

ARBITRAL AWARD

(BAT 2034/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Clifford J. Hendel

in the arbitration proceedings between

Mr. Ángel Luis Delgado Astacio

YF Spor Danismanlik ve Tic. A.S.
Yapi Krei Plaza C, Blok No. 40-41
Levent 34330, Istanbul, Turkey

U1st Sports Basket Espana, S.L.
C/Uruguay 3bis, 28016 Madrid, Spain

all represented by Mr. Guillermo López Arana and
Mr. Antonio Garcia-Aranda Stai, attorneys at law,

vs.

Karsiyaka Spor Kulübü Derneği
Selcuk Yasar Tesisleri Atasehir Mahallesi
Yeni Havaalani Yolu no. 13, Cigli, Izmir, Turkey

- Claimant 1 -

- Claimant 2 -

- Claimant 3 -

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. Ángel Luis Delgado Astacio (“the Player” or “Claimant 1”) is a Dominican professional basketball player.
2. YF Spor Danismanlik ve Tic., A.S, (“Claimant 2”) is a Turkish sports agency domiciled in Istanbul.
3. U1st Sports Basket España, S.L., (“Claimant 3”, and together with Claimant 2, “the Agencies”) is a Spanish sports agency domiciled in Madrid.

1.2 The Respondent

4. Karsiyaka Spor Kulübü Dernegi (“the Club”, and together with the Claimants, “the Parties”) is a professional basketball club competing in the Turkish professional basketball league.

2. The Arbitrator

5. On 10 November 2023, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (the “BAT”), appointed Mr. Clifford J. Hendel as arbitrator (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 (the “BAT Rules”).
6. 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

7. The relevant facts and allegations presented in the written submissions and evidence are summarised below. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.
8. Although the Arbitrator has considered all the facts, allegations and evidence submitted in the present proceedings, he refers in this Award only to those necessary to explain its reasoning.

3.1.1 The Agreements

9. On 20 June 2022, the Player and the Club entered into an agreement, executed in the English language, whereby the latter engaged the Player for the 2022/23 and the 2023/24 basketball seasons (the “Player-Club Agreement”).¹ The Player-Club Agreement was signed by the Club, the Player, and his two agents- Guillermo Bermejo Carbonell of U1st Sports Basket España, S.L., and Caglar Coskun of YF Spor Danismanlik ve Tic., A.S.
10. According to Clause First of the Player-Club Agreement:

“Mr. Ángel Luis Delgado Astacio engages himself to fulfill his activities as a basketball Player in the official competitions and friendly tournaments in which the Club may take part during the 2022-2023 and 2023-2024 seasons, as well as in the happenings and matches of “All-Stars” for which he may be selected. The contract shall begin once it is signed by

¹ Exhibit 4 to the Request for Arbitration (“RfA”).

the parties and shall conclude 48 hours after the last official game in which the Club participates in the 23/24 season.”

11. Clause Fifth of the Player-Club Agreement provides for the Player’s salary as follows:

“The salary to be received for the player’s services will be:

2022-2023 season:

*THREE HUNDRED AND TWENTY FIVE THOUSAND US DOLLARS NET (325,000 USD)
payable in the following manner:*

- *32,500 USD net on September 25th, 2022.*
- *32,500 USD net on October 25th, 2022.*
- *32,500 USD net on November 25th, 2022.*
- *32,500 USD net on December 25th, 2022.*
- *32,500 USD net on January 25th, 2023.*
- *32,500 USD net on February 25th, 2023.*
- *32,500 USD net on March 25th, 2023.*
- *32,500 USD net on April 25th, 2023.*
- *32,500 USD net on May 25th, 2023.*
- *32,500 USD net on June 25th, 2023.*

[...]

BONUS- *The player will receive the following bonus for the each season of validity of the present agreement:*

Non-cumulative Bonus (BSL PLAY OFFS):

10,000 USD net in the event the Club finishes the BSL regular season in the first 8 places.

15,000 USD net in the event the Club reaches the BSL play-off semifinal

20,000 USD net in the event the Club reaches the BSL play-off final

30,000 USD net in the event the Club wins the BSL play-offs

[...]

All bonuses are non-cumulative and will be paid to the Player with the next salary payment of having been achieved [sic].”

12. Additionally, according to Clause Sixth of the Player-Club Agreement:

“The Club will provide the Player free of charge with one three (3) [sic] economy class roundtrip airplane tickets from Izmir to his residence in the United States, during each season of validity of this agreement [sic].

[...]”

13. Clause Fourteenth of the Player-Club Agreement provides for the “UNILATERAL TERMINATION OPTION IN FAVOR OF THE PLAYER”:

“The Player will have the unilateral option to terminate the present agreement from the day of the last official match of the club in the 22-23 season and until July 5th, 2023, by effectively communicating his decision to the Club(e-mail is valid), and by payment, by the Player, or a third party on his behalf, in favor of the Club of the amount of 25,000 USD. Said amount will be paid via bank transfer within 15 days of the Club having [sic] received the mentioned termination communication.[sic].”

14. Finally, according to Clause Sixteenth of the Player-Club Agreement:

“The Club agrees to the Agent's fee to YF Spor Danismanlik ve Tic. A.S. and U1st Sports Basket Espana S.A. for their services as the Player's representatives, in the terms and conditions stipulated in the attached commission page which is included as an annex to this document. This commission is considered part of the Player's Contract.”

15. In effect, on 20 June 2022, Claimant 2, Claimant 3 and Respondent signed a separate

document (the “Annex to the Player-Club Agreement”)² whereby they declared, *inter alia*:

“That the Agents have provided their professional services of intermediation and mediation in the negotiation and contracting of the aforementioned Player.

That as a consequence of the professional intervention, the Agents have earned the following professional fees to be paid by the Club.”

16. Clause First of the Annex to the Player-Club Agreement provides for the Agency fees as follows:

“The Club agrees to pay the Agents, for the professional services of intermediation and mediation in negotiation and contracting of the Player by the Club the following amounts:

2022-2023 Season:

THIRTY TWO THOUSAND FIVE HUNDRED (32,500 USD) to be paid as follows:

- **8,125 USD plus the corresponding VAT in favor of YF Spor Danismanlik ve Tic. A.S,** via bank transfer on or before November 15th, 2022.
- **8,125 USD plus the corresponding VAT in favor of U1st Sports Basket Espana S.L.** via bank transfer on or before November 15th, 2022.
- **8,125 USD plus the corresponding VAT in favor of YF Spor Danismanlik ve Tic. A.S,** via bank transfer on or before December 15th, 2022.
- **8,125 USD plus the corresponding VAT in favor of U1st Sports Espana S.L.** via bank transfer on or before December 15th, 2022.

[...]”

17. According to Clause Second of the Annex to the Player-Club Agreement:

² Exhibit 7 to the RfA.

“The termination or suspension of the contract by the Club because of Player's illness, injury, on account of Player's failure to exhibit sufficient skill or for any other reason, aside from the execution of the termination options established in favor of the player or the club in the contract signed between the club and the player, shall in no way affect the right of the Agents to receive the professional fees agreed upon in this document on the dates mentioned above.”

18. On 27 June 2022, the Agencies and the Club concluded a second agreement, by means of which Claimant 2 and Claimant 3 would receive their agent fees for their professional intervention in the signing of an additional employment contract between the Club and the basketball player Mr. Jaylon Brown (the “Agents-Club Agreement” and together with the Player-Club Agreement, the “Agreements”).³

19. The parties in the Agents-Club Agreement declared:

“That on this date the Club has signed a professional athlete employment contract with the professional basketball player Mr. Jaylon Brown (hereinafter the “Player”) in virtue of which the Player shall lend his professional services to the first team of the Club during the 2022/2023 and 2023/2024 seasons.

That the Agents have provided their professional services of intermediation and mediation in the negotiation and contracting of the aforementioned Player.

That as a consequence of the professional intervention, the Agents have earned the following professional fees to be paid by the Club.”

20. Clause First of the Agents-Club Agreement provides for the Agents' fees as follows:

“The Club agrees to pay the Agents, for the professional services of intermediation and mediation in negotiation and contracting of the Player by the Club the following amounts:

³ Exhibit 8 to the RfA.

2022-2023 Season:

TWENTY FOUR THOUSAND (24,000 USD) to be paid as follows:

- **6,000 USD** plus the corresponding VAT in favor of **YF Spor Danismanlik ve Tic. A.S.**, via bank transfer on or before November 15th, 2022.
- **6,000 USD** plus the corresponding VAT in favor of **U1st Sports Basket Espana S.L.** via bank transfer on or before November 15th, 2022.
- **6,000 USD** plus the corresponding VAT in favor of **YF Spor Danismanlik ve Tic. A.S.**, via bank transfer on or before December 15th, 2022.
- **6,000 USD** plus the corresponding VAT in favor of **U1st Sports Espana S.L.** via bank transfer on or before December 15th, 2022.”

21. According to Clause Second of the Agents-Club Agreement:

“The termination or suspension of the contract by the Club because of Player's illness, injury, on account of Player's failure to exhibit sufficient skill or for any other reason, aside from the execution of the termination options established in favor of the player or the club in the contract signed between the club and the player, shall in no way affect the right of the Agents to receive the professional fees agreed upon in this document on the dates mentioned above.”

3.1.2 Factual background of the dispute

22. On the one hand, regarding the dispute between the Player and the Club, the relevant facts are the following:
23. On 5 July 2023, Mr. Guillermo Bermejo of U1st Sports Basket España, S.L., sent an email to the Club on behalf of the Player, exercising the Player's unilateral termination option under Clause Fourteenth of the Player-Club Agreement, as well as requesting the

payment of the outstanding salaries and bonus:⁴

“Dear Sirs,

I am writing to notify you of our client’s, Angel Delgado, decision to terminate the contract between your club and him signed on June 20th, 2022. More specifically, the Player is exercising his right foreseen in clause fourteenth (14), “Unilateral Termination option in favor of the Player”. The payment of 25.000 USD will be duly paid in the next 15 days as foreseen in the contract.

I would also like to remind you that there are two salary payments outstanding that have not been paid yet. Both salaries of may 25th [sic] and June 25th worth of 32.500 USD net (total of 65.000 USD net). In addition to this, the bonus for reaching the final of BSL playoffs, worth 20.000 USD, also has not been paid. The total amount to be paid is 85.000 USD. I kindly ask you to pay it promptly.

[...]”

24. There is no evidence on the record of any reply from the Club.
25. On 11 July 2023, the Player’s agent sent a further email to the Club, as a reminder of the outstanding amounts that the Club owed to the Player.⁵
26. The Club replied the same day by email through its General Manager:⁶

“Dear Guillermo,

I hope the mail finds you well.

As you have mentioned in the mail below, we owe to Angel Delgado, May and June salaries and the bonuses. From the opt – out fee, Angel Delgado owe us 25.000 usd.

⁴ Exhibit 5 to the RfA.

⁵ *Ibid.*

⁶ *Ibid.*

To be honest, it is not possible to pay the debts by tomorrow [sic]. But we can work on a termination agreement with a payment plan [sic].”

27. During the month of July, the Player’s representative and the Club exchanged further correspondence by email with the aim of concluding a termination agreement to settle their obligations. However, no such agreement was reached.⁷

28. Additionally, on 26 July 2023, the Player’s agent wrote to the Club:⁸

“Hello Selim,

I wanted to know if there are any news regarding this. I also wanted to bring up that the club also owes Angel 5.125 usd from different flights he purchased and the club said they would reimburse. I am attaching the receipts.”

29. Finally, on 30 August 2023 the Club and the Player signed a “Turkish Federation Termination agreement” that reads:⁹

“The Contract which had been signed by the Club and the Player Angel Luis Delgado Astacio, on the date 25.08.2022 and registered by Turkish Basketball Federation on the date 28.09.2022, has been terminated due to the clause 4 of Special Terms and Conditions. The remaining financial rights from past season are reserved by both parties.”

30. On the other hand, regarding the dispute between the Agencies and the Club, the relevant facts are the following:

31. On 13 June 2023, Mr. Antonio Stai of U1st Sports Basket España, S.L, sent an email to

⁷ *Ibid.*

⁸ *Ibid.*

⁹ Exhibit 6 to the RfA.

the Club on behalf of Claimant 2 and Claimant 3, requesting the payment of their outstanding agency fees under the Annex to the Player-Club Agreement and the Agents-Club Agreement. In its relevant part, the email read:¹⁰

“Dear Sirs,

I am writing to you from the Legal Department of You First concerning the fact that your club, Karsiyaka Spor Kulübü Derneği, still owes and has not paid the fess [sic] owed to both YF Spor Danismanlik ve Tic. A.S, and U1st Sports Basket España S.L. for the services of mediation and intermediation rendered on behalf of your club in the signing of our clients Mr. Jaylon Brown and Mr. Ángel Delgado.

Specifically, for the 2022-2023 season, Karsiyaka Spor Kulübü Derneği was to pay the amount of 24.000 USD to You First for the services rendered in the signing of Mr. Brown, as per the agreement signed on June 27, 2022 (see attached) and 32,500 USD for the services rendered in the signing of Mr. Delgado, as per the agreement signed on June 20th, 2022 (see attached). Making the total outstanding amount owed to You First by Karsiyaka Spor Kulübü Derneği 56,500 USD.

[...]

None of the above mentioned payments has been made by your club. We have been as patient as possible with this issue, but cannot let it continue any longer. Please proceed to comply with your contractual obligations and pay the above mentioned amounts to YF Spor Danismanlik ve Tic. A.S, and to U1st Sports Basket España S.L. In the event we do not receive the payment in full by this Friday, June 16th, 2023, you will leave us no option but to take the legal measures at our disposal to protect our interest [...]”

32. The Agencies’ counsel addressed three further emails to the Club, as reminders of his previous communication (on 20 June 2023, 25 August 2023 and 7 September 2023).¹¹

¹⁰ Exhibit 9 to the RfA.

¹¹ *Ibid.*

33. On 7 September 2023, the Club replied, also via email, through its General Counsel:¹²

“Dear Mr Stai,

First of all I really appreciate for your patience about all clauses you have mentioned [sic]. As we have send the necessary papers to TBF, in a short while we will get back to you with the resolution agreement for Angel Delgado.

Next week will be the payment day for Jaylon Brown, from 2022-23.

Thank you once again for your coloboration [sic] and understanding.”

34. On 19 September 2023, the Agencies’ counsel wrote to the Club:¹³

“Dear Mr. Cinar,

I am writing in reply to your email (below), dated September 7th, 2023, in which you stated that the fee owed for the signing of Mr. Jaylon Brown (24,000 USD) would be paid last week (September 11th to September 15th), as of today, Tuesday, September 19th, it has not been paid. Nor has the fee owed for the services rendered in favor to your club in the signing of Mr. Ángel Delgado (32,500 USD).

In a show of goodwill towards Karsiyaka, we will wait until this Friday, September 22nd, 2023, to receive payment in full of the owed and unpaid 56,500 USD, but we cannot wait any longer.

Again, in the event we do not receive payment in full of the mentioned 56,500 USD by this Friday, September 22nd, 2023, we will file a request for Arbitration before FIBA’s Basketball Arbitral Tribunal [...]”

35. The Club replied on 15 October 2023:¹⁴

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

Dear Mr Srai [sic],

I hope this mail finds you well.

First of all, I really appreciate for your patience and to your approach in colobration for years [sic]. I do not want to bother you again and again about the situations that were in but resinging of the Presedent of the Board was so tough [sic].

Not only for the agency fees, but also for the debts to Angel Delgado, would like to work on a resionable payment plan [sic], if acceptable for both sides.

We can make a double check on all amounts and I can also work on it to discuss.”

36. Finally, on 16 October 2023, the Agencies’ counsel sent a payment plan to the Club in order to settle its debts, warning the Club that if no reply was received by 20th October 2023, they would consider their proposal rejected and thus initiate legal proceedings.¹⁵

3.2 The Proceedings before the BAT

37. On 23 October 2023, the Claimants filed a Request for Arbitration dated the same day, in accordance with the BAT Rules.
38. On 24 October 2023, the non-reimbursable handling fee in the amount of EUR 4,000 was received in the BAT bank account.
39. On 13 November 2023, the BAT informed the Parties that Mr. Clifford J. Hendel had been appointed as the Arbitrator in this matter, invited the Respondent to file its Answer by 4 December 2023, and fixed the advance on costs to be paid by the Parties by 23 November 2023 as follows:

¹⁵ *Ibid.*

“Claimant 1 (Mr. Angel Luis Delgado) EUR 2,500.00
Claimant 2 (YF Spor Danismanlik) EUR 1,000.00
Claimant 3 (U1st Sports Basket Espana) EUR 1,000.00
Respondent (Karsiyaka Spor Kulübü) EUR 4,500.00”

40. On 23 November 2023, the BAT received an advance on costs paid by U1st Sports Basket Espana SL on behalf of the Claimants in the amount of EUR 4,500.
41. On 5 December 2023, the BAT informed the Parties that the Respondent had failed to submit its Answer to the Request for Arbitration and to pay its share of the advance on costs. The Respondent was given a final opportunity until 12 December 2023 to pay its share of the advance on costs and to file an Answer to the Request for Arbitration. The Club was informed that, in accordance with Article 14.2 of the BAT Rules, if the Respondent failed to submit an Answer, the Arbitrator may nevertheless proceed with the arbitration and deliver an award.
42. On 13 December 2023, the BAT informed the Parties that the Respondent had failed to submit its Answer to the Request for Arbitration and to pay its share of the advance on costs within the extended time-limit, and invited the Claimants to substitute for Respondent’s share by 3 January 2024. In accordance with Article 9.3.1 of the BAT Rules, the BAT decided to adjust the advance on costs to EUR 7,500 from the originally-established EUR 9,000 as follows:

“Claimant 1 (Mr. Angel Luis Delgado) EUR 2,000.00
Claimant 2 (YF Spor Danismanlik) EUR 875.00
Claimant 3 (U1st Sports Basket Espana) EUR 875.00
Respondent (Karsiyaka Spor Kulübü) EUR 3,750.00”

43. The same day, the Claimants’ counsel sent an email to the BAT stating that due to a misreading of the Procedural Order dated December 5th, the Claimants had already paid

EUR 4,500 as the Respondent's share of the advance on costs, such sum having been received by the BAT on 12 December 2023, hence the Claimants had overpaid EUR 1,500. The BAT offered the Claimants to reimburse the overpaid amount at the end of the proceedings, to which Claimants agreed.

44. On 10 January 2024, the BAT declared that the exchange of submissions was closed in accordance with Article 12.1 of the BAT Rules. The Claimants were granted a deadline until 17 January 2024 to set out how much of the applicable maximum contribution to their costs should be awarded to them and why, and to include a detailed account of their costs, including any supporting documentation in relation thereto.

45. The Claimants filed their costs submission on the same day.

4. The Positions of the Parties

4.1 The Claimants' Position

46. It is the Claimants' position that the amounts claimed are undisputedly owed under the Agreements. The Club has acknowledged its debts several times in the pre arbitration correspondence between the Parties, it has made repeated promises to satisfy them, and has even suggested that the Parties agree on a payment plan.

47. The Claimants have unsuccessfully attempted to resolve the dispute amicable "*in all possible ways*".

48. The Club must therefore be obliged to honour the Agreements.

49. In their Request for Arbitration, the Claimants requested the following relief:

"Claimant(s) request(s):

a) To award Claimant 1 with the amount of **SIXTY FIVE THOUSAND ONE HUNDRED AND TWENTY FIVE [sic] US DOLLARS NET (65,125 USD net)** plus interest at the applicable Swiss statutory rate, starting from the date of June 25th, 2023.

b) To award the Claimant 2 with the amount of **TWENTY EIGHT THOUSAND TWO HUNDRED AND FIFTY US DOLLARS + VAT (28,250 USD + VAT)** plus interest at the applicable Swiss statutory rate, starting from the date of December 15th, 2022.

c) To award the Claimant 3 with the amount of **TWENTY EIGHT THOUSAND TWO HUNDRED AND FIFTY US DOLLARS (28,250 USD)** plus interest at the applicable Swiss statutory rate, starting from the date of December 15th, 2022.

d) To award the Claimants with the full covered the costs of this arbitration.

Total amount in dispute: 125,109 USD net (claimed amount (121,625 USD) plus interest calculated approximately at the date of filing the present Request for Arbitration (3,484 USD))"

4.2 Respondent's Position

50. The Respondent has not participated in this proceeding but has been duly notified of its existence and has received copies of all submissions of the Claimants and all communications of the BAT.

5. The jurisdiction of the BAT

51. As a preliminary matter, the Arbitrator wishes to emphasize 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.

52. 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).

53. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
54. The dispute is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA¹⁶.
55. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under Clause Fifteenth of the Player-Club Agreement, Clause Third of the Annex to the Player-Club Agreement and Clause Third of the Agents-Club Agreement, all of which read as follows:

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

56. The Agreements are in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
57. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law

¹⁶ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

(referred to by Article 178(2) PILA).

58. The jurisdiction of BAT over the Claimants' claims arises from the Agreements. The wording "*Any dispute arising from or related to the present contract [...]*" clearly covers the present dispute.
59. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claims.

6. Other Procedural Issues

60. 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.¹⁷ However, the Arbitrator must make every effort to allow the defaulting party to assert its rights. This requirement is met in the present case. The Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator in accordance with the relevant rules. It was also given sufficient opportunity to respond to Claimant's Request for Arbitration. The Respondent, however, chose not to participate in this Arbitration.
61. Neither of the Parties requested a hearing. In accordance with Article 13.1 of the BAT Rules, the Arbitrator will decide the Claimants' claims based on the written submissions and the evidence on record.

¹⁷ See *ex multis* BAT cases 0001/07; 0018/08; 0093/09; 0170/11.

7. Discussion

7.1 Applicable Law – *ex aequo et bono*

62. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the arbitrators to decide “*en équité*” instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

“the parties may authorize the arbitral tribunal to decide ex aequo et bono”.

63. 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.”

64. Clause Fifteenth of the Player-Club Agreement, Clause Third of the Annex to the Player-Club Agreement, and Clause Third of the Agents-Club Agreement expressly provide that the Arbitrator shall decide the dispute *ex aequo et bono*.

65. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him

in this proceeding.

66. 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*¹⁸ (Concordat),¹⁹ 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.”*²⁰

67. 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*”.
68. In light of the foregoing considerations, the Arbitrator makes the findings below.

7.2 Findings

7.2.1 Player’s claims

69. Claimant 1 requests:

¹⁸ 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).

¹⁹ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

²⁰ JdT 1981 III, p. 93 (free translation).

- a) His unpaid salaries for the months of May and June 2023 in the total sum of USD 65,000 net.
 - b) His unpaid bonus for reaching the final of the BSL play-offs (season 2022/23) in the sum of USD 20,000 net.
 - c) His unpaid airplane tickets in the total sum of USD 5,125 (two airplane tickets: USD 2,455 + USD 2,670).
70. Such aggregate amount (USD 90,125) is duly compensated against the USD 25,000 owed to the Club for the payment of the Player's unilateral termination option. Thus, the Player claims a total of USD 65,125 net.
71. As set out above (Section 3.1.1), pursuant to Clause Fifth of the Player-Club Agreement the Player was entitled to a salary of USD 32,500 net per month, and the monthly instalments for May and June 2023 were due on 25 May 2023 and 25 June 2023, respectively.
72. Additionally, pursuant to the same Clause, the Player was entitled to a bonus of USD 20,000 net in the event the Club reached the BSL play-off final.²¹
73. The Respondent not having participated in the proceeding, it is not disputed – and it appears indisputable on the basis of the pre arbitration correspondence between the Parties – that the amounts claimed were not paid by the Club, and thus the Player is

²¹ According to publicly available information, the Club reached the BSL play-off final in the 2022/23 season. See <ING Basketbol Super Ligi Basketball 2022-2023, News, Teams, Scores, Stats, Standings, Awards – eurobasket>

entitled to receive the full amount due under the Player-Club Agreement.

74. Regarding the request for reimbursement of certain plane tickets paid by the Player, Clause Sixth of the Player-Club Agreement provides that the Player would receive from the Club 3 economy class roundtrip airplane tickets from Turkey to his residence in the US during each of the seasons. The Arbitrator is however not satisfied with the evidence provided by the Player in support of this claim. Exhibit 5 to the Request for Arbitration includes, within an email sent by the Player's representative to the Club, some attachments of what seems to be mere information on two plane tickets. However, part of the text is blackened and illegible, the dates and destinations of the flights are unclear (the Arbitrator understands that one of the tickets is for a trip from Istanbul to Santo Domingo, which is not the residence of the Player in the US as agreed). Additionally, the document provided is not an invoice or a payment receipt. In consequence, this claim is dismissed.
75. Therefore, the Club shall pay to the Player USD 60,000 net (as requested and agreed under Clause Fifth of the Player-Club Agreement) for his unpaid salaries and bonus.

7.2.2 Agencies' claims

76. Claimant 2 and Claimant 3 request USD 28,250 each for their unpaid agency fees regarding the 2022/23 season, under both the Annex to the Player-Club Agreement and the Agents-Club Agreement.
77. As set out above (Section 3.1.1), pursuant to Clause First of the Annex to the Player-Club Agreement each of the sport agencies was entitled to USD 16,250, plus the corresponding VAT, as their fees "*for their professional services of intermediation and mediation*" payable during the 2022/23 season. In each case, USD 8,125 was due on 15

November 2022 and the remaining USD 8,125 were due on 15 December 2022.

78. Additionally, pursuant to Clause First of the Agents-Club Agreement, each of the Agencies was entitled to USD 12,000, plus the corresponding VAT, as their agency fees payable during the 2022/23 season. In each case, USD 6,000 were due on 15 November 2022 and the remaining USD 6,000 were due on 15 December 2022.
79. As in the case of the Player's claims, the Respondent not having participated in the proceeding, it is not disputed – and it appears indisputable on the basis of the pre arbitration correspondence between the Parties, that the amounts claimed by the Agencies were not paid by the Club. Therefore, the Club shall reimburse said amounts to Claimant 2 and Claimant 3.
80. The Club shall pay Claimant 2 USD 28,250, plus VAT (as requested and agreed under Clause First of both the Annex to the Player-Club Agreement and the Agents-Club Agreement).
81. The Club shall pay Claimant 3 USD 28,250 (not including VAT, as requested).

7.2.3 Interest

82. The Claimants have further requested "*interest at the applicable Swiss statutory rate*" on the amounts claimed according to the following schedule:
- Claimant 1 has requested interest on the amount of USD 65,125 net, starting from 25 June 2023 (the day the last salary instalment for the 2022/23 season was due), until complete payment.

- Claimant 2 has requested interest on the amount of USD 28,250, plus VAT, starting from 15 December 2022 (the day the last agency fee instalment regarding the 2022/23 season was due), until complete payment.
- Claimant 3 has requested interest on the amount of USD 28,250, starting from 15 December 2022 (the day the last agency fee instalment regarding the 2022/23 season was due), until complete payment.

83. Not having participated in the proceedings, the Respondent has not disputed the Claimants' request for interest.

84. The Agreements do not provide for interest. However, in accordance with consistent BAT jurisprudence, and deciding *ex aequo et bono*, the Arbitrator considers it fair and reasonable to award interest at the rate of 5% per annum, as follows:

- Claimant 1 shall be awarded interest on the amount of USD 60,000 net, starting from 26 June 2023 (i.e. one day after the due date of the last salary instalment for the 2022/23 season as per established BAT jurisprudence), until payment in full.
- Claimant 2 shall be awarded interest on the amount of USD 28,250, plus VAT, starting from 16 December 2022 (i.e. one day after the due date of the last agency fee instalment regarding the 2022/23 season as per established BAT jurisprudence), until payment in full.
- Claimant 3 shall be awarded interest on the amount of USD 28,250, starting from 16 December 2022 (i.e. one day after the due date of the last agency fee instalment regarding the 2022/23 season as per established BAT jurisprudence),

until payment in full.

8. Costs

85. 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). [...]”

86. On 29 February 2024, the BAT President determined the arbitration costs in the present matter to be EUR 6,625.

87. 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.”

88. Considering that the Claimants were the prevailing party in this arbitration, it is consistent with the provisions of the BAT Rules that costs of the arbitration be borne by the Respondent alone. Given that the Claimants paid the entire Advance on Costs in the amount of EUR 7,500, plus EUR 1,500 that were overpaid by Claimants by mistake, (of which EUR 2,375 will be reimbursed to the Claimants by the BAT), Respondent shall reimburse EUR 6,625 to the Claimant.

89. 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.”

90. 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 (in this case, up to EUR 10,000).

91. The Claimants claim legal fees in the total amount of EUR 3,500. They also claim for the expense of the non-reimbursable handling fee (EUR 4,000).

92. Taking into account that the Claimants have succeeded in full with their prayers for relief, that the Respondent has not intervened in the proceeding, and that the Claimants' account on costs is sufficiently prudent, the Arbitrator considers it fair and reasonable to award the amount of EUR 3,500 in legal fees, as well as the payment of the non-reimbursable handling fee in the amount of EUR 4,000.

93. In summary, therefore, the Arbitrator decides that in application of Articles 17.3 and 17.4 of the BAT Rules:

- (i) The BAT shall reimburse EUR 2,375 to the Claimants, being the difference between the costs advanced by them and the arbitration costs fixed by the BAT President;
- (ii) The Club shall pay EUR 6,625 to the Claimants, being the difference between the costs advanced by them and the amount they are going to receive in reimbursement from the BAT;



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(iii) The Club shall pay to the Claimants EUR 3,500 as a contribution to their legal fees, as well as EUR 4,000 for the non-reimbursable handling fee.

9. AWARD

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

- 1. Karsiyaka Spor Kulübü Derneği shall pay Mr. Ángel Luis Delgado Astacio USD 60,000.00 net, as compensation for his unpaid salaries and bonus, together with interest at a rate of 5% *per annum* on any outstanding balance (as may be the case from time to time) thereof from 26 June 2023 until payment in full.**
- 2. Karsiyaka Spor Kulübü Derneği shall pay YF Spor Danismanlik ve Tic., A.S., USD 28,250.00, plus VAT, for its unpaid agency fees, together with interest at a rate of 5% *per annum* on any outstanding balance (as may be the case from time to time) thereof from 16 December 2022 until payment in full.**
- 3. Karsiyaka Spor Kulübü Derneği shall pay U1st Sports Basket España, S.L., USD 28,250.00, for its unpaid agency fees, together with interest at a rate of 5% *per annum* on any outstanding balance (as may be the case from time to time) thereof from 16 December 2022 until payment in full.**
- 4. Karsiyaka Spor Kulübü Derneği shall pay jointly to Mr. Ángel Luis Delgado Astacio, YF Spor Danismanlik ve Tic., A.S., and U1st Sports Basket España, S.L., an amount of EUR 6,625.00 as reimbursement of their arbitration costs.**
- 5. Karsiyaka Spor Kulübü Derneği shall pay jointly to Mr. Ángel Luis Delgado Astacio, YF Spor Danismanlik ve Tic., A.S., and U1st Sports Basket España, S.L., an amount of EUR 7,500.00 as a contribution to their legal fees and expenses (including the non-reimbursable handling fee).**
- 6. Any other or further requests for relief are dismissed.**



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Geneva, seat of the arbitration, 6 March 2024

Clifford J. Hendel
(Arbitrator)