



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1973/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Ian Hummer

Entersport, LLC.

P.O. Box 370665, Miami, FL 33137, USA

- First Claimant -

- Second Claimant -

vs.

AEK NEA KAE 2014

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

- Respondent -

1. The Parties

1. Mr. Ian Hummer (hereinafter referred to as the "Player" or "First Claimant") is a US-American basketball player.
2. Entersport LLC. (hereinafter referred to as the "Agency" or "Second Claimant") is a sports management company based in the United States of America.
3. AEK NEA KAE 2014 (hereinafter referred to as the "Club" or "Respondent") is a professional basketball club participating in the Greek professional basketball league.

2. The Arbitrator

4. On 28 June 2023, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (hereinafter referred to as the "BAT"), appointed Mr. Stephan Netzle as arbitrator (hereinafter referred to as the "Arbitrator") pursuant to Article 0.4 and Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter referred to as the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

5. On 6 October 2021, the Player and the Club signed an employment agreement for the 2021/2022 season (hereinafter referred to as the "First Employment Contract"). The Agency represented the Player in the contract negotiations.

6. According to Article 7 First Employment Contract, the Player is entitled to a net salary of USD 120,000.00, payable in eight equal installments of USD 15,000.00 on the last day of each month starting in November 2021 and ending in June 2022. By the end of the year, the Club has paid the Player the first two installments in a total amount of USD 30,000.00.
7. Pursuant to Article 13 First Employment Contract, the Club is obliged to pay the Agency an agent fee of USD 12,000.00 (i.e. 10% of the Player's net salary).
8. Article 14 lit. e) First Employment Contract provides the following opt-out clause for the Club:

"The Club has the right to unilaterally terminate this Contract, with such termination becoming effective on January 9th, 2022, by sending a written notice to the Player or to the Player's Agents, by fax or email [...] only during the period starting on December 23rd 2021 at 00:01 Athens time and ending on December 29th 2021 at 23:59 Athens time. [...]"
9. On 27 December 2021, instead of exercising the opt-out clause, the Parties agreed on a new employment contract for the remaining 2021/2022 season (hereinafter referred to as the "Second Employment Contract"). The Agency represented the Player again in the contract negotiations.
10. According to Article 6 Second Employment Contract, the Player is entitled to a total net salary of USD 108,000.00, payable in six equal instalments of USD 18,000.00 on the last day of each month, commencing on 31 January 2022 and ending on 30 June 2022. For the entire 2021/2022 season, the Player is entitled to a total salary of USD 138,000.00 (i.e. USD 30,000.00 under First Employment Contract and USD 108,000.00 under Second Employment Contract).
11. Article 6 Second Employment Contract provides the following late-penalty provision:

"[...] In the event Club is late in paying any instalment of the Player's salary by more than fourteen (14) calendar days of the respective due dates listed herein, Club shall also pay Player, as a material term of this Agreement, a late fee of 50.00 EUR net per day for every

day the Club is late in paying the Player."

12. Pursuant to Article 12 Second Employment Contract, the Club is obliged to pay the Agency an agent fee of total USD 13,800.00 (i.e. 10% of the Player's salary), payable as follows:
 - USD 5,900.00 by 15 January 2022;
 - USD 7,900.00 by 15 April 2022.
13. The Club did not pay the full salary to the Player and also did not pay the full agent fee to the Agency.
14. On 21 February 2023, the Claimants and the Respondent signed a settlement agreement (hereinafter referred to as the "Settlement Agreement"), in which the Club acknowledged the following:

"[...] WHEREAS the Club acknowledges that it has paid Player only 94.000 USD of the 138.000 USD in total salary due under Article 6 [Second Employment Contract] resulting in an outstanding amount of forty-four thousand US Dollars (44.000 USD) in salary still due to Player. More specifically, Club has failed to pay Player the following salary installments required under the [Second Employment Contract]: 8.000 USD of the 18.000 USD installment due 30th of April 2022, the full 18.000 USD installment due 31st of May 2022 and the full 18.000 USD installment due 30th of June 2022;

WHEREAS the Club acknowledges that as of the date of this Agreement it owes Player the sum of forty-four thousand two hundred Euros (44.200 EUR) in accrued late fees pursuant to Article 6 [Second Employment Contract]. Said late fees are calculated as follows in accordance with Article 6 [Second Employment Contract]: 1,500 EUR late fee for the 31 January 2022 salary installment which was paid 44 days late; 100 EUR late fee for the 28 February 2022 salary installment which was paid 16 days later; 1.350 EUR late fee for the 31 March 2022 salary installment which was paid 41 days late; 13.950 EUR late fee for the 30 April 2022 salary installment which thus far is 293 days late; 12.400 EUR late fee for the 31 May 2022 salary installment which thus far is 262 days late and 10.900 EUR late fee for the 30 June 2022 salary installment which thus far is 232 days late. The [Second Employment Contract] provides that late fees continue to accrue at 50 EUR net per day for every salary installment that is past due by more than 14 calendar days of its respective due date until the date of its full payment;

WHEREAS the Club acknowledges that it has not paid Agent the agent fee of seven

thousand nine hundred US Dollars (7.900 USD) net which is mandated by Article 12 [Second Employment Contract] to be paid by April 15, 2022; [...]"

15. In Article 1 of the Settlement Agreement, the Parties agreed that the Club shall pay the Player a total net amount of USD 60,000.00 (i.e. USD 44,000.00 as salary and reduced late penalty fees of USD 16,000.00), payable as follows:
- USD 10,000.00 upon signing the Settlement Agreement;
 - USD 15,000.00 no later than 30 March 2023;
 - USD 15,000.00 no later than 15 June 2023;
 - USD 15,000.00 no later than 20 July 2023.
16. According to Article 2 of the Settlement Agreement, the Parties agreed that the Club shall pay the Agency the outstanding agent fee of USD 7,900.00 net as follows:
- USD 5,000.00 upon signing the Settlement Agreement;
 - USD 2,900.00 no later than 30 March 2023.
17. In the event of non-payment, the Settlement Agreement provides in Article 3 the following:
- "In the event Club fails to pay any of the payment amounts by its respective due date as listed in Article 1 above, then Club agrees as a material term of this Agreement that it shall thereafter immediately owe to Player, in addition to all the amounts in this Agreement, the full amount of accrued late fees pursuant to Article 6 [Second Employment Contract] less the 16.000 USD reduced amount of such fees pursuant to Article 1 of this Agreement above."*
18. Until today, the Club has only paid the first instalment, i.e. USD 10,000.00 to the Player and USD 5,000.00 to the Agency.
19. On 10 April 2023, the Claimants informed the Respondent that he had not paid the amounts due on 30 March 2023 (i.e. USD 15,000.00 to the Player and USD 2,900.00 to the Agency) and explicitly referred to Article 3 Settlement Agreement.

20. The Player claims the entire salary of USD 44,000.00 plus late penalty fees in the total amount of EUR 54,100.00 minus the already paid USD 10,000.00. The Agency claims the outstanding agent fee of USD 2,900.00.

3.2 The Proceedings before the BAT

21. On 1 May 2023, the Claimants filed a Request for Arbitration against the Club in accordance with the BAT Rules (received by the BAT on 25 May 2023) and paid the non-reimbursable handling fee of EUR 4,000.00 (received in the BAT bank account on 25 May 2023).
22. On 29 June 2023, the BAT informed the Parties that Mr. Stephan Netzle had been appointed as the Arbitrator, invited the Respondent to file its Answer to the Request for Arbitration in accordance with Article 11.4 of the BAT Rules by no later than 20 July 2023 and fixed the Advance on Costs to be paid by the Parties by 10 July 2023 as follows:

<i>"Claimant 1 (Mr. Ian Hummer)</i>	<i>EUR 2,000.00</i>
<i>Claimant 2 (Entersport)</i>	<i>EUR 1,750.00</i>
<i>Respondent (AEK NEA KAE 2014)</i>	<i>EUR 3,750.00"</i>

23. On 25 July 2023, the BAT acknowledged receipt of the Claimants' share of the Advance on Costs and noted that the Respondent had failed to pay its share of the Advance on Costs and to submit the Answer. In the same Procedural Order the BAT invited the Respondent to submit the Answer and to pay the Advance on Costs until 1 August 2023.
24. On 8 August 2023, the BAT informed the Parties that the Respondent had still failed to file an Answer and pay its share of the Advance on Costs. In accordance with Article 9.3 BAT Rules, the BAT invited the Claimants to pay the adjusted Advance on Costs of EUR 2,250.00 until 18 August 2023.

25. On 29 August 2023, the BAT acknowledged receipt of the Respondent's share of the Advance on Costs paid by the Claimants and invited the Claimants to answer three questions of the Arbitrator until 8 September 2023.
26. By e-mail of 7 September 2023, the Claimants provided their answers to the Arbitrator's questions, whereupon the BAT invited the Respondent to respond to the Claimants' statement until 18 September 2023.
27. On 18 September 2023, the Club requested a deadline extension to submit its comments of four days. On the same day, the BAT granted the deadline extension and invited the Club so submit its comments until 22 September 2023. However, the Club did still not send any comments.
28. On 11 October 2023, the BAT informed the Parties that the Arbitrator had declared the exchange of submissions complete and that the final award would be rendered as soon as possible. Finally, the BAT granted the Parties a deadline until 18 October 2023 to provide a detailed account of their costs.
29. On 11 October 2023, the Claimants submitted their accounts of costs. The Respondent failed to submit its cost statement.

4. The Positions of the Parties

4.1 The Claimants' position

30. With regard to the outstanding salary: In the Settlement Agreement, the Club acknowledged that it had paid the Player only an amount of USD 94,000.00 instead of USD 138,000.00 and that a salary of USD 44,000.00 was, therefore, still outstanding at that time. As the Club only paid the first instalment based on the payment schedule

agreed in the Settlement Agreement of USD 10,000.00, the Player is entitled to USD 34,000.00 as salary.

31. With regard to the late penalty fees: The Club acknowledged in the Settlement Agreement that, in principle, the Club is obliged to pay the Player late penalty fees for the time period until 21 February 2023 (i.e. the date of signature of the Settlement Agreement) in the total amount of EUR 44,200.00. As the Club did not make the payments based on the agreed instalment schedule, the Player is entitled to the late penalty fees accrued until 21 February 2023 of EUR 44,200.00 and not only to the agreed reduced late penalty amount of USD 16,000.00. In addition, according to Article 3 Settlement Agreement and Article 6 Second Employment Contract, the Player is entitled to late penalty fees for the time period between 22 February 2023 and the date of the Request for Arbitration, i.e. 1 May 2023. According to the Player, he is entitled to additional late penalty fees for 66 days for all three instalments due (i.e. 66 days x EUR 50.00 x 3 = EUR 9,900.00). The Player claims late penalty fees of EUR 44,200.00 for the time until 21 February 2023 and EUR 9,900.00 between 22 February 2023 and the filing of the Request for Arbitration, i.e. total late penalty fees of EUR 54,100.00.
32. With regard to the agent fee: According to the Settlement Agreement, the Club is obliged to pay the Agency the outstanding agent fee of USD 7,900.00 (USD 5,000.00 upon signing the Settlement Agreement and USD 2,900.00 no later than 30 March 2023). As the Club only paid the first instalment, the Agency is still entitled to USD 2,900.00 as outstanding agent fee.
33. In the Request for Arbitration of 1 May 2023, the Claimants request the following relief:

"Player requests Salary in the amount of 44.000 USD due under the Agreement plus the full amount of late fees (54.100 EUR) accrued to date pursuant to Article 6 of the Contract LESS \$ 10.000 USD already paid by Respondent in connection with the Agreement, amounting to 34.000 USD plus 54.100 EUR;

Agent requests agent fee in the amount of 2.900 USD (7.900 USD due under the Agreement less 5.000 USD Respondent already paid);

PLUS 5% interest per annum on the abovementioned amount due Player calculated from the date of the BAT's receipt of this Request for Arbitration until the date of Respondent's full payment of such amount pursuant to a BAT Award; and PLUS 5% interest per annum on the abovementioned amount due Agent calculated from the agent fee due date of March 30, 2023 in the Settlement until the date of Respondent's full payment of such amount pursuant to a BAT Award;

PLUS all BAT costs and expenses associated with this BAT proceeding pursuant to the BAT provision in the Settlement."

4.2 The Club's Position

34. The Respondent did not make any submissions on the merits in this arbitration.

5. The jurisdiction of the BAT

35. Since the Respondent did not participate in the arbitration, the Arbitrator is obliged to examine his jurisdiction *ex officio*, on the basis of the record as it stands.¹

36. 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).

37. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

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

38. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.²
39. Article 3 of the Settlement Agreement contains the following arbitration clause:
- "Any dispute arising from or related to the present Agreement 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 arbitration shall be Geneva, Switzerland. The arbitration shall be governed by chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of parties' domicile. The language of arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono[.] The arbitration procedure as well as Arbitral Awards are to remain strictly confidential. Club shall be responsible for all legal fees and expenses associated with Player and/or Agent bringing a BAT case due to Club's breach of this Agreement."*
40. The First (Article 17) and Second Employment Contract (Article 16) contain a similar arbitration clause.
41. The arbitration clause is in written form and thus fulfils the formal requirements of Article 178(1) PILA.
42. With respect to the substantive validity, the Arbitrator considers that the jurisdiction of BAT over the Claimants' claims arises from the Settlement Agreement and the First and Second Employment Contract. The wording "[a]ny dispute arising from or related to the present Agreement [...]" clearly covers the Claimants' claims.
43. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claims.

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

6. Other Procedural Issues

44. Article 14.2 of the BAT Rules specifies that "*the Arbitrator may [...] proceed with the arbitration and deliver an award*" if "*the Respondent fails to submit an Answer*". The Arbitrator's authority to proceed with the arbitration in case of default by one of the parties is in accordance with Swiss arbitration law and the practice of the BAT.³ However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.
45. 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. He was also given sufficient opportunity to respond to Claimants' Request for Arbitration. In addition, the Respondent requested a deadline extension to comment on the Claimants' submission of 7 September 2023 but then failed to submit its comments. There is no doubt that the Club received the correspondence from the BAT and then decided not to submit an Answer.

7. Discussion

7.1 Applicable Law – *ex aequo et bono*

46. 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

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

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".

47. Under the heading "Law Applicable to the Merits", Article 15 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."

48. As seen above, Article 3 Settlement Agreement, Article 17 First Employment Contract and Article 16 Second Employment Contract stipulate that "[t]he arbitrator shall decide the dispute ex aequo et bono".

49. Consequently, the Arbitrator shall decide ex aequo et bono the issues submitted to him in this proceeding.

50. 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'arbitrage⁴ (Concordat)⁵, under which Swiss courts have held that arbitration "en équité" is fundamentally different from arbitration "en droit":

⁴ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and the Swiss Code of Civil Procedure (governing domestic arbitration).

⁵ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

"When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."⁶

51. This is confirmed by Article 15.1 BAT Rules, according to which the Arbitrator applies *"general considerations of justice and fairness without reference to any particular national or international law"*.
52. In light of the foregoing considerations, the Arbitrator makes the findings below.

7.2 Findings

6.2.1 Claims based on the Settlement Agreement

53. Based on Article 1 Settlement Agreement, the Player is entitled to the following payments:

"The Club pays the Player the net amount of sixty thousand US dollars (60.000 USD) consisting of unpaid salaries (44.000 USD) and a mutually agreed to reduced amount of accrued late fees (16.000 USD) in satisfaction of the Club's entire responsibility to the Player, as it relates to the Contract. The Club hereby agrees that it shall pay the Player and the Player will accept the following payment plan with respect to said 60.000 USD:

- *10.000 USD upon the signing of the present Agreement*
- *15.000 USD no later than March 30th, 2023*
- *15.000 USD no later than June 15th, 2023*
- *20.000 USD no later than July 20th, 2023*

Total: 60.000 USD net of any Greek taxes"

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

54. Based on the Settlement Agreement, the Player is entitled to a total amount of USD 60,000.00 net.

55. Article 2 Settlement Agreement provides the following regulation regarding the agent fee:

"The Club pays the Agent the net amount of seven thousand nine hundred US dollars (7.900 USD) in satisfaction of the Club's entire responsibility to the Agent, as it relates to the Contract. The Club hereby agrees that it shall pay to the Agent and the Agent will accept the following payment plan with respect to said 7.900 USD:

- 5.000 USD upon the signing of the present Agreement
- 2.900 USD no later than March 30th, 2023

Total: 7.900 USD net of any Greek taxes"

56. Based on the Settlement Agreement, the Agency is entitled to an agent fee of USD 7,900.00.

6.2.2 Financial Consequences of the Non-Fulfilment of the Settlement Agreement

57. The Claimants argue that the Club has only paid USD 10,000.00 upon signing the Settlement Agreement to the Player and USD 5,000.00 to the Agency, but has not fulfilled the payments due on 30 March 2023. There is no evidence in the submitted documents that would cast any doubt on the veracity of the Claimants' statement. The Club failed to submit an Answer to the Request for Arbitration and did not contest that it owed the claimed amounts to the Claimants. Nor did the Club provide any explanation for the non-payment of the agreed amounts based on the Settlement Agreement.

58. Therefore, the question arises as to the financial consequences resulting from the non-fulfilment of the Settlement Agreement.

a) *Claims of the Player*

59. As mentioned above, Article 3 Settlement Agreement provides the following:

"In the event Club fails to pay any of the payment amounts by its respective due date as listed in Article 1 above, then Club agrees as a material term of this Agreement that it shall thereafter immediately owe to Player, in addition to all the amounts in this Agreement, the full amount of accrued late fees pursuant to Article 6 [Second Employment Contract] less the 16.000 USD reduced amount of such fees pursuant to Article 1 of this Agreement above."

60. Article 6 Second Employment Contract reads as follows:

"[...] In the event Club is late in paying any instalment of the Player's salary by more than fourteen (14) calendar days of the respective due dates listed herein, Club shall also pay Player, as a material term of this Agreement, a late fee of 50.00 EUR net per day for every day the Club is late in paying the Player."

61. Based on these two provision, the Player is entitled to the outstanding salary in the amount of USD 44,000.00 minus the already paid USD 10,000.00, i.e. to USD 34,000.00.

62. According to BAT jurisprudence and many legal systems, the parties are free to determine the amount of a contractual penalty. The Arbitrator may reduce penalties that he or she considers excessive. Whether a penalty is considered excessive under the circumstances shall be decided *ex aequo et bono*.⁷

63. Pursuant to the BAT jurisprudence, the Arbitrator shall take the following considerations into account: 1) contractual penalties are a credible deterrent to non-payment; 2) a flat fee contractual penalty may be problematic and may call for an adjustment depending on the circumstances; 3) the contractual penalty should be capped and only under exceptional circumstances, such as a default in excess of one year or if the behaviour of

⁷ See e.g. BAT 1030/17, at para. 85; BAT 1172/18, at para. 125; BAT 1713/21 and BAT 1718/21, at para. 137.

the debtor requires a higher sanction, should it exceed the principal; and 4) the arbitrator should also take into account the behaviour of the parties, such as the duty to mitigate damages, which requires contractual penalties to be reduced if the creditor deliberately delays enforcement proceedings.⁸

64. Furthermore, based on the BAT jurisprudence, the time window for which penalty fees can be applied should be interpreted narrowly in order to prevent excessive results.⁹ At the utmost, arbitrators have approved accrual of late payment penalties until the filing of the Request for Arbitration, provided that the creditor has filed his claim in a diligent and timely manner.¹⁰
65. The Club has paid all salaries and a part of the agent fee during the year 2021 but then decided not to pay the entire salary in April 2022, as acknowledged by the Club in the Settlement Agreement. As neither of the Parties provided evidence for the dates on which the Club made certain payments, the Arbitrator cannot evaluate whether the Player's calculation of the late penalties for the period until the signing of the Settlement Agreement, i.e. until 21 February 2023, is correct. However, as the Club has expressly acknowledged in the Settlement Agreement that, in principle, it owes the Player late penalties in the total amount of EUR 44,200.00, the Arbitrator assumes that the Player is entitled to late penalty fees of EUR 44,200.00 for the period until 21 February 2023.
66. Furthermore, the Arbitrator can understand the Player's calculation for the late penalties between 22 February 2023 and 1 May (i.e. date of the submission of the Request for Arbitration). According to Article 6 Second Employment Contract, the Player is entitled to EUR 50.00 per day per payment that was made more than 14 days late. As the Player

⁸ See e.g. BAT 1499/20, at para. 80 with further references; BAT 1669/21, at para. 103.

⁹ See e.g. BAT 1499/20, at para. 82 with further references.

¹⁰ See e.g. BAT 1669/21, at para. 104.

is still waiting for the April-, May- and June-salary, he is, in principle, entitled to receive 3 x EUR 50.00 per missed day based on the Second Employment Contract. As the Player assumes that 66 days lie between 21 February 2023 and 1 May 2023, he claims a further late penalty amount of EUR 9,900.00 (3 x EUR 50.00 x 66 days). In total, the Player requests late penalty fees of EUR 54,100.00.

67. When examining the penalty amount, the Arbitrator takes the following circumstances into considerations, which justify the imposition of a severe penalty:
- a) The penalty provision is part of the signed Settlement Agreement (based on a reference to Article 6 Second Employment Contract). Hence, the Club could predict the consequences of not fulfilling the financial obligations based on the Settlement Agreement.
 - b) The Club did not make any attempts to find an amicable solution and did not provide any explanation for the non-payment.
 - c) The Club has not only failed to comply with the financial obligations arising from the Second Employment Contract but also from the Settlement Agreement concluded eight months after the end of the 2021/2022 season.
68. On the other hand, there are also circumstances, which call for a significant reduction of the penalty:
- a) The claimed penalty amount of EUR 54,100.00 (approx. USD 57,000.00) corresponds to the half net salary of the Player for the entire 2021/2022 season, which is very high.
 - b) Based on the BAT jurisprudence, a contractual penalty should be capped and should not exceed the principal amount.

69. By considering all circumstances of the present case and by applying the principle of *ex aequo et bono*, the Arbitrator considers it fair and adequate that the Player is entitled to a penalty in the amount of EUR 34,000.00 net, which represents two monthly salaries based on the Second Employment Contract (i.e. 2 x USD 18,000.00 = USD 36,000.00 = approx. EUR 34,000.00).

b) *Claims of the Agency*

70. The Agency argues that the Club has not paid the amount of USD 2,900.00 net as provided by the Settlement Agreement. There is no evidence in the submitted documents that would cast any doubt on the correctness of the Agency's statement. The Club has neither submitted an Answer in this proceeding nor provided an explanation for the non-payment. Therefore, the Agency is entitled to the outstanding agent fee of USD 2,900.00 net.

6.2.3 Interest

71. The Player requests the BAT to order interest of 5% p.a. on the awarded amount from "*the date of the BAT's receipt of this Request for Arbitration until the date of Respondent's full payment of such amount*". The Agency requests the BAT to award "*5% interest per annum on the abovementioned amount due Agent calculated from the agent fee due date of March 30, 2023 in the Settlement until the date of Respondent's full payment of such amount pursuant to a BAT Award*".

72. Neither the Settlement Agreement nor the First or Second Employment Contract provide a regulation concerning interest. According to standing BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. This is a generally accepted principle, which is embodied in most legal systems. As requested by the Player and the Agency and in correspondence with the standing BAT jurisprudence the default interest rate is of 5% per annum.

73. As to the date from which the interest for the outstanding amount starts to run, the Arbitrator respects the starting date indicated by the Claimants, namely the date of the BAT's receipt of the Request for Arbitration. The BAT has received the Request for Arbitration only on 25 May 2023. Therefore, the starting date for the interest for the outstanding salaries of USD 34,000.00 shall be 25 May 2023. The starting date for the interest for the outstanding agent fee shall be 31 March 2023.

8. Conclusion

74. Based on the foregoing, and after taking into due consideration all the evidence submitted and all arguments made by the Parties, the Arbitrator finds that the Respondent shall pay the Player outstanding salaries of USD 34,000.00 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) from 25 May 2023 until payment in full as well as late penalty fees in the amount of EUR 34,000.00 net. In addition, the Arbitrator finds that the Respondent shall pay the Agency the outstanding agent fee of USD 2,900.00 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) from 31 March 2023 until payment in full.

9. Costs

75. In respect of determining the arbitration costs, Article 17.2 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). [...]"

76. On 23 October 2023, the BAT President determined the arbitration costs in the present matter to be EUR 5,400.00.

77. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 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."

78. Article 3 Settlement Agreement, Article 17 First Employment Contract and Article 16 Second Employment Contract states that the *"Club shall be responsible for all legal fees and expenses associated with Player and/or Agent bringing a BAT case due to Club's breach of this Agreement"*. Whilst this wording is indicative of the Parties' intentions, it is nonetheless subject to application of the principals of *ex aequo et bono*.¹¹

79. Considering the requests for relief and the outcome of the case, it turns out that the Claimants prevailed by about 75% of the claimed amount (total claimed amount: USD 2,900.00 plus USD 34,000.00 plus EUR 54,100.00 = approx. USD 93,900.00; total awarded amount: USD 2,900.00 plus USD 34,000.00 plus EUR 34,000.00 = approx. USD 72,900.00) The Arbitrator therefore concludes that 75% of the arbitration costs (i.e. EUR 4,050.00) shall be borne by the Respondent and 25% (i.e. EUR 1,350.00) shall be borne by the Claimants. Therefore, the Respondent shall reimburse EUR 4,050.00 to the Claimants. EUR 600.00 shall be reimbursed to the Claimants by the BAT.

80. In relation to the Parties' legal fees and expenses, Article 17.3 BAT Rules provides that:

"as a general rule, the award shall grant the prevailing party a contribution towards any

¹¹ See e.g. BAT 1541/20, at para. 111.

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."

81. Moreover, Article 17.4 BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses. The maximum contribution for an amount in dispute from EUR 30,001.00 to EUR 100,000.00 (*in casu* USD 93,900.00, which is approx. EUR 89,000.00) is EUR 7,500.00.
82. The Arbitrator notes that the Claimants represented themselves in the proceedings. Therefore, the Arbitrator concludes that they should not be entitled to a compensation for their legal fees given that there was no external counsel engaged. Regarding the non-reimbursable handling fee, the Arbitrator notes that the Claimants did not expressly claim a reimbursement of the handling fee. However, the Arbitrator assumes that the Claimants wanted to reclaim this amount with their cost statement of 11 October 2023, in which they listed all the costs they had paid during the present proceedings.
83. Based on the circumstances of the case, the Arbitrator finds that it is reasonable for the Claimants to be awarded the reimbursement of the non-reimbursable handling fee of EUR 4,000.00.

10. AWARD

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

- 1. AEK NEA KAE 2014 shall pay Mr. Ian Hummer outstanding salaries of USD 34,000.00 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 25 May 2023 until payment in full as well as late penalties in the amount of EUR 34,000.00 net.**
- 2. AEK NEA KAE 2014 shall pay Entersport, LLC. the outstanding agent fee of USD 2,900.00 net, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 31 March 2023 until payment in full-**
- 3. AEK NEA KAE 2014 shall pay jointly to Mr. Ian Hummer and Entersport, LLC. an amount of EUR 4,050.00 as reimbursement for their arbitration costs.**
- 4. AEK NEA KAE 2014 shall pay jointly to Mr. Ian Hummer and Entersport, LLC. the non-reimbursable handling fee of EUR 4,000.00.**
- 5. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 25 October 2023

Stephan Netzle
(Arbitrator)