

ARBITRAL AWARD

(BAT 1903-1904/22)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Benny Lo

in the arbitration proceedings between

Mr. Manuel Bosch Bifet

- Claimant 1-

Mr. Joaquin Colom

- Claimant 2-

both represented by Mr. Oriol Castaner and Ms. Teodora Taneva, attorneys at law,

vs.

AEK B.C.

ANO LIOSIA OLYMPIC HALL, Konstantinoupoleos 59,
133 42 Ano Liosia, Athens, Greece

- Respondent -

1. The Parties

1.1. The Claimants

1. Mr. Manuel Bosch Bifet ("**Agent**" or "**Claimant 1**") is a Spanish professional basketball agent.
2. Mr. Joaquin Colom ("**Player**" or "**Claimant 2**") is a Spanish professional basketball player.

1.2. The Respondent

3. AEK B.C. ("**Club**" or "**Respondent**") is a Greek basketball club.

2. The Arbitrator

4. On 24 December 2022, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal ("**BAT**"), appointed Mr. Benny Lo as arbitrator ("**Arbitrator**") pursuant to Article 8.1 of the Arbitration Rules of the Basketball Arbitral Tribunal in force as from 1 January 2022 ("**BAT Rules**"). None of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1. Summary of the Dispute

5. On 18 July 2021, the Player, the Agent and the Club entered into a written agreement providing for the Player's employment as a skilled basketball player to perform his exclusive services for the Club for the 2021/2022 season ("**Agreement**"). For the purpose of registration in the league, the same parties signed another contract under exactly the same terms as those contained in the original Agreement.
6. The Agreement provides relevantly as follows:

“7. SALARY & SIGNING BONUSES COMPENSATION

a) *The Club agrees to pay the Player for rendering his services to the Club the following NET amounts:*

Season 2021-2022

€ 135.000 *(Euro one hundred thirty five thousand) net of Greek taxes, paid into 10 (ten) equal installments of € 13.500 (Euros thirteen thousand and five hundred) on the last day of each month, commencing with September 30th, 2021 and ending on June 30th 2022.*

[...]

10. TAXATION

All of the above said payments regarding paragraphs 7 (seven) and 8 (eight) of this Contract shall be NET of Greek income taxes. Club is responsible to pay all applicable taxes and charges on behalf of Player to the relevant authorities and shall furnish Player with all appropriate tax receipts and relevant documents at the end of each fiscal year and no later than 30/3 of the following year.

[...]

12. AMENITIES

In addition to the compensation outlined in paragraphs 7 (seven) and 8 (eight) of this Agreement, and at no cost to the Player, Club shall provide the Player with the following amenities, for the duration of this Contract:

[...]

b) **HOUSING:** *The club will pay a maximum of 1.500 euros per month (a total amount of 15.000 euros) for the player's housing. This amount will be paid into 10 (ten) equal installments of € 1.500 (Euros one thousand) on the last day of each month, commencing with September 30th, 2021 and ending on June 30th 2022.*

The club will help the player to find the most suitable house for him and his family.

[...]

14. AGENT FEES

The Club agrees to pay as agent fees to the Player's Agents, the following amount (payments will be transferred to the Agents' designated bank accounts):

- **€ 6.500** *(Euros six thousand and five hundred), plus VAT wired to the designated bank account of **Manuel Bosch Bifet**, paid on December 31st 2021*

- **€ 7.000** (Euros seven thousand), plus VAT wired to the designated bank account of **Manuel Bosch Bifet**, paid on March 31st 2022

[...]

18. ARBITRATION

Any dispute arising from or related to the present Contract shall be submitted to the FIBA 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 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 of FIBA shall be English. The arbitrator shall decide the dispute ex aequo et bono.

[...]"

7. According to the evidence on file it appears that, as a result of the services rendered by the Agent, the Player signed the Agreement with the Club, which agreed to pay agent fees by two instalments of EUR 6,500.00 and EUR 7,000.00 respectively. It is the Agent's case that, whilst the second instalment of the agent fees has been paid, the Club has been in default of the first instalment, which remains unpaid despite the Agent's repeated demands.
8. It further appears from the evidence in file that the Player has duly provided his services under the Agreement. Notwithstanding, it is the Player's case that the Club has been in default of his salary and housing allowance payments in the total amount of EUR 48,000.00. That amount had remained unpaid despite the Player's repeated requests and the Club's promise and reassurance to pay.
9. The Claimants have thus brought these claims to recover the Player's outstanding salary and housing allowance and the Agent's agent fees under the Agreement.

3.2. The Proceedings before the BAT

10. On 14 December 2022, the Agent filed his Request for Arbitration ("**1903 RfA**") in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 1,000.00 on 14 December 2022.

11. Separately, on 14 December 2022, the Player filed his Request for Arbitration (“**1904 RfA**”) in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 2,000.00 on 8 December 2022.
12. On 27 December 2022, the BAT informed the Parties that, in accordance with Article 11.3 of the BAT Rules, the BAT President had decided to consolidate the two cases into one arbitration for the sake of procedural efficiency, considering the overlapping factual elements and legal issues of both cases.
13. The consolidation resulted in the increase of the total value in dispute and hence the increment of the corresponding non-reimbursable handling fee to the amount of EUR 4,000.00 pursuant to Article 17.1 of the BAT Rules. Having already paid the non-reimbursable handling fee of EUR 3,000.00 in aggregate (see paras. 10-11 above), the Claimants paid the remaining amount of EUR 1,000.00 on 20 December 2022.
14. On 27 December 2022, the BAT also informed the Parties that Mr. Benny Lo had been appointed as the Arbitrator in this case, invited the Club to file its Answer by 18 January 2023, and fixed the advance on costs to be paid by the Parties by 10 January 2023 as follows:

<i>“Claimant 1 (Mr. Manuel Bosch Bifet)</i>	<i>EUR 750.00</i>
<i>Claimant 2 (Mr. Joaquin Colom)</i>	<i>EUR 3,000.00</i>
<i>Respondent (AEK BC)</i>	<i>EUR 3,750.00”</i>
15. On 3 and 5 January 2023, the BAT received the Claimants’ share of the advance on costs in the total amount of EUR 3,750.00.
16. On 20 January 2023, the BAT noted that the Respondent had failed to submit its Answer or pay its share of advance on costs within the set time-limit and gave it a final opportunity to do so by 27 January 2023.
17. On 31 January 2023, in light of the Respondent’s failure to pay its share of the advance

on costs, the BAT invited the Claimants to substitute for the Respondent's share in the amount of EUR 3,750.00 by 10 February 2023 in accordance with Article 9.3 of the BAT Rules.

18. On 2 February 2023, the BAT received the Respondent's share of the advance on costs paid by the Claimants in the amount of EUR 3,750.00.
19. On 23 February 2023, the BAT invited the Claimants to reply to various specific questions by 2 March 2023 ("**Arbitrator's Questions**").
20. On 27 February 2023, the Claimants filed their reply to the Arbitrator's Questions ("**Reply**").
21. On 1 March 2023, the BAT informed the Parties that the exchange of submissions was completed in accordance with Article 12.1 of the BAT Rules. The Claimants were invited to file submissions on how much of the applicable maximum contribution to costs should be awarded to them and why, and to include a detailed account of their costs, including any supporting documentation in relation thereto, by 8 March 2023.
22. On 2 March 2023, the Claimants filed their costs submissions.
23. On 3 May 2023, the BAT informed the Parties that the Arbitrator, having considered the entire course of the proceedings, had decided to re-open the proceedings to provide the Respondent the opportunity to comment on the Reply by 8 May 2023. Since the Respondent did not do so, these proceedings were conclusively closed on 9 May 2023. Up to the date hereof, the Respondent has not participated in this arbitration in any way.

4. The Positions of the Parties

4.1. The Claimants' Position

24. It is the Agent's case that, pursuant to Clause 14 of the Agreement, he is entitled to agent fees of EUR 13,500.00 payable in two instalments, namely (i) EUR 6,500.00 on

31 December 2021; and (ii) EUR 7,000.00 on 31 March 2022. Having only been paid the second instalment, the Agent submitted that the Club has been in default of the first instalment for almost a year up to the date of filing of the 1903 RfA.

25. On the other hand, it is the Player's case that he is entitled to receive from the Club the net monthly payment of EUR 15,000.00 under the Agreement, comprising EUR 13,500.00 as salary and EUR 1,500.00 as housing allowance. The Player submitted that the Club has been in default of (i) the salary and housing allowance for April, May and June 2022 in the total amount of EUR 45,000.00; and (ii) the housing allowance for September 2021 and March 2022 in the total amount of EUR 3,000.00.
26. By reference to a series of WhatsApp messages between the Agent and the Club's General Manager [Name Club General Manager] from June to October 2022, the Claimants submitted that the Club has admitted owing them the outstanding amounts as aforesaid.

27. In the 1903 RfA, the Agent sought the following relief:

***a.** Accepting this claim.*

***b.** Deciding that the Respondent shall pay the Agent the amount of EUR 6.500, together with interest of 5% p.a. starting to count as from 1 January 2022 and until the effective payment.*

***c.** 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.*

***d.** Further to article 17.3 of the BAT Arbitration Rules to decide, that the Respondent shall bear the payment of the non-reimbursable fee in amount of EUR 1.000 and shall pay the Agents' legal fees with respect to this procedure. Such amount will be justified with the relevant invoice issued once the investigation phase has been completed."*

28. In the 1904 RfA, the Player sought the following relief:

***a.** Accepting this claim.*

***b.** Deciding that the Respondent shall pay the Player the amount of EUR 48.000 net of any Greek taxes and charges as outstanding salary, together with interest of 5% p.a. starting*

to count on the date when the [sic] each of them became due until effective the payment.

c. To decide that the Respondent shall provide the Appellant with the pertinent Greek tax certificates on the amounts stipulated in the Contract.

d. 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.

e. Further to article 17.3 of the BAT Arbitration Rules to decide, that the Respondent shall bear the payment of the non-reimbursable fee in amount of EUR 2.000 and shall pay the Players' legal fees with respect to this procedure. Such amount will be justified with the relevant invoice issued once the investigation phase has been completed."

29. In his Reply, the Player revised the relief sought by him as follows:

"a. Accepting this claim.

b. Deciding that the Respondent shall pay the Player the amount of EUR 48.000 net which corresponds to EUR 40.500 net as monthly remuneration and EUR 7.500 net as housing allowance, together with interest of 5% p.a. starting to count on the date when each amount became due until effective the payment.

c. To decide that the Respondent shall provide the Appellant with the pertinent tax certificates for tax withholdings on the amounts paid in these proceedings to the Player.

d. 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.

e. Further to article 17.3 of the BAT Arbitration Rules to decide, that the Respondent shall bear the payment of the non-reimbursable fee in amount of EUR 2.000 and shall pay the Players' legal fees with respect to this procedure in the amount of EUR 7.035."

4.2. The Respondent's Position

30. The Club has failed to file any submission or evidence in these arbitration proceedings and has not otherwise participated in these arbitration proceedings at all.

5. The Jurisdiction of the BAT

31. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not participate in the arbitration, he will examine her jurisdiction *ex officio*, on the

basis of the record as it stands.¹

32. 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, the BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).
33. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the exercise of a valid arbitration agreement between the parties.
34. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.²
35. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under Clause 18 of the Agreement as follows:-

“Any dispute arising from or related to the present Contract shall be submitted to the FIBA 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 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 of FIBA shall be English. The arbitrator shall decide the dispute ex aequo et bono.”
36. The Agreement is in writing and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
37. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss Law (referred to by Article 178(2) PILA).
38. The predicate wording in Clause 18 of the Agreement, i.e. “[a]ny dispute arising from

¹ Judgement of the Swiss Federal Tribunal, 120 II 155, 162.

² Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

or related to the present Contract", clearly covers the present dispute.

39. For the above reasons, the Arbitrator rules and finds, pursuant to Article 1.3 of the BAT Rules, that he has jurisdiction to finally decide and rule upon the Claimants' claims.

6. Other Procedural Issues

40. Article 14.2 of the BAT Rules specifies that "*the Arbitrator may [...] proceed with the arbitration and deliver an award*" if "*the Respondent fails to submit an Answer*." The Arbitrator's authority to proceed with the arbitration in case of default by one of the parties is in accordance with Swiss arbitration law and the practice of the BAT.³ However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.

41. This requirement is met in the present case. The Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator in accordance with the relevant rules. It was also given sufficient opportunity to respond to Claimant's Request for Arbitration. The Respondent, however, chose not to participate in this arbitration.

42. In addition, the Arbitrator notes that none of the Parties requested a hearing. In accordance with Articles 13.1 and 14.2 of the BAT Rules, the Arbitrator will decide the Claimants' claims based on the written submissions and the evidence on record, notwithstanding the Club's default in filing its Answer or any submissions at all.

7. Discussion

7.1 Applicable Law – *ex aequo et bono*

43. 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

³ See *ex multis* BAT cases 0001/07; 0018/08; 0093/09; 0170/11.

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”.

44. 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.”

45. Clause 18 of the Agreement expressly provides that the Arbitrator shall decide the dispute *ex aequo et bono*.
46. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in these proceedings.
47. 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*⁴ (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

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.

not inspired by the rules of law which are in force and which might even be contrary to those rules.”⁶

48. 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*”.

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

7.2 Findings

50. As the Claimants’ claims are to enforce contractual payment obligations, the doctrine of *pacta sunt servanda* (which provides that parties who make a bargain are expected to stick to that bargain) is the principle by which the Arbitrator will examine their merits.

51. In the Arbitrator’s view, the factual and legal issues presented by the Parties outlined under Section 4 above give rise to two broad issues for consideration, namely:

(a) First, did the Club breach the Agreement by failing to pay agent fees alleged to be outstanding, and if so, what if any relief is the Agent entitled to in his claim against the Club? (“**Issue 1**”)

(b) Second, did the Club breach the Agreement by failing to pay salaries and housing allowance alleged to be outstanding, and if so, what if any relief is the Player entitled to in his claim against the Club? (“**Issue 2**”)

7.2.1. Issue 1 – Did the Club breach the Agreement by failing to pay agent fees alleged to be outstanding, and if so, what if any relief is the Agent entitled to in his claim against the Club?

52. By Clause 14 of the Agreement, the Club undertook to pay the Agent his agent fees of EUR 13,500.00. Payment was to be made in two instalments of EUR 6,500.00 on

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

31 December 2021 and EUR 7,000.00 on 31 March 2022.

53. It is the Agent's case that he has received only the second instalment from the Club, while the first instalment remains unpaid to date. This is indeed evident from an exchange of WhatsApp messages between the Agent and the Club's General Manager [Name Club General Manager] ("[Club General Manager]") between May and October 2022 (English translation of Spanish original as provided in Claimants' RfAs):-

"The Agent: Good afternoon [Name Club General Manager]!! I have received the second instalment for the commission. The first installment remains unpaid; I assume you are aware of that but just wanted to check with you. How are you doing with the sponsorship deals? (31 May 2022 19:41)

[Club General Manager]: Good morning Manel. Yes, I confirm the first installment remains unpaid. (1 June 2022 11:01)

[Club General Manager]:

- 01/10, €13.500
- 18/11, €15.000
- 28/12, €15.000
- 11/03, €30.000
- 11/05, €15.000
- 27/05, €13.500

*Total: €102.200 paid
Season Total: €150.000*

*Outstanding: €48.000 to
Quino and €6.500 to you (23 June 2022 13:19)*

The Agent: That is correct [Name Club General Manager]!! (24 June 2022)

The Agent: I hope the debt to the player and the agency will be solved this month as you suggested! Thanks so much! (12 July 2022 14:05)

[Club General Manager]: Hello Manel. First, thanks for your work and the patience you have shown. Second, it was an honor for the club that Quino was one of our players. For sure everything will be paid. I want to keep a good relationship with both you and Quino. Regards. (17 July 2022 22:27)

The Agent: Good morning [Name Club General Manager], did you spoke [sic] with the chairman and the owner?? They want to solve this or rather want us going to BAT?? Quino is really worried about this and we cannot wait any further. (29 September 2022 09:32)

[Club General Manager]: Good morning. Yes, I spoke to. Until we solve the ban issue

(deadline is this Friday) we can do nothing. I just want you to trust me. (5 October 2022 09:38)

The Agent: Good morning [Name Club General Manager]!! How is the situation looking after the deadline?? Can you pay now? (5 October 2022 11:54)

The Agent: [Name Club General Manager]! We agreed this week payments would be made by we have not received any amount!! Do you know what the problem is?? (21 October 2022 13:54)

[Club General Manager]: Manel. We spoke on Friday and I told you I would talk with them to find out what happened. They will be here tomorrow at a meeting and will let you know. I have not met them this weekend. I will solve this. (24 October 2022 21:43)

The Agent: OK. I though you have already met them. I'll wait for your news!! (24 October 2022 21:43)"

54. The Club has not put in any evidence to rebut the Agent's case that the first instalment of the agent fees was and has remained unpaid. There can be no question that the Club breached the Agreement by non-payment of the first instalment of the agent fees.
 55. Deciding *ex aequo et bono*, the Arbitrator therefore finds that the Agent is entitled to his claim for agent fees of **EUR 6,500.00**.
 56. On top of the unpaid agent fees, the Agent also claims default interest at the rate of 5% per annum from 1 January 2022 until effective payment.
 57. It is well-established BAT jurisprudence that interest runs from the day after the date on which an amount is due. Hence, on the unpaid first instalment of the agent fees due on 31 December 2021, the Arbitrator finds that default interest should start to accrue from 1 January 2022. Hence, the Agent's claim for interest is accepted in full.
- 7.2.2. Issue 2 – Did the Club breach the Agreement by failing to pay salaries and housing allowance alleged to be outstanding, and if so, what if any relief is the Player entitled to in his claim against the Club?**
58. By Clause 7 of the Agreement, the Club undertook to pay the Player total salaries of EUR 135,000.00 net of Greek taxes, payable in ten equal instalments of EUR

13,500.00 on the last day of each month from 30 September 2021 until 30 June 2022.

59. By Clause 12(b) of the Agreement, the Club also undertook to pay the Player total housing allowance of EUR 15,000.00, also payable in ten equal instalments of EUR 1,500.00 on the last day of each month from 30 September 2021 until 30 June 2022.
60. It is the Player's case that the Club has been in default of paying:
- (a) his salaries for April, May and June 2022 in the total amount of EUR 40,500.00; and
 - (b) his housing allowance for September 2021 and March, April, May and June 2022 in the total amount of EUR 7,500.00.
61. According to the WhatsApp messages referred to in para. 53 above, the Club, through its General Manager, appears to have admitted its outstanding debts of these payments.
62. The Club has made no rebuttal submissions or adduced contrary evidence. There is no question that the Club breached the Agreement by failing to make these payments to the Player. Deciding *ex aequo et bono*, and subject to the discussions below on whether these should be paid net, the Arbitrator finds that the Player is entitled to his claim for salaries of **EUR 40,500.00** and housing allowance of **EUR 7,500.00**.
63. As regards both outstanding salaries and housing allowance, the Player claims payment net of any Greek taxes and requests pertinent tax certificates.
64. In the 1904 RfA, the Player cited in support Clause 10 of the Agreement:
- "All of the above said payments regarding paragraphs 7 (seven) and 8 (eight) of this Contract shall be NET of Greek income taxes. Club is responsible to pay all applicable taxes and charges on behalf of Player to the relevant authorities and shall furnish Player with all appropriate tax receipts and relevant documents at the end of each fiscal year and no later than 30/3 of the following year".*
65. On the face of Clause 10, only salaries and bonuses (which are payable under Clauses

7 and 8 of the Agreement) are net of Greek taxes, whilst the Agreement has no express wording stating that the Player's housing allowance under Clause 12(b) is to be paid net of taxes.

66. Therefore, in the Arbitrator's Questions, the Player was invited to (i) explain the basis for claiming housing allowance net of Greek taxes; and (ii) identify the specific amounts for which tax certificates are sought.
67. In his Reply, the Player submitted that the housing allowance as stipulated in Clause 12(b) is a net amount, because the clause expressly provides that house allowance is paid *"In addition to the compensation outlined in paragraphs 7 (seven) and 8 (eight) of this Agreement, and at no cost to the Player"*. Such wordings, the Player submitted, can only mean that the housing allowance payable is a net amount as they reflect the Parties' understanding that he will receive housing allowance net of mandatory tax requirements and/or expenses (among others, i.e., bank commissions).
68. The Player further submitted that the above interpretation is consistent with the Parties' practice where the Club each time paid him EUR 15,000.00 net (comprising EUR 13,500 net as salaries and EUR 1,500.00 net as housing allowance). Therefore, the Player contended that housing allowance is an integral part of his player remuneration.
69. As to tax certificates, in the original 1904 RfA, what was sought was an order that *"the Respondent shall provide [...] the pertinent Greek tax certificates on the amounts stipulated in the Contract"* [emphasis added]. However, in the Reply, this relief sought was amended to read *"the Respondent shall provide the Appellant with the pertinent tax certificates for tax withholdings on the amounts paid in these proceedings to the Player."* [emphasis added]
70. In support of the revised relief, the Player submitted that any income he shall receive from the Club in connection with this case will need to be declared as personal income, because it derives from the Parties' employment relationship. Without the tax

certificates, the Player would incur a loss after his tax declaration, which would be contrary to the *pacta sunt servanda* principle as his remuneration agreed as “net”.

71. On the evidence before him, the Arbitrator accepts the Player’s submission. While the matter is not entirely free from doubt due to the way it is drafted, the wording of “*at no cost to the Player*” in Clause 12 of the Agreement does seem to suggest that the various amenities provided, including housing, is not intended to cost the Player anything.
72. Further, given the Player’s uncontradicted submission that his monthly housing allowance was paid together with his monthly salary in one lump sum, it would not make sense if his salary payment is paid net of taxes while his housing allowance is not. This is particularly so given the material possibility that housing allowance is a taxable item.
73. It follows that the Player’s outstanding salaries and housing allowance are to be paid net by the Club.
74. As to default interest, the Player claims interest on the said amounts at the rate of 5% per annum from the day after the respective due dates until effective payment.
75. In line with the established BAT jurisprudence, the Arbitrator agrees that default interest on the awarded salaries and housing allowance should start to accrue from the day after the respective due dates at 5% per annum up to the date of filing of the 1904 RfA (i.e., 14 December 2022):

Salary	Accrual Date	Interest accrued up to the date of filing the 1904 RfA
EUR 13,500.00	1 May 2022	EUR 421.64
EUR 13,500.00	1 June 2022	EUR 364.32
EUR 13,500.00	1 July 2022	EUR 308.84
Sub-total:		EUR 1,094.80
Housing Allowance	Accrual Date	Interest accrued up to the date of filing the 1904 RfA
EUR 1,500.00	1 October 2021	EUR 90.41

EUR 1,500.00	1 April 2022	EUR 53.01
EUR 1,500.00	1 May 2022	EUR 46.85
EUR 1,500.00	1 June 2022	EUR 40.48
EUR 1,500.00	1 July 2022	EUR 34.31
Sub-total:		EUR 265.06
Total:		<u>EUR 1359.86</u>

76. As from 15 December 2022, interest will continue to accrue on the outstanding amounts at the same rate of 5% per annum until payment in full.

7.2.3. Conclusion on Liability

77. In conclusion, and deciding the case *ex aequo et bono*, the Arbitrator finds that the Club is liable to pay:
- (a) the Agent the amount of EUR 6,500.00 as unpaid agent fees together with interest at the rate of 5% p.a. on any outstanding balance (as may be the case from time to time) thereof from 1 January 2022 until full payment;
 - (b) the Player the amount of EUR 40,500.00 net as unpaid salaries together with interest at the rate of 5% p.a. on any outstanding balance (as may be the case from time to time) thereof from 15 December 2022 until full payment;
 - (c) the Player the amount of EUR 7,500.00 net as unpaid housing allowance together with interest at the rate of 5% p.a. on any outstanding balance (as may be the case from time to time) thereof from 15 December 2022 until full payment;
 - (d) the Player the amount of EUR 1,359.86 as interest on the unpaid salaries and housing allowance accrued up to and including 14 December 2022.
78. As to Player's request for issuance of a tax certificate, the Arbitrator orders that the Club is to provide proof of the fact that it has duly paid on behalf of the Player all Greek taxes due on the full amount of unpaid salaries and unpaid housing allowance awarded.

8. Costs

79. In respect of determining the arbitration costs, Article 17.2 of the BAT Rules provides:

“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). [...]”

80. On 28 April 2023, the BAT President determined the arbitration costs in the present matter to be EUR 7,500.00.

81. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 of the BAT Rules provides:

“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.”

82. The Claimants have been wholly successful in their claims. As such, in the exercise of his discretion pursuant to Article 17.3 of the BAT Rules, the Arbitrator determines that the costs of the arbitration be borne by the Club alone. Since the Claimants have paid EUR 7,500.00 for the total advance on costs, the Club shall reimburse EUR 7,500.00 to the Claimants jointly as reimbursement of the arbitration costs.

83. On the Parties' legal fees and expenses, Article 17.3 of the BAT Rules provides:

“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.”

84. Moreover, Article 17.4 of the BAT Rules provides for the maximum amounts a party can receive as a contribution towards its reasonable legal fees and other expenses (excluding the non-reimbursable handling fee). Considering the amounts of

EUR 6,500.00 and EUR 48,000.00 respectively claimed by the Agent and the Player, the maximum contribution to them is up to EUR 5,000.00 and EUR 7,500.00 respectively.

85. In the Claimants' costs submissions, (a) the Agent claims the amount of EUR 1,590.00 as a contribution to his legal fees and expenses, and the non-reimbursable handling fee of EUR 1,000.00 paid to the BAT, and (b) the Player claims the amount of EUR 5,445.00 as a contribution to his legal fees and expenses and the non-reimbursable handling fee of EUR 2,000.00 paid to the BAT.
86. For the reasons as stated in para. 82 above, and the relatively straightforward nature of the matter, the Arbitrator considers it fair and reasonable to award:
- (a) the Agent the amounts of **EUR 2,500.00** as a contribution towards his legal fees and expenses, including the non-reimbursable handling fee paid; and
 - (b) the Player the amounts of **EUR 6,500.00** as a contribution towards his legal fees and expenses, including the non-reimbursable handling fee paid.

9. AWARD

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

- 1. AEK B.C. shall pay Mr. Manuel Bosch Bifet the amount of EUR 6,500.00 as unpaid agent fees together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 1 January 2022 until payment in full.**
- 2. AEK B.C. shall pay Mr. Joaquin Colum the amount of EUR 40,500.00 net of Greek taxes as unpaid salaries together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 15 December 2022 until payment in full.**
- 3. AEK B.C. shall pay Mr. Joaquin Colum the amount of EUR 7,500.00 net of Greek taxes as unpaid housing allowance together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 15 December 2022 until payment in full.**
- 4. AEK B.C. shall pay Mr. Joaquin Colum the amount of EUR 1,359.86 as interest on the unpaid salaries and housing allowance accrued up to and including the date of 14 December 2022.**
- 5. AEK B.C. shall provide to Mr. Joaquin Colum a tax certificate evidencing that it had paid all taxes due on the amounts ordered to be paid under paragraphs 2 and 3 above of this Award.**
- 6. The costs of this arbitration until the present Award, which were determined by the President of the BAT to be in the amount of EUR 7,500.00, shall be borne by AEK B.C. alone. Accordingly, AEK B.C. shall pay Mr. Manuel Bosch Bifet and Mr. Joaquin Colum jointly the amount of 7,500.00.**
- 7. AEK B.C. shall pay Mr. Manuel Bosch Bifet the amount of EUR 2,500.00 as a contribution towards his legal fees and expenses (including the non-reimbursable handling fee).**
- 8. AEK B.C. shall pay Mr. Joaquin Colum the amount of EUR 6,500.00 as a contribution towards his legal fees and expenses (including the non-reimbursable handling fee).**

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

Geneva, seat of the arbitration, 11 May 2023

Benny Lo
(Arbitrator)