

ARBITRAL AWARD

(BAT 2048/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Brianna Quinn

in the arbitration proceedings between

BC Hapoel Holon

220 Jerusalem Boulevard, Holon, 5835568, Israel

- Claimant -

represented by Mr. Roi Rozen and Mr. Amit Akiva, attorneys at law,

vs.

Mr. Chris Johnson

- Respondent -

represented by Mr. Izik Avisar and Mr. Eran Dagan, attorneys at law,

1 The Parties

1.1 The Claimant

1. BC Hapoel Holon (hereinafter also referred to as the “Claimant” or the “Club”) is a professional basketball club participating in the Israeli Basketball Premier League.

1.2 The Respondent

2. Mr. Chris Johnson (hereinafter also referred to as the “Respondent” or the “Player”, and together with the Claimant, the “Parties”) is a professional basketball player from the USA.

2 The Arbitrator

3. On 27 November 2023, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal (the “BAT”), appointed Ms. Brianna Quinn as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal in force as from 1 January 2022 (hereinafter the “BAT Rules”). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3 Facts and Proceedings

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

3.1 Summary of the Dispute

3.1.1 The Player's employment agreements with the Club

6. The Player was first employed by the Club for the 2020-21 basketball season and played with the Club from then until the end of the 2022-23 season.
7. Over the years a pattern emerged, whereby the Club would negotiate a contract with the Player for two years but then terminate the contract prior to the second year by paying an agreed amount of compensation to the Player. The Club would then enter into a new two-year contract with the Player, however with a reduced salary for the first year (i.e. what was originally the second year under the prior contract) and a higher salary for the second year.
8. More specifically, on 3 August 2020, the Player entered into a contract under which he was engaged by the Club with a guaranteed contract for two seasons, until the end of the 2021-22 season (the "2020 Agreement").
9. Under the 2020 Agreement, the Player was entitled to a salary of USD 110,000.00 for the 2020-21 season, and USD 250,000.00 for the 2021-22 season. However, the Club had an option to terminate the 2020 Agreement after the first season by notifying the Player and paying him USD 15,000.00.
10. In March 2021, the Club exercised its buyout option under the 2020 Agreement. On 25 March 2021, the Player's Agent and the Club's representative had the following WhatsApp exchange:

"[Agent]:

We are all good. I just want to make sure that he still gets his \$15k at the end of this season since we are terminating the current contract to sign this new deal.

Otherwise we are all good on the language

[Club]:

For sure. It was only technical how to get 125k this year.

I can send you a letter for ‘terminating’ next year.. to make the 15k official.”

11. On 28 March 2021, the Parties entered into a new agreement, with a reduced salary of USD 150,000.00 for the 2021-22 season and a salary of USD 250,000.00 for the 2022-23 season; once again, the Club had an option to terminate the agreement after the first season by notifying the Player and paying him USD 30,000.00 (the “2021 Agreement”).
12. The Club subsequently exercised its buyout option under the 2021 Agreement and, on 23 January 2022, it entered into a new agreement with the Player, with a reduced salary of USD 180,000.00 for the 2022-23 season (plus the buyout fee of USD 30,000.00 according to the 2021 Agreement) and a salary of USD 220,000.00 for the 2023-24 season (the “2022 Agreement”).
13. Similarly to the 2020 and 2021 Agreements, Clause R of the 2022 Agreement contained the following provision, titled “Release/Outs”:

Player’s option: *The Player can in his discretion terminate this AGREEMENT until 10th of July 2023 by written notice for any reason. In such a case, the Player or one of his REPRESENTATIVES should send an email to the CLUB at the address [...] and notify he is using his right to opt out.*

In such a case, upon sending the said email, the Player will be free agent to join any club he wants. The CLUB will deserve an agreed buy-out of 60,000\$ (Sixty Thousand US dollars) which will be paid by the player or his new club the [sic] no later than August 31st, 2023.

Team’s option: *The club has the option to terminate the 2023/24 season of the agreement, by sending an email confirming the termination to the player’s representatives at [...] no later than July 1st, 2023.*

In case the club will decide to terminate the agreement for the 2023/24 season it will pay an acceptable compensation of \$20,000 USD to the player which will be paid no later than August 1st, 2023.

3.1.2 The termination of the 2022 Agreement

14. At the end of the 2022-23 season, the Player and the Club went their separate ways.
15. Whilst certain facts are undisputed, the key factual issue in these proceedings – which is hotly contested by the Parties – is whether the termination of the Parties’ relationship

was mutual or whether the Player exercised his buyout option under Clause R of the 2022 Agreement.

16. The undisputed facts and evidence are as follows:

- (i) The Club had significant financial difficulties during the 2022-23 season. A number of investigations and proceedings led to a petition for the compulsory liquidation of the Club. The Player was not aware of the proceedings at the time, however had heard “*rumours*” surrounding the Club’s financial position.
- (ii) The Club was late with a number of payments during the 2022-23 season and, on 8 June 2023, the Club sent the Player a Confirmation of Balance form which declared the Club’s debt to the Player as at 31 May 2023 to be USD 47,000.00.
- (iii) At the end of the 2022-23 season, as it had done in the past, the Club approached the Player and sought to renegotiate his agreement, with the aim of reducing the salary payable to the Player (while this is undisputed, the Parties are in dispute over the precise terms offered by the Club: according to the Club, it proposed a similar structure as it had in the past, i.e. a reduced salary and an additional year; according to the Player, the Club advised him that it was forced to terminate the relationship due to its financial position but that it might be possible to agree to a new contract in the future).
- (iv) During the Parties’ discussions, there was no mention (by either Party) nor any discussion of whether the “*agreed buy-out of 60,000\$*” under Clause R of the 2022 Agreement would be payable if the Player ultimately decided he did not wish to renegotiate the 2022 Agreement and stay at the Club.
- (v) On 10 June 2023, one month prior to the date specified in Clause R of the 2022 Agreement, the Player’s Agent and the Club’s representative had the following WhatsApp exchange:

[Agent:]

I spoke to CJ at length about what you told me regarding budget and role next year. As much as he has loved it in Holon he thinks it's time to explore his other options at this time

[Club:]

Ok. So what is the plan from his side? You guys gonna opt out? Or just searching for now?

[Agent:]

Yes we will opt out

[Club:]

Got you. Can you just please send an official email so I can update our board members? Thanks again

[Agent:]

Yes I can. Just wanted to update you as I told you I would

[Club:]

Appreciate it"

- (vi) On 12 June 2023, the Club's representative wrote again to the Player's Agent stating:

"Hey. Any idea when you gonna opt out? Just to be ready, to thank Chris etc".

- (vii) On 13 June 2023, the Player's Agent sent the Club's representative the following email:

"[...] I would like this email to serve as our official request to opt-out of our contract with Holon. If you have any questions or concerns please feel free to contact me on behalf of Chris Johnson. Thank you."

- (viii) On the same day, the Club's representative wrote to the Player's Agent, stating:

"Hey. I got your email. Thanks. We will publish a club's announcement thanking Chris for his time in Holon".

- (ix) Following this, the Player received his unpaid and remaining salaries on 22 June 2023, 10 July 2023, and 23 July 2023 respectively. In related WhatsApp communications, the Club stated:

- On 18 June 2023: “[...] *I know that May 31st salary wasn’t paid yet. We got a partial amount of money from municipality via check which was deposite [sic] today. Therefore the salary will be pay [sic] on Tuesday. I want to apologize again for the uncomfortable situation. I will update when the salary will be send [sic]*”.
 - On 22 June 2023: “[...] *Updating that May salary was sent earlier to your Israeli account. Tmw you will see the money in your account. Thanks allot for your patience and understanding*”.
 - On 10 July 2023: “[...] *Updating that June 15th payment was sent today to [...] July 15th payment will be paid soon. Thanks and good luck*”.
 - On 24 July 2023: “*Updating that the last payment [...] were sent yesterday to [...]. I’ll send you in the next few days the ‘confirmation of balance’ form for your signature. Good Luck*”.
- (x) On 8 July 2023, the Player signed an employment agreement with Hapoel Jerusalem Basketball Club (“Hapoel Jerusalem”) for the 2023-24 and 2024-25 basketball seasons. Hapoel Jerusalem plays in the same competitions and tournaments as the Club, and the Player’s remuneration was fixed at USD 220,000.00 for the 2023-24 season (i.e. the same amount provided for in the 2022 Agreement for that season) and USD 200,000.00 for the second season, if Hapoel Jerusalem did not exercise its right to buyout the contract for USD 30,000.00. Article 8 of the Hapoel Jerusalem agreement required the Player to undergo a physical examination and provided that “*the obligations of the Club under this Agreement shall be contingent on a successful examination*”.
- (xi) On 10 August 2023:
- The Club sent the Player a “*Confirmation of Balance During the Season 2022-23*” (“Confirmation of Balance”) and requested him to sign it. This document required the Player to confirm to the Budget Control Authority

that “I have no further financial claims against the team as of the date above”.

- The Club granted the Player’s Letter of Clearance (“LOC”) such that he was free to join Hapoel Jerusalem.

- (xii) On 15 August 2023, the Player arrived back in Israel to commence playing with Hapoel Jerusalem. However, the medical staff of Hapoel Jerusalem were concerned with the results of certain examinations and the Player was not cleared to play with the new Club until 28 August 2023.

- (xiii) On 29 August 2023, the Club wrote to the Player’s Agent requesting the payment of the buyout amount, for the first time, in the following terms:

“Dear Austin,

*In virtue of what is established in the labor contract signed with **Chris Johnson**, on January 23rd, 2022, I hereby inform you that since Chris exercise his option to unilaterally terminate such contract applying what is established in its **clause. R – Release/Outs (Player's option)**, which literally states:*

Player’s Option: *The Player can in his discretion terminate this AGREEMENT until 10th of July 2023 by written notice for any reason. In such a case, the Player or one of his REPRESENTATIVES should send an email to the CLUB at the address [...] and notify he is using his right to opt out. In such a case, upon sending the said email, the Player will be free agent to join any club he wants. The CLUB will deserve an agreed buy-out of 60,000\$ (Sixty Thousand US dollars) which will be paid by the player or his new club the no later than August 31st, 2023.*

In this sense, attached to my letter the club's bank account details for paying the agreed compensation by the player as agreed.” (emphasis as in the original)

- (xiv) On the same day, the Player’s Agent responded to this letter in two emails:

“What is this?”

And shortly thereafter:

“Roy -

Me and you spoke and you said you were going to release him due to the financial position. You wanted to know if we would come back under new terms. We said that we

wouldn't considering the state of the club! This is complete BS. It was not mentioned once in our conversations. You actually were the one who said that like in previous years going to [...] out of the contract but wanted to see if we would be interested in coming back. You agreed after speaking with me and Chris and you told me to send you an email. Now, you're using the email you told us to send you as a way to call it a unilateral termination of the contract? That's the claim?

Chris served your club as a captain, gave everything he had to the club, played through injury, and served as a leader on the floor and off the floor. He helped lead that team to one of its best seasons of all time. He did everything right and now you're trying to exert money from him on a termination that was mutual. You told me that you weren't picking up his option at that number and discussed new terms with me which we considered heavily due to Chris' respect for you and love for the club.

Lastly, in all of our conversations and those you had with Chris not once was this clause mentioned until today. Not one time. The reason for that is because you know it was mutual and that you expressed multiple times not picking up the option like you did previously and only discussing new terms on the contract. Also, that you told us to simply write you an email saying we weren't picking up the option after Chris decided not to sign a NEW contract in Holon.

I would hope that you and the club would have more respect for me and certainly more respect for Chris than to try to manipulate this clause that you know has no standing to be invoked."

17. It is further uncontested that:

- (i) Later in 2023, the Club received payment from Hapoel Jerusalem in the amount of USD 13,000.00, however this amount was paid due to specific transfer regulations in place in Israel.
- (ii) On 3 September 2023, in a report submitted by the Club's Liquidator to the District Court, the Liquidator reported:

"Economic efficiency measures were implemented to ensure the Club's regular participation in the 2023/2024 season, despite its legal situation.

3 players with a cumulative cost of approximately NIS 2.5 million were released by mutual consent."

- (iii) On 31 December 2023, in a further report, the Liquidator used similar wording.
- (iv) At the end of the 2023 season, two other players were released by the Club:

- In the case of the first player, the Club invoked the buyout clause and sent

the player an official notice informing him of the termination of the agreement and the corresponding compensation payment to be made to him.

- In the case of the second player, the Club did not have the option to terminate the agreement after one season, and it was the player who elected to exercise his buyout option. The Club provided a copy of the agreement with the player, which contained a buyout option for the player and stated “*in case the player will decide to terminate the agreement for the 2023/24 season it will be without any compensation fee to the club*”.

18. In addition to the above, the Parties have made a series of factual allegations that are unsupported by any contemporaneous documentary evidence (but in the case of the Player were supported by affidavits filed by himself and his agent), as follows:

19. With respect to the discussions held at the end of the 2022-23 season:

(i) According to the Player:

- The Club informed him that it was forced to terminate the 2022 Agreement due to its financial position and, for the same reason, requested that he forfeit his right to receive the associated compensation of USD 20,000.00 but never mentioned the USD 60,000.00 buyout fee would be payable on the Player’s side.
- The Player informed the Club that he would not accept a reduced terms offer as he had done in the past, *inter alia*, due to the uncertainty surrounding the Club’s future and because, at that point, the Club was late on salary payments. However, the Player agreed to waive his right to receive the agreed upon damages, thus making it a mutual termination of the 2022 Agreement.
- The Player would not have exercised his buyout option (thereby waiving his guaranteed USD 220,000.00 salary plus becoming liable to pay USD 60,000.00) unless he had another (better) offer, and there was no logic for him to agree to

a mutual termination (whereby he waived his right to receive compensation from the Club) – he did so only because the Club informed him that it was planning to terminate the agreement and asked him to waive the relevant compensation.

- The CEO thanked the Player and, for the sake of good order, requested him to send an email verifying the termination. At that time, there was approximately one month remaining until the last date the Player could notify the Club that he was terminating, and as at that day the Player had no offers to join another club.

(ii) According to the Club:

- The Club's CEO explored the option of offering the Player an extension of the agreement, as it had done in the past, contingent on the Player accepting a reduced salary in the first year. At no point did the Club's CEO indicate to the Player or his Agent that the Club was contemplating unilaterally terminating the contract, and the liquidation proceedings against the Club would not have impacted the Club and the Player's relationship in any way.
- The Club never requested the Player to waive the USD 20,000.00 compensation for its buyout option, and the payment required for the Player to opt out of the 2022 Agreement was not discussed because the Club had no obligation to raise it and the Player's Agent allegedly "*neglected his duties by either forgetting or being unaware of the buyout payment clause*".

20. With respect to the Club's agreement to the Player's LOC and its sending of the Confirmation of Balance on 10 August 2023, as well as its payment of the Player's salaries (with no conditions and no mention of a possible set off) after his decision to opt out but prior to the final date he could do so, according to the Club:

- (i) It did not raise any issues with the Player's LOC because the Club had released the Player after he opted out, the time limit to pay the USD 60,000.00 buyout amount had not yet passed, and the Club did not anticipate any issues with the Player fulfilling his obligation.

(ii) There was no legal basis or justification for the Club to withhold the unpaid and remaining payments due to the Player as long as the time limit for the buyout payment had not passed.

21. Finally, with respect to the Club's "pattern" of executing buyout options and renegotiating agreements for reduced remuneration, according to the Player, this is done for taxation purposes. In support of this, the Player submitted a note from the Club's 2021 Financial Statements recording that "[t]he Club adopted a position, supported by an opinion letter provided to it, asserting that compensation paid to a player who is a foreign resident for the termination of his employment with the Club, whereas the player resides outside of Israel, is not subject to taxation in Israel". Thus, according to the Player, although the contracts between the Parties were, on their face, for two seasons, in reality they were only for one guaranteed season which reinforced his understanding that the Club was terminating the agreement at the end of the 2022-23 season.

3.2 The Proceedings before the BAT

22. On 12 November 2023, the Claimant filed a Request for Arbitration in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 4,000.00 on 8 November 2023.

23. On 4 December 2023, the BAT informed the parties that Ms. Brianna Quinn had been appointed as the Arbitrator in this matter and fixed the advance on costs to be paid by the Parties by no later than 14 December 2023 as follows:

<i>"Claimant (BC Hapoel Holon)</i>	<i>EUR 3,750.00</i>
<i>Respondent (Mr. Chris Johnson)</i>	<i>EUR 3,750.00"</i>

24. In the same letter, the Player was invited to file his Answer by no later than 3 January 2024.

25. On 15 December 2023, the Player paid part of his share of the Advance on Costs in the amount of EUR 3,740.00.

26. On 4 January 2024, the Player filed his Answer, at the same time requesting an extension as he had belatedly filed the submission due to a “*clerical error*”. The Player’s Answer included evidence that was not translated into English, however the Player expressly stated that he assumed the Club would not dispute the contents of that evidence and that, if it did so, he reserved the right to submit a translation of it.
27. On 8 January 2024, the BAT confirmed that the Club failed to pay the Advance on Costs as required and granted an extension until 15 January 2024 to do so. In the same letter, the BAT requested the Club’s position on the Player’s request for an extension to file his Answer.
28. On 10 January 2024, the Club paid its share of the Advance on Costs in the amount of EUR 3,750.00.
29. On 18 January 2024, in view of the lack of any objection on the part of the Club, the BAT decided to admit the Player’s Answer to the file. In the same correspondence, the Club was invited to file a Reply to the Answer by 1 February 2024.
30. On 31 January 2024, the Club requested an extension of 20 days to submit its Reply, noting that the Player’s representative had agreed to the request. The BAT granted the extension on 2 February 2024, following confirmation from the Player that he had indeed agreed to the request.
31. On 21 February 2024, the Club submitted its Reply (dated “*21 February 2023*”), including a request that documents that had been submitted by the Player in his Answer without a certified translation into English “*should not be considered*”.
32. Following this, on 27 February 2024, the Player requested the opportunity to file a response to the Club’s submission, suggesting that there were additional claims made that he wished to address. At the same time, the Player requested an opportunity to submit a certified translation of documents that had been attached to his Answer.
33. On 12 March 2024, the BAT invited the Player to file his Rejoinder by 26 March 2024.

34. On 25 March 2024, the Player requested a one-week extension to file his Rejoinder on the grounds that his translator could not complete the translation of the reports within the time limit. The Club was requested to provide its position on this request and the time limit was suspended in the meantime.
35. On 27 March 2024, the Club opposed the Player's request for an extension.
36. On 2 April 2024, the Player submitted his Rejoinder with translated annexes. On the same day, the Club objected to the admissibility of the Rejoinder and the translated exhibits, on the grounds that the BAT had not formally ruled on the request for an extension.
37. On 3 April 2024, the BAT confirmed that the Player's time limit to file his Rejoinder had been suspended (and thus not expired) and confirmed that in all of the circumstances the translated documents and the Rejoinder would be admitted to the file.
38. On 7 May 2024, the Player advised the BAT that he had come into new information relevant to the dispute and requested permission to submit a certified English translation of the relevant information, with an accompanying affidavit. The BAT granted the request on 21 May 2024, requiring submission of the documents by 4 June 2024. The BAT further advised that following receipt of the Player's documents, the Parties would be invited to file a final round of submissions to address the new elements.
39. On 3 June 2024, the Player submitted his affidavit and translated reports. One day later, the BAT invited the Club to file its final submission by 18 June 2024.
40. On 17 June 2024, the Club requested an extension of 20 days to submit its final submission, noting consent had been received from Player's counsel. Following confirmation from the Player's counsel that consent had been provided, the BAT granted the request on 19 June 2024, i.e. the final submission to be filed by 8 July 2024.
41. On 8 July 2024, the Club filed its final submission.

42. On 29 July 2024, the BAT acknowledged receipt of the Club's submission and invited the Player to file his final submission by 12 August 2024.
43. On 8 August 2024, the Player requested an extension until 9 September 2024 to file his final submission, noting that consent had been obtained from the Club. Following confirmation from the Club's counsel that consent had been provided, the BAT granted the request on 12 August 2024, i.e. the final submission to be filed by 9 September 2024.
44. On 20 September 2024, the Player belatedly filed his final submission, together with a request to accept the submission as admissible in circumstances where another clerical error had occurred.
45. The Club's position was requested and, on 7 October 2024, the Club confirmed its consent to the Player's request.
46. On 18 November 2024, pursuant to Article 12.3 of the BAT Arbitration Rules and prior to declaring the written exchange of submissions complete, the BAT requested the Parties to correspond directly to determine whether it was possible to amicably settle their dispute. The Parties were requested to update the BAT on the status of any such negotiations by 25 November 2024. The BAT further advised that in the event the Parties did not wish to consider settlement and/or did not revert by 25 November 2024, the BAT would proceed with issuing the Award. Finally, the BAT requested the Parties to file their submission on costs by 2 December 2024.
47. On 26 November 2024, the Parties confirmed that they had engaged in discussions, and the Player had presented a settlement offer to the Club which it had not accepted. The Club therefore requested that the procedure be continued. On the same day, the Parties were invited to submit their submissions on costs by 2 December 2024.
48. On 2 December 2024, the Parties submitted their respective submissions on costs, which were circulated on 3 December 2024.
49. As none of the Parties requested a hearing, the Arbitrator decided, in accordance with

Article 13.1 of the BAT Rules, not to hold a hearing and to render the award based on the written record before her.

4 The Positions of the Parties

50. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to summarise the Parties' main arguments. In considering and deciding upon the Parties' claims, the Arbitrator has accounted for and carefully considered all the submissions made and the evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the findings below.

4.1 The Club's Position

4.1.1 The Club's position on its claim for the buyout compensation

51. The Club's position is, essentially, that by refusing to pay the amount of USD 60,000.00 after allegedly deciding to exercise his buyout option under Clause R of the 2022 Agreement, the Player has materially breached that agreement.

52. The Club suggests that the requirements of the relevant clause were fulfilled – it was the Player who elected to terminate the agreement, and to formally confirm that by email, and the Parties had agreed on express written consequences for such a decision.

53. The Club refutes any suggestion that there was an agreement to alter the 2022 Agreement and relies on the final paragraph of the 2022 Agreement to support its position, which states “[t]he agreement contains the entire agreement between the parties and there are no oral or written inducements, promises or agreements, except as contained herein. Any changes to this agreement must be made in writing and signed by all parties”.

54. In its additional submissions, the Club added the following:

- (i) the Player's arguments (see below) are unsupported by relevant documents or based on documents that are irrelevant to the arbitration. The Player's position is further undermined by the fact that he did not request clarification or any written agreement regarding the alleged mutual termination of the agreement at the time that he alleges this occurred;
- (ii) the Club accepts that there are liquidation proceedings in progress, however the Club's financial position is stable and it continues to operate and compete in the league. With respect to the Liquidator's statement that three players were released by mutual consent, the Liquidator specialises in corporate and associate dissolution law and was not familiar with the details of the case at hand. Her choice of words served to convey only that three players with substantial contracts were no longer affiliated with the Club;
- (iii) the Player produced no documentary evidence for his (disputed) claim that the Club's CEO sought to unilaterally terminate the 2022 Agreement. To the contrary, the Player's position (as evidenced) was unequivocal ("*yes, we will opt out*" followed by formal confirmation of this in an email as required by the agreement), and the reality is that the Player's Agent agreed to opt out without paying attention to the agreed upon buyout clause in the 2022 Agreement. For its part, the Club had no obligation to mention the buyout payment earlier than it did or remind the Player of its application, because the agreement between the Parties is clear and unambiguous – if the Player requests to be released from the agreement, he must fulfil his obligation to pay the buyout amount. The Club argues that this position from the Player imposes an unrealistic expectation on the Club to exceed standard practices – both the Player and his Agent are expected to be aware of the terms outlined in their agreements, including the legal implications of the actions they choose to undertake;
- (iv) the Club did not force the Player to opt out a month early and the Club's subsequent behaviour does not support the Player's position that a mutual termination occurred, nor was such behaviour unreasonable: at the time the Club

issued the LOC the Player's time limit to pay the buyout amount had not passed and the Club had no doubt that he would pay the relevant compensation; the Player had in any event been released by the Club after executing his opt-out option; the Club had no direct legal relationship with Hapoel Jerusalem thus no obligation to inform it about the Player's alleged debt to the Club; and there was no legal basis or justification to withhold any payments due to the Player as long as the time limit for the buyout payment had not passed; and

- (v) the Club's alleged "pattern" of conduct in fact supports its position – in previous years when the Club intended to activate the buyout clause it explicitly notified the Player and paid the relevant compensation. Moreover, the Player's allegations in relation to the two other released players are incorrect – one of those players terminated the agreement himself, and in the second case the Club executed its buyout option and was obliged to pay compensation to the player as a result.

- 55. On that basis, the Club requests payment in full of the USD 60,000.00 buyout amount referenced in Clause R of the 2022 Agreement.

4.1.2 The Club's position on its entitlement to further damages

- 56. Together with its request that the Player be ordered to pay the USD 60,000.00 buyout amount, the Club has claimed a further EUR 10,000.00 in damages – EUR 5,000.00 for "*non-pecuniary damages, including emotional distress and for loss of reputation*" and EUR 5,000.00 as "*compensation for the unilateral breach of the Contract*".
- 57. The Club did not elaborate on nor substantiate those claims in its Request for Arbitration.
- 58. In its Reply, the Club did not elaborate on its claim for "*non-monetary damages caused to the Club*" but argued in relation to its claim for additional damages that "*by failing to fulfil his obligation to pay the buy out payment to the Club, the Player has breached and continues to breach the agreement between the parties. As a result, he is liable to compensate the Club for this breach of contract, in addition to the buyout amount he is*

obligated to pay for his premature exit from the agreement”.

4.1.3 The Club’s position on its receipt of compensation from Hapoel Jerusalem

59. In its final submission, the Club noted that the payment from Hapoel Jerusalem to the Club was made in the context of the regulations of the Israel Basketball Authority concerning the transfer of a foreign player from one team to another. The Club argued that this clause in the Israeli regulations is completely separate from and has no connection to the buyout compensation stipulated in the 2022 Agreement.

4.2 The Club’s Prayers for Relief

60. In its Request for Arbitration, the Club requested the Arbitrator to order as follows:

*“[...] the honorable BAT is hereby requested to determine that **the Contract was materially breached by the Respondent.***

*The club is entitled to **60,000 dollars Net.***

*The honorable tribunal is hereby requested to determine that the Claimant is entitled to compensation for non-pecuniary damages, including emotional distress and for loss of reputation, in the sum of, **5,000 euros Net.***

*Furthermore, the honorable Tribunal is hereby requested to determine that the Club is obliged to pay the Claimant compensation for the unilateral breach of the Contract, in the sum of **5,000 euros Net.***

*Without derogating from the above, the honorable Tribunal is further requested to hold the Respondent responsible for the payment of the Claimant’s legal expenses in respect of this procedure, in a total sum of **7,500 euros Net** [...].”*

61. The Club repeated these requests in its Reply and its final submission and, in the latter document, also requested that “[...] *the compensation received by the Club from Hapoel Jerusalem is irrelevant to the current case, and this amount should not be deducted from the buyout compensation owed by the Player to the Club”.*

4.3 The Player's Position

4.3.1 The Player's position on the Club's claim for the buyout compensation

62. The Player's position is, in essence, that:

- (i) due to its established financial difficulties, the Club had no choice but to – and did – terminate the 2022 Agreement at the end of the 2022-23 season;
- (ii) the Club requested, and the Player agreed, to waive the USD 20,000.00 payable by the Club to the Player, resulting in a “*mutual termination*”; and
- (iii) even if one were to ignore those facts, it was contrary to all norms and reasonable legal and business conduct for the Club to conduct itself in the way it did insofar as it failed to raise the applicability of the buyout clause not only during the negotiations and the exchanges regarding termination, but on numerous subsequent occasions when it could and should have done so. The Player argues in this respect that “[n]o *reasonable party acting in good faith, and confident in the validity of its position, would intentionally conceal its alleged rights and claims until the last possible moment, especially when it has had ample opportunity to assert them - including the option to offset compensation debts against payments made to the Player. Such a party cannot prevail in its assertions. Conversely, any party that genuinely believes in the validity of its rights and obligations [...] is expected to assert its rights in a timely and appropriate manner*”.

63. To support his position that the Club had no choice but to (and did) terminate the 2022 Agreement, the Player relies on, *inter alia*: (i) his reference to the Club's “*budget*” in the WhatsApp exchange prior to termination; (ii) the Club's liquidation proceedings and other evidence of the Club's financial difficulties; (iii) the Liquidator's statement that three players (including him) were released by mutual consent to “*ensure the Club's regular participation in the 2023/2024 season, despite its legal situation*” and alleged confirmation from those players that the Club had requested to terminate their contracts

due to its financial distress; (iv) the “*pattern*” of the Club at the end of the first year of each agreement, including the fact that it never issued a formal termination notice to him, which established that the contracts between the Parties were in reality one year agreements; and (iv) the absurdity of the scenario presented by the Club, whereby the Player allegedly waived a guaranteed USD 220,000.00 contract, one month before the last date he was required to, while accepting that he had to pay USD 60,000.00 to the Club, in order to eventually join a team that competes in the same tournaments, for the same salary in the 2023-24 season (USD 220,000.00).

64. In support of both his argument that the termination was mutual and that the Club acted in bad faith by withholding and not raising its claims against him in an appropriate and timely manner, the Player relies on the facts that the Club: (i) continued to pay his salaries without invoking nor mentioning its financial claims, let alone deducting or offsetting the alleged USD 60,000.00 debt from the money that it owed to him (or even suggesting this while it was making delayed payments to him and apologising for same); and (ii) did not raise any alleged debt against the Player or attempt to negotiate payment terms when accepting the issuance of his LOC and sending him the Confirmation of Balance, nor raise any alleged debt with Hapoel Jerusalem despite that club being potentially liable to pay the relevant buyout amount. The Player further argues that had the Club not executed its buyout clause, as it had done previously, and had it argued in real time that the Player would be liable to pay USD 60,000.00 rather than intentionally withholding its claims, the Player would have insisted on the performance of the 2022 Agreement for the 2023-24 season or would have insisted on receiving USD 20,000.00 in compensation from the Club.

4.3.2 The Player’s position on the Club’s claim for further damages

65. In response to the Club’s claims for additional damages, the Player relied on the above arguments and argued in addition that: (i) the Club did not suffer, and failed to establish that it suffered, any non-pecuniary damages; and (ii) the Club’s request for additional compensation for the alleged unilateral breach of the 2022 Agreement conflicts with Clause R of that agreement, which already specified the amounts to be paid in case the

Player was found to have opted out of the agreement.

4.3.3 The Player's position on the Club's receipt of compensation from Hapoel Jerusalem

66. In his Rejoinder, the Player noted that since the submission of its Request for Arbitration, the Club had received a compensation payment of USD 13,000.00 from Hapoel Jerusalem in connection with the Player's transfer and in accordance with the Israeli Premier League regulations concerning the transfers of foreign basketball players. The Player argued that this served as further evidence of the Claimant's poor conduct and, in any case, should lead to a reduction of any compensation awarded to the Club.

4.4 The Player's Prayers for Relief

67. In his Answer, the Player submitted the following prayers for relief:

"Respondent respectfully Requests the Basketball Arbitral Tribunal to:

(i) Dismiss Claimant's claim in their entirety.

(ii) Order Claimant to pay all arbitration costs, including Respondent's counsel's costs and expenses or reimbursing the Respondent for his legal expenses (EUR 7,500).

(iii) Order any further and/or additional relief as the Tribunal may deem appropriate".

68. In his Rejoinder, the Player repeated these prayers for relief and added that, as a result of the transfer fee paid by Hapoel Jerusalem to the Club:

"[...] the Respondent argues that if not completely rejected and denied, compensation must be reduced by USD 13,000."

5 The Jurisdiction of the BAT

69. 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).
70. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
71. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.¹
72. The jurisdiction of the BAT in the present case results from the arbitration clause contained under Clause P of the 2022 Agreement, which reads as follows:
- “any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties’ domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.”*
73. The 2022 Agreement is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
74. 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

¹ 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).

75. The jurisdiction of BAT over the Claimants' claims arises from the 2022 Agreement. The wording "[a]ny dispute arising from or related to the present contract [...]" covers the present dispute. Moreover, the Respondent has fully engaged in the proceedings and has expressly accepted the Arbitrator's jurisdiction.
76. For the sake of completeness, the Arbitrator notes that Clause S of the 2022 Agreement provided that:

"In the event of any dispute in relation to this Agreement, Club agrees to contact Agent in an attempt to negotiate the dispute prior to taking any action. The player reserves the right to challenge any dispute in the applicable forum, including but not limited to the FIBA Basketball Arbitral Tribunal".

77. The Arbitrator considers this requirement to have been met. The Club has alleged, and the Player has not disputed, that the Parties had discussions about the relevant buyout fee prior to the proceedings being filed. Moreover, prior to finally declaring the proceedings closed, the Arbitrator invited the Parties to correspond directly to discuss any possible amicable resolution, which they did. Finally, and again, the Arbitrator notes that the Player has participated in these proceedings without any objection to the Arbitrator's jurisdiction, and to the contrary has expressly confirmed that he *"acknowledges and consents to the Basketball Arbitral Tribunal jurisdiction in the dispute between the Parties and acknowledges its arbitrability and governing applicable law, within the meaning and under the BAT Rules"*.
78. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimant's claim.

6 Discussion

6.1 Applicable Law – *ex aequo et bono*

79. 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 authorise 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”.

80. 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.”

81. Clause P of the 2022 Agreement expressly provides that the Arbitrator shall decide the dispute *ex aequo et bono*. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to her in this proceeding.
82. 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’arbitrage² (“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

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.

*not inspired by the rules of law which are in force and which might even be contrary to those rules.*⁴

83. 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*”.

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

6.2 Findings

85. The key issues to be determined in these proceedings are how and why the 2022 Agreement was terminated, and with what consequences, as well as whether the Club is entitled to the additional compensation it seeks, and if so, in what amount.

86. More specifically, the Arbitrator must make findings on:

- (i) whether the Player exercised his option to terminate the 2022 Agreement under the terms provided in Clause R of that agreement;
- (ii) in the event that the Player is deemed to have exercised his option under Clause R of the 2022 Agreement, whether he is liable to pay all or part of the USD 60,000.00 buyout amount set out in that clause;
- (iii) whether the Club has established its claims for additional compensation and, if so, in what amount; and
- (iv) whether, in case the Player is ordered to pay a buyout fee and/or compensation to

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

the Club, such compensation should be reduced by the amount of USD 13,000.00 that Hapoel Jerusalem paid to the Club in connection with the Player's transfer.

87. The Arbitrator addresses each of these issues in turn below.

6.2.1 The Arbitrator's findings on the termination (and breach) of the 2022 Agreement

88. It is undisputed in these proceedings that, pursuant to the terms of Clause R of the 2022 Agreement, both the Player and the Club were entitled to terminate their relationship prior to the 2023-24 season on certain express conditions.

89. If the Player wished to exercise his option, he was required to do so by 10 July 2023, by sending an email to the Club at a specific email address and notifying the Club that "*he is using his right to opt out*". Upon sending such email, the Player would be free to join any club he wished, but the Club would be entitled to "*an agreed buy out*" of USD 60,000.00, payable by the Player (or his new club) no later than 31 August 2023.

90. If the Club wished to exercise its option, it was required to send an email confirming the termination to the Player's representatives by no later than 1 July 2023 and pay compensation in the amount of USD 20,000.00 by no later than 1 August 2023.

91. It is further undisputed that, on 13 June 2023, the Player's Agent sent an email to the Club using the following express terminology:

"I would like this email to serve as our official request to opt-out of our contract with Holon. If you have any questions or concerns please feel free to contact me on behalf of Chris Johnson. Thank you."

92. On these facts alone, the Arbitrator considers that there is very strong evidence in favour of the Club's assertion that the Player exercised his option under Clause R of the 2022 Agreement. Indeed, the Player sent his email to the address specified in the 2022 Agreement, he used the specific terminology "*opt-out*", and he stated not that he was opting out of negotiations or a future contract with the Club but that he was opting out of "*our contract with Holon*".

93. The questions remain, however, whether: (i) the allegations and evidence the Player has submitted in these proceedings are sufficient to undermine the express terms of his email of 13 June 2023 and establish the Player's contrary position – that he did not opt out under Clause R of the 2022 Agreement and that the Parties instead decided to mutually terminate the 2022 Agreement with no compensation to be payable by either party; and/or (ii) the Club intentionally withheld its claim for compensation from the Player and, if so, whether this has any impact on the Arbitrator's findings on termination.
94. Having carefully considered the Parties' arguments and the evidence on file, and not without hesitation, the Arbitrator finds that the Club has established that the Player's email triggered Clause R of the 2022 Agreement, and that the Player has not established either that the Parties mutually terminated the 2022 Agreement or that the Club intentionally misled him with respect to the consequences of sending his email and electing to "opt out" of the 2022 Agreement.
95. In coming to this decision, the Arbitrator has taken into account the following:
- (i) It is undisputed that the Club was suffering from financial difficulties at the end of the 2022-23 season, that it was seeking to renegotiate the terms of the Player's agreement, and that it was in the Club's interest to reduce its liabilities in view of its financial struggles. However, there is insufficient evidence to establish that if the Player refused to accept new terms, the Club would (let alone had no option but to) terminate the 2022 Agreement.
 - (ii) Additionally, even putting aside that the Liquidator may not have been aware of the specific circumstances leading to the termination of the 2022 Agreement, the Liquidator's suggestion that three players were released by "*mutual consent*" does not exclude that this occurred via the Player exercising his option under Clause R. With respect to the other two players whose agreements were terminated at the same time as the Player's, the Club adduced evidence indicating that it had exercised its option to terminate one agreement (with a corresponding payment) and that the other agreement had been validly terminated by the Player rather than

the Club.

- (iii) The WhatsApp exchanges between the Parties prior to the Player's email of 13 June 2023 do not resolve the issue in favour of either party. The Player's reference to "*budget and role*" in those exchanges may support his contention that the Club had advised him it could not afford his salary for the 2023-24 season. Equally, however, it may support the Club's contention that it was attempting to reduce that salary, but that if the Parties could not reach an agreement it intended to fully comply with the 2022 Agreement. Moreover, in response to the Player's message, the Club asked "*So what is the plan from his side? You guys gonna opt out? Or just searching for now?*" to which the Player's Agent responded "*Yes we will opt out*". This does not sound as if the Parties had already agreed to mutual termination beforehand.
- (iv) While it is true that the Club asked the Player to send an "*official email*" without mentioning Clause R of the 2022 Agreement, it was ultimately the Player's Agent who sent the email, using the above terminology, to the Club. The Arbitrator does not therefore consider that the Club's conduct establishes any intent to deceive the Player or to fraudulently misrepresent the situation but rather finds (as accepted by both Parties) that the Parties simply did not discuss the matter.
- (v) Equally, the Arbitrator considers that the Club's decision to pay the Player's unpaid and remaining salary (without any mention of the alleged debt or a possible set off), and to issue the LOC and Confirmation of Balance (without any mention of the alleged debt or setting any terms for the payment of same), do not establish such intention either. The Arbitrator sees some merit in the Club's argument that it had no legal right, until such time as the Player's payment was due and unpaid, to set off the amount of USD 60,000.00 against the unpaid and remaining salaries due under the 2022 Agreement. In the same way, Clause R of the 2022 Agreement expressly stated that "*upon sending the said email, the Player will be free agent to join any club he wants*" (emphasis added), and the Arbitrator accepts the Club's position that its direct relationship was with the Player, not Hapoel Jerusalem, and

that it therefore had no obligation to inform Hapoel Jerusalem of any potential debt.

- (vi) As to the “pattern” of the Club exercising its buyout option at the end of the first year of each agreement, the Arbitrator accepts that this course of conduct may have caused the Player to believe that his agreements with the Club were, in reality, only for one guaranteed term. However, this was not what the agreements actually provided, the Player was in reality entitled to claim the amount of USD 20,000.00 if it was in fact the Club’s choice to exercise the option in Clause R, and the Club had paid the relevant buyout amount on each prior occasion that it had exercised that option. It may very well be the case that the Player believed that the termination was mutual, and that he willingly waived the USD 20,000.00 that the Club would ordinarily have had to pay under the 2022 Agreement, but that is not a finding available to the Arbitrator based on the evidence on record. Rather, the only contemporaneous evidence on record is the Player’s formal email to the Club which, in his own words, was intended “*to serve as our official request to opt-out of our contract with Holon*”.
- (vii) Finally, the Arbitrator certainly sees force in the Player’s submission that it would have been illogical for him to opt out of the 2022 Agreement prior to the date he was required to, waiving a guaranteed salary of USD 220,000.00 (as well as the USD 20,000.00 buyout amount payable by the Club) and becoming liable to pay USD 60,000.00, when he did not have any offers on the table. However, the evidence on record is that the Player did elect to “opt out” of the Agreement, without ever indicating that his decision was due to or based on a “mutual termination” that had been discussed and agreed by the Parties, as opposed to other considerations that may have made an early termination attractive to him.

96. In view of all of the above, the Arbitrator finds that the Player’s email of 10 June 2023 triggered Clause R of the 2022 Agreement, that he was, in principle, liable to pay a buyout amount to the Club by no later than 31 August 2023, and that his failure to do so was a breach of the 2022 Agreement. The Arbitrator therefore finds that the amount of USD 60,000.00 is payable, in principle, to the Club and takes that amount as a starting

point for her assessment of the Club's claim.

6.2.2 The Arbitrator's findings on the buyout amount to be paid by the Player

97. This is not, however, the end of the Arbitrator's assessment, as the Parties have authorised her to decide *ex aequo et bono* in these proceedings, in other words, to apply "*general considerations of justice and fairness without reference to any particular national or international law*".
98. And, deciding *ex aequo et bono* in these very specific circumstances, the Arbitrator considers that the strict application of Clause R against the Player would lead to a manifestly unjust or unfair result that is unacceptable from the Arbitrator's perspective.
99. In this respect, as noted in an often-quoted BAT award (BAT 0634/14, para. 70 with reference to CAS 2014/A/3524, para. 66):

"[...] the concept of ex aequo et bono does not entitle the Arbitrator to simply rewrite the parties' agreement at [her] discretion in order to establish a more balanced solution. The Arbitrator is still guided by the parties' consensus which is reflected by their contract. That is however subject to interpretation. The wording of a contract is the starting point of the interpretation to determine the true intention of the parties. Other facts may also be taken into consideration, especially if the wording is unclear or if a literal interpretation leads to a manifestly unfair and unjust result under the specific circumstances. Only in such cases, the Arbitrator is entitled under the concept of ex aequo et bono to deviate from the wording of the contract."

100. The Arbitrator considers this to be one such case.
101. Indeed, and whilst (as set out above) the Arbitrator has not found it established that the Club intended to mislead the Player, nor does she consider that it would be an equitable result to award the full buyout fee of USD 60,000.00 to the Club in the specific circumstances, including when considering the Club's conduct.
102. The Arbitrator accepts the Club's submissions that it was not "obligated", *stricto sensu*, to take actions to alert the Player to the existence and/or the Club's intended insistence on the application of Clause R of the 2022 Agreement. However, she finds the Club's

failure to do so difficult to square with a good faith approach, and therefore to be relevant to the amount of compensation that ought to be awarded to the Club on an *ex aequo et bono* basis.

103. The specific circumstances that the Arbitrator has taken into account are the following:
- (i) First, it is undisputed that the Club was experiencing significant financial difficulties and that it was the Club that approached the Player, seeking to renegotiate the agreement and, specifically, to reduce his salary. In the past, such negotiations had been successful, and the Club had paid the specified compensation to the Player. However, on this occasion the Parties found themselves in a novel situation where the Player decided not to accept the Club's offer to change the terms of the agreement. Given that this was not the usual course of events, and in order to avoid any misunderstandings on the Player's part as to the terms upon which the Player was "opting out" of the Agreement, the Arbitrator considers that it was incumbent upon the Club to inform the Player that in the event he took the decision to "opt out", the Club intended to enforce Clause R of the 2022 Agreement.
 - (ii) The Arbitrator considers that it was, or at least should have been, clear to the Club that a misunderstanding was likely to arise if the Parties failed to discuss the consequences of the Player deciding to "opt out" (and the consequences of confirming this in writing to the Club as requested). Despite this, the Club made no effort to set the record straight. It is undisputed that the Club never raised its rights under – and intention to enforce – Clause R of the 2022 Agreement and, to the contrary:
 - In the WhatsApp exchange between the Parties prior to the email of 13 June 2023, the Club requested confirmation of whether the Player was "opting out" without referring to the 2022 Agreement at all, let alone Clause R. Further, when the Club asked for an "*official email*", it stated that this was to "*update its board members*", not that it required confirmation that Clause R of the 2022 Agreement had been triggered. Later in the same

conversation, when the Club enquired as to when the Player intended to opt out, it stated “*Just to be ready, to thank Chris etc*” without mentioning Clause R, the last date for the Player to opt out, or any future arrangements for the Player’s payment of the USD 60,000.00 buyout amount. Finally, after receiving the Player’s email of 13 June 2023, the Club merely confirmed receipt and stated “*Thanks. We will publish a club’s announcement thanking Chris for his time in Holon*”. That is to say, at no time did the Club either advise the Player that it intended to insist on the application of Clause R of the 2022 Agreement, nor even follow up in terms of how the Player could make the relevant payment to the Club.

- In further correspondence, concerning the unpaid and remaining salary payments to the Player, the Club again never mentioned the existence of the Player’s (future) debt, in circumstances where it was having difficulties meeting its payment obligations and apologising for the “uncomfortable situation”. Moreover, the Club ought to have been aware that its final two messages of 10 July 2023 – which was in fact the final date for the Player to opt out of the 2022 Agreement under Clause R of same – and 24 July 2023 might reasonably have been interpreted by the Player as confirming that all matters between the Parties had been resolved, specifically: (i) “*Updating that June 15th payment was sent today [...] July 15th payment will be paid soon. Thanks and good luck*”; and (ii) “*Updating that the last payment [...] were sent yesterday [...]. I’ll send you in the next few days the ‘confirmation of balance’ form for your signature. Good Luck*”.
- It bears emphasising that throughout the vast majority of the above correspondence, the Player’s time limit to opt out of the 2022 Agreement had not yet expired. The Arbitrator therefore has significant sympathy for the Player’s position that had the Club argued “in real time” that the Player would be liable to pay USD 60,000.00 for opting out of the 2022 Agreement, the Player would have either insisted on the performance of the agreement or would have waited until he had an offer on the table before exercising

that option.

- Finally, whilst by August 2023 the Player's time limit to opt out had passed, the Arbitrator nevertheless does not consider it reasonable for the Club to have (i) issued the LOC without (again) making any mention, at all, of the upcoming payment that was required to be made by the Player and (ii) to have written to the Player, for the first time, on 29 August 2023 "*inform[ing]*" the Player of the applicability of Clause R of the 2022 Agreement, and only then providing the Club's bank account details for payment to be made.
- (iii) In short, the Arbitrator finds that the Club's behaviour significantly contributed to legitimate confusion on the part of the Player as to whether the Club intended to enforce Clause R of the 2022 Agreement, and that it would not be appropriate, on an *ex aequo et bono* basis, for the Club to receive the full buyout fee in those very specific circumstances.

104. As to what amount *would* be reasonable to award, the Arbitrator has considered the following.

105. First, it is undisputable, given the statements made by the Liquidator in her report, that the Club had an interest in reducing its liabilities, including the Player's (in the Club's own words) "*substantial contrac[t]*". Whilst the Arbitrator accepts there is no evidence that the Club would definitely have terminated the 2022 Agreement if the Player had not opted out of same, there is equally no doubt that the Club subsequently presented the termination of the 2022 Agreement as a positive development in the context of the liquidation proceedings.

106. Second, the Arbitrator cannot accept that it would be equitable in those circumstances, i.e. where both Parties ultimately had an interest in the termination of the 2022 Agreement, for the Player to pay three times more than the Club to exercise his buyout option (i.e. USD 60,000.00 instead of USD 20,000.00).

107. Considering all of the above, the Arbitrator considers that the most equitable solution in

the present proceedings is to limit the buyout amount payable by the Player to the Club to USD 20,000.00, i.e. the amount that the Club would have had to pay had it been the one to exercise the option under Clause R of the 2022 Agreement.

108. As such, deciding *ex aequo et bono*, the Arbitrator finds that the Player owes the Club the amount of USD 20,000.00 as a buyout payment for the early termination of the 2022 Agreement.
109. For the sake of completeness and clarity, the Arbitrator has taken note of the Club's request that payment of any buyout compensation be made "net". However, this is not provided for in Clause R of the 2022 Agreement and the Arbitrator therefore rejects this request.

6.2.3 The Arbitrator's findings on the Club's claims for additional compensation

110. As noted, in addition to its claim for buyout compensation, the Club has filed two further damages claims totalling EUR 10,000.00 – EUR 5,000.00 for '*non-pecuniary damages, including emotional distress and for loss of reputation*' and EUR 5,000.00 as '*compensation for the unilateral breach of the Contract*'.
111. The Club has not, however, substantiated its position in any detail, let alone identified the alleged facts and evidence underlying these claims (other than to suggest the Player's ongoing breach should result in him being liable to pay additional compensation to the Club).
112. The Arbitrator finds the Club's claims for additional compensation to be wholly unsubstantiated and, considering that the burden of proving these claims lies with the Club, the Arbitrator dismisses them without further consideration.

6.2.4 The Arbitrator's finding on the Player's request that any compensation be reduced

by the amount received by Hapoel Jerusalem

113. Finally, the Arbitrator wishes to briefly address the Player's suggestion that any award in favour of the Club ought to be reduced by the amount of compensation the Club received from Hapoel Jerusalem in connection with the Player's transfer.
114. On this claim, the Arbitrator fully agrees with the Club - the payment from Hapoel Jerusalem to the Club was undisputedly made in the context of the applicable transfer regulations and is, therefore, separate from and has no connection to the buyout compensation stipulated in the 2022 Agreement.
115. This request from the Player is therefore dismissed.

7 Costs

116. 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). [...]"

117. On 22 February 2025, the BAT President determined the arbitration costs in the present matter to be EUR 7,490.00.

118. 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."

119. Considering the results of these proceedings, more specifically that: (i) the Club

succeeded in principle on its main claim, but the relevant compensation was reduced to one third of the original claim; and (ii) the Club's additional claims for compensation were fully rejected, the Arbitrator decides, on an *ex aequo et bono* basis, that the Parties should share the arbitration costs equally.

120. Given that both Parties paid shares of the Advance on Costs in the total amount of EUR 7,490.00 (EUR 3,750.00 paid by the Club and EUR 3,740.00 by the Player), and that the costs of the proceedings were determined to be EUR 7,490.00, the Player shall pay the amount of EUR 5.00 to the Club.

121. 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."

122. Consistent with the Arbitrator's finding on the arbitration costs, she finds, on an *ex aequo et bono* basis and for the same reasons, that the Parties are to bear their own legal fees in these proceedings. With that said, given that the Club paid the full amount of the Non-Reimbursable Handling Fee (in the amount of EUR 4,000.00), the Arbitrator orders the Player to reimburse the amount of EUR 2,000.00 to the Club.

8 AWARD

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

- 1. Mr. Chris Johnson shall pay BC Hapoel Holon USD 20,000.00 as a buyout payment in connection with the early termination of the Parties' 2022 Agreement.**
- 2. The costs of this arbitration shall be borne by Mr. Chris Johnson and BC Hapoel Holon by 50% each. Accordingly, Mr. Chris Johnson shall pay EUR 5.00 to BC Hapoel Holon as reimbursement for its advance on the arbitration costs.**
- 3. The Parties shall bear their own legal fees and expenses, save for the amount of EUR 2,000.00 which is to be paid by Mr. Chris Johnson to BC Hapoel Holon as partial reimbursement of the non-reimbursable handling fee.**
- 4. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 26 February 2025

Brianna Quinn
(Arbitrator)