

ARBITRAL AWARD

(BAT 1898/22)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Raabersport Kft (Sopron Basket)
Lackner Kristóf str. 48, 9400 Sopron, Hungary

- Claimant -

represented by Mr. Kristof Wenczel, attorney at law,

vs.

Ms. Brittney Sykes

- Respondent -

represented by Mr. Arda Güney, attorney at law,

1. The Parties

1. Raabersport Kft (Sopron Basket) (hereinafter referred to as the "Club" or "Claimant") is a professional basketball club competing in the Hungary-A Division.
2. Ms. Brittney Sykes (hereinafter referred to as the "Player" or "Respondent") is a US American professional basketball player.

2. The Arbitrator

3. On 13 December 2022, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (hereinafter referred to as the "BAT"), appointed Mr. Stephan Netzle as 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

4. On 25 April 2022, the Player and the Club entered into an agreement by which the Club engaged the Player for the 2022/2023 season (hereinafter referred to as the "Employment Contract").
5. Article 1 of the Employment Contract describes its term as follows:

*"The Club hereby engages **Brittney Sykes** as a skilled basketball player for the **2022-2023** Hungarian basketball league for a no-cut, fully guaranteed contract. Player to arrive no later than **14 days after the conclusion of Brittney's 2022 WNBA season.**" (emphasis as in*

the original)

6. Para. A of Exhibit 1 of the Employment Contract contains the following salary provision:

*“For rendering her services as a Player, The [sic] Club agrees to pay **Brittney Sykes** the guaranteed amount of \$110,000 (One Hundred Ten Thousand US dollars net), including the agency fee of \$10,000 USD. The player is obligated to pay the agency fee. Payments to be made as follow:*

After passing the physical - \$6,000 (Six Thousand US Dollars Net)

30.9.22 - \$6,500 (Six Thousand Five Hundred US Dollars net)

30.10.22 - \$17,500 (Seventeen Thousand Five Hundred US Dollars net)

30.11.22 - \$17,500 (Seventeen Thousand Five Hundred US Dollars net)

30.12.22 - \$12,500 (Twelve Thousand Five Hundred US Dollars net)

30.1.23 - \$12,500 (Twelve Thousand Five Hundred US Dollars net)

30.2.23 - \$12,500 (Twelve Thousand Five Hundred US Dollars net)

30.3.23 - \$12,500 (Twelve Thousand Five Hundred US Dollars net)

30.4.23 - \$12,500 (Twelve Thousand Five Hundred US Dollars net)” (emphasis as in the original)

7. According to para. B of Exhibit 1 of the Employment Contract, the Player is entitled to the following bonus payments:

“-Sopron wins the Euroleague championship - \$10,000 (Ten Thousand US Dollars net)

-Sopron reaches the Euroleague championship game - \$5,000 (Five Thousand US Dollars net)

-Sopron reaches the Euroleague final 4 - \$5,000 (Five Thousand US Dollars net)

-Sopron Club wins the Hungarian League Championship - \$3,000 (Three Thousand US Dollars net)

-Sopron wins Hungarian Cup - \$2,000 (Two Thousand US Dollars net)”

8. Pursuant to para. B of Exhibit 1 of the Employment Contract, the salary and bonus payments “are net, in other words, no taxes of any kind will be included in the aforementioned amounts, and no under any circumstance shall the Player be obligated to pay any taxes on her salary. It is understood that the Club is paying in USD (US Dollars) by the representative rate set by the Bank of Hungary on the date of payment. The Club agrees to pay all the charges incurred by the Player to wire money to the bank account designated by the Player.”

9. Exhibit 2 of the Employment Contract provides the following provision regarding the agent fee:

*“The Club agrees to pay a representative’s fee to The Fam Sports Agency, for services rendered on behalf of the Player, **Brittney Sykes** for the 2022-2023 season via 2 \$5,000 USD payments made to Brittney Sykes.”* (emphasis as in the original)

10. The last game of the Player’s WNBA season took place on 14 August 2022.¹ Afterwards, a Club’s representative and the Player’s agent had the following text message conversation:

Agent: *“This is [Name Player Agent], what day do you want Sykes there and she is currently working on the passport renew”*

Club: *“31st Augustus [sic]*

If she wanna [sic] comes [sic] on 28th Augustus [sic], as the contract says, I'm not againts [sic]”

Club: *“Okay, we found tickets.*

Please, confirm that she comes on 9th September from LAX!”

Agent: *“[Name Club Managing Director], Please [sic] confirm the total fine amount if you book the flight for Sept 9. We just want to make sure its in writing and everyone is on the same page.*

If its \$4896, please just confirm and then you can book the flight.”

Club: *“I confirm the number, the only point is, that this is not fine!!!*

_____, she miss days and ofcourse [sic], i [sic] can not pay for days, when she isn’t here.

But I confirm the deducted number!”

Agent: *“Ok. Then please book the flight for september [sic] 9”*

¹ <https://www.wnba.com/player/brittney-sykes/>

11. The Player arrived at the Club on 9 September 2022.
12. After the Euroleague away game against UNI Girona (Spain), on 15 November 2022, the Club granted all players a vacation of seven days until 22 November 2022.
13. On 22 or 23 November 2022, respectively, a Club's representative and the Player's agent had the following text message exchange:

Club: *"Slim doesn't answer us, about her arrival time tomorrow morning. Do you have any infos [sic]?"*

Agent: *"I dont. Ill check with her."*

Club: *"Thank you"*

Agent: *"She said she arrives on Saturday"*

Club: *"What?"*

So, she late 3 days. Ofcourse [sic], i [sic] will give her professional respond."

[...]

Agent: *"Im sorry but Sykes will not be flyng today [23 November 2022].*

So, if you need to terminate her as a result, then Im [sic] sorry that you feel this needs to happen.

She will just need to come there to get her belongings."

Club: *"Send you the termination docs tomorrow"*

Agent: *"Ok"*

14. On 24 November 2022, the Club sent the following termination letter to the Player:

"Background

In September 2022, Player seriously breached the Contract by arriving and starting work only with considerable delay, despite the provisions of the Contract.

Event description

On November 15, 2022, Club granted 7 days of vacation break to all players, despite the fact that the contracts of the players, including Brittney Sykes, did not stipulate such an

obligation for the Club. After the 7 days break, Player did not show up for work and did not respond to the messages of the club staff. At the request of Club's managing director [Name Club Managing Director], Player responded through her Agent that she intended to return to the Club only after another 3 days. Player did not give a reason for her delay, there was no impeding factor or extraordinary event.

Decision

Club issues an extraordinary termination of the Contract, terminating it with immediate effect, due to serious and repeated violations.

Reasoning

Club determines a repeated serious breach of Contract, that destroys the morale of the community to such an extent that, despite the player's excellent individual performance, it is not compatible with neither the Club's view of team sports and community activities, nor the written and explained rules. Furthermore, it is not compatible with the spirit and provisions of the Contract, since Player – with her repeated delays – declares her independence, the disregard of written and unwritten rules, and disrespectfully placing her own interests above that of the community.

Club acts in accordance with the provisions of the Contract in relation to compensation for damages intentionally caused by the Player, and seeks legal remedies."

15. On 28 November 2022, the Player signed an employment agreement with the Spanish basketball club UNI Girona.

3.2 The Proceedings before the BAT

16. On 7 December 2022, the BAT received a Request for Arbitration (dated 8 December 2022) filed by the Club against the Player in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 4,000.00 was received by the BAT on 9 December 2022.
17. On 13 December 2022, the BAT informed the Parties that Mr. Stephan Netzle had been appointed as the Arbitrator, invited the Respondent to file her Answer to the Request for Arbitration in accordance with Article 11.4 of the BAT Rules by no later than 9 January

2023 and fixed the Advance on Costs to be paid by the Parties by 23 December 2022 as follows:

<i>"Claimant (Raabersport Kft.)</i>	<i>EUR 4,500.00</i>
<i>Respondent (Ms. Brittney Sykes)</i>	<i>EUR 4,500.00"</i>

18. On 9 January 2023, the Respondent submitted her Answer to the Request for Arbitration including a counterclaim by which she claimed a compensation of EUR 15,861.00, and duly paid the non-reimbursable handling fee for the counterclaim of EUR 1,000.00.
19. On 10 December 2023, the BAT acknowledged receipt of the Claimant's share of the Advance on Costs and fixed a new deadline for the Respondent to pay her share until 20 January 2023. In addition, the BAT acknowledged receipt of the non-reimbursable handling fee for the counterclaim and drew the Respondent's attention to Articles 9.3.4. and 9.4 of the BAT Rules concerning the consequences for counterclaims in case of non-payment of the Respondent's share of the Advance on Costs.
20. On 25 January 2023, the BAT acknowledged receipt of the Respondent's share of the Advance on Costs and invited the Claimant to comment on the Answer and the counterclaim by no later than 6 February 2023.
21. By e-mail of 6 February 2023, the BAT acknowledged receipt of the Claimant's Reply and invited the Respondent to comment on it until 16 February 2023.
22. On 16 February 2023, the Respondent submitted her Rejoinder to the Claimant's Reply.
23. By letter of 20 February 2023, the BAT invited the Claimant to answer several questions of the Arbitrator until 2 March 2023.
24. On 24 February 2023, the Claimant submitted the requested answers.

25. By e-mail of 27 February 2023, the BAT invited the Respondent to comment on the Claimant's submission of 24 February 2023 until 9 March 2023.
26. On 9 March 2023, the Respondent submitted her comments to the Claimant's submission of 24 February 2023.
27. On 13 March 2023, the BAT informed the Parties that the Arbitrator had declared the exchange of submissions complete and that the final award would be rendered as soon as possible. In addition, the BAT granted the Parties a deadline until 20 March 2023 to provide a detailed account of their costs.
28. On 18 March 2023, the Club submitted its cost statements.
29. On 20 March 2023, the Player provided the BAT with her request for reimbursement of her legal fees.

4. The Positions of the Parties

4.1 The Club's position

30. The Club's submissions can be summarised as follows:
31. According to the Employment Contract, the Player is entitled to a net salary of USD 110,000.00, payable in 9 instalments, and additionally certain bonuses of USD 25,000.00 and miscellaneous costs for housing, transportation and medical insurance. As the Club was obliged to pay taxes for the Player, the gross annual remuneration of the Player was USD 110,000.00 as salaries (plus bonuses) and HUF 6,892,441.00 as taxes.

32. According to Article 1 Employment Contract, the Player should have arrived at the Club no later than 14 days after the conclusion of the Player's 2022 WNBA season. Since her last WNBA game was on 15 August 2022, the Player should have arrived at the Club on 28 August 2022 at the latest. However, the Player arrived only on 9 September 2022 with a 12-day delay with the explanation that her passport had expired. The Player knew four months in advance (in particular, since the signing of the Employment Contract on 25 April 2022) that either at the end of August or if her team qualified for the playoffs in the WNBA season somewhere at the mid/end of September, she must arrive at the Club. Therefore, the excuse that the delay in issuing a new passport was beyond her control is not convincing, as she should have renewed her passport in time. The process to extend a passport takes, according to the US authorities, only six to nine weeks, plus two further weeks for delivery. Even with a significant bureaucratic delay, the Player should have received her extended passport no later than mid/late July 2022 if she had applied for the extension in a timely manner. This has to be considered a breach of contract although the Club forgave her and settled the incident internally with a fine of USD 4,896.00.
33. After the game of 15 November 2022, the Club granted all players vacation of seven days although it was not obliged to do so based on the contracts with the players. After this break, the Player did not return to the Club and did not respond to the messages of the Club's representatives. Finally, the Player informed the Club through her agent that she intended to return to the Club only after another three days. The Player did not give any explanation for her absence. According to the Player's social media platforms, she was celebrating Thanksgiving and had programs with her family and friends in the USA and contrary to her allegation, she did not take care of her sick grandmother. She could have spent more time with her grandmother instead celebrating with her friends. In such a case, the three days delay would not have been necessary. The Player did not request in advance that she needed special leave to take care of her grandmother.

34. On 24 November 2022, the Club terminated the Employment Contract with immediate effect due to the Player's severe violations of the Employment Contract. The Player's violations of the Employment Contract are of serious nature, which justified the unilateral termination by the Club in accordance with the principles of *contractual stability* and *pacta sunt servanda*. The Player did not bother to respond to the Club's calls and other attempts to contact her. The Club cannot tolerate such unacceptable behaviour, as it would create tension between the other players and most likely have negative impact on the team's results.
35. As a consequence of the Player's breach of contract, the Club suffered severe damages. The Respondent was the most important player of the Club and the entire team had been built around her. She was ranked second in the Euroleague MVP power ranking. Due to the Player's key position, the Club's entire season was destroyed from a sporting, financial and moral perspective. The Club was forced to restructure the team in the middle of the season as a quick replacement of the Player was simply impossible.
36. According to BAT case law (BAT 0209/11, BAT 1030/17, BAT 1172/18, BAT 0334/12), in case a player's unjustified departure causes substantial complications for the club, the club is entitled to compensation in form of a "special indemnity", even if the suffered damage is difficult or impossible to quantify. By determining the "special indemnity", the Arbitrator must take into account the facts that (i) the Player's violations of the Employment Contract occurred in the middle of the season, (ii) the Player could not be replaced as she is a very unique and high-level player, (iii) the Player violated the Employment Contract twice (by not arriving at the Club on time at the beginning and not returning on time after the vacation in November 2022), (iv) the Player did not provide the Club with a credible explanation for her breaches, (v) the remuneration received by the Player until the termination shall be considered as damage; (vi) it is unfair and indecent that the Player signed a new employment contract with UNI Girona, i.e. the club against which the Claimant had played before granting all players a vacation of seven

days, and (vii) a significant part of the damage can be quantified (e.g. the registration fee, housing costs, transportations costs, etc.).

37. Until the date of the termination of the Employment Contract on 24 November 2022, the Player received a net amount of USD 51,667.00 (including the agent fee) and additional HUF 3,166,145.00 as taxes. The fine in the amount of USD 4,896.00 has to be considered as integral part of the remuneration paid to the Player. In addition, the agent fee of USD 10,000.00 is, according to the Employment Contract, to be paid on behalf of the Player and must, therefore, be considered as remuneration for the Player. The total remuneration paid to the Player corresponds to 47% of the contractual value and should be regarded as financial damage of the Club. On a proportional timeframe, the Club significantly overpaid the Player. She only fulfilled approximately two months of the Employment Contract with a total duration of 9 months.
38. The Club shall be compensated not only in the amounts already paid to the Player (i.e. USD 51,667.00 and HUF 3,166,145.00) but also the remaining contractual value of USD 58,333.00 and HUF 3,726,296.00.
39. As the bonuses should be regarded as an agreed counter-value of the services of the Player and an essential part of her contractually agreed remunerations, the Arbitrator shall consider the bonus as another position in the Club's damage. It is likely that the Player would have achieved 70% of the total amount of bonuses of USD, 25,000.00, i.e. USD 17,500.00.
40. In addition, the Club listed the following damage components: housing cost and an average maintenance for two months of EUR 1,200.00 corresponding to HUF 497,208.00; costs for the car use of two months of HUF 250,000.00; flight tickets of USD 902.00; registration fee of HUF 4,000,000.00; LOC for the Player of CHF 250.00 corresponding to HUF 104,642.00.

41. In total, the Club requests damage compensation for the amounts already paid to the Player until the termination (i.e. USD 51,667.00 and HUF 3,166,145.00), the remaining salaries under the Employment Contract (i.e. USD 58,333.00 and HUF 3,726,296.00), 70% of the bonuses under the Employment Contract (i.e. USD 17,500.00) and expenses for housing costs, car, flight tickets, registration fee and the LOC (i.e. USD 902.00 and HUF 4,851,850.00).
42. Alternatively, the Club requests, in accordance with BAT 1030/17, where a "special indemnity" of 37,5% of the annual remuneration of a player was awarded, 37,5% of the Player's annual remuneration plus the already paid salaries of 47% (in total 85%). The Player's annual remuneration is USD 135,000.00 (salary of USD 110,000.00 plus bonus of USD 25,000.00) plus HUF 6,513,011.00. Therefore, the Club alternatively requests USD 114,750.00 and HUF 6,513,011.00.
43. In its Request for Arbitration, the Club requests the following relief:

"7.1. With consideration in the above mentioned, especially the calculation of the claim defined in para 5 of the present Request for Arbitration Claimant requests for a compensation (5.1. + 5.2. + 5.3. + 5.4. =) of

USD 128.402,- and HUF 11.744.291,-

from the Respondent.

		USD	HUF
5.1.	effective payments until the termination (2 months)	USD 51.667,-	HUF 3.166.145,-
5.2.	outstanding gross amounts (7 months)	USD 58.333,-	HUF 3.726.296,-
5.3.	70% of the bonuses (as essential part of the contracted value)	USD 17.500,-	-

5.4.	<i>miscellaneous</i>	USD 902,-	HUF 4.851.850,-
TOTAL:		USD 128.402,-	HUF 11.744.291,-

7.2. Alternatively, in case the Hon. Arbitrator may not comply with the claim for compensation above, Claimant requests a compensation of 47% (effective paid amounts) + 37,5% ('special indemnity' in accordance with BAT jurisprudence) = 85% of the gross contracted amount. The gross contracted amounts equal USD 135.000,- and HUF 7.662.366,-. Consequently, the Claimant's alternative claim from the Respondent is USD 114.750,- and HUF 6.513.011,-"

44. In its submission of 2 February 2023, the Club supplemented its requests for relief by requesting that the Player's counterclaim shall be dismissed.

4.2 The Player's Position

45. The Player's submissions, in essence, may be summarised as set out below.
46. According to the Employment Contract, the Player must have joined the Club 14 days after the last game of the WNBA season. A Club's representative informed the Player that she has to be in Hungary on 31 August 2022. Due to a delayed delivery of the Player's new passport – of which the Club has been informed in a timely manner – she was not able to be in Hungary 14 days after her last game with her WNBA-team. She flew to Hungary as soon as she received her new passport on 8 September 2022 and arrived at the Club on 9 September 2022. As the reason for the delay was caused by the passport agency, the delay was beyond the Player's control. The Club reduced the Player's salary due to her delay. The Club's representative confirmed per text message that this salary deduction is not a fine and, therefore, did not consider the Player's behaviour as a breach of contract.
47. Since joining the team, the Player has fulfilled all her contractual duties in full and has become one of the most strenuous players of the Club.

48. After the away game against UNI Girona on 15 November 2022, the Club gave all players a 7-days' vacation break. The Respondent returned to her hometown to spend Thanksgiving with her family (as almost all other players) and especially with her sick grandmother. The Player informed the Club through her agent that she would have been able to fly to Hungary only two days later. In that case, the Player would have been able to join the team on 25 November 2022 (instead of 23 November 2022). The reason for her delay was that her grandmother was sick and she wanted to take care of her for two more days, which was stated through her agent to the Club during a phone call. The Player has never had the intention to leave the Club. In fact, the Player returned to the Club to collect her belongings on 25 November 2022. The Player would not have missed a game, as the next game was not scheduled until 4 December 2022.
49. The Club's termination was without just cause. According to BAT jurisprudence (BAT 0383/13), an early termination is *"the last resort if the relationship between parties becomes distressed, the breach of contract must amount a certain degree of seriousness in order to justify 'just cause' for the termination"*. As both incidents cannot be considered a *"serious breach"*, the Club terminated the Employment Contract without just cause. According to BAT jurisprudence (BAT 0038/09), the general principle of proportionality requires that any other available measures have been exhausted before the most extreme sanction, i.e. unilateral termination, is applied. Therefore, less radical measures, such as disciplinary actions, should have been imposed before terminating the Employment Contract, as is the standard for such incidents in the basketball industry.
50. After the unjustified termination by the Club, the Player had to seek for a new club to play for the rest of the season. It is reasonable that the Player wanted to sign a new contract as soon as possible in order to mitigate the damages suffered from the unjustified termination.
51. Until the unjustified termination of the Employment Contract, the Player did not receive USD 51,667.00 as stated by the Club. The Club paid the following amounts to the Player:

Date of Payment	Amount Paid
23 September 2022	USD 4,352.00
30 September 2022	USD 4,852.00
2 November 2022	USD 15,840.00
29 November 2022	USD 11,639.00
Total	USD 36,683.00

52. According to Exhibit 1 of the Employment Contract, the Player should have received an amount of total USD 47,500.00 until the termination. Considering the fine issued by the Club for the Player's delay at the beginning of the contract in the amount of USD 4,956.00, the Player would have been entitled to a salary of USD 42,544.00. Therefore, the Club still owes the Player an amount of USD 5,861.00 as unpaid salaries until termination (i.e. USD 42,544.00 – USD 36,683.00).
53. The agent fee in the amount of USD 10,000.00 paid to the Player's agent cannot be considered as remuneration of the Player as the Club tries to argue. The agent fee was directly paid to the agent and was not received by the Player.
54. According to BAT jurisprudence (FAT 0034/09), the salary that had been earned until the termination needs to be paid by the employer. It is disrespectful, highly unfair and against BAT jurisprudence to request a compensation of the entire remuneration paid to the Player including taxes and miscellaneous costs, even though it is obvious that the

Club benefited from the Player's services throughout the period she played for. Otherwise, this would constitute an unjust enrichment on the Club's side. In addition, all miscellaneous costs claimed by the Club (i.e. flight tickets, car, housing costs) are clearly mentioned in the Employment Contract.

55. Even if the Arbitrator were to conclude that the termination was with just cause, the Club shall be entitled to a compensation for its proven damages only, however the Club failed to prove any material damage. According to BAT jurisprudence (BAT 1445/19), the principle of *ex aequo et bono* does not justify a "special indemnity" since "(i) the Club did not even try to quantify the damages, but only referred to the total value of the contract; [...] (iii) the Club failed to show that it took great effort to conclude the Employment Contract".
56. Moreover, the Player is not obliged to pay taxes as the Employment Contract explicitly states that the amounts mentioned in Exhibit 1 of the Employment Contract are net amounts. Although asked by the Arbitrator to provide a legal basis, the Club did not explain why the taxes should be considered remuneration of the Player.
57. As the Club's termination was without just cause, the Player is entitled to a compensation for the financial damage suffered. According to BAT jurisprudence (FAT 0008/08 and BAT 0155/11), in case of an unjustified termination by the club, the player can claim damages in the amount of the future salaries until the expiration of the contract. The Player would have been entitled to future salaries of USD 68,361.00 (USD 110,000.00 – USD 41,639.00², which were paid or due until the termination). The Player accepts to deduct the salary of USD 52,500.00 which she agreed with her new club UNI Girona which results in an amount of USD 15,861.00.

² The received salary amount of total USD 36,683.00 plus the deducted fine of USD 4,956.00.

58. However, in her requests for relief, the Player did not request damages of USD 15,861 for the loss of future salaries, but only of USD 10,000.00, in addition to the outstanding salaries of USD 5,861.00. The Player's requests for relief in her Answer of 9 January 2023 read as follows:

"The Respondent kindly requests the Hon. Arbitrator to deny all claims of the Claimant entirely and find that;

(1) The Respondent did not breach the Contract,

(2) The Claimant did not prove any actual damage incurred, therefore it cannot justify any compensation

(3) The amount sought by the Claimant does not represent a compensation which is in accordance with ex aequo et bono doctrine since it represents an unjust enrichment

(4) The Claimant to be obliged to pay all arbitration costs of the Respondent

(5) The Claimant to be obliged to pay all legal fees and expenses incurred in these proceedings.

The Respondent (as counterclaimant) requests the Hon. Arbitrator to uphold all counterclaims of the Respondent and find that:

(6) The Claimant terminated the Contract without just cause

(7) The Respondent is entitled to a compensation of 5,861 as unpaid salaries and 10,000 USD as the outstanding gross amount of the Contract

(8) The Claimant to be obliged to pay all arbitration costs of the Respondent

(9) The Claimant to be obliged to pay all legal fees and expenses incurred in these proceedings" (emphasis as in the original)

5. The Jurisdiction of the BAT

59. The Club requests damage compensation because the Player allegedly violated the Employment Contract twice, which caused the early termination by the Club. The Player

filed a counterclaim in this arbitration and requests unpaid salaries and a compensation for the unjustified termination of the Employment Contract.

60. Pursuant to Article 2.1 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).
61. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
62. 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) PILA³.
63. The jurisdiction of the BAT over claims related to the Employment Contract results from the arbitration clause contained under Article 9 Employment Contract, which reads as follows:

“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 (PIL), irrespective of the parties’ domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.”

64. The dispute resolution clause is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
65. With respect to the substantive validity, the Arbitrator considers that the jurisdiction of BAT over the Club’s claims arises from the Employment Contract. The wording “[a]ny

³ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

dispute arising from or related to the present contract [...]” clearly covers the Club's claims.

66. Finally, the procedure with the BAT was initiated by the Club without any jurisdictional reservation and the Player did not object to the jurisdiction of the BAT.
67. A counterclaim is a separate claim raised by a respondent by occasion of a legal proceeding initiated by the claimant. It is independent from the initial claim. As a matter of procedural efficiency and economy, an arbitral tribunal may (but does not have to) accept to adjudicate a counterclaim together with the initial claim if the initial claim and the counterclaim are subject to similar arbitration agreements and the adjudication of a counterclaim is not excluded by the applicable procedural rules. The BAT Rules explicitly provide for the admissibility of a counterclaim in its Article 11.4.
68. The Player's counterclaim is directly based on the Employment Contract and therefore subject to the same arbitration agreement as the Club's claims. It is aimed at the payment of a compensation of an allegedly unlawful termination of the Employment Contract by the Club and, therefore, directly relates to the Club's claim for compensation for the Player's alleged severe violations of the Employment Contract. The Player raised the counterclaim together with the Answer and therefore complied with Article 11.4 BAT Rules, and also paid the non-reimbursable handling fee. The Club has not disputed the Arbitrator's jurisdiction in respect of the counterclaim, or the admissibility of the counterclaim. The Arbitrator therefore accepts to adjudicate the counterclaim together with the Club's claims.
69. For the above reasons, the Arbitrator accepts jurisdiction to adjudicate the Club's claim and the Player's counterclaim.

6. Discussion

6.1 Applicable Law – *ex aequo et bono*

70. 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".

71. 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."

72. As seen above, Article 9 Employment Contract stipulates that "[t]he arbitrator shall decide the dispute *ex aequo et bono*".
73. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding.

74. 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'arbitrage⁴ (Concordat)⁵, 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."⁶

75. 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".
76. In light of the foregoing considerations, the Arbitrator makes the findings below.

6.2 Findings

77. The Parties agree that the Employment Contract was no longer effective upon receipt of the Club's termination notice by the Player on 24 November 2022. They disagree however on whether (i) the Club was entitled to unilaterally terminate the Employment Contract and (ii) the Parties can claim any financial consequences as a consequence of the unilateral termination.

⁴ 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).

⁵ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

⁶ JdT 1981 III, p. 93 (free translation).

6.2.1 Did the Club terminate the Employment Contract with just cause?

78. While the Club argues that it terminated the Employment Contract on 24 November 2022 with just cause, the Player submits that the Club's unilateral termination was not justified.
79. A premature termination of a contract with a fixed term must remain the *ultima ratio* in order to preserve the goal of contractual stability, which is particularly important in volatile legal environments such as the world of sports.⁷ According to BAT jurisprudence, "*only very serious breaches of an employment agreement that strike at the heart of the employment relationship can justify immediate termination upon short or even without prior notice. The employer however must respond promptly to misconduct which amounts to a severe breach and cannot wait and see whether any further misconduct will occur. Otherwise, the employer is deemed to have accepted the misconduct of the employee and can no longer justify an immediate termination. If the employee's behaviour is less serious but still not acceptable to the employer, the employer must first warn the employee and then allow him to cure the breach or demonstrate improvement within a reasonable time. Only if the employee's performance does not improve, or the breach is not cured can the employment contract be unilaterally terminated prior to its expiration date.*"⁸
80. The Arbitrator finds that the Club has credibly established that the two reported incidents have actually taken place.
81. With regard to the first incident, the Arbitrator notes that according to Article 1 Employment Contract, the Player should have arrived at the Club no later than 14 days after the end of the season of the Player's WNBA club. As the last game of the Player's

⁷ BAT 0815/16, at para. 94, BAT 1545/20, at para. 61, BAT 1767/21, at para. 139.

⁸ BAT 0640/14, at para. 39 et seq.

WNBA club took place on 14 August 2022⁹, the Player should have arrived on 28 August 2022 in Hungary. It was the obligation of the Player to ensure that her passport is valid and to initiate the procedure to extend the passport in a timely manner. However, considering the quoted text message dialogue between the Player's agent and a Club's representative in August 2022, it is apparent to the Arbitrator that the Parties had agreed that the Player would not arrive at the Club until 9 September 2022 and that she would not receive a salary for the period between 28 August 2022 and 9 September 2022. It was agreed that a total amount of USD 4,896.00 (and not USD 4,956.00 as argued by the Player) would be deducted from the first three salary instalments. In the mentioned text message dialogue, the Club's representative emphasized that this deducted amount was not considered a fine. The Arbitrator concludes that in August 2022, the Club did not consider the Player's delayed arrival as a breach of contract. The Club's contrary argument in this proceeding is not compatible with the legal principle of *venire contra factum proprium*. Thus, the Arbitrator does not regard the first incident as a violation of the Employment Contract but as an amendment of Article 1, which specified the arrival date.

82. This is different with respect to the second incident, i.e. when the Player did not return from holiday in time. On 15 November 2022, the Club granted – without being obliged to do so – all players a vacation of seven days. It remained undisputed between the Parties that the Player should have returned to the Club on 23 November 2022 at the latest. On 22 November 2022, the Player's agent informed the Club that the Player would only arrive on 25 November 2022. According to the case file, the Player requested an extension of the vacation for two days only on 23 November 2022 and not in advance. According to BAT jurisprudence, a player may indeed have valid reasons not to fulfil her duties under the employment agreement. In an earlier case, the BAT concluded that a player's absence was justified by a sudden life-threatening illness of a very close

⁹ <https://www.wnba.com/player/brittney-sykes/>

relative.¹⁰ Accordingly, it would have been the Player's obligation to provide evidence that her grandmother was suffering from an illness and that the Player's presence was necessary. However, there is no such evidence on record. The Player's absence must be considered as a breach of contract for lack of proof of sufficient cause.

83. When assessing the seriousness of the second incident, the Arbitrator finds that the Player did not behave in a respectful and professional manner¹¹ but he does not share the Club's view that the second incident was absolutely intolerable and justified a unilateral and immediate termination of the Employment Contract. It is difficult to understand how the second incident irremediably affected the Club's reputation or caused any other damage that could not be further tolerated by the Club, in particular considering the fact that the Player would not have missed a single game.
84. If the second incident had indeed been so detrimental to the Club and the Player had indeed been so important to the Club, the Arbitrator would have expected, as a matter of proportionality, that the Club issued a formal warning to the Player before terminating the Employment Contract.¹² However, that did not happen.
85. By early terminating the Employment Contract on 24 November 2022, which was even before the announced date of return of 25 November 2022, the Club violated the principle of *ultima ratio* and the principle of proportionality. Therefore, the Arbitrator holds that the Club terminated the Employment Contract without just cause.

¹⁰ See BAT 0381/13, at para. 77.

¹¹ See also BAT 0640/14, at para. 45.

¹² See also BAT 0640/14, at para. 46.

6.2.2 Financial consequences of the early termination

86. As the Club terminated the Employment Contract without just cause, the Club is not entitled to any compensation.
87. However, the question arises whether the Player is entitled to outstanding salaries and a compensation for the lost income for the rest of the contractual term as a consequence of the unjustified termination by the Club.
88. With regard to the outstanding salaries until the termination date of 24 November 2022, the Arbitrator notes that, according to Exhibit 1 of the Employment Contract, the Player would have been entitled to the following payments:

Payment date	Amount
After passing medical test	USD 6,000.00
30 September 2022	USD 6,500.00
30 October 2022	USD 17,500.00
30 November 2022	USD 17,500.00

89. The Player is, in principle, entitled to USD 6,000.00 after passing the medical test, USD 6,500.00 on 30 September 2022, USD 17,500.00 on 30 October 2022 and a *pro rata* salary until 24 November 2022 of USD 14,000.00 ($\text{USD } 17,500.00 / 30 \times 24$), which corresponds to a total amount of USD 44,000.00. USD 4,896.00 must be deducted from this amount due the Player's late arrival at the Club as agreed by the Parties. Therefore, until termination of the Employment Contract on 24 November 2022, the remaining salary amounted to USD 39,104.00.
90. According to Exhibit 1 of the Employment Contract, these are net amounts and under no circumstances “*shall the Player be obligated to pay and taxes on her salary. [...] The Club agrees to pay all the charges incurred by the Player to wire money to the bank*”

account designated by the Player“. Therefore, the taxes paid by the Club cannot be considered remuneration of the Player.

91. The same applies also to the agent fee. Pursuant to Exhibit 1 of the Employment Contract, the Club is obliged to pay an agent fee directly to the Player's agent on behalf of the Player. An agent fee cannot be considered as remuneration for the Player as it is paid for the services of another person/entity and not for the Player's. While a club and a player may of course agree that such agent fee is deducted from the player's salary, the Employment Contract does not provide any indication that this is what the Parties in this case had agreed.
92. As credibly demonstrated by the Player, she only received an amount of USD 36,683.00. Therefore, there remains an unpaid difference of USD 2,421.00 (USD 39,104.00 – USD 36,683.00), and not USD 5,681.00 as argued by the Player, as the November-salary has to be calculated on a *pro rata* basis until the termination on 24 November 2022.
93. In her Answer, the Player requests *“a compensation of 5,861 as unpaid salaries and 10,000 USD as the outstanding gross amount of the Contract”*. As the Player emphasized in her written submissions that, according to the Employment Contract, she was entitled to a *“guaranteed base salary **net of taxes**”* (emphasis as in the original), the Arbitrator concludes that the Player's reference to *“outstanding gross amount”* does not refer to the outstanding salaries already due before the termination of the Employment Contract (but only to the calculation of a potential compensation, see below). For this reason, the Arbitrator obliges the Club to pay outstanding salaries of USD 2,421.00 net.
94. There remains the question whether the Player is entitled to a compensation for the loss of future salaries. According to BAT jurisprudence and also based on generally accepted principles of the law of damages and also labour law, *“after an unjustified termination of the player contract by the club, the player has an obligation to take reasonable efforts to find a new club and that his alternative earnings shall be deducted from the*

compensation otherwise due by the club. A player shall not profit from the early termination of the player contract but rather be put into the same economic situation as if that player contract would have correctly been fulfilled. The Arbitrator shall thus award the sum which would restore the injured party into the economic position that such party expected from performance of the contract. On the other hand, the injured party is obliged to mitigate the damage. In addition, any advantages which the injured party may have gained as a consequence of the breach (e.g. salaries otherwise earned) must be taken into account when calculating the compensation due¹³.

95. Based on the principle of *ex aequo et bono*, the compensation does not only depend on the calculation of the lost income but also on considerations of fairness, namely whether the Club terminated the contract unprovoked and arbitrary or whether the Player somehow contributed to the circumstances which eventually led to the early termination of contract.
96. Under the Employment Contract, the Player would have been entitled to the following salary payment after the termination date (i.e. 24 November 2022):

Payment date	Amount
30 November 2022 (<i>pro rata</i> payment)	USD 17,500.00 - USD 14,000.00 = USD 3,500.00
30 December 2022	USD 12,500.00
30 January 2023	USD 12,500.00
28 February 2023	USD 12,500.00
30 March 2023	USD 12,500.00
30 April 2023	USD 12,500.00
Total	USD 66,000.00

¹³ BAT 0644/15, at para. 33.

97. From this amount, the Player's income from UNI Girona during the remaining season 2022/2023 must be deducted. According to the employment contract with UNI Girona, the Player is entitled to a total salary of USD 52,500.00. This deduction results in an amount of USD 13,500.00 net. The Player claims an amount of USD 10,000.00 gross.
98. However, the Arbitrator finds that the Player has to accept the reproach that she contributed to the Club losing patience and dismissing her. She breached the contract by returning late from vacation without proof of a valid reason after she arrived late already at the beginning of her assignment. The Arbitrator also notes that the Player earned significantly more in the first two months of her employment than in the remaining months. The Arbitrator, by applying the principle of *ex aequo et bono*, finds a compensation of amount of USD 5,000.00 (gross) appropriate.
99. Therefore, the Player is only entitled to outstanding salaries in the amount of USD 2,421.00 net and a compensation for the loss of future salaries of USD 5,000.00 gross.

6.2.3 Interest

100. In her counterclaim, the Player mentions that "*default interest at a rate of 5% per annum can be awarded even if the underlying agreement does not explicitly provide for a respective obligation*". However, the Player fails to indicate the period for which interest shall be awarded. In addition, the Player did not mention the interest in her requests for relief.
101. Nevertheless, the Arbitrator decides to award interest for the following reasons: First, 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. Second, after review of the Player's submissions it is obvious to the Arbitrator that it was the intention

of the Player to request interest and that the failure to mention the period for which interest is claimed is an oversight.

102. As to the date from which the interest for the outstanding salaries and the compensation for the loss of future salaries starts to run, the Arbitrator decides to award interest only as from the date of the submission of the counterclaim, i.e. from 25 January 2023.

7. Conclusion

103. 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 Club shall pay the Player the outstanding salaries of USD 2,421.00 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) from 25 January 2023 until payment in full, and a compensation of USD 5,000.00 gross, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) from 25 January 2023 until payment in full.

8. Costs

104. 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). [...]”

105. On 12 May 2023, the BAT President determined the arbitration costs in the present matter to be EUR 6,450.00.

106. 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.”

107. Considering the Parties' requests for relief on the one hand and the outcome of the case on the other hand, it turns out that the Club did not receive anything from the requested amount of approximately USD 160,000.00, whereas the Player prevailed by about 50% of her much lower claim of USD 15,861.00. As the Player succeeded with the dismissal of the main claim of approx. USD 160,000.00 and was partially successful with her counterclaim (i.e. USD 7,421.00 out of USD 15,861.00), she won by approx. 95 % of her claims (i.e. USD 167,421.00 of USD 175,861.00). The Arbitrator therefore concludes that 95 % of the arbitration costs (i.e. EUR 6,127.50) shall be borne by the Club and 5 % (i.e. EUR 322.50) shall be borne by the Player.

108. Since both Parties paid their shares of the Advance on Costs of each EUR 4,500.00, the Club shall reimburse EUR 1,627.50 to the Player and the BAT will reimburse EUR 2,550.00 to the Player.

109. 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.”

110. 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 (which

are limited in this case at EUR 10,000.00 for the main claim and EUR 5,000.00 for the counterclaim).

111. The Club claims legal fees in the total amount of EUR 9,300.00 plus a success fee of 10%. It also claims for the expense of the non-reimbursable handling fee in the amount of EUR 4,000.00. The Player claims legal fees in the total amount of EUR 10,000.00 related to the claim and the counterclaim and the expense of the non-reimbursable handling fee for the counterclaim of EUR 1,000.00.
112. Because of the specific circumstances of this case and considering the outcome of the proceeding, the Arbitrator holds that it is fair and equitable that the Club pays an amount of EUR 4,000.00 to the Player for her legal costs and a further amount of EUR 1,000.00 in respect of the non-reimbursable handling fee for the counterclaim.

9. AWARD

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

- 1. Raabersport Kft (Sopron Basket) shall pay Ms. Brittney Sykes outstanding salaries of USD 2,421.00 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) from 25 January 2023 until payment in full.**
- 2. Raabersport Kft (Sopron Basket) shall pay Ms. Brittney Sykes a compensation of USD 5,000.00 gross, together with interest at 5% per annum on any out-standing balance (as may be the case from time to time) from 25 January 2023 until payment in full.**
- 3. Raabersport Kft (Sopron Basket) shall pay Ms. Brittney Sykes EUR 1,627.50 as reimbursement of her arbitration costs.**
- 4. Raabersport Kft (Sopron Basket) shall pay Ms. Brittney Sykes EUR 5,000.00 as contribution to her legal fees and (including the non-reimbursable handling fee for the counterclaim).**
- 5. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 16 May 2023

Stephan Netzle
(Arbitrator)