at the times and amounts as specified above. The PLAYER agrees to make himself available for insurance examinations in order to allow the CLUB to purchase a policy of disability insurance at the CLUB'S expense. Notwithstanding the foregoing, the CLUB'S inability to obtain such insurance shall not modify, reduce, eliminate or otherwise change the CLUB'S obligations hereunder. The Players* [sic] *salary is NET of Montenegro taxes and social security dues and the club will provide the Player with a tax receipt on April 1, 2022 for his 2021 taxes, and September 1, 2022 for his 2022 taxes.*

4. *The CLUB shall make the payments to the PLAYER in U.S. Dollars to his US Bank Account or a European bank account which will be opened by the CLUB. In the event that any payments or agent fees are not paid in full within Thirty (30) days after the scheduled payment date, the PLAYER shall not be required to practice or play in any scheduled games until all scheduled payments have been made and the Agent ([E-Mail Agent]) must notify the CLUB with in writing by email which then the Club has four (4) days to make all those payments in full. In such case, the CLUB fails to make all payment(s) owed to the PLAYER, then the PLAYER is immediately entitled to receive and claim all payments/monies by way of acceleration without any off-set or mitigation whatsoever and be free to leave the CLUB with no further obligation or withholding of clearance rights.*

[…]

6. *For services of locating and contracting the Player, Club shall pay to AGENTS commission fee. The CLUB agrees to pay a commission in the amount of $32,000 USD (twenty-two thousand US Dollars) by no later than January 15th 2022 to be paid in equal parts of $16,000USD NET (sixteen thousand US Dollar) to Lanshire Group LLC Corp (Mr. Iman Shokuohizadeh) and $16,000USD NET (sixteen thousand US Dollar)[Name Agent] for all services provided as the AGENTs in regarding to execution /recruitment /negotiation of professional basketball player William Mosley. In Addition* [sic]*, the Club acknowledges that upon execution of the agreement the agent's duties have been completed in full for the entirety of the agreement. As such, should the club and player (William Mosley) either independently or mutually, decide to terminate their contract, the agent fee due to the agent will be due in its totality. If the payment to the AGENT is late more then* [sic] *30 days, then the AGENTS are entitled to receive and claim all payments/monies owed by way of acceleration without any off-set or mitigation whatsoever.*

[…]

8. *Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."*

(Emphasis as in the original.)

9. On 14 April 2022, Claimant 1 and the Respondent entered into an agreement to mutually terminate the Contract (the "Termination Agreement"). The Termination Agreement contains, among others, the following provisions:

*"**WHEREAS** the Club and the Player are parties to the Contract dated 15 October 2021 (hereinafter referred to as the »**Contract**«) by which the Club employed the Player in capacity of professional basketball player of the Club's first team for the 2021-202 sporting seasons;*

***WHEREAS**, the Parties have agreed to terminate the Contract under the terms and conditions as set forth hereunder.*

***NOW, THEREFORE**, in consideration of the above premises and the agreements of the Parties contained herein, the Parties hereby agree as follows:*

1. TERMINATION

The Parties hereby agree that as of the Termination Date, the Contract shall stand terminated and thereafter it shall have no future force and effect. Also, the Parties will not be liable for any ongoing obligations.

The Parties agree that this Termination Agreement is the result of compromise and is entered into in good faith and shall not be considered an admission of liability or responsibility concerning any breaches and defaults of the Contract.

2. SURVIVING OBLIGATIONS, RELEASE

This Termination Agreement shall take effect on the Termination Date.

*The Parties agree that the Club shall pay to the Player the amount of **USD $102,000** (One Hundred and two Thousand US dollars) net of any taxes, which are three (3) owed salaries from February 15th 2022 ($34,000), March 15th 2022 ($34,000) and April 15th 2022 ($34,000) salaries, to be paid as follows:*

- ***USD $34,000** (thirty-four thousand US dollars) net of any taxes no later than April*

*27th 2022. In case the Club fails to pay the payment of **USD $34,000** (thirty-four thousand US dollars) net of any taxes by April 27th 2022, the Player shall be immediately entitled to receive and claim USD 70,000 (Seventy thousand US dollars) net of any taxes, corresponding to the 2021-2022 Player's salary under the Contract, with not offset or mitigation whatsoever; and*

- ***USD $34,000** (thirty-four thousand US dollars) net of any taxes no later than June 5th 2022. In case the Club fails to pay the payment of **USD $34,000** (thirty-four thousand US dollars) net of any taxes by June 5th 2022, the Player shall be immediately entitled to receive and claim USD 70,000 (Seventy thousand US dollars) net of any taxes, corresponding to the 2021-2022 Player's salary under the Contract, with not offset or mitigation whatsoever; and*

- ***USD $34,000** (thirty-four thousand US dollars) net of any taxes no later than July 5th 2022. In case the Club fails to pay the payment of **USD $34,000** (thirty-four thousand US dollars) net of any taxes by July 5th 2022, the Player shall be immediately entitled to receive and claim USD 70,000 (Seventy thousand US dollars) net of any taxes, corresponding to the 2021-2022 Player's salary under the Contract, with not offset or mitigation whatsoever; and* [sic]

Excluding the above releasing funds, the Club and the Player do hereby mutually remise, release, and forever discharge each other from all claims and demands related to the Contract occurring at any time prior to the execution of this Termination Agreement.

The Player becomes a free agent after the moment of conclusion of this Termination Agreement, as of April 14th 2022, and the Club will procure to the Player necessary consent and will do all necessary formalities from the side of the Club to release the Player, including the issuance of the Letter of Clearance (i.e., will instruct Basketball Federation of Montenegro to issue the LoC) as soon as possible, so that the Player can continue his career in another club of his choice.

This agreement will not suspend or replace any other obligations the Club has towards agent(s) from the existing contract between Club and Player signed on October 15th 2021. All obligations the Club has towards the agent(s) is still valid and club obligated to pay in full."

[…]

4. DISPUTE RESOLUTION

Any dispute arising from or related to this Termination Agreement shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono."

(Emphasis as in the original.)

3.1.2 Factual background to the dispute

10. Article 2 of the Contract provides that Claimant 1 was entitled to receive a net salary of USD 320,000.00 for the 2021/2022 season. Specifically, he was entitled to receive USD 82,000.00 on 25 October 2021 after passing a medical examination, and USD 34,000.00 payable on the fifteenth day of each month up to and including May 2022. Article 2 of the Contract also provided that Claimant 1 would receive a net daily rate of USD 1,333.00 for the provision of services "*for any day beyond June 15th 2022*".

11. Article 6 of the Contract also provides that Claimant 2 was entitled to receive an agent fee of USD 16,000.00 net of taxes to be paid no later than 15 January 2022 for its role in "*the execution /recruitment /negotiation of professional basketball player William Mosley*". Article 6 states that Claimant 2's duties were fulfilled through the Parties executing the Contract, and that termination of the Contract would therefore not affect the Respondent's obligation to pay Claimant 2's agent fee.

12. On 15 January 2022, Claimant 2's agent fee of USD 16,000.00 became due and payable in accordance with Article 6 of the Contract. The Respondent has not paid Claimant 2's agent fee.

13. The Respondent did not make salary payments owed to Claimant 1 as they fell due on 15 February 2022 and 15 March 2022, as required under Article 2 of the Contract.

14. On 1 April 2022, the Respondent contacted Claimant 2 by email acknowledging that the agent fee was "*past due*", stating *"we expect it will be settled very soon"*.

15. On 12 April 2022, the Respondent sent a further email to Claimant 2 acknowledging "*the players' payments are our current priority and agents´ debts will be settled too*".

16. On 14 April 2022, Claimant 1 and the Respondent entered into the Termination Agreement, under which the Respondent agreed to pay Claimant 1 USD 102,000.00 (reflecting the amounts owed to Claimant 1 for his February, March and April salary

payments). Article 2 of the Termination Agreement provided that the Respondent would pay this amount in three instalments:

a) USD 34,000.00 paid net of any taxes by 27 April 2022;

b) USD 34,000.00 paid net of any taxes by 5 June 2022; and

c) USD 34,000.00 paid net of any taxes by 5 July 2022.

17. Article 2 of the Termination Agreement provided that if the Respondent failed to pay any of the amounts listed in the preceding paragraph, Claimant 1 would in each case, be immediately entitled to receive and claim USD 70,000.00 net of taxes, instead of USD 34,000.00.

18. Also on 14 April 2022, Claimant 1 entered into a player contract with BC UNICS, a basketball club in Kazan, Russia (the "BC UNICS Contract"). Article 3 of the BC UNICS Contract provides that Claimant 1 will receive a total salary of USD 70,000.00, payable in two equal instalments on 15 May 2022 and 15 June 2022.

19. On 27 April 2022, the first payment of USD 34,000.00 became due and payable in accordance with Article 2 of the Termination Agreement. The Respondent did not make such payment.

20. On 22 May 2022, attorneys for the Claimants wrote to the Respondent, requesting that the Respondent (i) pay USD 70,000.00 to Claimant 1 pursuant to Article 2 of the Termination Agreement (as a result of not making payment of USD 34,000.00 on 27 April 2022), and (ii) pay USD 16,000.00 to Claimant 2 pursuant to Article 6 of the Contract.

21. On 26 May 2022, the Respondent emailed the Claimants' attorney acknowledging that payment was late and requested "*a few more days*" to pay.

22. On 27 May 2022, the Claimants' attorney emailed the Respondent to reserve the Claimants' rights and to remind the Respondent of the upcoming payment of USD 34,000.00 due on 5 June 2022 (in accordance with Article 2 of the Termination Agreement).

23. On 5 June 2022, the second payment of USD 34,000.00 became due and payable in accordance with Article 2 of the Termination Agreement. The Respondent did not make such payment.

24. On 6 June 2022, the Claimants' attorney wrote again to the Respondent, requesting that the Respondent now pay (i) USD 140,000.00 to Claimant 1 pursuant to Article 2 of the Termination Agreement (as a result of not making payments of USD 34,000.00 on 27 April 2022 and USD 34,000.00 on 5 June 2022); and (ii) USD 16,000.00 to Claimant 2 pursuant to Article 6 of the Contract.

25. On 5 July 2022, the third payment of USD 34,000.00 became due and payable in accordance with Article 2 of the Termination Agreement. The Respondent did not make such payment.

26. On 6 July 2022, the Claimants' attorney wrote again to the Respondent, requesting that the Respondent now pay (i) USD 210,000.00 to Claimant 1 pursuant to Article 2 of the Termination Agreement (as a result of not making payments of USD 34,000.00 on 27 April 2022, USD 34,000.00 on 5 June 2022 and USD 34,000.00 on 5 July 2022); and (ii) USD 16,000.00 to Claimant 2 pursuant to Article 6 of the Contract.

3.2 The Proceedings before the BAT

27. On 11 November 2022, the Claimants filed a Request for Arbitration with the BAT in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 6,000.00 was received by the BAT on 14 November 2022.

28. On 17 November 2022, the BAT fixed a deadline of 8 December 2022 to file an Answer to the Request for Arbitration (hereinafter the "Answer"). The BAT also fixed the following amounts as the Advance on Costs with a deadline of 28 November 2022 for payment:

"*Claimant 1 (Mr. Mosley)*	*EUR 4,000.00*
Claimant 2 (Lanshire Group LLC)	*EUR 1,000.00*
Respondent (KK Mornar)	*EUR 5,000.00*"

29. On 22 November 2022, Claimant 1 and Claimant 2 both paid their share of the Advance on Costs. The Respondent failed to submit an Answer and to pay its share of the Advance on Costs within the respective deadlines.

30. On 9 December 2022, the BAT sent the Respondent a final opportunity to pay its Advance on Costs and file its Answer with a deadline of 16 December 2022.

31. On 16 December 2022, the Respondent filed its Answer.

32. On 19 December 2022, the BAT notified the Claimants of their right to pay the Respondent's share of the Advance on Costs and fixed a deadline of 9 January 2023 for the Claimants to pay the Respondent's share.

33. On 27 December 2022, the Claimants paid the Respondent's share of the Advance on Costs.

34. By Procedural Order dated 25 January 2023 (hereinafter "Procedural Order 1"), the Arbitrator requested that the Parties provide further information by 8 February 2023.

35. The Claimants and the Respondent responded to Procedural Order 1 on 8 February 2023.

36. By Procedural Order dated 27 February 2023, the Arbitrator declared the exchange of submissions complete and requested that the Parties submit detailed accounts of their costs by 6 March 2023 (hereinafter "Procedural Order 2").

37. On 3 March 2023, the Respondent informed the BAT that it had incurred legal costs of EUR 9,242.96.

38. On 6 March 2023, Claimants informed the BAT that they had incurred legal costs of EUR 10,000.00 (Claimant 1) and EUR 5,000.00 (Claimant 2) plus the non-reimbursable handling fee in the amount of EUR 6,000.00.

4. The Position of the Parties

4.1 The Claimants

Amounts purported to be owed to Claimant 1

39. The Claimants submit that pursuant to Article 2 of the Termination Agreement, Claimant 1 is entitled to receive USD 210,000.00 net of any taxes as a result of the Respondent failing to make each of the three payments of USD 34,000.00 on the dates prescribed.

Claimants' analysis of amounts owed to Claimant 1 under the Termination Agreement

40. The Claimants submit that the amount of USD 210,000.00 owed to Claimant 1 under the Termination Agreement should be considered as follows:

    a) USD 102,000.00 of the amount relates to unpaid salaries under the Contract which were restated as being owed under the Termination Agreement.

    b) As the Respondent did not honour the Termination Agreement, it is relevant to consider the additional amount of salary which Claimant 1 would have been owed had he taken further action to recover sums owed under the Contract (as

opposed to entering into the Termination Agreement). The Claimants submit that this additional amount of salary is USD 68,658.00, calculated as follows:

(i) USD 34,000.00 as Claimant 1's unpaid salary in May 2022; and

(ii) USD 34,658.00 as pro rata salary owed to Claimant 1 for rendering his services past 15 May 2022. The Claimants acknowledge that Article 2 of the Contract states that the pro rata salary is payable after 15 June 2022 and not 15 May 2022. However, the Claimants argue that Article 2 of the Contract contains a clerical error and the reference to "*15 June 2022*" should in fact be a reference to 15 May 2022.

(iii) A penalty amount of USD 39,342.00.

41. The Claimants submit that the penalty amount is justified for a number of reasons:

a) Claimant 1 always complied with his obligations under the Contract, even when the Respondent stopped paying his salary, and even though three outstanding monthly salaries had accrued by the time that the Termination Agreement was executed.

b) The Respondent never paid Claimant 1's salary on time and eventually completely stopped making salary payments.

c) Claimant 1 did not elect to terminate the Contract by following the termination procedure set out in Article 4 of the Contract (as he was entitled to do), but instead agreed to postpone payment of his three outstanding salary payments by entering into the Termination Agreement.

d) Claimant 1's representatives gave the Respondent ample opportunities to make payments and rectify its position, sending several reminders and notices.

e) Since February 2022, the Respondent has been in breach of its obligation to pay salary payments to Claimant 1 under the Contract and the Termination Agreement.

42. The Claimants argue that this penalty amount, which they calculate as being 23% of the amount 'originally' owed to Claimant 1 (i.e. USD 170,658.00, comprising the three salary payments covered by the Termination Agreement and the additional amount of USD 68,658.00 which would have been payable under the Contract had Claimant 1 not entered into the Termination Agreement), is fair and proportionate.

Claimant 1 had no duty to mitigate

43. In their response to Procedural Order 1, the Claimants made a number of submissions arguing that, notwithstanding Claimant 1's entry into a new contract for the remainder of the 2021/2022 season, he was not under any duty to mitigate his losses incurred as a result of the Respondent's breach of the Termination Agreement.

44. In this regard, the Claimants highlight that each limb of Article 2 of the Termination Agreement stipulates that if Claimant 1 becomes entitled to payment of USD 70,000.00 as a result of an original salary payment not being paid on the agreed date, the USD 70,000.00 will be paid "*with not* [sic] *offset or mitigation*".

45. The Claimants also cite various BAT jurisprudence which consider the duty to mitigate losses relating to unpaid sums due under a settlement or termination agreement, for example, BAT 0826/16 (paragraph 72), BAT 0421/13 (paragraphs 66 and 67), and BAT 1706/21 (paragraph 119(a)).

Amounts purported to be owed to Claimant 2

46. The Claimants submit that pursuant to Article 6 of the Contract, Claimant 2 is entitled to receive USD 16,000.00 net of any taxes as a result of the Respondent failing to pay Claimant 2's agent fee.

47. The Claimants submit that the Respondent's obligation to pay the agent's fee was triggered on 15 January 2022 and that this obligation survived the termination of the Contract. In this regard, the Claimants rely on the final paragraph of Article 2 of the Termination Agreement, which provides:

> *"This agreement will not suspend or replace any other obligations the Club has towards agent(s) from the existing contract between Club and Player signed on October 15th 2021. All obligations the Club has towards the agent(s) is still valid and club obligated to pay in full."*

48. Finally, the Claimants submit that the Respondent acknowledged that it owed the agent fee to Claimant 2 on a number of occasions: on 1 April 2022, 12 April 2022 and 26 May 2022.

Interest

49. The Claimants claim interest at a rate of 5% per annum as follows:

a) On USD 16,000.00 owed to Claimant 2 from 15 January 2022.

b) On USD 70,000.00 owed to Claimant 1 from 27 April 2022.

c) On USD 70,000.00 owed to Claimant 1 from 5 June 2022.

d) On USD 70,000.00 owed to Claimant 1 from 5 July 2022.

Request for Relief

50. The Claimants accordingly submitted the following request for relief:

"*a. To accept this claim;*

b. To decide that the Respondent shall pay the Claimant 1 USD 210,000.00 net of any taxes plus (5%) per annum interest rate:

- *on the amount of USD 70,000.00 net of any taxes from 27 April 2022, when the Respondent was supposed to make the first payment under article 2 of the Termination, until its effective and entire payment;*

- *on the amount of USD 70,000.00 net of any taxes from 5 June 2022, when the Respondent was supposed to make the second payment under article 2 of the Termination, until its effective and entire payment;*
- *on the amount of USD 70,000.00 net of any taxes from 5 July 2022, when the Respondent was supposed to make the third payment under article 2 of the Termination, until its effective and entire payment;*

c. *To decide that the Respondent shall provide the Claimant 1 with the pertinent Montenegrin taxes and social security certificates on the amount of USD 210,000.00, demonstrating that the Claimant 1 receives a total net benefit of USD 210,000.00.*

d. *To decide that the Respondent shall pay the Claimant 2 USD 16,000.00 net as outstanding fees, plus (5%) per annum interest rate from 15 January 2022 until its effective and entire payment.*

e. *Further to article 17.3 of the BAT Arbitration Rules to decide that the Respondent shall bear the entirety of the costs of this arbitration;*

f. *Further to article 17.4 of the BAT Arbitration Rules to decide, besides the payment of the non-reimbursable handling fee, that the Respondent shall pay:*

- *the Claimant 1's legal fees with respect to this procedure in the total amount of EUR 10,000.00.*
- *the Claimant 2's legal fees with respect to this procedure in the total amount of EUR 5,000.00*

Total amount in dispute: USD 226,000.00 net of any taxes, plus 5% p.a. interest rate from each of the payment dates described in the above request for relief, until its effective and entire payment (of which, USD 39,342.00 are considered as late payment penalties sought in relation to any period prior to the date of filing of the Request for Arbitration)"

4.2 The Respondent

51. The Respondent accepts that it owes USD 16,000.00 to Claimant 2 in respect of unpaid agent fees and that it owes USD 102,000.00 to Claimant 1 in respect of unpaid salary payments. Notwithstanding this, the Respondent argues that the Claimants' claim should be dismissed in its entirety.

52. The Respondent submits that since entering into the Termination Agreement, the Respondent's economic circumstances have changed and due to political and economic circumstances in Montenegro and the Covid-19 pandemic, the obligations imposed by the Termination Agreement have become excessively burdensome so as to justify a modification of the terms of the Termination Agreement.

53. The Respondent additionally submits that Article 2 of the Termination Agreement constitutes a penalty clause, as it allows Claimant 1 to recover more than double the original amount owed to Claimant 1 under the Contract. Accordingly, the claim for USD 108,000.00 (i.e. the portion of the USD 210,000.00 being claimed which does not relate to the February, March and April salary payments under the Contract) is excessive in the circumstances. The Respondent states that BAT jurisprudence has established that any penalty amounts must not exceed the principal amount owed, as they do in Claimant 1's case.

54. Accordingly, the Respondent disputes the Claimants' submission that the penalty component in Claimant 1's claim is only USD 39,342.00.

55. The Respondent submits that, if Claimant 1's claims are accepted, the true penalty amount of USD 108,000.00 should be reduced by at least 50% in the interests of fairness.

56. The Respondent also disputes Claimants' claim that the reference at Article 2 of the Contract to "*15 June 2022*" was a clerical error.

57. The Respondent further submits that any interest rate applied should accrue from the date of the request for Arbitration, and not from the date on which amounts under the Contract and Termination Agreement became due and payable.

58. The Respondent accordingly submitted the following request for relief:

> "*Accepting ex aequo et bono*, *the sum of USD 108,000 should be reduced at least 50% to take account of the sum outstanding under the Termination Agreement and the Respondent's financial situation.* […]
>
> *VII/ The Respondent considers that interest at rate proposed by the Claimant can be imposed from the date of the Request for Arbitration not in the way requested by the Claimant's* [sic]. […]
>
> *Finally, Respondent is proposing settling the depute through Mutual Settlement Agreement for the purpose of reaching an amicable solution.*
>
> *IX/ Therefor* [sic]*, the Respondent proposes to dismiss the Claimant's claim in its entirety."*

5. The Jurisdiction of the BAT

59. 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).

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

61. The Arbitrator notes that the dispute referred to him is clearly of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[1]

62. Article 8 of the Contract states:

> "*Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.*"

63. Article 4 of the Termination Agreement similarly states:

> "*Any dispute arising from or related to this Termination Agreement shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.*"

64. Both the Contract and the Termination Agreement are in written form and thus the arbitration clauses fulfil the formal requirements of Article 178(1) PILA. With respect to

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

their substantive validity, the Arbitrator considers that there is no indication in the file that would cast doubt on the validity of the arbitration agreements contained in the Contract and the Termination Agreement under Swiss law (referred to by Article 178(2) of the PILA). In addition, the Respondent expressly accepted the BAT's jurisdiction.

65. For these reasons, the Arbitrator has jurisdiction to adjudicate the claim against the Respondent.

6. Discussion

6.1 Applicable Law – *ex aequo et bono*

66. 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 authorise the arbitrators to decide "*en équité*", as opposed to a decision according to the rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

> "[*T*]*he parties may authorise the arbitral tribunal to decide ex aequo et bono.*"

67. Under the heading "*Law Applicable to the Merits*", 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.*"

68. Article 8 of the Contract states "[t]*he arbitrator shall decide the dispute ex aequo et bono*".

69. Article 4 of the Termination Agreement states "[t]*he arbitrator shall decide the dispute ex aequo et bono*".

70. In light of the above, the Arbitrator will decide the issues submitted to him in these proceedings *ex aequo et bono*.

71. 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*[2] (Concordat),[3] 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.*"[4]

72. 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*".

6.2 BAT Covid-19 Guidelines

73. The BAT Covid-19 Guidelines (hereinafter the "Covid Guidelines") are aimed at addressing "*the consequences of the COVID-19 crisis on contracts in basketball, in*

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2 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).

3 P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

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

particular those consequences arising out of domestic championships being suspended or terminated early as a result of the pandemic".[5]

74. The Respondent submitted that it was unable to comply with its obligations under the Termination Agreement in part because of the economic effect of the COVID-19 pandemic. Article III of the Covid Guidelines states "[t]*he principles enshrined in these Guidelines do not apply, in principle, to contracts entered into after the beginning of the Lockdown Period. These contracts will be rebuttably presumed to have taken into account the effects of the COVID-19 crisis*." The Lockdown Period is defined as "*the period starting on the date of suspension/termination of the relevant 2019/20 domestic championship and ending on the date on which the championship is resumed, or the original end date if it is not resumed*."

75. Given that both the Contract and the Termination Agreement were signed after the beginning of the Lockdown Period, the Arbitrator finds that the Covid Guidelines do not apply to the present dispute. Moreover, there is nothing to suggest that the Parties did not take into account the effects of the COVID-19 pandemic when they negotiated both the Contract and the Termination Agreement.

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

6.3 Findings

6.3.1 Sums alleged to be owed to Claimant 1

Claimant 1's entitlement to sums due under the Termination Agreement

77. The Respondent does not dispute that it has failed to make any payments under the Termination Agreement.

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5 BAT Covid-19 Guidelines, p.1.

78. The Respondent argues that its obligations under the Termination Agreement should be "modified" because they have become excessively burdensome due to political and economic circumstances in Montenegro and the Covid-19 pandemic. The Arbitrator rejects these arguments. Firstly, the Respondent failed to provide any meaningful evidence of why this is the case. Secondly, and consistent with long-standing BAT jurisprudence, the Arbitrator finds that changing economic or political circumstances do not absolve a party of its contractual obligations. Furthermore, the Parties are presumed to have factored the effects of the COVID-19 pandemic into their negotiations regarding the Contract and the Termination Agreement, as explained above.

79. *Prima facie* therefore, the Respondent is liable to the Claimant for all sums payable under the Termination Agreement. It is agreed that at least USD 102,000.00 of the amount payable under the Termination Agreement constitutes principal due to Claimant 1. As such, the Arbitrator finds that this amount of the sums claimed by Claimant 1 is payable in full.

80. However, the Respondent disputes that it should be liable for what it describes as the "excessive" penalty payments due under the Termination Agreement.

Calculation of the penalty amount under the Termination Agreement

81. The Parties advance different arguments in relation to the calculation of the penalty amount in Claimant 1's claim.

82. As described above, the Claimants submit that the additional amounts Claimant 1 would have been entitled to claim under the Contract, had he not entered into the Termination Agreement (i.e. salary payments for May and June) are relevant to the question of the penalty amount. The Claimants argue that those amounts (which are calculated to be USD 68,658.00) should be considered *principal* owed to Claimant 1 because he could have claimed them as salary under the Contract. Claimant 1

therefore submits that only USD 39,342.00 of the total amount he is claiming should be treated as a penalty amount.

83. The Respondent submits that all amounts which do not comprise "*principal*" under the Termination Agreement, i.e. the USD 102,000.00 of missed salary payments, should be considered as a penalty amount. In the Respondent's submission, the penalty amount is therefore USD 108,000.00.

84. The Arbitrator does not find the Claimants' argument persuasive. Claimant 1 elected to negotiate and enter into the Termination Agreement, and in doing so Claimant 1 was expressly giving up his right to claim for amounts (including salary relating to May and June) due under the Contract. This is reflected in Article 1 of the Termination Agreement, which provides that:

> *"The Parties hereby agree that as of the Termination Date, the Contract shall stand terminated and thereafter it shall have no future force and effect. Also, the Parties will not be liable for any ongoing obligations."*

85. The Arbitrator also notes that by entering into the Termination Agreement, Claimant 1 potentially benefitted from (i) a new contractual right to recover larger amounts from the Respondent if the Respondent missed the payment deadlines set out in Article 2 of the Termination Agreement; and (ii) a new separate obligation from the Respondent to pay sums reflecting the February, March and April 2022 salary payments.[6]

86. The Arbitrator therefore finds that the salary payments for May and June 2022 should not be considered relevant when determining what proportion of the sums claimed by the Claimant constitute a penalty, because the Claimant expressly renounced his right

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[6] As explained below, this new, separate obligation was more advantageous to Claimant 1 than the previous obligation in the Contract to pay the same amounts because the new obligation falls to be treated differently when assessing how effectively Claimant 1 mitigated his losses.

to the May and June salary payments and received tangible benefits in return for doing so. Essentially, the Claimant cannot have it both ways.

87. Moreover, the drafting of Article 2 of the Termination Agreement strongly suggests that USD 108,000.00 of the amounts claimed by Claimant 1 are penalties. In particular, Article 2 provides that the Respondent will pay Claimant 1 "*three (3) owed salaries*" each of USD 34,000.00. The Respondent is required to pay Claimant 1 an additional USD 36,000.00 for each of those three payments that it failed to make to Claimant 1. This is clearly a penalty. Given that the Respondent failed to pay all three amounts, the penalty due is USD 36,000.00 multiplied by three, i.e. USD 108,000.00.

88. On this basis, the Arbitrator finds that the proportion of the USD 210,000.00 claimed by Claimant 1 that represents a penalty is USD 108,000.00.

Treatment of the penalty amount

89. The penalty component constitutes 106% of the principal amount owed to Claimant 1. The Arbitrator agrees with the Respondent's submissions (which were made by reference BAT jurisprudence) that penalty amounts should generally not exceed the amount of principal owed.

90. In its submissions, the Respondent cites BAT 1560/20. This award states:

> *"95. Contractual penalty clauses are permissible in principle, pursuant to BAT jurisprudence. They are, however, subject to careful judicial scrutiny. A clause which imposes a detriment on the breaching party which is out of all proportion to any legitimate interest of the innocent party may be found to be unenforceable, or moderated in its application.*
>
> *96. Whether a penalty clause is excessive has to be determined on a case-by-case basis. BAT jurisprudence has identified a number of factors that need to be considered in this context, including: (i) the damage suffered by the creditor as a result of the contractual breach; (ii) the severity of the breach and the conduct of the debtor; (iii) the economic situation of the debtor; and (iv) the creditor's opportunities to mitigate the (incurred or prospective) damage (see, for example, BAT 0826/16)."*

91. The Arbitrator considers these four points raised in paragraph 96 of BAT 1560/20 in turn.

92. The damage suffered by the creditor as a result of the contractual breach: the damage suffered by Claimant 1 as a result of the Respondent's breach was material. He has gone without large sums of money which were due to him under both the Contract and the Termination Agreement. He also, in order to mitigate his losses, relocated from Montenegro to Russia mid-season, a process which the Arbitrator considers a form of detriment (albeit less significant than the Respondent's failure to meet its payment obligations). This factor means that a sizeable penalty is justifiable in the circumstances.

93. The severity of the breach and the conduct of the debtor: the Respondent has breached both the Contract and the Termination Agreement and made numerous statements in which it promised to make payment, but then did not do so. The severity of the breach is significant because the Respondent's repeated failure to pay Claimant 1's salary has deprived Claimant 1 of a fundamental term of the Termination Agreement and the principal benefit to which he is entitled in return for the provision of his services. This factor also means that a sizeable penalty amount is justifiable in the circumstances.

94. The economic situation of the debtor: the Respondent submits that political and economic "*circumstances*" in Montenegro and economic circumstances of the Respondent itself should be considered when analysing the effect of the Termination Agreement. The Respondent does not develop this submission or adduce any evidence in support of it, however. This leaves the Arbitrator little choice but to afford less weight to this point when considering the fairness of enforcing the penalty clause.

95. The creditor's opportunities to mitigate the (incurred or prospective) damage: Claimant 1 entered into the BC UNICS Contract on the same day as entering into the Termination Agreement. Under the BC UNICS Contract, Claimant 1 received USD

70,000.00 for the provision of his services in April and May 2022. Claimant 1 therefore had an opportunity to mitigate his loss and, to his credit, took that opportunity. His monthly salary with BC UNICS was slightly greater than his monthly salary from the Respondent. This fact is clearly relevant to the total amount of compensation that should be awarded, *ex aequo et bono*, to Claimant 1. However, the question of mitigation is not straightforward.

a) The starting point is that Claimant 1 would, consistent with BAT jurisprudence, typically have a duty to mitigate his losses. However, this duty was qualified in Claimant 1's case for two reasons, which were well argued in the Claimants' submissions.

b) First, Claimant 1 relied on the language included in Article 2 of the Termination Agreement, which provides that the sums due to Claimant 1 (including the penalty amounts) shall be "*with not offset or mitigation whatsoever*". The meaning of this clause is easily discernible, notwithstanding the apparent typographical error of "not". The Termination Agreement provides that sums due under it should not be subject to the usual principles of mitigation.

c) BAT 1706/21 provides a helpful summary of the development of BAT jurisprudence of "*no mitigation*" clauses:

> *"119. More recent BAT decisions (e.g. BAT 1457/19, BAT 1455/19 and BAT 1697/21) have now leaned toward the middle ground. The approach laid down in these decisions (which is the approach that the Arbitrator considers appropriate and decides to adopt herein) can be summarised as follows:*
>
> *(a) At the outset, it should be recognised that ´clear and unambiguous contractual provision should not be easily dismissed or departed from". As such, these "no mitigation / no-offset´ clauses are per se valid.*

> *(b) That said, BAT arbitrators would still subject such clauses to an ex aequo et bono assessment in order to ´prevent a manifestly unfair and unjust result´ by looking at ´the specific circumstances of the case´.* […]
>
> *120. The reference to ´specific circumstances of the case´ means that the assessment is invariably fact-sensitive.* […]"

d) Applying these principles to the facts in the present dispute, the Arbitrator considers that the "*no mitigation*" wording militates in favour of upholding a higher penalty than would have been the case if such wording was not present. However, the Arbitrator considers that a penalty of more than 100% would still be manifestly unfair (notwithstanding the "*no mitigation*" wording), particularly in circumstances where Claimant 1 was, in fact, very successful in mitigating his losses.

e) The second reason that Claimant 1's duty to mitigate losses was qualified in this case is that the duty to mitigate is different when it arises in the context of a settlement or termination agreement, as compared to an employment contract.

f) Claimant 1 cited, among other cases, BAT 0826/16 which states at paragraph 72:

> "*Because* [..] *the payments promised under a termination and settlement agreement can usually not be qualified as a quid pro quo for services already rendered or to be rendered by the Player, the mitigation principles developed by BAT Arbitrators in relation to a Player's damages claim for a breach of the original player contract cannot be applied in the same manner to such settlement agreements. Rather, the mitigation principles should only be applicable, as a matter of principle, under particular circumstances, e.g.*

- *when the settlement agreement provides for a ´resurrection´ of the original player contract so that the Player's claim becomes a damages claim subject to the terms of the original contract; or*

- *when the amounts the Player is to receive under the settlement agreement would result in a significant windfall for the Player, which is disconnected from the quantum of any (mitigated) damages the Player would have received under the original player contract; or*

- *when the Player had very obvious opportunities to mitigate his damages (e.g. by signing a contract with a new club), but unreasonably refused to realize such opportunity.* […]"

g) The Arbitrator accepts that, as a matter of principle, the duty to mitigate losses will often be less onerous in respect of settlement and termination agreements than in respect of employment agreements. In the present case, the Respondent was aware of the penalty provision to which it agreed and that penalty mechanism is fundamental to the Termination Agreement: it is the benefit that Claimant 1 gained in consideration for giving up his rights under the Contract. That said, Claimant 1 did, in fact, mitigate his losses very successfully. Consistent with the text quoted above from BAT 0826/16, this fact militates in favour of reducing the proportion of the penalty that is enforceable against the Respondent.

h) Consistent with this jurisprudence, the Arbitrator in the present case agrees that the clear and unambiguous language of Article 2 of the Termination Agreement should not be easily departed from. However, when the issue is considered in the round, and noting that the Arbitrator is required to decide *ex aequo et bono*, the Arbitrator finds that some moderation of the penalty amount is appropriate given Claimant 1's entry into the BC UNICS Contract and the remuneration received under it.

96. To summarise: the penalty in question is excessive because it is more than 100% of the principal debt. As a matter of principle, the Arbitrator considers that he should not reduce the penalty by too great an amount because (i) the penalty is contained in a termination agreement and not an employment agreement; and (ii) the Termination Agreement contains express wording that there should be no mitigation of the penalty. However, the Arbitrator is not, *ex aequo et bono*, expected to uphold the *"no mitigation*" provision in full in circumstances where it would be manifestly unfair to do so. The Arbitrator considers it would be unfair to do so in the present case, primarily because Claimant 1 mitigated his losses so successfully, by joining a new club for a salary that is comparable with that paid by the Respondent (and Claimant 1 knew this at the time of signing the Termination Agreement because the BC UNICS Contract was executed on the same day). The Arbitrator recognises that Claimant 1 still suffered detriment as a consequence of the Respondent's unilateral breach without just cause and did forego his right to sue the Respondent for breaching the Contract when he signed the Termination Agreement. Hence, the Respondent should not be allowed to evade the contractual consequences of its behaviour entirely. Consequently, the Arbitrator decides, *aequo et bono,* that it is appropriate to reduce the penalty payable by the Respondent by USD 63,000.00 (which is equivalent to 90% of the value of the BC UNICS Contract). The Arbitrator has not reduced the penalty by 100% of the value of the BC UNICS Contract to reflect the fact that Claimant 1's commendable efforts to mitigate his losses did not offset all of the detriment he suffered as a consequence of the Respondent's breach.

97. Claimant 1 is therefore entitled to a penalty amount under the Termination Agreement in the sum of USD 45,000.00. This penalty amount is "*net of any taxes*" as stipulated in Article 2 of the Termination Agreement and as claimed by Claimants in their Requests for relief.

6.3.2 Sums alleged to be owed to Claimant 2

98. The Respondent has not denied that it owes Claimant 2 the agent fee. As explained at paragraphs 46-47 above, this debt was recognised by the Respondent in the Termination Agreement and correspondence sent after the Termination Agreement had been entered into. Accordingly, the Arbitrator finds that the Respondent is liable to pay USD 16,000.00 to Claimant 2 in respect of unpaid agent fees provided under Article 6 of the Contract. This amount is "*net*" as expressly stipulated in Article 6 of the Contract and as claimed by Claimants in their Requests for relief.

6.3.3 Interest

99. Claimant 1 has claimed interest at a rate of 5% per annum on all sums awarded to him. The Arbitrator notes that a substantial part of the amount being awarded to Claimant 1 is a penalty for the Respondent's failure to pay the principal amounts due under the Termination Agreement. The amount of the penalty is significant, and the Arbitrator considers that it will adequately compensate Claimant 1 for the delay he suffers in receiving the principal until the date of this Award. As such, the Arbitrator finds that Claimant 1 is not entitled to interest on the sums owed to him up to and including the date of this award. However, it is not known whether the Respondent will comply promptly with this award and whether Claimant 1 might suffer any damage as a consequence of any failure by the Respondent to do so. The Arbitrator therefore awards Claimant 1 interest at 5% per annum on any outstanding balance on the sums awarded from the day after this award until payment is made in full to Claimant 1.

100. Claimant 2 has claimed interest a rate of 5% per annum on the unpaid agent fee. The Contract does not provide for interest, however consistent with BAT jurisprudence, default interest at a rate of 5% per annum may be awarded in such circumstances. The Arbitrator notes that, unlike Claimant 1, Claimant 2 is not receiving any penalty payments as part of this award.

101. Accordingly, the Arbitrator finds *et aequo et bono* that Claimant 2 is entitled to interest at 5% per annum on USD 16,000.00 payable from 16 January 2022 (i.e. the day after the agent fee fell due under the Contract) until the date of payment.

6.3.4 Tax certificate

102. Claimant 1 has requested that "*the Respondent shall provide the Claimant 1 with the pertinent Montenegrin taxes and social security certificates on the amount of USD 210,000.00, demonstrating that the Claimant 1 receives a total net benefit of USD 210,000.00*." Article 3 of the Contract provides that in respect of his salary, Claimant 1 is entitled to receive a "*tax receipt*" for tax paid by the Respondent. The Termination Agreement (which is stated on its face to render the Contract with "*no future force and effect*") is, however, silent on whether the Respondent is required to provide Claimant 1 with any Montenegrin tax or social security certificates.

103. This notwithstanding, the Termination Agreement is clear at Article 2 that payments to Claimant 1 shall be made "*net of any taxes*". Consistent with BAT jurisprudence (for example BAT 1813/22), and to give proper effect to Article 2 of the Termination Agreement, the Arbitrator finds ex aequo et bono that the Respondent shall provide Claimant 1 with the tax and social security certificate(s) sought in order to evidence the fact that the Respondent has duly paid any Montenegrin tax due.

6.3.5 Costs

104. 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).* […]*"*

105. On 20 April 2023, the BAT President determined the arbitration costs in the present matter to be EUR 10,000.00.

106. 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."*

107. The Claimants' claim was substantially upheld, with the Claimants receiving an award equivalent to nearly 75% of the total amount claimed.

108. The Arbitrator considers it is fair in these circumstances, and consistent with Article 17.3 of the BAT Rules, that 75% of the costs of the arbitration be borne by the Respondent. The Arbitrator notes in this context that there is nothing in the conduct of the Parties in this arbitration that would support a different allocation.

109. 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."*

110. 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 (excluding the non-reimbursable handling fee) with a maximum contribution of EUR 15,000.00 to a party's legal fees for cases of this size with the sum in dispute being between EUR 200,001.00 and EUR 500,000.00.

111. Claimant 1 has claimed EUR 10,000.00 in legal fees and Claimant 2 has claimed 5,000.00 in legal fees. In addition to this, the Claimants have claimed EUR 6,000.00 in

respect of the non-reimbursable handling fee. The Arbitrator considers that the amounts requested are too high in the circumstances. In particular, while Claimant 1's submissions were well researched, citing appropriate BAT jurisprudence, they were longer than they needed to be for a claim of this nature. Claimant 2's claim was very simple, did not involve (or require) lengthy pleadings and the claim was essentially admitted by the Respondent. In light of this, the Arbitrator finds that it would be fair and reasonable for the Respondent to pay Claimant 1 EUR 5,000.00 for his legal fees and expenses (excluding the non-reimbursable fee), and Claimant 2 EUR 1,500.00 for its legal fees and expenses. The handling fee in the amount of EUR 6,000.00 has been paid on behalf of both Claimants. The Arbitrator is of the view that it should be reimbursed in full.

112. Therefore, the Arbitrator decides:

a) The Respondent shall pay to Claimants EUR 7,500.00 as reimbursement for their contribution to the Advance on Costs;

b) The Respondent shall pay to Claimant 1 EUR 5,000.00, as a contribution towards his legal fees and expenses.

c) The Respondent shall pay to Claimant 2 EUR 1,500.00, as a contribution towards its legal fees and expenses; and

d) The Respondent shall reimburse to Claimants the non-reimbursable handling fee in the amount of EUR 6,000.00.

7. AWARD

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

1. **Basketball Club KK Mornar shall pay to Mr. William Mosley USD 147,000.00 net of all taxes for amounts owed under the Termination Agreement, plus interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from the day after this award until payment is made in full.**

2. **Basketball Club KK Mornar shall provide to Mr. William Mosley a tax and/or social security certificate proving that Basketball Club KK Mornar paid all Montenegrin taxes due in relation to the above-mentioned sum of USD 147,000.00.**

3. **Basketball Club KK Mornar shall pay to Lanshire Group LLC Corp USD 16,000.00 net for unpaid agent fees, plus interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 16 January 2022 until payment in full.**

4. **Basketball Club KK Mornar shall pay jointly to Mr. William Mosley and Lanshire Group LLC Corp EUR 7,500 as reimbursement for their arbitration costs.**

5. **Basketball Club KK Mornar shall pay Mr. William Mosley EUR 5,000.00, as a contribution towards his legal fees and expenses.**

6. **Basketball Club KK Mornar shall pay Lanshire Group LLC Corp EUR 1,500.00, as a contribution towards its legal fees and expenses.**

7. **Basketball Club KK Mornar shall pay jointly to Mr. William Mosley and Lanshire Group LLC Corp EUR 6,000.00, as reimbursement of the non-reimbursable handling fee.**

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

Geneva, seat of the arbitration, 2 May 2023

Rhodri Thomas

(Arbitrator)