

ARBITRAL AWARD

(BAT 1961/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Rhodri Thomas

in the arbitration proceedings between

Mr. Sheldon Mac

SLASH International Inc.

1728 NE Miami Gardens Drive #252, North Miami Beach,
Florida, United States of America

- The First Claimant -

- The Second Claimant -

both represented by Mr. Charles Misuraca, Esq., attorney at law,

vs.

Club Atletico Aguada

Av. San Martin 2261, 11800, Montevideo, Uruguay

- The Respondent -

represented by Mr. Emiliano Operti, attorney at law,

1. The Parties

1.1 The Claimants

1. Mr. Sheldon Mac (hereinafter the “First Claimant”) is an American professional basketball player.
2. SLASH International Inc., trading as SLASH Sports (hereinafter the “Second Claimant”), is the First Claimant’s agent. Together the First Claimant and the Second Claimant are referred to as the Claimants.

1.2 The Respondent

3. Club Atletico Aguada (hereinafter the “Respondent”) is a professional men’s basketball club located in Montevideo, Uruguay.

2. The Arbitrator

4. On 26 April 2023, Mr. Raj Parker, Vice-President of the Basketball Arbitral Tribunal (hereinafter the “BAT”), appointed Mr. Rhodri Thomas as arbitrator (hereinafter the “Arbitrator”) pursuant to Articles 0.4 and 8.1 of the Rules of the Basketball Arbitral Tribunal in force as from 1 January 2022 (hereinafter the “BAT Rules”).
5. 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

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

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

3.1.1 The Agreement

8. On 31 October 2022, the Claimants, [Another Agent of the Player], and the Respondent entered into a contract (hereinafter the “Agreement”) for the First Claimant to play for the Respondent for a four-month period. The Agreement contained, among others, the following provisions:

“1. TERM OF PLAYER’S EMPLOYMENT:

The CLUB hereby hires the PLAYER as a skilled basketball PLAYER to play specifically what remain [sic] of the LIGA URUGUAYA DE BASKETBALL 22/23 (“LUB 22/23”), BEGINNING ON the PLAYER’S ARRIVAL TO URUGUAY and passing satisfactorily the Medical Test, and ENDING ON THE LAST OFFICIAL GAME PLAYED BY THE CLUB IN THE LUB 2022/23, under the condition that PLAYER and AGENTS has received all monies due and foreseen in this AGREEMENT as set forth herein. The PLAYER will be able TO PLAY IN OTHER LEAGUES AND COUNTRIES when the CLUB finishes the basketball sport’s [sic] season. The CLUB will not have any right over the PLAYER once the season has ended (except the transfer rights inside Uruguay according to Uruguayan Federation rules).

2. SCOPE OF PLAYER’S EMPLOYMENT:

The PLAYER’s employment in this AGREEMENT includes providing his best services and loyalty to the CLUB. PLAYER shall attend and participate in all activities that are related to the sports professional activity for which PLAYER is employed by CLUB as in official and non-official basketball games, tournaments and in all practice, [sic] sessions scheduled by CLUB. The CLUB may also request PLAYER’s attendance and participation to all other activities promoting the CLUB’s image or basketball in general. PLAYER shall provide CLUB with prompt notice of any injury.

3. MONETARY COMPENSATION TO PLAYER:

During the term of employment as foreseen in point 1, CLUB shall pay the PLAYER the following monetary (salary and bonuses) compensation within the payment terms as follows hereunder. All payments showed [sic] in this AGREEMENT are intended net of all and any

social expenses and net of all income taxes which are paid for by CLUB and not to be deducted from PLAYER's monetary compensation at no time. The PLAYER hereby receives the guarantee from the CLUB that all social expenses and income taxes are paid by CLUB on the PLAYER's behalf. In the event those social expenses and/or income taxes are not paid, the CLUB shall be held fully responsible and claimable of all administrative, legal, or other consequences and penalties.

SALARY CURRENCY: UNITED STATES DOLLARS (USD).

The Club shall pay the Player a fully guaranteed (protected for lack of skill, death, and injury/illness) salary in the amount of \$64,000.00 USD NET (sixty-four thousand US dollars) which covers the first four months (\$16,000.00 USD per month) of this Agreement until February 28, 2023.

The Club and Player may each decide to unilaterally terminate this Agreement (and play for any other club in the world outside of Uruguay) by providing written notice of termination (whats app [sic] or email shall suffice) of the parties' intention to terminate this Agreement as of February 28, 2023. Notice of Termination must be provided between February 22nd and February 28th, 2023, otherwise the remainder of the Agreement becomes fully guaranteed

A. USD 4,000=NET (four thousand US Dollars) after the PLAYER arrival in Uruguay and pass satisfactorily the medical test [sic].

B. USD 12,000=NET (twelve thousand US Dollars) on December 1st, 2022.

C. USD 16,000=NET (sixteen thousand US Dollars) on January 1st, 2023.

D. USD 16,000=NET (sixteen thousand US Dollars) on February 1st, 2023.

E. USD 16,000=NET (sixteen thousand US Dollars) on March 1st, 2023.

F. USD 18,000=NET (eighteen thousand US Dollars) monthly, if the CLUB continue playing in the LUB 22/23 after March 1st 2023. If the period is less than a full month they will pay him daily pro rata of the monthly amount, until end of CLUB participation in the LUB 22/23.

* The PLAYER shall arrive to Montevideo not later than November 4th 2023, and in case he starts the practices later than the previous date, the CLUB may deduct from the payment "B" the correspondent daily amounts.

PAYMENT METHOD: BANK TRANSFER to the Bank account the PLAYER inform [sic] the CLUB. The cost of the money transfer is on charge of the Club.

-LATE PAYMENTS

In the event CLUB is late paying the salary to PLAYER the following irrevocable and contract "overdue payments" rules shall apply:

- *Starting from the seventh (7th) day of delay, PLAYER shall have the right to not participate in practice sessions and/or games (with no penalty).*
- *Since the fifteenth (15th) day of delay, PLAYER shall have the right to unilaterally terminate this agreement and accelerate all owed payments up to that date under this Agreement, and PLAYER shall be free to leave Uruguay with his FIBA Letter of Clearance to play basketball anywhere in the world PLAYER chooses, but the duties and liabilities of CLUB under this Agreement shall continue in full force and effect.*

[...]

16. *AGENTS [sic] SERVICES: In addition to the Player's base salary, the Club shall pay an additional fully guaranteed \$6,400.00 USD NET directly to the Player's Agents (\$4,000 to SLASH International and \$2,400 to [Another Agent of the Player]) by November 10, 2022 to SLASH and January 10, 2023 to [Another Agent of the Player]. The CLUB also will pay an amount equal to the 5% the PLAYER receive as salary from March 1" 2023 until end of his participation during the LUB 22/23, to SLASH and another 5% of that amount, to [Another Agent of the Player], The Player explicitly authorizes the Club to pay the Agent Fee directly to the Agent in accordance with the modified FIBA Regulations. Failure to remit the payment on time shall be treated in the same manner as a late payment to the Player and shall have the same rights / consequences.*

17. *DISPUTES:*

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. The arbitrator shall decide the dispute ex aequo et bono. Awards of the BAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. To the extent legally possible under Swiss Law recourse to the Swiss Federal Tribunal against awards of the BAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal shall be excluded.

18. *GOVERNING LAW*

This contract shall be interpreted and enforced in accordance with the rules of the BAT.

19. APPROVAL:

This AGREEMENT is only valid and will enter into force once PLAYER and CLUB have signed this AGREEMENT”.

(Emphasis as in the original.)

3.1.2 Factual background to the dispute

9. After signing the Agreement, in November and early December 2022, the First Claimant provided his services to the Respondent by playing for its team.
10. The Claimants submit that, on 5 December 2022, the Respondent informed the Second Claimant that the Respondent was releasing the First Claimant from the Agreement. The Respondent submits that an agreement was reached to end the contractual relationship between the First Claimant and the Respondent.
11. On 6 December 2022, a representative of the Respondent wrote to the First Claimant via WhatsApp to arrange for the first month’s salary owed under the Agreement to be paid to the First Claimant and to organise a flight home for the First Claimant. The First Claimant wrote in response that: *“My agency will be reaching out to you guys because I am owed the full 64k!”* and *“...You guys still owe me the 64k. So the 12k is not a settlement agreement deal!”*.
12. On 7 December 2022, the First Claimant and the Respondent signed an agreement which included both English and Spanish language wording, which the Respondent submits is a settlement agreement (the “Purported Settlement Agreement”), and which states:

“Montevideo, martes 6 de Diciembre 2022.

Recibi de Club Aguada la suma de US\$ 16.000 (dólares americanos dieciséis mil) por los servicios prestados del 6 de noviembre de 2022 al 6 de diciembre de 2022.

Entregados de la siguiente manera:

US\$ 4000 (dólares americanos cuatro mil) al llegar a Montevideo

US\$ 12.00 [sic] (dólares americanos doce mil) en este momento.

No teniendo nada que reclamar por ningún concepto.

[...]

“Montevideo, Tuesday december [sic] 6, 2022.

Club Aguada receipt watered down the sum of US\$ 16,000 (american [sic] dollars sixteen thousand) for the services rendered from noviembre 6 [sic] to December [sic] 6, 2022.

Delivered as follow [sic]:

US\$ 400 [sic] (american [sic] dollars four thousand) upon arriving in Montevideo

US\$ 12000 (american dollars [sic] twelve thousand) right now.

Having [sic] nothing to claim for any reason.”

13. Following the signing of the Purported Settlement Agreement, the First Claimant returned to the USA.
14. On 12 February 2023, the First Claimant’s legal counsel wrote to the Respondent requesting the sums owed under the Agreement:

“On behalf of Mr. Sheldon Mac, we are providing your Club with one final opportunity to honor the financial obligation entered into on October 31, 2022 in the Sheldon Mac Contract (“Contract”).

Per negotiated provision three (3) of the Contract:

The Club shall pay the Player a fully guaranteed (protected for lack of skill, death, an injury/illness salary in the amount of \$64,000.00 USD Net (sixty-four thousand US dollars) which covers the first four months (\$16,000.00 USD Net per month) of this Agreement until February 28, 2023.

Thus, the Club owes Mr. Sheldon Mac \$52,000 USD NET in outstanding unpaid salary (as only \$12,000 USD was paid to date). The Player has attempted to find alternative salary

elsewhere but has not been able to during this time after the Club materially breached the guaranteed Contract due to poor performance.

Moreover, SLASH Sports is an additional party to the BAT Request for Arbitration as the Agent Fee of \$4,000 USD was not paid.

We will provide until February 17, 2023 to enter into a Settlement Agreement / Payment Plan regarding the outstanding debts. In the event we do not formalize a Settlement Agreement in due time, we will submit the Request for Arbitration to the BAT immediately for the full amounts owed, plus legal fees, arbitration costs, and interest. All legal work has not been performed. This will be a costly mistake the for the Club.”

15. On 17 February 2023, the Respondent responded to the First Claimant’s legal counsel stating:

“Club Aguada says in response to your note:

The player Sheldon Mac received \$16,000 for one month of work, \$4,000 upon arrival and \$12,000 upon departure. He signed a settlement agreement, stating that he had no further claims and was satisfied with the amount he received. Since he arrived in Uruguay and joined our club, the player never demonstrated a proactive or professional attitude, did not integrate with his teammates, and did not show any enthusiasm for playing. After some dissatisfaction was expressed to him, he said he preferred to collect his payment and leave. That was what we did. It is evident that he did not come to stay for the full four months, as he signed with a team in Venezuela shortly after his arrival. Additionally, we sent the agent's commission through [Another Agent of the Player] (\$1,600) for the month that the player was with the team. Unfortunately, Sheldon's arrival was not beneficial for anyone, but Club Aguada fulfilled its obligations to the player. However, there were also acts of indiscipline, as he smoked marijuana, and we had problems at the hotel in Buenos Aires when we played the Sudamericana League.

That is all we have to clarify.”

16. On 17 February 2023, the First Claimant’s legal counsel responded to the Respondent:

“Emiliano,

Your response is false and in bad faith. We will provide one final attempt to either illustrate proof of this referenced Settlement Agreement (“He signed a settlement agreement, stating

that he had no further claims and was satisfied with the amount he received”), or provide a reasonable proposal to settle and not submit the Request to the BAT.

If we do not hear from you by Monday, we will submit to the BAT”.

17. On 22 March 2023, the First Claimant played his first game for a new club.

3.2 The Proceedings before the BAT

18. On 13 April 2023, the First Claimant filed a Request for Arbitration with the BAT in accordance with the BAT Rules.
19. On 18 April 2023, the Claimants paid the non-reimbursable handling fee of EUR 4,000.00 (the “NRF”) to the BAT.
20. On 3 May 2023, the BAT fixed a deadline of 24 May 2023 for the Respondent to file an Answer to the First Claimant’s Request for Arbitration. The BAT also fixed the following amounts as the advance on costs with a deadline of 15 May 2023 for payment:

<i>“Claimant (Mr. Sheldon Mac)</i>	<i>EUR 3,750.00</i>
<i>Respondent (Club Atletico Aguada)</i>	<i>EUR 3,750.00”</i>

21. On 5 May 2023, the First Claimant paid the Claimant’s Advance on Costs of EUR 3,750.00.
22. On 15 May 2023, the Respondent paid EUR 3,365.45 on account of the Respondent’s Advance of Costs.
23. On 17 May 2023:
- a) The First Claimant’s legal counsel wrote to the BAT to request that SLASH International Inc. be joined to the Request for Arbitration as the Second Claimant.

- b) The BAT invited the First Claimant's legal counsel to resubmit the Request for Arbitration by 24 May 2023 and suspended the Respondent's obligation to file its Answer until the Request for Arbitration had been resubmitted.
 - c) The First Claimant's legal counsel submitted an amended Request for Arbitration (the "RFA").
24. On 19 May 2023, the BAT requested that the Respondent file its Answer by 31 May 2023.
25. On 31 May 2023, the Respondent filed its Answer to the RFA (the "Answer").
26. By Procedural Order dated 29 June 2023 (the "Procedural Order"), the Arbitrator requested the Parties to provide further information by 10 July 2023.
27. On 7 July 2023, the Claimants responded to the Procedural Order.
28. On 10 July 2023, the Respondent responded to the Procedural Order.
29. On 24 July 2023, the Arbitrator closed the submissions phase and requested that the Parties provide an account of their costs by 31 July 2023.
30. On 25 July 2023, the Claimants' legal counsel submitted the Claimants' account of costs in the sum of EUR 7,300.00.
31. The Respondent did not submit an account of costs.

4. The Position of the Parties

4.1 The Claimants' claims

4.1.1 The First Claimant's claim for unpaid salary

32. The First Claimant submits that pursuant to Clause 3 of the Agreement, the Respondent owes USD 48,000.00 net, comprising USD 64,000.00 in guaranteed

salary, less the USD 4,000.00 payable to the First Claimant upon arriving in Uruguay and USD 12,000.00 in respect of salary for December 2022 (which sums he has already received).

33. In relation to the disputed events surrounding the First Claimant's departure from Uruguay, the First Claimant submits that he left the country on the instruction of the Respondent.
34. Additionally, the First Claimant submits that he did not believe the Purported Settlement Agreement, which he signed, operated as a settlement agreement which terminated the Agreement. Instead, the First Claimant submits that he understood the Purported Settlement Agreement to have been a payment receipt for the first two payments made to him under the Agreement. The First Claimant submits that on its true construction, the Purposed Settlement Agreement does not function as a settlement agreement.
35. In support of this position, the First Claimant relies on a series of WhatsApp exchanges with a representative of the Respondent, which the First Claimant submits demonstrate that the First Claimant did not consider the Purported Settlement Agreement to be a settlement agreement at the time of signing it.
36. The First Claimant also disputes the Respondent's accusations relating to the First Claimant's alleged poor conduct (including that he demonstrated a bad attitude and that he smoked marijuana). Similarly, the First Claimant submits that at the time of negotiating the Agreement, the Respondent was aware that the First Claimant was contracted to play for a different club from March 2023 onwards.

4.1.2 The Second Claimant's claim for unpaid agent fees

37. The Second Claimant submits that pursuant to Clause 16 of the Agreement, the Respondent owes USD 4,800.00 net, comprising 6,400.00 USD in guaranteed agent fees stated to be payable under the Agreement, less the USD 1,600.00 already paid to the First Claimant's other agent.

4.1.3 The Claimants' claim for interest

38. The Claimants submit that, while the Agreement does not provide for interest to accrue on amounts owed, in accordance with BAT jurisprudence, interest shall be payable at a rate of 5 % per annum on the sums that they claim.

4.1.4 The Claimants' request for relief

39. Accordingly, the Claimants' request for relief states:

“A. The Respondent to pay the Claimant \$48,000.00 USD NET in outstanding salary.

B. The Respondent to pay the Claimant's outstanding guaranteed Agent Fee: \$4,800.00 USD NET.

C. The Respondent to bear the entirety of the costs of this arbitration.

D. The Respondent to pay the Claimant EUR 7,500.00 in compensation for his legal fees (\$8,000 USD).

Total Amount in Dispute: \$60,800.00 USD NET (excluding arbitration costs).”

4.2 The Respondent's submissions

4.2.1 The Respondent's reliance on the Purported Settlement Agreement

40. The Respondent submits that it is not required to pay the amounts claimed by the Claimants because the Claimants and the Respondent entered into the Purported Settlement Agreement on 6 December 2023. The Respondent submits that the Parties understood the Purported Settlement Agreement to be a settlement agreement which documented the termination of the First Claimant's employment with the Respondent and released the Respondent from any obligation to make further payments to the Claimants.

41. In support of this submission, the Respondent states that contemporaneous evidence proves that the First Claimant was content to sign a settlement agreement.

42. Additionally, the Respondent submits that the Arbitrator should consider:

- a) the overall fairness of the situation in arriving at any decision;
- b) the fact that the Purported Settlement Agreement represents an agreement by the Parties to terminate the Agreement.
- c) the First Claimant's performance and attitude during his time employed by the Respondent (which the Respondent submits was negative); and
- d) customary practices in sport, i.e. that it is customary for clubs and players to enter into settlement agreements if the parties mutually agree that the player should no longer be bound by a contract.

4.2.2 The Respondents' Request for Relief

43. Accordingly, the Respondent's Request for Relief states:

- a. Holding a hearing for the testimony of witness [Another Agent of the Player]*
- b. Dismissal of the claim filed by Sheldon Mac and Slash International*
- c. The Claimants to bear the entirety of the costs of this arbitration*
- d. The Claimants to pay the Respondent EUR 7,500 in compensation for his legal fees."*

5. Procedural issues

44. The Respondent requested a hearing to hear the testimony of [Another Agent of the Player]. [Another Agent of the Player] is another agent of the First Claimant and a signatory to the Agreement, but is not a party to this dispute.
45. The Respondent's Answer provides that "*the future testimony*" of [Another Agent of the Player] will, along with the Purported Settlement Agreement and the correspondence with the First Claimant, assist the Arbitrator in demonstrating that the Claimant's claim "*is unfounded and should be rejected*". However, the Respondent does not provide any explanation as to why this is the case or, indeed, what [Another Agent of the Player]'s evidence will address. In any event, the Arbitrator considered, in accordance with

Article 13.1 of the BAT Rules, that a hearing is not required to determine this dispute. As explained below, the dispute essentially turns on the construction of the Purported Settlement Agreement and the Arbitrator considers that the testimony of [Another Agent of the Player] is highly unlikely to impact the proper construction of that agreement. Accordingly, the Arbitrator delivers this award on the basis of the written submissions of the Parties.

6. The Jurisdiction of the BAT

46. 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).
47. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
48. The Arbitrator notes that the dispute referred to him is clearly of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.¹
49. The Agreement contains the following provisions:

“17. DISPUTES:

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. The arbitrator shall decide the dispute ex aequo et bono. [...]”

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

50. The Agreement is in written form and thus the arbitration Clause 17 of the Agreement fulfils the formal requirements of Article 178(1) PILA.
51. 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 contained in the Player Agreement under Swiss law (referred to by Article 178(2) of the PILA). The predicate wording in arbitration Clause 17 of the Agreement, i.e. “*Any dispute arising from or related to the present contract [...]*”, clearly covers the present dispute. The Arbitrator further notes that the Respondent has expressly declared that it does not object to the BAT’s jurisdiction
52. For these reasons, the Arbitrator has jurisdiction to adjudicate the dispute.

7. Discussion

7.1 Applicable Law – *ex aequo et bono*

53. 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.*”

54. 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.”

55. Clause 18 of the Player Agreement similarly states that “[t]his contract shall be interpreted and enforced in accordance with the rules of the BAT.” By virtue of the preceding paragraph, the concept of *ex aequo et bono* is therefore incorporated into the Agreement as the law applicable to the merits of the present dispute.
56. For these reasons, the Arbitrator will decide the issues submitted to him in these proceedings *ex aequo et bono*.
57. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the *Concordat intercantonal sur l’arbitrage*² (Concordat),³ under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit*.

“When deciding ex aequo et bono, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”⁴

58. 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*”.

² That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

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

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

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

7.2 Findings

7.2.1 The First Claimant's Claim for unpaid salary

Validity and effect of the Agreement

60. The Claimant's claim presupposes the validity of the Agreement. The Agreement is signed by each of the Claimants, the Respondent and [Another Agent of the Player]. The Agreement is also initialled on each page by the Respondent's signatory, _____. The Agreement states that it "*contains and establishes the contractual relationship by and between PLAYER, CLUB and AGENTS*". The Arbitrator observes that no party to this arbitration has argued that the Agreement was not a valid contract.

61. At Clause 3 of the Agreement, it is stated that "[t]he Club shall pay the Player a fully guaranteed (protected for lack of skill, death, and injury/illness) salary in the amount of \$64,000.00 USD NET (sixty-four thousand US dollars) which covers the first four months (\$16,000.00 USD per month) of this Agreement until February 28, 2023." In BAT jurisprudence and in basketball more generally, the effect of parties stating that a contract is "*fully guaranteed*" is well understood. Where this language is included in a contract, the player will be entitled to the full amount of the salary stated to be owed to them, unless: (i) the club or employing party has a prescribed termination right which it validly exercises, or (ii) a party repudiates the contract, or (iii) if the parties agree to terminate the contract.

62. Unless the Respondent is able to demonstrate that the Agreement was terminated, the Claimants will, on the face of it, be entitled to the amounts stated to be owed to them.

The Purported Settlement Agreement: The First Claimant's and the Respondent's understanding

63. The Respondent's principal submission in this dispute is that the First Claimant and the Respondent agreed to terminate the Agreement by signing the Purported Settlement Agreement, which it submits was agreed on 6 December 2023. The Respondent submits that as a result of this agreement, the First Claimant agreed to accept payment of USD 12,000.00 (comprising the salary amount which became payable on 1 December 2022), forgo his entitlement to further salary, and return to the USA on the flight which the Respondent had arranged for him.
64. The Respondent stated in its submissions that *"the claimants had the opportunity to raise any concerns or objections at the time of the termination agreement. However, they chose to accept the settlement and expressed their satisfaction with the arrangement."* On the Respondent's case, therefore, the First Claimant understood that he was signing a settlement agreement, was content to do so and similarly was content with the terms of the agreement. The First Claimant disputes this characterisation.
65. The First Claimant adduced contemporaneous WhatsApp exchanges in support of its Request for Arbitration and its response to the Procedural Order. The exchanges are dated 6 and 7 December 2022 and show communications between a [representative of the Respondent], and the First Claimant.
66. In one exchange, the First Claimant stated at 3:20 pm on 6 December 2022: *"I just need my direct deposit asap and flight back home asap and we all good"*.
67. [Representative of the Respondent] responded at 3:32 pm: *"you arrive on 6 an [sic] have your fligth [sic] for after tomorrow we give you the 12k for complete the all month We got your fligth [sic] for the 8 Let me know if you preffer [sic] take your money cash or transfer"*.
68. The First Claimant then stated at 3:40 pm: *"My agency will be reaching out to you guys because I am owed the full 64K!"*

69. The following day, the Respondent's representative stated via WhatsApp message that if the First Claimant accepted payment in cash he would receive payment sooner: *"Want it cash gonna got [sic] your money shortly than wire"*. The First Claimant responded: *"That's fine"*. The WhatsApp messages adduced indicate that between 4:44pm and 5:13pm on 7 December 2023, the First Claimant received a payment in cash of USD 16,000.00.
70. The First Claimant submits that in return for handing him his December salary in cash, the Respondent required that he sign a document that he understood to be a receipt (but which was in fact the Purported Settlement Agreement). The First Claimant submits that the Respondent's representative informed him that the document he was signing was a receipt, and that the language it contained (in both English and Spanish) concerned his December salary.
71. After receiving the payment in cash, the First Claimant messaged again at 5:30pm to state *"You guys still owe me the 64k So the 12k is not a settlement deal!!"*
72. The Respondent relies on the First Claimant's statement at 3:20pm on 6 December 2023 (*"I just need my direct deposit asap and flight back home asap and we all good"*) to support its position that the First Claimant was aware that he was agreeing to a settlement.
73. The precise meaning of [Representative of the Respondent]'s statement that the USD 12,000.00 payment made was in respect of *"the all month"* is unclear, but it is plausible that [Representative of the Respondent] was conveying to the First Claimant that the Respondent meant to settle all obligations under the Agreement by paying the First Claimant the December salary owed.
74. On the other hand, the position is altogether clearer when the First Claimant's statements are considered. Both before accepting the USD 12,000.00 and signing the Purported Settlement Agreement (*"My agency will be reaching out to you guys because I am owed the full 64K!!"*) and afterwards (*"You guys still owe me the 64k So the 12k is*

not a settlement deal!!”) the First Claimant communicated unequivocally that he understood that he was entitled to the full amount of salary stated to be owed to him under the Agreement.

75. The Arbitrator is therefore satisfied, having reviewed all of the WhatsApp messages adduced and the surrounding facts provided by the parties, that the First Claimant did not believe that the effect of signing the Purported Settlement Agreement was to waive his entitlement to the remainder of the salary owed to him under the Agreement. Importantly, the First Claimant also communicated his understanding to the Respondent. As such, the Arbitrator is not persuaded by the Respondent’s submission that the First Claimant understood the Purported Settlement Agreement to function as a settlement agreement, pursuant to which the First Claimant would accept the USD 12,000.00 in satisfaction of any claims the First Claimant may have under the Agreement.

Construction of the Purported Settlement Agreement

76. There are two preliminary points to address in considering the effect of the Purported Settlement Agreement (the text of which is set out at paragraph 12 above).
77. First, the first page of the Purported Settlement Agreement is a document which includes both Spanish and English text, with the English text appearing to be a translation of the Spanish. A space for the First Claimant to sign his name is included under both the Spanish and English language sections and the First Claimant has signed under both sections.
78. Legal documents often contain more than one language, for example where the counterparties speak different languages. Where this is the case, the agreement will often state which language should take precedence if the two languages do not perfectly mirror each other. The Purported Settlement Agreement does not include this kind of provision.

79. Neither the Claimants nor the Respondent have submitted that the English and Spanish sections of the Purported Settlement Agreements have differing meanings. As the Purported Settlement Agreement is (on the Respondent's case) intended to terminate the Agreement, under which the First Claimant was entitled to further salary payments, and given that the First Claimant does not understand Spanish, it is in the Arbitrator's opinion appropriate to focus on the English language section of the Purported Settlement Agreement, given that it is the First Claimant's rights which are potentially affected by it and given that the Respondent drafted it.
80. Secondly, the version of the Purported Settlement Agreement adduced in this dispute includes a second page which contains a paragraph of Spanish-language text. It has been signed by a _____ and the Respondent submits that the document has been certified by a notary, although does not expand on the significance of this fact. The First Claimant submits that the notarised page appears to have added to the Purported Settlement Agreement after it was signed by the First Claimant and should be considered a separate document. As neither party made any substantive submissions in relation to this page of the Purported Settlement Agreement, the Arbitrator finds that the meaning and status of this additional page shall have no bearing on the award.
81. The English language part of the Purported Settlement Agreement states:
- “Delivered as follow [sic]:*
- US\$ 400 [sic] (american [sic] dollars four thousand) upon arriving in Montevideo*
- US\$ 12000 (american dollars [sic] twelve thousand) right now.*
- Havimg [sic] nothing to claim for any reason.”*
82. The Respondent submits that the phrase *“Havimg [sic] nothing to claim for any reason”* should be interpreted to mean that the First Claimant has agreed to forgo the remainder of the salary payments stated to be owed to him under the Agreement. The Respondent submits:

“Sheldon Mac declares that having nothing to claim for any reason in the Termination Agreement. This implies that it accepted the agreement, since it had nothing more to claim from Club Aguada. This acknowledges the Termination Agreement and determines that it is not a payment receipt as the plaintiffs want to argue.”

83. The Arbitrator does not accept this submission for the following reasons:
- a) As discussed above, the Respondent has failed to demonstrate that the First Claimant intended (or understood) that he was signing a settlement agreement.
 - b) The language which the Respondent seeks to rely on is so unclear that it is not possible for the Arbitrator to reach the conclusion that the language is intended to function as a settlement agreement and release the Respondent from any claims arising under the Agreement.
 - c) Had the Respondent intended to enter into a settlement agreement with the First Claimant, it would have been reasonable to do so using a more accurately drafted and longer form agreement, particularly given that as the Respondent itself submits, it is a customary practice for clubs and players to enter into such agreements. By contrast, the Purported Settlement Agreement bears none of the hallmarks of a typical settlement agreement.
84. As the Purported Settlement Agreement did not have the effect of terminating the Agreement, the First Claimant is therefore *prima facie* entitled to the outstanding salary stated to be owed to him under the Agreement.

The First Claimant's conduct

85. In pre-action correspondence and in its submissions, the Respondent has submitted that that the First Claimant demonstrated poor conduct and a lack of professionalism. The Respondent appears to have raised these points to explain why it is that the First Claimant may have decided to leave Uruguay in December 2022, rather than see out his contract. The First Claimant has denied these allegations. It is not necessary to

consider these points in any detail, however, as they are not relevant to the Arbitrator's reasoning. This is because the Respondent has not submitted that the First Claimant's conduct amounted to a breach of the Agreement (and that consequently the First Claimant is not entitled to the sums claimed under the Agreement), so it is not necessary to consider the First Claimant's conduct in this regard. For the sake of completeness, the Arbitrator considers that the evidence submitted by the Respondent of the First Claimant's alleged misconduct (primarily a witness statement provided by an assistant coach of the Respondent) would not be sufficient evidence that the First Claimant had committed a breach of the Agreement which would entitle the Respondent to terminate the Agreement without having to pay any further salary to the First Claimant.

86. The consequence of these findings is that, subject to mitigation, the First Claimant is entitled to unpaid salary provided under Clause 3 of the Agreement, in the sum of USD 48,000.00 net.

Mitigation

87. The First Claimant left the Respondent mid-way through the season, in December 2022. Prior to entering into the Agreement, the First Claimant had already agreed to report to a Puerto Rican club on 13 March 2023. The First Claimant submits that this fact was known to the Respondent and it is reflected in Clause 1 of the Agreement.
88. This therefore left the First Claimant with approximately three months in which to mitigate his losses. The Arbitrator notes that this would have been challenging because it is a relatively short period of time and it did not fall at the start or the end of a season.
89. During these proceedings, the Arbitrator requested evidence of the First Claimant's attempts to mitigate his losses. In its response to the Procedural Order, the First Claimant stated: "*the Claimant's representation did try hard to find a solution but unfortunately could not*", however the First Claimant provided no evidence to support that submission. In circumstances where the Arbitrator had specifically requested

details and evidence of the First Claimant's attempts at mitigation, this response failed to demonstrate that the First Claimant discharged his duty to attempt to mitigate his losses.

90. The Arbitrator therefore finds *ex aequo et bono* that the amount payable to the First Claimant should be reduced by 30%, to a net amount of USD 33,600.00.

Interest

91. The First Claimant's request for relief does not include a claim for interest. His submissions, however, include a statement that "[a]lthough the Agreement does not stipulate a specific interest rate other than the late penalties, a rate of 5% p.a. shall apply to compensation, as consistently upheld by BAT jurisprudence." The Arbitrator accepts this statement and consequently finds that the First Claimant is entitled to interest at the customary BAT rate.

92. The First Claimant's submissions do not state when he seeks the interest to start accruing from and the Agreement itself does not provide for default interest. It is not in dispute that the Agreement had been terminated by the Respondent by 5 December 2022. At that point in time, all outstanding sums became due and payable for the reasons given above. As such, the Arbitrator finds that interest at a rate of 5% per annum shall accrue on the sums owed to the First Claimant from the day after this date, i.e. 6 December 2022.

7.2.2 The Second Claimant's claim for unpaid agent fees

Unpaid agent fees

93. The Second Claimant claims that it is entitled to outstanding guaranteed agent fees of USD 4,800.00, under Clause 16 of the Agreement. The Second Claimant states that this is because USD 1,600.00 has been paid to [Another Agent of the Player] and therefore the Second Claimant should be entitled to the balance.

94. Clause 16 of the Agreement states:

“16. AGENTS [sic] SERVICES: In addition to the Player's base salary, the Club shall pay an additional fully guaranteed \$6,400.00 USD NET directly to the Player's Agents (\$4,000 to SLASH International and \$2,400 to [Another Agent of the Player]) by November 10, 2022 to SLASH and January 10, 2023 to [Another Agent of the Player]. The CLUB also will pay an amount equal to the 5% the PLAYER receive as salary from March 1" 2023 until end of his participation during the LUB 22/23, to SLASH and another 5% of that amount, to [Another Agent of the Player], The Player explicitly authorizes the Club to pay the Agent Fee directly to the Agent in accordance with the modified FIBA Regulations. Failure to remit the payment on time shall be treated in the same manner as a late payment to the Player and shall have the same rights / consequences.

95. The Arbitrator is satisfied that this provision creates a payment obligation owed to the Second Claimant. The Respondent has not disputed that it has failed to pay an amount to the Second Claimant in respect of its agent fee.

96. The Arbitrator does not accept, however, that the Second Claimant is entitled to the sum of USD 4,800.00. Clause 16 of the Agreement states unequivocally that the Respondent is required to pay “\$4,000 to SLASH International”. As a consequence, the Arbitrator finds that the Second Claimant is entitled to unpaid agent fees of USD 4,000.00 net.

Interest

97. The Second Claimant also claims customary BAT interest on the unpaid agent fees.

98. As with the First Claimant's claim, the Arbitrator is content to award the Second Claimant interest at the BAT customary rate of 5% per annum on the sum of USD 4,000.00 net.

99. Clause 16 of the Agreement provides that the Second Claimant's payment was due on 10 November 2022. Consistent with BAT jurisprudence, the Arbitrator considers that interest shall therefore accrue from 11 November 2022.

8. Costs

100. 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). [...]”

101. On 12 October 2023, the BAT Vice-President determined the arbitration costs in the present matter to be EUR 7,115.45.

102. 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.”

103. The Arbitrator notes that: (a) the Claimants have been awarded approximately 71% of the sums claimed from the Respondent (USD 37,600.00 of the USD 52,800.00 claimed).

104. The Arbitrator is grateful to both the Claimants' and the Respondent's legal counsel for submitting concise submissions.

105. In light of the above, the Arbitrator considers it is fair in the circumstances and in application of Article 17.3 of the BAT Rules, that 71% of the costs of the arbitration shall be borne by the Respondent and 29% shall be borne by the Claimants. Consequently, the Claimants shall bear EUR 2,063.48 and the Respondent EUR 5,051.97.

106. Given that the Claimants paid EUR 3,750.00 of the advance on costs, and the Respondent paid EUR 3,365.45, the Respondent shall pay EUR 1,686.52 jointly to the Claimants.

107. 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.”

108. 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 (including a maximum contribution of EUR 7,500.00 to a party's legal fees where the sum in dispute is between EUR 30,001.00 and EUR 100,000.00).

109. The Claimants were the prevailing parties and are therefore entitled to a contribution to their legal fees. The Claimants claimed EUR 11,300.00 in legal fees and expenses, comprising: (a) legal costs of EUR 7,300.00; and (b) the non-reimbursable handling fee of EUR 4,000.00.

110. The Claimants' legal counsel provided the following breakdown of their costs, incurred at an hourly rate of USD 150.00:

- a) 2 hours gathering evidence;
- b) 2 hours on legal research;
- c) 33 hours drafting the RFA; and
- d) 17 hours reviewing the Respondent's submissions and drafting the Claimants' response to the Procedural Order.

111. Given that the RFA contains less than 8 pages of advocacy and the Claimants' response to the Procedural Order was also brief, the Arbitrator considers that this was an excessive amount of time spent on these activities.

112. Considering also that the Claimants did not succeed in all of their claims, the Arbitrator finds that it would be fair and reasonable for the Respondent to pay the Claimants EUR 7,500.00 as a contribution towards their legal fees and expenses (including the NRF).
113. Therefore, the Arbitrator decides:
- a) the Respondent shall reimburse EUR 1,686.52 jointly to the Claimants in respect of the advance on costs paid by the Claimants; and
 - b) the Respondent shall pay to the Claimants EUR 7,500.00, as a contribution towards their legal fees and expenses (including the NRF).

9. AWARD

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

- 1. Club Atletico Aguada shall pay USD 33,600.00 net to Mr. Sheldon Mac in respect of outstanding salary, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 6 December 2022 until payment in full.**
- 2. Club Atletico Aguada shall pay USD 4,000.00 net to SLASH International Inc. in respect of 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 11 November 2022 until payment in full.**
- 3. Club Atletico Aguada shall pay EUR 1,686.52 jointly to Mr. Sheldon Mac and SLASH International Inc. in respect of the advance on costs paid by Mr. Sheldon Mac and SLASH International Inc.**
- 4. Club Atletico Aguada shall pay EUR 7,500.00 jointly to Mr. Sheldon Mac and SLASH International Inc. as a contribution to their legal fees and expenses.**
- 5. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 23 October 2023

Rhodri Thomas
(Arbitrator)