



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1977/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Ms. DeWanna Bonner,

- Claimant -

represented by Mr. Howard Jacobs, attorney at law,

vs.

Mersin Yenişehir Belediyesi Çukurova Basketbol Kulübü,
Limonluk Mahallesi, 2404 Sokak No: 15, Yenişehir, Mersin, Turkey

- Respondent -

represented by Mr. Arda Güney, attorney at law,

1. The Parties

1.1 The Claimant

1. Ms. DeWanna Bonner (the “**Player**” or “**Claimant**”) is a professional basketball player of US/Macedonian nationality.

1.2 The Respondent

2. Mersin Yenişehir Belediyesi Çukurova Basketbol Kulübü (hereinafter the “**Club**” or the “**Respondent**”) is a Turkish professional basketball club competing in the Turkish Women Basketball Super League and in the Euroleague Women.

2. The Arbitrator

3. On 28 June 2023, Mr. Raj Parker, Vice-President of the Basketball Arbitral Tribunal (the “**BAT**”), appointed Ms. Annett Rombach as arbitrator (the “**Arbitrator**”) pursuant to Articles 0.4 and 8.1 of the Rules of the Basketball Arbitral Tribunal (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

3.1 Summary of the Dispute

4. The relevant facts and allegations presented in the Parties’ written submissions and evidence are summarised below. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows.
5. On 23 May 2022, the Player and the Club entered into an employment agreement pursuant to which the Club engaged the Player as a professional basketball player for

the 2022-23 season (the “**Player Contract**”). At the time of the signing, the Player was already under contract with the WNBA club Connecticut Sun, which the Parties addressed in Clause 1 of the Player Contract as follows:

*“DEPARTURE DATE: This agreement shall be valid until the last official game of the Club for the 2022-23 season. The Player shall be free to leave Turkey, without any restriction of any kind, within two (2) days following the last official game of the Club for the 2022-23 season, being released from all obligations, duties and liabilities towards the Club, **with the following caveat:***

- ***The Player has signed a 4-year agreement in the WNBA prior to this contractual agreement. The terms of the WNBA contract do not allow the Player to miss one day of the 2023 WNBA regular season; the Player must be in her WNBA team city no later than the day before the 1st day of the 2023 WNBA season.”***

[emphasis in the original]

6. Pursuant to Clause 3.a) of the Player Contract, the Player was to receive a total salary for the 2022-23 season of USD 200,000.00 net, payable as follows:

*“a) The Player shall receive from the Club, in the course of the 2022-23 season, the guaranteed net amount of **two-hundred thousand (200,000) US Dollars** in total. In other words, no taxes of any kind shall be included in this amount and any Social Security which needs to be paid shall be done so by the Club. The Club is obligated to pay all taxes and under no circumstance shall the Player be obligated to pay any taxes on her salary. The Club is also obligated to pay the seal tax risen by the execution of this contract. The Club shall provide the Player upon her request with the appropriate certificate of tax credit indicating that all required income tax due in Club's nation, state or providence and city on all salary and bonus sums have been paid and showing the amount of tax that has been paid on the Player's behalf by the Club.*

[...]

2022-23 season

- 25,000 US Dollars upon Player's arrival (within 5 days)
- 25,000 US Dollars on or before October 31st, 2022
- 25,000 US Dollars on or before November 30th, 2022
- 25,000 US Dollars on or before December 31st, 2022
- 25,000 US Dollars on or before January 31st, 2023
- 25,000 US Dollars on or before February 28th, 2023
- 25,000 US Dollars on or before March 31st, 2023
- 25,000 US Dollars on or before April 30th, 2023

200,000 US Dollars NET total for 2022-2023 season



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- *In case the Player misses any days of 2023 WNBA Training Camp due to the Turkish League 2022-23 season schedule, the Club shall pay the Player total amount of penalty / salary deduction that the Player's WNBA team will execute. (1 % of the Player's WNBA season salary per each day she misses due to Turkish League schedule)”*

7. Clause 3.b) of the Player Contract provided for the following bonus payments:

“b) In addition to the compensation herein above provided in Article “Third-a”, the Club agrees to pay the Player the following bonuses based on team achievement for each season covered by the present contract.

Turkish League Play-Offs

*Reaching the Final 10,000 US Dollars
Winning the Title 25,000 US Dollars*

Turkish Cup

Winning the Title 10,000 US Dollars

Presidency Cup

Winning the Title 7,500 US Dollars

FIBA EuroLeague Women

*Reaching the Quarter-Final 5,000 US Dollars
Reaching the Semi-Final 10,000 US Dollars
Reaching the Final 25,000 US Dollars
Winning the Title 50,000 US Dollars*

Single Game Wins

For each official game win against Fenerbahce 1,000 US Dollars

Bonuses are net of taxes and shall be paid within twenty (20) days following the last game of the Club for each season covered by present contract. Bonuses are noncumulative and only the bonus of the highest achievement at each competition shall be paid.”

8. Clauses 6 and 8 addressed issues of illness and injury of the Player, and their respective consequences for the Player’s remuneration. These provisions, which are at the core of the present dispute, read as follows:

“SIXTH:

The Club agrees to guarantee and cover the totality of the stipulated salary and earned bonus amounts in this contract in case [of] a season ending injury or illness received during Club related activities during the time period in which the Player is playing basketball for



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the Club.

If the Player suffers an injury due to basketball related activity and does not agree with the Club doctor's diagnosis, she shall be allowed to select a physician of her choice to render a second medical opinion concerning the said injury. In the event that the Club disagrees with the second medical opinion, a third reviewing physician who is mutually acceptable by the Club, the Player and the Agents shall render a medical opinion concerning the Player's injury and such opinion shall be final and binding. In the case the Player seeks a second opinion, in or outside of Turkey, in a place other than the Club's affiliated hospital, she is free to do so with all costs covered by the Player herself.

If a surgery is needed, the Player may choose her doctors and rehabilitation providers. If the Player chooses the medical staff suggested by the Club, she shall not pay any cost of consultations, treatments (surgery, medicines, etc.) and rehabilitation. If the Player chooses a different medical staff, the Club could refuse to pay any costs of consultations, treatments (surgery, medicines, etc.) or rehabilitation if there is not a previous financial agreement between the Club and the Player.

The Club doesn't have any responsibility to cover any expenses if the injury or sickness is the result of other sports or activities which are dangerous for her basketball activity.

[...]

EIGHT:

[...]

f) During the contract period, all compensation and bonuses are considered guaranteed to the Player and Agents by the Club. In the event that the Player sustains an incapacitating injury or illness during the term of this agreement, as long as injury and illness are incurred due to activity made by the Player for the Club that renders the Player incapable of performing in some or all of the remaining games, the Club agrees to meet all payment obligations as though the Player had performed in all games.

g) If the Player unilaterally rescinds the present contract or leaves the Club / city / country without justification, the Club shall have the right to receive a compensation fee as a penalty in the amount of Player's guaranteed net salary stipulated in Article "THIRD-a" of this present contract, reserving the right to request FIBA to ban the Player of playing for another team in the world during the term covered by this present contract. [...]"

9. With respect to the termination of the Player Contract, Clause 3 stated the following:

"c) [...] If the Club is more than thirty (30) days late in the payment of any monthly salary payment, the Player shall have the right, anytime and till the execution of the full payment, to unilaterally rescind the present contract, by serving the Club five (5) day advance written notice, while the Club remains obligated to pay all economic amounts stipulated in this contract. [...]"

10. On 4 January 2023, during the EuroLeague Women's game against the Spanish club

CB Avenida, the Player suffered an injury at _____. Upon physical examination, but without taking an MRI (Magnetic Resonance Imaging), the Club’s doctor diagnosed _____ and ordered rehabilitation through strength exercises (“**First Diagnosis**”). At the same time, he cleared her to return to play. The Player continued to play both in the Turkish Women Basketball Super League and in the EuroLeague Women. Undisputedly, her _____ injury worsened as a result of these playing activities.

11. On 27 January 2023, the Club paid the Player her January salary.
12. On 10 February 2023, due to increasing pain, the Player sought a second medical opinion in the United States, from [American doctor 1] (“**Second Diagnosis**”). [American doctor 1]’s opinion was based both on a physical and an MRI examination. The Second Medical Opinion provided the following:

“FINDINGS:

_____.

IMPRESSION:

_____.”

[emphasis added]

13. On 16 February 2023, after the Player’s return to Turkey, another [Turkish doctor] examined the Player’s _____ (including MRI examination) and provided the following diagnosis (“**Third Diagnosis**”):

“Physical Examination Findings: _____.

Tests / Results: _____.

Preliminary Diagnosis/ Diagnosis: _____ .

Planned Treatment / Procedure: _____ . It would be appropriate for the club doctor, athlete, and physiotherapy team to make a joint decision for the athlete’s return to the team.”

14. In the following days, physical therapy was performed to treat the Player’s injury.



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15. On 17 February 2023, the Club's coach sent the following WhatsApp-message to the Player:

"Hi DB, this is the Coach. I know everything about your situation. _____ talk with me everyday too about that...I don't wanna talk about doctors, medical opinions, bla, bla, bla. I am writing you in our road to Ankara only to say you that WE need you, teammates need you, the TEAM need you. I would like you think about that, our playoff with Bourges is gonna be so hard, and without you, it will be even harder. [Player's Teammate] played yesterday so sick, everybody is trying their best, let's finish this shit in the right way. Think about that, that's the only I want to ask you, think about that."

16. On 22 February 2023, the Player played another (her eventually last) game for the Club.

17. On 23 February 2023, the Player requested the Club's permission for a one week-leave to the United States. The Club granted her request and allowed her to travel to the United States.

18. On 24 and 27 February 2023, the Player was examined by two other _____ specialists ([American doctor 2] and [American doctor 3]) in the United States.

19. [American doctor 2] provided the following assessment:

"[...]

1. _____

Plan:

The patient was educated extensively about their [sic] condition, including the pathology, etiology, natural history and treatment options. Non-operative measures as well as surgical interventions were both addressed. He [sic] voiced understanding, and all questions were answered."

20. [American doctor 3] provided the following assessment:

" _____

Plan:

We discussed her _____ injury and persistent symptoms despite appropriate

conservative measures. Especially in light of her high athlete activity status, I recommend _____.

We discussed the postoperative period _____. She would like to think about her options and we will schedule in short order if she desires to proceed.”

21. By e-mail of 2 March 2023, the Player’s agent explained the situation to the Club as follows:

“Hey _____.

Please forward this information to Cuckarova immediately and, if possible, please cc me and DB on the email. Despite the apparent rejection of all _____ specialists in the world outside of Turkey as far as an option for evaluation of Dewanna’s _____, we took the opportunity to call the [NBA Team] and inquire into who their _____ specialist is and what his availability may be. This is another opportunity for Cuckarova to approve a top medical specialist in this field as an acceptable 3rd option for evaluation of Dewanna’s _____. This doctor has no connection whatsoever to the CT Sun.

The following is Dr _____, who is the [NBA Team] go to guy for these types of injuries. Here’s some information on him: _____

[...]

Please note that _____ should feel free to speak to either the 1st doctor Dewanna saw the other day or [NBA Team doctor], should they want to discuss Dewanna’s situation. We request that the Cuckarova officials consult with their doctor immediately about approving [NBA Team doctor] for an immediate office visit and evaluation.”

22. By e-mail of 4 March 2023, the Club replied as follows:

“As Mersin Yenisehir Belediyesi Cukurova Basketbol Kulübü, we once more would like to express that we are sincerely sad for the injury that our player has to go through. In our first invitation to Player through her Agents, we, with our good intention and respect to the Player, invited Player to see 3 more specialists in Turkey, one of which is to be selected by her Agents but the Player rejected our first invitation by saying that she does not trust in Turkish specialists. However, it is necessary for the club to be involved in the process as much as possible to make sure everything is settled in terms of the injury and the reconstructive procedure of our contracted player. For this reason, we would like to state that it is unacceptable for the club to agree on seeking a 4th specialist located in United States or Canada, unfortunately. Therefore, we repeated our invitation to Player to Turkey for seeing 3 more specialists in Turkey one of which is to be selected by her Agents.

On the other hand, in the email we saw that Player’s own specialist address non-operative measures for the Player as well as surgical interventions. Since the Player’s own specialist addressed non-operative measures, we understand that non-operative measure is an option for the Player. So we believe that Player’s following a non-operative measure with the assistance of the Club in Turkey is for the highest benefit of the Player.



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Therefore, we would like to remind you of following our mutual agreement regarding your receiving 1-week therapy in States and coming back to Turkey and also invite you to Istanbul no later than next Monday, 6st of March, in order to have the opinion of best specialists of Turkey. Please note that, the club does not want to waste time either for any process, which is why you are invited to Istanbul as soon as possible to have an opinion with the presence of club manager.”

23. On 8 March 2023, the Club sent another letter to the Player, requesting her return to Turkey by no later than 10 March 2023:

“Since you have not replied our invitation email and you have not arrived in Istanbul to see specialists, as Mersin Yenisehir Belediyesi Cukurova Basketbol Kulübü, we once more would like to invite you to Istanbul and see specialists who are the bests of Turkey. We, hereby, kindly ask you to respond our invitation in 24 hours and be in Istanbul Turkey latest on March 10th, 2023, for the club does not want to waste time any more, and otherwise we will pursue all legal proceedings for which our club has right.”

24. Still on the same day, the Player’s agent replied (via e-mail) as follows:

“To whom it may concern:

Based on the information we have received from 3 independent and respected _____ specialists, one of them being the [NBA Team doctor], we consider your request unreasonable. As has been stated in multiple communications and medical reports, if Ms. Bonner does not receive the procedure which has been recommended by all 3 independent professionals, she runs the risk that she will never fully recover from this injury. The risk of waiting any longer to obtain the procedure far outweighs any other considerations in this case.”

25. On 10 March 2023, the Player underwent surgery on _____, in the United States. [American doctor 2], who performed the surgery, noted the following:

*“**Indications for Procedure:** Dewanna Bonner is 35 y.o. female professional basketball player who injured _____ when she fell at work playing basketball. She was seen by another _____ who ordered an MRI that showed _____. She plays basketball in Turkey and the team doctor cleared her to play. However, she was still having pain. _____ referred her to me. _____. I recommended _____. She did not want _____ as she does not want to miss the basketball season and wants to try to get back to playing one more season if possible. We discussed that given it is more than 6 weeks since the injury that _____ may not work and she may not get back to play no matter what we do. She understood all the discussion and wished to proceed. The risks of surgery including, but not limited to bleeding, infection, damage to the adjacent nerves, arteries and tendons, numbness, chronic pain, stiffness, need for further surgery, wound problems, continued pain, loss of limb, stroke, heart attack, death, and blood clots were all*

explained to the patient. No guarantees were made or implied. The patient agreed to proceed and informed consent was obtained.

[...]

Postoperative Plan: _____.”

26. On 25 April 2023, the Club played its last official game in the 2022-23 season.
27. On 10 May 2023, the Player sent the following termination letter to the Club:

“Dear _____:

Please be advised that our office represents Ms. DeWanna Bonner in the above-referenced matter. Please ensure that we are copied on any future communications.

I write regarding Ms. Bonner’s contractual agreement to play for the Cukurova Basketball Club for the 2022-2023 basketball season (signed 23 May 2022) (hereinafter the “Cukurova contract”). Please consider this letter as written notice of Ms. Bonner’s intent to rescind the Cukurova contract.

Pursuant to Article “THIRD (c)” of the Cukurova contract:

If the Club is more than thirty (30) days late in the payment of any monthly salary payment, the Player shall have the right, anytime and till the execution of the full payment, to unilaterally rescind the present contract, by serving the Club five (5) day advance written notice, while the Club remains obligated to pay all economic amounts stipulated in this contract.

Cukurova Basketball Club last paid Ms. Bonner on or about 27 January 2023. As such, her salary installments for February and March 2023 (due 28 February 2023 and 31 March 2023, respectively) remain owed, and are more than 30 days late. Thus, Ms. Bonner is formally exercising her right to unilaterally rescind the contract under Article THIRD (c) of the Cukurova contract as a result of Cukurova’s failure to pay the February and March salary payments, which shall become effective (absent payment of the past due sums) 5 days after receipt of this letter.”

3.2 The Proceedings before the BAT

28. On 8 June 2023, the BAT received a Request for Arbitration together with several exhibits filed by the Claimant in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 4,000.00 had been received in the BAT bank account on the same day.
29. On 28 June 2023, the BAT informed the Parties that Ms. Annett Rombach had been

appointed as Arbitrator in this matter, invited the Respondent to file its Answer in accordance with Article 11.4 of the BAT Rules by no later than 19 July 2023 (the “**Answer**”), and fixed the amount of the Advance on Costs to be paid by the Parties by 10 July 2023 as follows:

<i>“Claimant (Ms. DeWanner Bonner)</i>	<i>EUR 4,500.00</i>
<i>Respondent (Cukurova BC)</i>	<i>EUR 4,500.00”</i>

30. On 19 July 2023, the Respondent filed a request for a one-week extension of the time limit to file the Answer, which was granted by the BAT on the same day.
31. On 26 July 2023, within the extended time limit, the Respondent filed its Answer, together with a counterclaim (the “**Counterclaim**”).
32. On 27 July 2023, the BAT acknowledged receipt of the Respondent’s Answer and Counterclaim. In accordance with Article 17.1 of the BAT Rules, the BAT requested the Respondent to pay the non-reimbursable handling fee for the Counterclaim in the amount of EUR 4,000.00 by no later than 7 August 2023. In addition, the BAT acknowledged receipt of Claimant’s share of the Advance on Costs and noted Respondent’s failure to pay its share. The Respondent was given a final opportunity to pay its share by no later than 7 August 2023. The BAT also informed the Respondent that its Counterclaim would be deemed withdrawn if the Respondent did not pay the full amount of EUR 8,500.00 (consisting of the non-reimbursable handling fee and its share of the Advance on Costs) by 7 August 2023.
33. On 23 August 2023, the BAT acknowledged receipt of the full amount of the Advance on Costs, paid by the Parties (respectively), as well as the non-reimbursable handling fee for the Counterclaim, paid by the Respondent. The Claimant was invited to comment on the Answer by no later than 13 September 2023 (“**Reply**”), and to specifically include the following:

“1. An Answer to the Counterclaim;

2. Certified English translation of the Medical Report dated 16 February 2023 (Exhibit D);
3. Information whether the Claimant requests a hearing.”

34. On 13 September 2023, the Claimant filed her Reply, including an Answer to the Counterclaim.
35. On 14 September 2023, BAT acknowledged receipt of the Claimant’s Reply and invited the Respondent to comment on the Reply by no later than 5 October 2023 (“**Rejoinder**”).
36. On 5 October 2023, the Respondent filed its Rejoinder.
37. On 19 October 2023, the BAT acknowledged receipt of Respondent’s Rejoinder. In the same Procedural Order, the Arbitrator (in accordance with Article 12.1 of the BAT Rules) declared that the exchange of documents was completed and requested the Parties to submit their detailed cost accounts by 26 October 2023. Claimant submitted her cost account on 27 October 2023. Respondent submitted its cost account on 26 October 2023.
38. As neither of the Parties requested to hold 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 Position of the Parties

4.1 Claimant’s Position and Request for Relief

39. Claimant submits the following in substance:
 - The Player’s examination resulting in the First Diagnosis was performed improperly, because it omitted a necessary MRI examination. The Club’s doctor

wrongly diagnosed the Player's _____ injury as a mere _____, and wrongly cleared her to return to play. The injury got worse as the Player continued to play for the Club until the beginning of February 2023. The Player was pressured by the Club's coach to return to play, despite increased pain and discomfort in her _____. The pain in her _____ increased and her functionality became noticeably worse when the Player played again in a game on 22 February 2023. By pressuring the Player to continue playing, the Club is directly responsible for the additional damage to the Player's _____. In light of the Club's blatant disregard for the Player's well-being, the Player's only opportunity to receive the appropriate medical treatment at the time was outside of Turkey;

- The Third Diagnosis provided by [Turkish doctor] in Turkey cannot be considered as the third and final medical opinion in the sense of Clause 6 of the Player Contract. The wording of this Clause 6 requires mutual acceptance of the doctor by the Club, the Player and the agents. The Player and her agent were not in agreement that [Turkish doctor]'s assessment should be the third and final medical opinion. In addition, as it is the Club's defence, it is the Club's burden to prove that the requirements of Clause 6 of the Player Contract were met. However, there is no evidence from the Club that that visit was considered by either the Player or the Club as the third and final medical opinion;
- The Club's actions after the Third Diagnosis contradict its own argument. There is no reason why the Club would invite the Player to seek additional medical opinions from additional Turkish medical specialists in March 2023 if it believed that the Third Diagnosis given by [Turkish doctor] on 16 February 2023 was final and binding, as it claims in this arbitration;
- Furthermore, the Third Diagnosis simply recommended that the Player continue to rehabilitate with physical therapy and that the Club and Player make a "joint decision" regarding her return to play. It is hard to understand how that recommendation could be final, when it clearly contemplated further discussion

regarding future medical treatment;

- The Player sought additional medical opinions in the U.S. with the Club's approval. Thus, the Club accepted that the Player is going to miss the remaining games in February 2023, as well as on 1 and on 3 March 2023 while she sought additional treatment for her _____ injury;
- The Player always acted in good faith and informed the Club about the developments in the U.S. The doctors the Player consulted in the U.S. – who the Club refused to even speak with – were some of the leading doctors in the world for professional basketball players. Pursuant to the doctrine of *ex aequo et bono*, it was fair and equitable for the Player to proceed with surgery in early March 2023;
- The Player Contract does not address the situation that developed, where the Club and Player were not able to mutually agree on a third physician. The Club should not be permitted to unreasonably withhold its consent to necessary medical treatment and to put the Player's basketball career at risk and then claim that it owes her nothing when she chooses to undergo that necessary medical treatment to save her career. The doctrine of *ex aequo et bono* allows an arbitrator to decide based on equity and the circumstances at hand, and to reject the Club's assertions that it was entitled to put the Player's basketball career at risk;
- The Player is entitled to the claimed outstanding salaries according to Clause 8.f) of the Player Contract and its guaranteed nature. There is no doubt that the Player suffered the _____ injury due to activity for the Club;
- The Club is late for more than thirty (30) days on the Player's February, March and April salaries (USD 25,000.00 each). Therefore, it is in material breach of the Player Contract and the Player had the right to unilaterally terminate the Player Contract pursuant to Clause 3.c) of the Player Contract;
- The Player terminated the Player Contract and left the Club for just cause.

Therefore, the Club is not entitled to compensation in accordance with Clause 8.g) of the Player Contract, and the Club's Counterclaim must fail. The Club failed to prove that the Player unilaterally terminated the Player Contract without just cause. Returning to Turkey would only have further delayed surgery which increased the risk that the Player would never fully recover from her injury and/or play basketball again at the same level she did before her injury. The Player had to undergo surgery as early as possible, however the Club misdiagnosed her injury;

- In any event, the amount of the Counterclaim has to be reduced as it is unreasonably excessive. According to BAT jurisprudence, damage claims can be limited or reduced based on the party's duty to mitigate damages. The Club failed to order an MRI. The Club also refused to discuss the Player's medical treatment with the US doctors. The Club insisted to continue with conservative medical treatment. All these actions have prolonged the Player's healing process. The Counterclaim in the amount of to the Player's entire annual salary is grossly disproportionate and inequitable, as the Player was a valuable contributor to the Club for most of the season.

40. With the Request for Arbitration dated 7 June 2023, the Claimant initially requested the following relief:

“Claimant request an award against Cukurova in the following amounts:

Unpaid salary compensation to DeWanna Bonner under the Cukurova contract in the amount of US \$75,000.00;

Unpaid bonuses to DeWanna Bonner under the Cukurova contract in the amount of US \$44,500.00; and

Arbitration costs, arbitrator costs, attorney's fees, and legal interest at 5% per annum. In the alternative, Claimant requests an award against Cukurova in an amount which the arbitrator deems to be owed under the contract, including an award of costs, legal fees and interest in an amount which the arbitrator deems just and proper.”

41. In her Reply dated 13 September 2023, the Claimant updated her request for relief as

follows:

“7.2 For all of the foregoing reasons, Claimant prays as follows:

7.2.1. That Respondent’s prayers be denied in their entirety;

7.2.2. Unpaid salary compensation to Claimant Bonner under the Contract in the amount of US \$75,000.00³³;

7.2.3. Unpaid bonuses to Claimant Bonner under the Contract in the amount of US \$44,500.00³⁴; and

7.2.4. Arbitration costs, arbitrator costs, attorney’s fees, and legal interest at 5% per annum³⁵.

7.3 Alternatively, Claimant requests an award against the Club in an amount which the arbitrator deems to be owed under the contract, including an award of costs, legal fees and interest in an amount which the arbitrator deems just and proper.

7.4 Finally, Claimant Bonner requests that the Counter Claim be denied in its entirety; or alternatively, that the amount sought in the Counter Claim be significantly reduced based on equitable considerations.

7.5 Claimant Bonner does not believe that a hearing is necessary and that the Arbitrator can decide the issue based on written submissions submitted by the parties.”

[footnotes refer to identical numbers in the Request for Arbitration]

4.2 Respondent’s Position and Request for Relief

42. Respondent submits the following in substance:

- The First Diagnosis constituted the “First Medical Opinion” within the sense of the Player Contract. The Second Diagnosis obtained by the Player, which (just as the First Diagnosis) did not recommend surgery, was the “Second Medical Opinion”. The Third Diagnosis given by [Turkish doctor] on 16 February 2023 was the final and binding medical opinion according to Clause 6 of the Player Contract. Just as the first two examinations, this Third Diagnosis did not reveal any need for surgery;
- Clause 6 of the Player Contract clearly established that the third medical opinion was to be final and binding. Therefore, within the meaning of the Player Contract, no other medical assessment following the Third Diagnosis was to have any

effect. The Player's assertion that she never agreed to the Third Diagnosis being the final and binding opinion in accordance with Clause 6 of the Player Contract constitutes a misinterpretation of the Player Contract. Clause 6 only required that the doctor performing the final examination is "mutually acceptable" to the Parties, which was the case here. It does not require that the medical opinion provided by such "mutually acceptable" doctor be accepted by both Parties. The Player, her agents, and the Club mutually agreed on [Turkish doctor] to examine the Player's injury. This is proven by the fact that the Player went to see [Turkish doctor]. As a result, the Player was bound by the Third Diagnosis, in accordance with Clause 6;

- Clause 6 of the Player Contract precisely covers the situation at issue in this arbitration. Its sole purpose was to bind the Parties to the final medical opinion after an injury, in order to create legal certainty and avoid continuing disagreement between the Parties;
- The Club did not give its permission for the Player to seek additional medical advice in the U.S. after the issuance of the Third Diagnosis (which constituted a final and binding medical opinion). At that time, the Player was already undergoing the rehabilitation measures prescribed by [Turkish doctor], and the Club's permission for her leave only covered the continuation of her therapy in the U.S. The Club did not agree to the Player's seeking of any additional medical opinions, let alone surgery. Hence, there was no justification for the Player to stay in the U.S. and decide to undergo a surgery without the Club's permission. The Player's unjustified departure triggered the penalty clause in Clause 8.g) of the Player Contract;
- The Club never put pressure on the Player to play. She always had the option to rest, rehabilitate and not play in games;
- There is no evidence that a surgery was needed immediately. Neither of the three diagnoses relevant under the Player Contract suggested a _____ surgery.

Therefore, the Club's request for the Player to return to Turkey to visit more specialists was fair and reasonable and done in good faith. The true reason why the Player underwent immediate surgery was that she wanted to be ready for the WNBA training camp with her WNBA team;

- The Club never refused that the Player undergoes surgery. It only requested her to visit three more specialists in Turkey. The Player's distrust in the Turkish specialists is subjective and unacceptable;
- As the Player left the Club without any justification, and by not returning to Turkey despite several formal invitations to do so, Clause 8.g) of the Player Contract was triggered so that the Club is entitled to a compensation in the amount of Player's guaranteed net salary;
- The e-mail sent by the Player's agent on 8 March 2023, in which she refused to return to Turkey, constituted a unilateral contract termination without just cause;
- The Player's decision to undergo a surgery left the Club with distress and difficulties. The Player missed the most important games of the season, the Club had to look for another player and invest time and money to find a replacement. The Club lost the EuroLeague Women's Final and Turkish League Final. For these reasons, the Club is entitled to a penalty in the amount of the Player's annual salary under the Player Contract (Clause 8.g)), or – in the alternative – in an amount deemed proportionate;

43. The Respondent requests the following relief:

"The Respondent kindly requests the Hon. Arbitrator to deny all claims of the Claimant entirely and find that;

- ***The Respondent is entitled to compensation in the amount of an 200,000-USD as a penalty fee.***
- ***The Claimant to be obliged to pay all arbitration costs of the Respondent.***
- ***The Claimant to be obliged to pay all legal fees and expenses incurred in these proceedings."***

[emphasis in the original]

5. The Jurisdiction of the BAT

44. Pursuant to Art. 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”).

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

46. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Art. 177(1) PILA.

47. The Player Contract (Clause 12) contains the following dispute resolution clause in favour of BAT:

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

The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the BAT as provided in Article 192 of the Swiss Act on Private International Law. In case of any conflict between a local law, a federation rule and any clause of this agreement, the latter shall prevail.”

48. The arbitration agreement is in written form and thus fulfils the formal requirements of Article 178(1) PILA.

49. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast any doubt on the validity of the arbitration agreement in the

present matter under Swiss law (cf. Article 178(2) PILA).

50. Hence, the Arbitrator has jurisdiction to decide the present dispute.

6. Admissibility of the Respondent's Counterclaim

51. The Respondent lodged its Counterclaim together with the Answer, and in accordance with Article 11.4 of the BAT Rules. The Claimant did not object to the admissibility of the Counterclaim, and the Arbitrator does not have any indication to that extent either. Hence, the Counterclaim is admissible.

7. Applicable Law – *ex aequo et bono*

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

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

53. Under the heading "Applicable Law to the Merits", Article 15.1 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.”

54. In the arbitration agreement quoted above at para. 47, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to any other law. Consequently, the Arbitrator will decide the issues submitted to her in this proceeding *ex aequo et bono*.

55. 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’arbitrage¹ (Concordat)², under which Swiss courts have held that arbitration “*en équité*” is fundamentally different from arbitration “*en droit*”:

“When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”³

56. 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*”.

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

8. Findings

58. The Player seeks payment of unpaid salaries in the amount of USD 75,000.00 (net), together with bonus payments in the amount of USD 44,500.00 net (see below **8.1**). The Club, with its Counterclaim, requests a penalty in the amount of USD 200,000.00 (see below **8.2**).

¹ 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).

² P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

³ JdT 1981 III, p. 93 (free translation).

8.1 The Player's Claims

59. The Player argues that, despite her injury, she is entitled to the full salary and bonuses, because the Player Contract is fully guaranteed against injury. In this respect, the Player refers to Clauses 6 (first paragraph) and 8.f) of the Player Contract, which provide as follows:

Clause 6 (first paragraph):

"The Club agrees to guarantee and cover the totality of the stipulated salary and earned bonus amounts in this contract in case [of] a season ending injury or illness received during Club related activities during the time period in which the Player is playing basketball for the Club."

Clause 8.f):

"During the contract period, all compensation and bonuses are considered guaranteed to the Player and Agents by the Club. In the event that the Player sustains an incapacitating injury or illness during the term of this agreement, as long as injury and illness are incurred due to activity made by the Player for the Club that renders the Player incapable of performing in some or all of the remaining games, the Club agrees to meet all payment obligations as though the Player had performed in all games."

60. The Player is of the opinion that, because her injury was sustained – undisputedly – during a club activity (more specifically, during a match she played for the Club against the Spanish club CB Avenida on 4 January 2023), she is unconditionally entitled to receive the remainder of her remuneration. The Club rejects the Player's submission, arguing – in essence – that Clause 8f) is not a limitless financial guarantee, but confined by, *inter alia*, Clause 6 (second and third paragraph) of the Player Contract, which addresses the procedure to occur when the Player sustains an injury. Clause 6 (second and third paragraph) reads as follows:

"If the Player suffers an injury due to basketball related activity and does not agree with the Club doctor's diagnosis, she shall be allowed to select a physician of her choice to render a second medical opinion concerning the said injury. In the event that the Club disagrees with the second medical opinion, a third reviewing physician who is mutually acceptable by the Club, the Player and the Agents shall render a medical opinion concerning the Player's injury and such opinion shall be final and binding. In the case the Player seeks a second opinion, in or outside of Turkey, in a place other than the Club's affiliated hospital, she is

free to do so with all costs covered by the Player herself.

If a surgery is needed, the Player may choose her doctors and rehabilitation providers. If the Player chooses the medical staff suggested by the Club, she shall not pay any cost of consultations, treatments (surgery, medicines, etc.) and rehabilitation. If the Player chooses a different medical staff, the Club could refuse to pay any costs of consultations, treatments (surgery, medicines, etc.) or rehabilitation if there is not a previous financial agreement between the Club and the Player.”

61. These provisions support the Club’s argument that the financial guarantee under the Player Contract in case of an injury was not unrestricted, but – rather – depended on the Parties to follow a certain procedure in case of disagreement on the nature of the injury and treatment options (see also, e.g., BAT 1064/17, which involved a very similar clause). The Club is of the opinion that the Parties initially followed said procedure, that [Turkish doctor]’s Third Diagnosis formed a “*final and binding medical opinion*” with which the Player had to comply, and that the Player’s choice to seek further medical advice in the U.S., and to treat her injury through surgery, constituted a breach of the Player Contract resulting in the forfeiture of any remaining remuneration claims.
62. The Player, on the other hand, argues that the Third Diagnosis was not a “*final and binding medical opinion*”, and that the manner in which the Parties handled the Player’s injury situation is not addressed by the Player Contract, with the result that, under principles of *ex aequo et bono*, the Player is entitled to receive the full remuneration (including bonuses).
63. As a starting point, the Arbitrator notes that Clause 6 (second paragraph) indeed provides for a specific procedure to be followed by the Parties in case the Player sustains an injury. This procedure foresees that the Player shall first be diagnosed by doctors chosen by the Club. If the Player disagrees with such first opinion, she is entitled to select a physician of her choice to render a second opinion. In the event the Club disagrees with such second opinion, a third opinion shall be sought by a mutually acceptable doctor, and this third opinion shall then be final and binding upon the Parties. Clause 6 (second paragraph) of the Player Contract, however, does not

provide which consequences shall apply if the prescribed procedure is not followed by one or both Parties (for whatever reasons). The relevant questions the Arbitrator needs to address are, therefore, whether or not the procedure in Clause 6 (second paragraph) was complied with (below at **8.1.1**), and – if not – what consequences an assumed non-compliance entails for the Player’s remuneration claims (below at **8.1.2**).

8.1.1 Following the Player’s injury, did the Parties comply with the procedure foreseen in Clause 6 (second paragraph)?

64. The Player was injured during a game on 4 January 2023. The First Diagnosis rendered by the Club’s doctor on the same day identified a _____ and ordered rehabilitation through strength exercises. The Player did not dispute this opinion at the time, but followed the doctor’s instructions and promptly returned to train and play. Because her pain did not vanish, but rather increased, the Player decided to seek a medical opinion (resulting in the Second Diagnosis) more than 5 weeks later during a visit to the United States. Because the Second Diagnosis was obtained after weeks of practicing and playing at the highest professional level, it is very likely that [American doctor 1] – the physician who rendered the Second Diagnosis – did not look at the exact same injury that had been examined by the Club’s doctor more than a month earlier, but potentially at an injury that had been evolving and worsening over the Player’s further basketball activities following the First Diagnosis. For this reason alone, the Arbitrator has doubts that the Second Diagnosis can be considered a “second medical opinion” within the sense of Clause 6 of the Player Contract. This clause does not contemplate such a significant time gap between different medical opinions, and it does also not contemplate that the Player resumes to work in between any of the medical opinions being rendered. Insofar, the present case is significantly distinct from the case BAT 1064/17, which also involved a dispute about different medical opinions obtained under a similar contractual clause.

65. Furthermore, what also speaks against the Second Diagnosis being a “second medical

opinion” is that the Player did not disagree with the First Diagnosis. To the contrary, the Player followed the First Diagnosis by promptly returning to practice and play. It was only when the prescribed therapy did not result in any improvement, but – rather – to a deterioration of the Player’s medical condition that she decided to have the injury re-examined to analyse its progress. This situation is different from the scenario described in Clause 6 of the Player Contract. Clause 6 would have applied had the Player declined to follow the recommendations of the First Diagnosis, and had she insisted on a second opinion to clarify, for example, whether a surgery is required. This is not what happened in the present case.

66. When the Second Diagnosis was not a “second opinion” within the meaning of Clause 6 of the Player Contract, it is only logical that the Third Diagnosis provided by [Turkish doctor] on 16 February 2023 cannot be considered a (third) “*final and binding medical opinion*” either. Rather, the Third Diagnosis was a completely new opinion assessing the progress of the injury after the Player’s return from the United States.
67. To summarize, what happened in the Player’s case is that the therapy prescribed by the Club’s doctor in the First Diagnosis did not result in the Player’s recovery, but instead worsened her condition. As a result of the deterioration of the injury, the Parties’ sought additional medical advice which was not the result of an initial disagreement with the First Diagnosis. Therefore, the present circumstances fall outside the scenario addressed in Clause 6 (second paragraph) of the Player Contract.
68. As a result, the Arbitrator finds that Clause 6 (second paragraph) does not apply in the present case. The Third Diagnosis is not a “*final and binding medical opinion*” that required the Player to stay with the Club and prevented her from seeking further advice in the United States later on.
69. The crucial question, to be answered immediately below, is whether the Player, under the circumstances at hand, kept her remuneration claims, or whether her unilateral

decision to undergo surgery in the United States without the Club's consent resulted in the forfeiture of the financial guarantees provided on her behalf in the Player Contract.

8.1.2 Did the Player forfeit her remuneration claims because of the medical treatment she received in the U.S. without the Club's consent?

70. Having established that the present case does not fall under Clause 6 (second paragraph) of the Player Contract, the consequences of the Player's injury are governed by Clause 6 (first paragraph) and Clause 8 f) of the Player Contract. These provisions provide for a guarantee of "*the totality of the stipulated salary and earned bonus amounts*" in the case of "*a season ending injury or illness received during Club related activities.*"
71. Under this guarantee, the Club is principally obliged to pay the Player her salary and bonuses for the remainder of the season, because the injury was undisputedly sustained during a club activity. In fact, even when she decides *ex aequo et bono*, the Arbitrator is bound by the terms of the Parties' contract. She may only divert from them if a party establishes compelling reasons why the Parties' contractual agreement should be disregarded. In the present case, it is the Club's case that the Player unjustifiably arranged for her medical treatment (including surgery) without involving the Club, and without obtaining the Club's prior consent. In essence, the Club argues that the Player acted in bad faith without consideration of the Club's interests when she underwent a season-ending surgery in the United States after the Third Diagnosis had been rendered in Turkey.
72. As a starting point, the Arbitrator notes that the Club has not demonstrated that the Player's treatment in the U.S. caused her inability to be available for the Club for the remainder of the season. The Player was injured, and the injury had occurred, undisputedly, during "*Club-related activities*". The Club did not dispute that she was unable to play, which is why it offered the Player to see three more _____

specialists in Turkey. The Club has not argued, let alone proved, that there was any treatment option available which would have let the Player return to the court before the end of the season. In fact, conservative treatment had been unsuccessful; further conservative treatment would have required time. It is inconceivable and not demonstrated by the Club that the Player's _____ would have healed so quickly upon her return to Turkey in March that she could have played at any time soon. There is no proof that the healing time caused by the surgery deprived the Club of the Player's availability to play. Therefore, while the Player's decision to undergo surgery may have been influenced by her motivation to be fit for the new WNBA season, there is no proof that it was against the Club's interests, because there is no indication that the Player could have played again until end of April without the surgery. Therefore, the Arbitrator is comfortably satisfied that the injury sustained by the Player during a game constituted a "season ending injury" in the sense of the Player Contract, irrespective of the surgery she underwent in the United States. As a result, the prerequisites for her payment claim under the contract are principally fulfilled.

73. As stated above at para. 71, the Arbitrator may only disregard the Parties' contractual agreement for compelling reasons. In this respect, the Club essentially argues that the Player, by undergoing surgery against the Club's will and without its consent, acted in bad faith, thereby forfeiting her payment claim.
74. Based on the facts summarized above, it is indeed undisputed that the Player's decision to undergo surgery was not supported by the Club's consent. To the contrary, the Club's e-mails to the Player dated 4 and 8 March 2023 (quoted above at para. 22, 23) demonstrate that the Club wanted the Player to return to Istanbul to undergo further examinations and treatment there. The Player disregarded the Club's request and decided to have a surgery performed in the United States, and to remain there afterwards for further rehabilitation.
75. However, on the basis of the record before her, the Arbitrator does not find any bad

faith conduct on the Player's part, for the following reasons::

76. First, and in accordance with the findings above at Section 8.1.1, the Player was not bound by a “*final and binding medical opinion*” preventing her from undergoing surgery. [Turkish doctor]'s Third Diagnosis did not, and could not, be regarded as such a “*final and binding medical opinion*”. In the absence of any medical opinion that bound the Player, she was principally free to seek further medical advice and treatment, albeit – if outside of the Club – at her own cost.
77. Second, the Player Contract did not require the Player to obtain the prior authorization of the Club to undergo surgery with the doctor of her choice (see also, on this aspect, BAT 1634/20). Clause 6 (third paragraph) provides that the Player may freely choose her doctors and rehabilitation providers if surgery is required. It does not obligate the Player to obtain the Club's prior consent for surgery. Clause 6 (third paragraph) reflects the (professional) athletes' fundamental right of a free choice of their medical providers.
78. Third, the Arbitrator has no indication that the Player's choice to undergo surgery in the U.S. was unreasonable. The Player demonstrated, to the comfortable satisfaction of the Arbitrator, that her physical condition worsened over time, after she had sustained the initial injury in January. While the first assessment by the Club's doctor (the First Diagnosis) diagnosed a mere _____ to be treated with physical therapy, other doctors consulted later, due to the Player's increasing pain, diagnosed a more severe injury and offered different treatment options:
- The Second Diagnosis found, *inter alia*, a “_____”;
 - The Third Diagnosis, provided by the [Turkish doctor], found that a “_____” and recommended the wearing of a brace, medical treatment and physical therapy. It also indicated that a decision with respect to the timing of the Player's return to play shall be made jointly between the Club and the Player;

- [American doctor 2] diagnosed “*at least*” a “_____” and discussed with the Player both non-operative measures as well as surgical interventions;
- [American doctor 3] diagnosed a “_____”, which he considered a “_____ *injury*” with “*persistent symptoms despite appropriate conservative measures*”. He specifically recommended surgery, followed by a postoperative period of 6 weeks of immobilization.

79. Especially the medical opinions obtained by the Player from [American doctor 2] and [American doctor 3] on 24 and on 27 February 2023 highlighted the severity of the injury (_____) and discussed surgery as a reasonable possibility. The Club did not take true issue with the substance of any of these medical assessments, but simply insisted for the Player to return to Turkey so that local specialists could re-examine her _____. The Club argued that it was necessary for it “*to be involved in the process as much as possible to make sure everything is settled in terms of the injury and the _____*” (E-Mail of 4 March 2023). It took the position that a conservative treatment would be best for the Player’s healing, and offered the Player to see three specialists in Turkey, including one chosen by the Player’s agents. This e-mail was sent on 4 March 2023, i.e. two months after the Player had sustained the initial injury.

80. Up until this time, the record demonstrates that the Club was eager for the Player – one of the most important players on the team’s roster – to return to the court as soon as possible. The First Diagnosis, which cleared the Player to return to the court immediately, was not even based on an MRI examination, despite the fact that, arguably, a player’s _____ is one of the most important body parts for playing basketball. Nevertheless, the Player had trusted such diagnosis and resumed to play as per the Club’s instruction, which resulted in a worsening of her condition. After the Third Diagnosis, the Club, through its coach, was again asking the Player to play (see the WhatsApp message sent by the coach to the player on 17 February 2023, quoted above at para. 15). The coach’s invitation for the Player to return to the court was made only one day after the Third Diagnosis, in which it was recommended that the Player

and the Club jointly discuss when she would resume to play, after appropriate treatment. The Arbitrator has no indication to doubt that the Club's coach indeed sent the respective WhatsApp message to the Player on 17 March 2023.

81. From the Player's perspective, it is understandable that the Club's eagerness for her to play again as soon as possible raised concerns as to the Club's interest in the Player's full recovery. For an important player, it is worrisome to suspect that a Club may put its own sporting success over the player's well-being. From the Player's perspective, it was, therefore, reasonable to seek additional advice outside of Turkey to ensure that she would not suffer irreparable harm from a wrong treatment. This is all the more true in light of the fact that the player was already 35 years old, which made her more vulnerable for career-ending injuries than a younger player. In light of the considerable time that had elapsed since the Player sustained the injury, without that any treatment resulted in an improvement of her situation, and in light of the assessments of reputable doctors in the U.S., the Player's decision to stay in the U.S. to undergo surgery was reasonable.

82. This finding is not meant to dilute the Club's justified interest in being involved in the diagnosis and treatment of the Player's injury. In the present case, however, the medical assistance rendered by the Club, through its doctors, had not benefitted the Player, whose condition was worsening over time. When the Player sought additional advice in the U.S., it kept the Club informed and tried to obtain the Club's consent for treatment by a renowned specialist involved also with an NBA team. The Club did not invoke any compelling reason, other than its need to be involved in the Player's treatment, for ordering her back to Turkey. Since the "crunch time" of the season was just about to begin, returning to Turkey would potentially have entailed for the Player other requests and beggings by the Club to return to the court. The Club's urgent interest for one of its star players to be available for the most important games of the season is further fuelled by the fact that the Player's contract was to expire at the end of the season, which means that the Club had no own interest in the Player being fit for

the new season.

83. Finally, in the same context, the Arbitrator finds no proof for the Club's assertion that the Player acted against the Club's interests for the sole and selfish purpose to ensure that she would be fit to play for her WNBA team later that year. In fact, that the Player had to be fit for her new WNBA season was fully known to the Club, and it forms a premise for the Parties' employment relationship. Clause 1 of the Player Contract, *inter alia*, provides that

"the Player has signed a 4-year agreement in the WNBA prior to this contractual agreement. The terms of the WNBA contract do not allow the Player to miss one day of the 2023 WNBA regular season; the Player must be in her WNBA team city no later than the day before the 1st day of the 2023 WNBA season."

84. In addition, Clause 3.a) of the Player Contract stipulates that

"In case the Player misses any days of 2023 WNBA Training Camp due to the Turkish League 2022-23 season schedule, the Club shall pay the Player total amount of penalty / salary deduction that the Player's WNBA team will execute. (1 % of the Player's WNBA season salary per each day she misses due to Turkish League schedule)."

85.

86. As a result of the above, and in the absence of any bad faith on the Player's side, the Arbitrator finds that the contractual payment guarantee contained in Clauses 6 (first paragraph) and 8 f) fully applies. Therefore, the Player is entitled to receive three (3) outstanding salary instalments of USD 25,000.00 (net), respectively, for the months of February, March and April 2023. In addition, the Player is also entitled to receive the requested bonuses in the amount of USD 44,500.00 (net) as follows:

- Turkish League Play-Offs (Reaching the Final) USD 10,000
- Presidency Cup (Winning the Title) USD 7,500
- FIBA EuroLeague Women (Reaching the Final) USD 25,000

- Single Game wins against Fenerbahce USD 2,000

87. The Claimant established that the bonus-triggering events indeed occurred, and the Respondent has not disputed these facts.

88. Finally, and for the avoidance of doubt, the Arbitrator notes that in light of her findings above, she does not have to address the validity of the Player's termination, executed on 10 May 2023, i.e after the termination of the Player Contract. According to Clause 1 of the Player Contract, the *"Player shall be free to leave Turkey, without any restriction of any kind, within two (2) days following the last official game of the Club for the 2022-23 season, being released from all obligations, duties and liabilities towards the Club [...]"*. Since the Club's last official game undisputedly took place on 25 April 2023, the termination has no legal bearing, because the Player is – irrespective of the termination – entitled to the claimed amounts.

8.2 The Club's Counterclaim

89. With its Counterclaim, the Respondent requests a penalty in the amount equal to the Player's annual salary, i.e. USD 200,000.00. According to Clause 8.g) of the Player Contract, the Club is entitled to a penalty (i) *"if the Player unilaterally rescinds the present contract"* or (ii) if the Player *"leaves the Club / city / country without justification"*.

90. It follows from the Arbitrator's findings above at 8.1 that the Player neither rescinded the Player Contract nor left the Club without justification. The Player's decision to seek medical advice in the U.S. and undergo surgery and rehabilitation there did not constitute a departure *"without justification"*, or a contract rescission. The Player had been struggling with a deterioration of her condition ever since she sustained the injury, potentially caused by her continued playing activities upon the Club's recommendation. BAT 1064/17, on which the Respondent relies, was substantially different from the present case. In BAT 1064/17, the Player had refused to follow a final and binding

medical opinion, and had unilaterally undergone a different medical treatment. In the present case, the Player was not bound by any “final and binding” medical opinion.

91. Furthermore, the Respondent had undisputedly allowed the Player to travel to the U.S. For which reason the permission was granted is irrelevant, as the Player’s decision to consult other doctors and undergo surgery was justified in light of the Club’s previous actions, which reasonably weakened the Player’s trust in the Club’ medical judgement.
92. Lastly, the agent’s e-mail dated 8 March 2023 cannot be considered a unilateral rescission of the Player Contract, as argued by the Respondent. The e-mail has not the required minimum content to be considered as a termination statement even under consideration of the BAT jurisprudence (see BAT 1785/22, para. 75). It only informs the Club about the Player’s decision to undergo a surgery.
93. Hence, the Counterclaim is without merit and must be dismissed in its entirety.

8.3 Interest

94. The Player Contract does not provide for any provision concerning interest. According to constant BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. As requested by the Claimant, and in line with BAT’s jurisprudence, the applicable interest rate is 5% per annum.
95. With respect to the starting dates requested by the Claimant (which correspond to the respective due dates for the salary and bonus payments), the Arbitrator notes that interest principally begins running as of the day after the principal debt falls due.
96. Hence, the Arbitrator finds that the Player’s claim for interest starts running as of the date after the respective due date of the salary instalments and bonus payments

pursuant to Clauses 3.a) and b) of the Player Contract, i.e.

- from 1 March 2023 on the amount of USD 25,000.00;
- from 1 April 2023 on the amount of USD 25,000.00;
- from 1 May 2023 on the amount of USD 25,000.00;
- from 16 May 2023 on the amount of USD 44,500.00.

8.4 Summary

97. The Player is entitled to receive USD 119,500.00 (net) in outstanding salaries and bonuses together with interest of 5% per annum

- from 1 March 2023 on the amount of USD 25,000.00;
- from 1 April 2023 on the amount of USD 25,000.00;
- from 1 May 2023 on the amount of USD 25,000.00;
- from 16 May 2023 on the amount of USD 44,500.00.

98. The Club's Counterclaim is dismissed in its entirety.

9. Costs

99. 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). [...]"

100. On 23 January 2024, the Vice-President of the BAT determined the arbitration costs in the present matter to be EUR 9,000.00.

101. 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.”

102. Considering that it was the Claimant who entirely prevailed in this arbitration (including on the Counterclaim, which was fully dismissed), it is consistent with the provisions of the BAT Rules that 100% of the costs of the arbitration be borne by the Respondent. Accordingly, the Respondent shall pay the Claimant EUR 4,500.00 as reimbursement of her advance on costs.

103. 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.”

104. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses. The maximum contribution for the amount in dispute (including the Counterclaim, Article 17.5 of the BAT Rules) in the present case (USD 119,500.00 for the main claim plus USD 200,000.00 for the Counterclaim = USD 219,500.00, which is equal to approx. EUR 202,000.00) according to Article 17.4 of the BAT Rules is EUR 15,000.00.

105. Claimant claims reimbursement of legal fees and expenses in the amount of approx.

EUR 10,763.10⁴ (USD 11,354.50). Respondent claims reimbursement of legal fees and expenses in the amount of EUR 15,000.00.

106. Since it is the Claimant who prevailed in this arbitration (on her main claim and on the Counterclaim), the Arbitrator finds that only the Claimant shall receive a contribution towards her legal fees and expenses. The amount requested by the Claimant is below the maximum contribution foreseen in Article 17.4 of the BAT Rules for the present case, i.e. EUR 15,000.00. Under the circumstances of this rather complex case, the Arbitrator finds that the requested contribution of EUR 10,763,10 is appropriate. The Claimant provided a detailed cost account with reasonable descriptions. A substantial part of the Claimant's hours was also caused by the Respondent's Counterclaim. Deciding *ex aequo et bono*, the Arbitrator finds that an appropriate contribution towards the Claimant's legal fees and expenses is EUR 10,763.10 (excluding the non-reimbursable handling fee).
107. Finally, as prevailing party, the Claimant is also entitled to a reimbursement of the non-reimbursable handling fee in the amount of EUR 4,000.00.

⁴ Exchange rate on 27 October 2023 (date of Claimant's cost account submission): USD 1,00 = EUR 0.94792.

10. Award

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

- 1. Mersin Yenişehir Belediyesi Çukurova Basketbol Kulübü is ordered to pay Ms. Dewanna Bonner the amount of USD 119,500.00 net in outstanding salaries and bonuses, together with interest at 5% per annum on the amounts of**
 - USD 25,000.00 or any outstanding balance (as may be the case from time to time) thereof from 1 March 2023 until complete payment;
 - USD 25,000.00 or any outstanding balance (as may be the case from time to time) thereof from 1 April 2023 until complete payment;
 - USD 25,000.00 or any outstanding balance (as may be the case from time to time) thereof from 1 May 2023 until complete payment; and
 - USD 44,500.00 or any outstanding balance (as may be the case from time to time) thereof from 16 May 2023 until complete payment.
- 2. The counterclaim is dismissed.**
- 3. Mersin Yenişehir Belediyesi Çukurova Basketbol Kulübü is ordered to pay Ms. Dewanna Bonner EUR 4,500.00 as a reimbursement for her arbitration costs.**
- 4. Mersin Yenişehir Belediyesi Çukurova Basketbol Kulübü is ordered to pay Ms. Dewanna Bonner EUR 14,763,10 as a contribution towards her legal fees and expenses (including the non-reimbursable handling fee).**
- 5. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 1 February 2024.

Annett Rombach (Arbitrator)