

ARBITRAL AWARD

(BAT 2199/24)

by the

BASKETBALL ARBITRAL TRIBUNAL IN(BAT)

Mr. Rhodri Thomas

in the arbitration proceedings between

Mr. Arnoldas Kulboka

Wasserman France

4 rue du Docteur Barie, 92160 Antony, France

- Claimants -

represented by Ms. Jolanta Špakauskaitė, attorney at law,

vs.

Limited Liability Company “Sports club Prometey”

Dnipropetrovsk region, Dniprovsky District, Village Slobozhanske, Str. Sportivna,
Bldg. 4, 52005 Ukraine

- Respondent -

1 The Parties

1.1 The Claimants

1. Mr. Arnoldas Kulboka (hereinafter referred to as the “Player” or “Claimant 1”) is a professional basketball player from Lithuania.
2. Wasserman France (hereinafter referred to as the “Agent” or “Claimant 2”) is the Player’s agent. Together, Claimants 1 and 2 are hereinafter referred to as the “Claimants”.

1.2 The Respondent

3. Limited Liability Company “Sports club Prometey” (hereinafter referred to as the “Club” or the “Respondent”) is a professional basketball club located in Ukraine. Together, the Claimants and the Respondent are hereinafter referred to as the “Parties”.

2 The Arbitrator

4. On 10 September 2024, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal (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 February 2024 (hereinafter the “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 20 July 2023, the Parties entered into an agreement under which the Respondent engaged Claimant 1 as a basketball player for the 2023-2024 season (hereinafter referred to as the “Agreement”).
6. Article 1(B) of the Agreement sets out the Respondent’s right to give Claimant 1 a “*standard physical examination*” within 48 hours of his arrival in Riga, Latvia for the 2023-2024 season. Article 1(B) provides that if the physical examination is passed, “*this Agreement shall be of full force and effect and be fully guaranteed as set forth below*”.
7. Article 2 of the Agreement sets out Claimant 1’s salary:

“II. Compensation. Club agrees to pay Player the following guaranteed compensation net of all taxes, fees, and other charges (the “Guaranteed Compensation”) during the Term: according to the following schedule:

A total of Three Hundred and Fifty Thousand USD (\$350,000) net for the 2023-24 season.

\$38,889 USD net on September 7, 2023;
\$38,889 USD net on October 7, 2023;
\$38,889 USD net on November 7, 2023;
\$38,889 USD net on December 7, 2023;
\$38,889 USD net on January 7, 2024;
\$38,889 USD net on February 7, 2024;
\$38,889 USD net on March 7, 2024;
\$38,889 USD net on April 7, 2024;
\$38,888 USD net on May 7, 2024;

All salary to Player shall be fully guaranteed, vested, and owed in full upon execution of this Agreement by the Player and Club.

[...]

In the event any payments of any kind are more than thirty (30) days late, Club acknowledges and agrees that it shall incur a late fee of \$50.00 per day as a non-exclusive remedy to Player.

Taxes: *All the above-mentioned compensation to Player shall be net of all taxes, social (employer and employee) charges, bank fees and other costs. Club acknowledges and agrees that Club is responsible for the payment of all applicable income, VAT, local, state, federal, and other taxes, social fees, and other costs on any monies paid to Player under this Agreement and shall pay all such taxes and costs on Player's behalf to the appropriate governmental entities. At the end of the Term and prior to Player's departure from Latvia, Club will provide Player with a certified tax receipt that all applicable taxes on have been paid on Player's behalf. The Club will make all arrangements necessary within the Latvian banking system to allow the Player to transfer funds to a bank account in any other country designated by the Player, at Club's sole cost and expense."*

8. Article 3 of the Agreement sets out additional benefits to be provided to Claimant 1, which include health insurance:

“III. Additional Benefits. *In addition to the compensation set forth above, Club agrees to provide, throughout the Term of this Agreement, and at no cost to Player, the following:*

[...]

C. Health Insurance. *The Club shall provide and pay for full medical (including but not limited to doctor, specialists, and hospital), dental (non-cosmetic), and pharmaceutical insurance and coverage for Player, regardless of the cause of the injury or illness. The Player agrees to consult with Club's medical professionals and may follow such professional's medical treatment and advice, however the Player has the sole and absolute right to approve or disapprove of any medical treatment on his body. The Player shall be entitled at all times to seek a second opinion by a doctor of Player's choosing. If Player requires surgery, Club agrees that Player shall be entitled to return to Lithuania or any other country designated by the Player, at the Club's sole expense, to have the surgery performed by a doctor of Player's choosing. Club shall be responsible for all such medical costs, regardless of where they are performed. Club agrees to provide a translator to be present with Player during any medical or physical treatment or consultation."*

9. Article 4 of the Agreement sets out Claimant 2's commission:

“IV. Agent's Commission. *Pursuant to the request by the Player and on the Player's behalf, Club agrees to pay Agent a guaranteed fee equal to ten percent (10%) of Player's Guaranteed Compensation, or Thirty-Five Thousand USD (\$35,000.00), net of all taxes, fees and charges, as compensation for the negotiation of this Agreement (“Agent Fee”)*

payable in one installment [sic] on or before September 30, 2023. For the avoidance of doubt, the Agent Fee shall be in addition to all and any payments agreed herein. In the event any payment due hereunder is more than one (1) day late, Club agrees that it shall incur a late fee of \$50.00 per day as a non-exclusive remedy to Agent. Agent shall be the intended third party beneficiary of such payment, and as such the Club agrees that Agent shall have the right to recover the full amount of the Agent Fee and late fees from the Club pursuant to the procedure set forth in Section VII in the event the Club fails to pay the Agent Fee in accordance with this provision. Notwithstanding the foregoing, Club agrees that Player shall also have the right to recover the full amount of the Agent Fee and any late fees from Club pursuant to the procedure set forth in Section VII in the event Club fails to pay the Agent Fee in accordance with this provision."

10. Article 6 of the Agreement states that the payments owed under the Agreement were fully guaranteed, including in the event of injury:

*"**VI. Contract Guarantee.** Club agrees that this Agreement is an unconditionally guaranteed contractual Agreement and that Player's Guaranteed Compensation, bonuses and the Agent Fee are fully guaranteed, due and payable, including but not limited to in the event of Player's injury, illness, and/or lack of skill. The Club agrees that this Agreement is a no-cut guaranteed agreement, and that the Club shall not have the right to suspend or release the Player in the event that the Player does not exhibit sufficient skill or competitive ability, or in the event that an injury or illness shall befall the Player. Accordingly, in such event, Club agrees to meet all payment obligations to Player and Agent as though Player had performed in all games and met all obligations in this Agreement. Without limiting any other rights of Player, if the Club rescinds this contract without a legal cause, the Club is obligated to pay to the Player as an indemnity all salary, compensation, benefits and bonuses contained in this Agreement. This clause will operate even in case of injury, illness, or lack of skills of the Player.*

On the day of signing this Agreement, the Club is located in Riga, Latvia, where they perform all activities, including, but not limited to official home games and practices. In the event Club decides to change the location of its above-mentioned activities during the Term, the Player shall have a right to immediately terminate this Agreement. In such case, monies that otherwise would have been due to Player and Agent had this Agreement been fully performed as if this Agreement were not terminated shall become immediately due and payable."

11. Article 9 of the Agreement provides for remedies for non-payment:

*"**IX. Remedies for Non-Payment.** Club agrees that Player may immediately terminate this Agreement in the event that: (i) any payment to Player and/or Agent required by this Agreement is past due more than thirty (30) days; and/or (ii) Club breaches any non-*

payment term of this Agreement and fails to cure such breach within seven (7) days after notice of such breach.

In the case of such termination of this Agreement by Player, Club will immediately grant Player his unconditional release and free agency, and Club shall take all necessary steps to immediately issue a Letter of Clearance. Upon forty-eight (48) hours after notice has been given, all monies that otherwise would have been due to Player and Agent had this Agreement been fully performed as if this Agreement were not terminated shall become immediately due and payable. Player shall be under no obligation to mitigate his damages and Club shall receive no offset.

Without limiting any other remedies, in the event Club has failed for any reason to make any payment mandated by this Agreement for thirty (30) or more days, Player shall, in his sole discretion, be entitled to refrain from participating in practices and games until all such scheduled payments have been made and Club shall be prohibited from fining or otherwise punishing the Player or terminating this Agreement as a result. Player's decision not to participate in any practice or game does not waive his right to terminate this Agreement for non-payment in accordance with the terms hereof."

12. Around September 2023, Claimant 1 suffered an injury that meant that he was unable to play throughout the 2023-2024 season. Claimant 1 has provided evidence of his injury in the form of (i) extracts from medical documents; (ii) invoices for medical and rehabilitation services; (iii) correspondence sent between the Respondent and the Claimants in relation to Claimant 1's injury; and (iv) correspondence sent internally within Claimant 2's organisation in relation to Claimant 1's injury.
13. On 23 October 2023, purportedly in light of Claimant 1's injury and the Respondent's financial difficulties, the Parties entered into an agreement to amend the salary and commission owed to Claimant 1 and Claimant 2 under the Agreement (hereinafter referred to as the "Amendment Agreement").
14. Article 2 of the Amendment Agreement sets out the amended payment schedule for Claimant 1's salary:

"Amendment to Payment Schedule. As of the Amendment Effective Date, the payment schedule for the 2023-2024 season, as set forth in Section II of the Agreement, shall be

amended to reflect the following:

'II. Compensation. Club agrees to pay Player the following guaranteed compensation net of all taxes, fees, and other charges (the "Guaranteed Compensation") during the Term: according to the following schedule:

A total of Three Hundred Fifty Thousand USD (\$350,000) net for the 2023-24 season.

*\$38,889 USD net on September 7, 2023;
\$38,889 USD net on October 27, 2023;
\$19,445 USD net on November 7, 2023;
\$19,445 USD net on December 7, 2023;
\$19,445 USD net on January 7, 2024;
\$19,445 USD net on February 7, 2024;
\$19,445 USD net on March 7, 2024;
\$19,445 USD net on April 7, 2024;
\$19,444 USD net on May 7, 2024;
\$19,444 USD net on June 7, 2024;
\$19,444 USD net on July 7, 2024;
\$19,444 USD net on August 7, 2024;
\$19,444 USD net on September 7, 2024;
\$19,444 USD net on October 7, 2024;
\$19,444 USD net on November 7, 2024;
\$19,444 USD net on December 7, 2024.*

All salary to Player shall be fully guaranteed, vested, and owed in full upon execution of this Agreement by the Player and Club. "

15. Article 3 of the Amendment Agreement sets out the amended payment schedule for Claimant 2's commission:

"Amendment to Agent Fees. As of the Amendment Effective Date, the payment schedule for the 2023-2024 season, as set forth in Section IV of the Agreement, shall be amended to reflect the following:

'IV. Agent's Commission. Pursuant to the request by the Player and on the Player's behalf, Club agrees to pay Agent a guaranteed fee equal to Thirty-Five Thousand USD (\$35,000.00), net of all taxes, fees and charges, as compensation for the negotiation of this Agreement ("Agent Fee") payable as follows: 1) Seventeen Thousand Five Hundred USD (\$17,500), net of all taxes, fees and charges on or before October 27, 2023; 2) Seventeen Thousand Five Hundred USD (\$17,500), net of all taxes, fees and charges on or before March 30, 2024. For the avoidance of doubt, the Agent Fee shall be in addition to all and

any payments agreed herein. In the event any payment due hereunder is more than one (1) day late, Club agrees that it shall incur a late fee of \$50.00 per day as a non-exclusive remedy to Agent. Agent shall be the intended third party beneficiary of such payment, and as such the Club agrees that Agent shall have the right to recover the full amount of the Agent Fee and late fees from the Club pursuant to the procedure set forth in Section VII in the event the Club fails to pay the Agent Fee in accordance with this provision. Notwithstanding the foregoing, Club agrees that Player shall also have the right to recover the full amount of the Agent Fee and any late fees from Club pursuant to the procedure set forth in Section VII in the event Club fails to pay the Agent Fee in accordance with this provision.”

16. Article 5 of the Amendment Agreement states:

“Fully Guaranteed Payments. All amounts to the Player and/or the Agent as per Articles 2, 3 and 4 of the Amendment are fully guaranteed, due and payable. The Club must keep paying the Player as per the schedule agreed herein, regardless as to whether the Player signs a contract with a new basketball club once the Term of the Agreement concludes as per Article I(A).”

17. Article 6 of the Amendment Agreement provides:

“No Implied Amendments. Except as expressly modified herein, all other terms and conditions of the Agreement shall remain in full force and effect; provided, however, that if any term or condition of the Agreement conflict with or is inconsistent with any term or condition of this Amendment, the terms and conditions of this Amendment shall prevail and be controlling, but only to the extent of the conflict.”

18. Up to March 2024, it is understood that the Respondent paid the Claimants the instalments owed under the Agreement (as amended by the Amendment Agreement), and paid Claimant 1 the costs of his medical and rehabilitation services.
19. From March 2024 onwards, however, the Respondent failed to pay the Claimants the instalments owed under the Agreement (as amended). The Respondent also failed to pay Claimant 1 the costs of his medical and rehabilitation services.
20. On 9 April 2024, Claimant 2 sent the Respondent a late payment notice which required the Respondent to pay Claimant 1 the salary instalments due on 7 March and 7 April

2024, failing which a claim would be issued with the BAT (hereinafter referred to as the “Late Payment Notice”).

21. On 15 April 2024, the Respondent responded to the Late Payment Notice, stating that it was “*impossible for Ukrainian companies to make any transfers of funds abroad*” and therefore requiring the Claimants to “*personally obtain an individual tax number on the territory of Ukraine for the subsequent opening of an account in Ukrainian banking institutions*” before payment could be made.
22. On 18 April 2024, the Claimants sent the Respondent a termination notice, which terminated the Agreement (as amended) for non-payment pursuant to Article 9 of the Agreement (hereinafter referred to as the “Termination Notice”). The Claimants submit that following termination, all outstanding monies payable under the Agreement (as amended) fell due.
23. There is no evidence on record that the Respondent responded to the Termination Notice.

3.2 The Proceedings before the BAT

24. On 4 September 2024, the Claimants filed a Request for Arbitration, together with several exhibits, in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 6,000.00 was received by the BAT on 19 June 2024.
25. On 16 September 2024, the BAT (a) notified the Parties that Mr. Rhodri Thomas had been appointed as the Arbitrator; (b) invited the Respondent to submit its Answer to the Request for Arbitration in accordance with Article 11.4 of the BAT Rules by no later than 7 October 2024; and (c) fixed the amount of Advance on Costs to be paid by the Parties

by no later than 23 September 2024 as follows:

<i>"Claimant (Mr. Arnoldas Kulboka)</i>	<i>EUR 4,000.00</i>
<i>Claimant 2 (Wasserman France)</i>	<i>EUR 1,000.00</i>
<i>Respondent (BC Prometey)</i>	<i>EUR 5,000.00".</i>

26. On 9 October 2024, the BAT extended the deadline for (a) the Parties to pay the Advance on Costs to 23 October 2024; and (b) for the Respondent to submit an Answer to the Request for Arbitration to 17 October 2024.
27. On 23 October 2024, the Claimants paid their share of the Advance on Costs.
28. On 30 October 2024, the BAT extended the deadline for the Respondent to (a) pay its share of the Advance on Costs; and (b) submit an Answer to the Request for Arbitration to 13 November 2024.
29. On 20 November 2024, the BAT noted that the Respondent failed to submit an Answer to the Request for Arbitration or pay its share of the Advance on Costs, and provided the Claimants with an opportunity to pay the remaining Advance on Costs by no later than 27 November 2024, adjusted as follows:

<i>"Claimant (Mr. Arnoldas Kulboka)</i>	<i>EUR 3,200.00</i>
<i>Claimant 2 (Wasserman France)</i>	<i>EUR 800.00</i>
<i>Respondent (BC Prometey)</i>	<i>EUR 4,000.00".</i>

30. On 25 and 28 November 2024, the Claimants paid the remaining, adjusted Advance on Costs.
31. By Procedural Order dated 18 December 2024 (hereinafter "Procedural Order 1"), the Arbitrator requested the Parties to provide further information by 7 January 2025.

32. On 7 January 2025, the Claimants responded to Procedural Order 1. The Arbitrator invited the Respondent to comment on the Claimants' reply by 21 January 2025. The Respondent did not provide a response.
33. By Procedural Order dated 4 February 2025 (hereinafter "Procedural Order 2"), the Arbitrator requested the Claimants to provide further information by 11 February 2025.
34. On 11 February 2025, the Claimants responded to Procedural Order 2.
35. On 17 February 2025, the Arbitrator declared that the exchange of submissions in the proceedings was complete and invited Claimants to file submissions on costs by 24 February 2025.
36. On 17 February 2025, the Claimants requested an extension until 5 March 2025 to file their submissions on costs. The Arbitrator granted this extension.
37. On 5 March 2025, the Claimants submitted their submissions on costs, seeking EUR 17,500.00 (plus the non-reimbursable handling fee and arbitration costs).

4 The Positions of the Parties

4.1 The Claimants

Outstanding contractual payments

38. The Claimants' position is, in essence, that the Respondent owed them the salary

payments and commission due under the Agreement (as amended by the Amendment Agreement) and that, by failing to make the payments that fell due on or after 7 March 2024, the Respondent breached the Agreement (as amended).

39. On the basis of the Respondent's breach, the Claimants terminated the Agreement (as amended) pursuant to Article 9 of the Agreement. This meant that all monies that otherwise would have been due to the Player and Agent had the Agreement (as amended) been fully performed became "*immediately due and payable*" within 48 hours of notice of the termination.
40. Claimant 1 therefore claims USD 194,450.00 net as compensation for all outstanding salary instalments due under the Agreement (as amended). Claimant 2 claims USD 17,500.00 net as compensation for all outstanding commission instalments.
41. Claimant 1 argues that he was not required to mitigate his losses but, in any event, claims that he could not have found alternative employment because of the injury he had suffered in the pre-season training camp, which continued until after the 2023-2024 season had ended.
42. Claimant 1 additionally claims for interest at the default rate of 5% per annum on each outstanding salary instalment from (i) the day after the date the relevant salary instalment fell due (where such instalments fell due before the Agreement (as amended) was terminated); or (ii) the day after 48 hours after the date that notice of termination was given (pursuant to Article 9 of the Agreement (as amended)).

Compensation for rehabilitation

43. Claimant 1 submits that the Respondent was also required to provide and pay for full

medical insurance and coverage under Article 3(C) of the Agreement. He therefore additionally claims for reimbursement of the expenses he incurred on medical and rehabilitation expenses during the 2023-2024 season following his injury sustained during the pre-season training camp.

44. In their Request for Relief of 4 September 2024, the Claimants requested the following relief:

*“1) Limited Liability Company “Sports club Prometey” (BC Prometey) shall pay Mr. Arnoldas Kulboka **USD 194,450.00 NET** as compensation for outstanding salary payments for 2023/2024 season, plus **EUR 6,445.00** as compensation for medical/rehabilitation expenses plus **USD 3,774.46** interest (i.e. 5% per annum for the period prior to RfA) plus interest at 5% per annum on total awarded amount from September 4 2024 until full payment.*

*2) Limited Liability Company “Sports club Prometey” (BC Prometey) shall pay Wasserman France **USD \$17,500.00 NET** as compensation for outstanding agent fees for 2023/2024 season plus **USD \$376.37** interest (i.e., 5% per annum for the period prior to RfA) plus interest at 5% per annum on such amount from September 4 2024 until full payment.*

*3) Limited Liability Company “Sports club Prometey” (BC Prometey) shall submit Mr. Arnoldas Kulboka **tax certificate**, providing that all taxes were paid on all payments according to the Contract.*

4) Limited Liability Company “Sports club Prometey” (BC Prometey) shall reimburse Claimants all their arbitrations costs, also legal fees and expenses.”

(emphasis as in the original).

4.2 The Respondent

45. Despite having been duly notified of the proceedings via courier and email on several occasions, the Respondent has not provided an Answer to the Request for Arbitration or otherwise participated in the proceedings.

5 The jurisdiction of the BAT

46. As a preliminary matter, the Arbitrator wishes to emphasise that, since the Respondent did not participate in the arbitration, he will examine his jurisdiction *ex officio*, on the basis of the record as it stands.¹
47. 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).
48. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
49. 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
50. The jurisdiction of the BAT over the dispute results from the standard BAT arbitration clause contained under Article 7 of the Agreement (which is unamended by the Amendment Agreement):

“VII. Governing Law, Disputes, Translation. *This Agreement contains the entire agreement between the parties and there are no oral or written inducements, promises or*

¹ Judgment 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.

agreements except as contained herein. Any or all prior agreements or contracts are void upon the execution of this Agreement. 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. The prevailing party shall be entitled to recover all costs, fees, and attorneys' fees from the other party in any such dispute. [...]".

51. The Amendment Agreement does not expressly set out a jurisdiction or governing law clause. It is an agreement that amends certain provisions of the Agreement. Further, Article 7 of the Amendment Agreement states "*This Amendment [Agreement] shall be governed by all of the provisions of the Agreement, unless the context otherwise requires, including but not limited to provisions concerning construction, enforcement and governing law.*" Consequently, the standard BAT arbitration clause contained in Article 7 of the Agreement is incorporated into the Amendment Agreement.
52. The Agreement and the Amendment Agreement are in written form and thus the arbitration agreements fulfil the formal requirements of Article 178(1) PILA.
53. 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 agreements under Swiss law (referred to by Article 178(2) PILA).
54. The jurisdiction of BAT over the Claimants' claim arises from the Agreement (as amended). The wording "[a]ny dispute arising from or related to the present contract [...]" clearly covers the present dispute.

55. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claim.

6 Other Procedural Issues

56. 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.
57. 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 Claimants' Request for Arbitration: on 16 September 2024, 9 October 2024, 30 October 2024 and 18 December 2024. It was also notified that, if it nevertheless failed to provide an Answer, the Arbitrator may proceed with the arbitration and deliver an award in accordance with Article 14.2 of the BAT Rules. The Respondent, however, chose not to participate in this arbitration.
58. Neither of the Parties has requested a hearing to be held, nor does the Arbitrator consider a hearing necessary. In accordance with Article 13.1 of the BAT Rules, the Arbitrator will therefore decide the Claimants' claims based on the written submissions and the

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

evidence on record.

7 Discussion

7.1 Applicable Law – *ex aequo et bono*

59. 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*”, 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”.

60. 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.”

61. Article 7 of the Agreement (as amended) provides that “[t]he arbitrator shall decide the dispute *ex aequo et bono*”. By virtue of the preceding paragraph, the concept of *ex aequo*

et bono is therefore incorporated into the Agreement (as amended) as the law applicable to the merits of the present dispute.

62. For these reasons, the Arbitrator will decide the issues submitted to him in these proceedings *ex aequo et bono*.
63. 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 not inspired by the rules of law which are in force and which might even be contrary to those rules."*⁶

64. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives "*a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case*".⁷
65. This is confirmed by Article 15.1 of the BAT Rules *in fine* according to which the Arbitrator

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).

⁷ Poudret/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

applies “*general considerations of justice and fairness without reference to any particular national or international law*”.

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

7.2 Findings

7.2.1 Claimants’ claim for outstanding salary payments and agent’s commission

67. Although the Respondent has not made submissions on the validity of the Agreement, the Arbitrator notes that correspondence sent between the Respondent and Claimant 1 or 2 suggests that the Respondent considered that the injury was a pre-existing medical condition. However, the evidence also suggests that Claimant 1 undertook a “*thorough medical and physical examination*” (in accordance with Article 1(B) of the Agreement), which Claimant 1 passed (as the examination did “*not [reveal] any unusual medical conditions*”). As such, the Arbitrator considers that the Agreement was in force and fully guaranteed at the point of Claimant 1’s injury. The Arbitrator notes further that the Amendment Agreement appears to confirm that the Respondent had abandoned its “pre-existing injury” argument.
68. Claimant 1 claims for USD 194,450.00 net in unpaid salary instalments under the Agreement (as amended). Claimant 2 claims for USD 17,500.00 net in unpaid commission under the Agreement (as amended).
69. The Arbitrator notes that there is a miscalculation in the amounts owed to Claimant 1 under the Agreement (as amended). The total amount in unpaid salary instalments in fact amounts to USD 194,442.00 net, being the sum of:

- a) USD 19,445.00 net due on March 7, 2024;
- b) USD 19,445.00 net due on April 7, 2024;
- c) USD 19,444.00 net due on May 7, 2024;
- d) USD 19,444.00 net due on June 7, 2024;
- e) USD 19,444.00 net due on July 7, 2024;
- f) USD 19,444.00 net due on August 7, 2024;
- g) USD 19,444.00 net due on September 7, 2024;
- h) USD 19,444.00 net due on October 7, 2024;
- i) USD 19,444.00 net due on November 7, 2024; and
- j) USD 19,444.00 net due on December 7, 2024.

70. Article 6 of the Agreement (as amended) specifies that these payments are “*fully guaranteed, due and payable, including but not limited to in the event of Player’s injury, illness, and/or lack of skill*”.
71. There is no evidence that these salary instalments have been paid by the Respondent.
72. By its letter dated 15 April 2024, the Respondent suggested that it failed to make these payments because it was “*impossible for Ukrainian companies to make any transfers of funds abroad*” and therefore required the Claimants to “*personally obtain an individual tax number on the territory of Ukraine for the subsequent opening of an account in Ukrainian banking institutions*” before payment could be made. There is nothing in the Agreement (as amended) that requires the Claimants to obtain an individual tax number in Ukraine or open a Ukrainian bank account before being paid. In fact, the Arbitrator notes that the Agreement (as amended) states that “[t]he Club will make all arrangements necessary within the Latvian banking system to allow the Player to transfer funds to a bank account in any other country designated by the Player, at Club’s sole cost and expense” (emphasis added). Further, the Respondent seems to have made

payments before March 2024 without Claimant 1 having a Ukrainian tax number, and there does not appear to be any evidence suggesting that the regulatory situation may have changed after that point. Therefore, the Arbitrator finds that this is not a valid defence to the Claimants' claims.

73. For these reasons, the Arbitrator finds the Respondent liable to pay (i) Claimant 1 USD 194,442.00 net as compensation for his unpaid salaries, and (ii) Claimant 2 USD 17,500.00 net as compensation for its unpaid commission, each in accordance with the Agreement (as amended).

7.2.2 Interest and late payment penalties

74. Claimant 1 additionally claims for interest at the default rate of 5% per annum on each outstanding salary instalment. Where the relevant instalment fell due before the Agreement (as amended) was terminated, Claimant 1 claims for interest from the day after the date that it fell due in accordance with Article 2 of the Amendment Agreement. Where the relevant instalment fell due after the Agreement (as amended) was terminated, Claimant 1 claims for interest from 21 April 2024, being the day after 48 hours following the date of the Termination Notice in accordance with Article 9 of the Agreement (as amended).
75. Claimant 2 additionally claims for interest at the default rate of 5% per annum from 31 March 2024, being the day after the date that the outstanding commission instalment fell due in accordance with Article 3 of the Amendment Agreement.
76. The Agreement (as amended) does not include any provision concerning interest. Consistent with BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. As

requested by the Claimants, and in line with BAT jurisprudence, interest will be payable at the default rate of 5% per annum.

77. As requested by the Claimants, and in line with BAT jurisprudence, interest accrues from the day after the relevant payments fell due, i.e.:

Amount	Interest rate	Date due	Start date for interest
<i>Claimant 1</i>			
USD 19,445.00	5%	7 March 2024	8 March 2024
USD 19,445.00	5%	7 April 2024	8 April 2024
USD 19,444.00	5%	20 April 2024	21 April 2024
USD 19,444.00	5%	20 April 2024	21 April 2024
USD 19,444.00	5%	20 April 2024	21 April 2024
USD 19,444.00	5%	20 April 2024	21 April 2024
USD 19,444.00	5%	20 April 2024	21 April 2024
USD 19,444.00	5%	20 April 2024	21 April 2024
USD 19,444.00	5%	20 April 2024	21 April 2024
USD 19,444.00	5%	20 April 2024	21 April 2024
<i>Claimant 2</i>			
USD 17,500.00	5%	30 March 2024	31 March 2024

78. The Arbitrator notes that, under the sub-heading “Amendment to Bonuses”, at Article 4 of the Amendment Agreement, the Respondent agreed to incur a late payment penalty of USD 50.00 per day as a non-exclusive remedy to Claimant 1 if “*payments of any kind [we]re more than thirty (30) days late*”. Similarly, at Article 3 of the Amendment Agreement, the Respondent agreed to incur a late payment penalty of USD 50.00 per day as a non-exclusive remedy to Claimant 2 if “*any payment due hereunder [wa]s more*

than one (1) day late". Neither Claimant 1 nor Claimant 2 has requested the payment of the late payment penalty. On the contrary, the Claimants' request for relief requests compensation for the unpaid salary payments, medical/rehabilitation services or agent fees (as the case may be) plus specific amounts of interest reflecting (i) interest at the rate of 5% per annum for the period prior to the Request for Arbitration, and (ii) interest at the rate of 5% per annum on total awarded amount from September 4 2024 until full payment.

79. The Arbitrator therefore finds the Respondent liable to pay the Claimants interest at a rate of 5% per annum on the amounts set out in the table above (or any outstanding balance as may be the case from time to time) from the dates set out until payment in full.

7.2.3 Claimant 1's medical or rehabilitation expenses

80. Claimant 1 additionally claims for reimbursement of EUR 6,445.00 in unpaid medical expenses associated with the injury he suffered during the 2023-2024 season. Claimant 1 has provided evidence that he was recommended by a medical professional to start rehabilitation for the injury from 26 October 2023.
81. Article 3(C) of the Agreement (as amended) requires the Respondent to "*provide and pay for full medical (including but not limited to doctor, specialists, and hospital), dental (non-cosmetic), and pharmaceutical insurance and coverage for Player, regardless of the cause of the injury or illness*" (emphasis added). It also states that, "[i]f Player requires surgery, Club agrees that Player shall be entitled to return to Lithuania or any other country designated by the Player, at the Club's sole expense, to have the surgery performed by a doctor of Player's choosing. Club shall be responsible for all such medical

costs, regardless of where they are performed" (emphasis added).

82. The Arbitrator interprets this clause to mean that the Respondent is required to pay for all medical (including rehabilitation), dental or pharmaceutical services incurred by Claimant 1 before the expiry or termination of the Agreement (as amended).
83. The Arbitrator notes that the Claimants terminated the Agreement (as amended) on 18 April 2024. However, the Arbitrator also notes that the Claimants were exercising their right to terminate following non-payment by the Respondent and, further, Article 6 of the Agreement (as amended) provides that the agreement as a whole is "*an unconditional guaranteed contractual Agreement*". In these circumstances, the Arbitrator considers it would be unfair for the Respondent to be released from its obligation to provide certain benefits to Claimant 1 that it should otherwise have provided, but for its non-payment. The Arbitrator therefore finds that the Respondent should be required to provide the relevant benefits to Claimant 1 as though the contract had been fully performed.
84. But for the Claimants' termination of the Agreement (as amended), the Arbitrator understands that the Agreement (as amended) would have terminated on 14 May 2024.⁸
85. Certain of the invoices provided by Claimant 1 are for rehabilitation services prior to 14 May 2024. However, others are for services that do not expressly meet the definition of medical, dental or pharmaceutical services e.g. personal training sessions, massages,

⁸ This is on the basis that Article 1(A) of the Agreement (as amended) states that the term will expire three days following the Club's last official game of the 2023-2024 season, which appears to have been 11 May 2024 - see here:

gym membership and other generic “SERVICES RELATED TO THE PLAYER ARNOLDAS KUBOLKA”. Despite the Arbitrator asking, Claimant 1 did not provide evidence as to why these services should be classified as medical and instead stated that they were standard rehabilitation processes. Further, others post-date 14 May 2024. Despite the Arbitrator asking, Claimant 1 did not confirm when the services claimed for in the relevant invoices were provided and instead stated that the “*Club agrees to meet all payment obligations to Player and Agent as though Player had performed in all games and met all obligations in this Agreement*” (emphasis added). The Arbitrator agrees that this is the position and therefore that Claimant 1 is only entitled to be reimbursed for relevant expenses incurred while the Agreement (as amended) was (or would have been) in force; there is no clause that suggests that Article 3(C) survives the expiry or termination of the Agreement (as amended).

86. In light of the above, the Arbitrator considers that the Respondent is required to reimburse Claimant 1 for the invoices (or line items within an invoice) which he has submitted that expressly relate to medical (including rehabilitation), dental or pharmaceutical services, and which are dated prior to 14 May 2024. These invoices / line items total EUR 1,120.00. There is no evidence that these expenses have been paid by the Respondent.
87. For these reasons, the Arbitrator finds the Respondent liable to pay Claimant 1 EUR 1,120.00 as reimbursement for his unpaid medical expenses.

7.2.4 Tax certificate

88. The Arbitrator notes that Claimant 1 has also requested to be provided with a tax certificate proving that it paid all taxes due on all payments under the Agreement (as

amended) with Claimant 1.

89. The Arbitrator notes that Article 2 of the Agreement (as amended) specifies that salary instalments are to be paid to Claimant 1 “*net of all taxes, social (employer and employee) charges, bank fees and other costs*” and that, “[a]t the end of the Term and prior to Player’s departure from Latvia, Club will provide Player with a certified tax receipt that all applicable taxes on have been paid on Player’s behalf”.
90. Consistent with BAT jurisprudence (for example, BAT 1813/22), and to give proper effect to Article 2 of the Agreement (as amended), the Arbitrator therefore finds *ex aequo et bono* that the Respondent shall provide Claimant 1 with the tax certificate(s) sought in order to evidence the fact that the Respondent has duly paid any applicable taxes due.

8 Costs

91. 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). [...]”.

92. On 4 July 2025, the BAT President determined the arbitration costs in the present matter to be EUR 8,000.00.
93. 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.”.

94. The Arbitrator notes that the Claimants were the prevailing parties and have been awarded 97% of their claims. Consistent with Article 17.3 of the BAT Rules, the Arbitrator therefore considers that the Respondent should bear 97% of the costs of the arbitration.
95. Given that the Claimants paid the entire Advance on Costs in the amount of EUR 8,000.00 the Arbitrator finds that the Respondent shall pay to the Claimants EUR 8,000.00.
96. 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.”.

97. 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.
98. The Arbitrator notes that Article 10 of the Agreement (as amended) provides that, “[s]hould litigation or arbitration become necessary regarding this Agreement, [...] the prevailing party in any such litigation or arbitration shall be entitled to recover from the non-prevailing party its costs and attorneys’ fees”. The fact that the parties agreed to this provision indicates to the Arbitrator that the parties intended the prevailing party in any dispute to recover their costs. The existence of the clause is, therefore, relevant to the Arbitrator’s decision on costs. Notwithstanding this, the Arbitrator considers that, in

accordance with Article 17.3 of the BAT Rules, the prevailing party's costs and attorneys' fees are required to be reasonable.

99. The Claimants claim EUR 17,500.00 in legal costs (excluding the non-reimbursable handling fee).
100. Taking into account the factors required by Article 17.3 of the BAT Rules; the maximum awardable amount prescribed under Article 17.4 of the BAT Rules (in this case, EUR 15,000.00, comprising EUR 10,000.00 for Claimant 1 and EUR 5,000.00 for Claimant 2); the fact that the non-reimbursable handling fee in this case was EUR 6,000.00; the facts of the case (which were not particularly complicated); the fact that submissions were relatively short and the claims were uncontested; and the fact that the Claimants were awarded 97% of their claims, the Arbitrator finds that it would be fair and reasonable for the Respondent to pay the Claimants a total of EUR 12,500.00 (including the non-reimbursable handling fee) as a contribution to their legal fees and expenses.
101. The Respondent did not participate in this arbitration and therefore did not submit a claim for its legal costs.
102. Therefore, the Arbitrator decides:
 - (i) the Respondent shall pay EUR 8,000.00 to the Claimants in respect of the costs of the arbitration; and
 - (ii) the Respondent shall pay to the Claimants EUR 12,500.00, as a contribution towards their reasonable legal fees and other expenses.

9 AWARD

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

- 1. Limited Liability Company “Sports club Prometey” shall pay Mr. Arnoldas Kulboka USD 194,442.00 net as compensation for unpaid salary, together with interest on any outstanding balance (as may be the case from time to time) at a rate of 5% per annum, as follows:**
 - a. on USD 19,445.00 from 8 March 2024 until the date of payment in full;**
 - b. on USD 19,445.00 from 8 April 2024 until the date of payment in full;**
 - c. on USD 155,552.00 from 21 April 2024 until the date of payment in full.**
- 2. Limited Liability Company “Sports club Prometey” shall pay Mr. Arnoldas Kulboka EUR 1,120.00 as reimbursement for unpaid medical expenses.**
- 3. Limited Liability Company “Sports club Prometey” shall provide to Mr. Arnoldas Kulboka a certified tax receipt proving that Limited Liability Company “Sports club Prometey” paid all applicable taxes due on behalf of Mr. Arnoldas Kulboka in relation to the above-mentioned sum of USD 194,442.00.**
- 4. Limited Liability Company “Sports club Prometey” shall pay Wasserman France USD 17,500.00 net as compensation for unpaid commission, together with interest on any outstanding balance (as may be the case from time to time) at a rate of 5% per annum from 31 March 2024 until the date of payment in full.**
- 5. Limited Liability Company “Sports club Prometey” shall pay Mr. Arnoldas Kulboka and Wasserman France EUR 8,000.00 as reimbursement for the arbitration costs.**

6. **Limited Liability Company “Sports club Prometey” shall pay Mr. Arnoldas Kulboka and Wasserman France EUR 12,500.00 as a contribution towards their legal fees and expenses.**
7. **Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 7 July 2025

Rhodri Thomas
(Arbitrator)