



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1997/23)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Mr. Akil Mitchell

- Claimant 1 -

Mr. Daryl T. Graham

- Claimant 2 -

both represented by Mr. Özcan Yüksel, attorney at law,

vs.

AEK B.C.

Ano Liosia Olympic Hall,
59 Konstantinoupoleos, 13342 Ano Liosia, Athens, Greece

- Respondent -

represented by its President and CEO Mr. Alexandros Alexiou

1. The Parties

1.1 The Claimants

1. Mr. Akil Mitchell (the “**Player**” or “**Claimant 1**”) is a professional basketball player of US-Panamanian nationality.
2. Mr. Daryl T. Graham (the “**Agent**” or “**Claimant 2**”) is a sports agent.
3. The Player and the Agent are jointly referred to as the “**Claimants**”.

1.2 The Respondent

4. AEK B.C. (hereinafter the “**Club**” or the “**Respondent**”) is a professional basketball club competing in the Greek Basket League (GBL).

2. The Arbitrator

5. On 30 July 2023, Prof. Ulrich Haas, President of the Basketball Arbitral Tribunal (the “**BAT**”), appointed Ms. Annett Rombach as arbitrator (the “**Arbitrator**”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal in force as from 1 January 2022 (the “**BAT Rules**”). None 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

6. 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.

7. On 1 August 2022, the Player, the Agent 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**”).

8. The term of the Player Contract was stipulated in Clause 2 of the Player Contract as follows:

“The term of this Contract shall cover the 2022-2023 basketball season, starting on August 15th 2022 and ending on June 30th 2023 or three (3) days after the last official game of the Club, whichever comes first. At the conclusion of the term, Club must immediately consent to the issuing of Player’s Letter of Clearance. Such consent must not be unreasonably withheld and has to be sent within 24 hours upon request.”

9. The Player’s contractual remuneration (salary and bonuses) was agreed as follows, Clauses 7 and 8 of the Player Contract:

“7. SALARY & SIGNING BONUSES COMPENSATION

a) [sic] *The Club agrees to pay the Player for rendering his services to the Club the following NET amounts:*

Season 2022-2023

- **USD 150.000** (One Hundred and Fifty Thousand US Dollars) net of Greek taxes per month, paid into 10 equal installments [sic] of USD 15.000 (US dollars fifteen thousand) on the last day of each month, commencing with September 30th, 2022 and ending on June 30th 2023.

8. BONUSES

a) *The Club agrees to pay the Player the following NET target bonuses for every season of this Contract:*

Season 2022-2023

[...]

Games played

-In case the player participates in, at least, 30 official games of the club for the season 2022-2023, he will receive the amount of USD 10.000 net of Greek taxes to be paid on August 30th 2023

b) *All the bonuses are net and non-cumulative. The player will be entitled to only the highest amount achieved in each competition. All bonuses are NET of Greek income taxes and*

social security charges. All bonuses, upon achieved, are guaranteed as part of salary and must be paid by the Club to the Player within Sixty (60) days of their achievement.”

10. Pursuant to Clause 10 of the Player Contract the compensation payable to the Player under Clauses 7 and 8 of the Player Contract were “NET of Greek income taxes”, with the Club being “responsible to pay all applicable taxes and charges on behalf of Player to the relevant authorities”.

11. According to Clause 13 of the Player Contract, the Agent was entitled to an agent fee as follows:

“The Club agrees to pay as agent fees to the Player’s Agents, the following amount (payments will be transferred to the Agents’ designated bank accounts):

*- USD 7.500 (US dollars seven thousand and five hundred) plus VAT wired to the designated bank account of the **Agent**, paid on December 15th 2022*

*- USD 7.500 (US dollars seven thousand and five hundred) plus VAT wired to the designated bank account of the **Agent**, paid on March 15th 2023”*

12. On 27 April 2023, the Club played its last game of the 2022-23 season.

13. On 29 April 2023, the Puerto Rican national league “La Guerra des BSN” posted a photo of the Player stating that he had joined the Puerto Rican Club “Grises de Humacao BC”. The Player played for this club until 16 June 2023.

14. On 29 May 2023, the Agent sent the following e-mail to the Club, requesting the payment of the Player’s outstanding salaries and of the second instalment of the agent fee:

*“Hello,
My player Akil Mitchell is still due the net amount of 70k deriving from pending salaries from the 2022/23 season, signed between the parties on 8/1/22.
Also delinquent is the \$7,500 from the 2nd installment [sic] of the agent fee.
We kindly request that you make all pending payments by Friday June 2nd. If payments have not been made by that date and since your Club is already numerous months late, we shall pass the case to our lawyer in order to initiate a BAT case immediately.
Thank you,
Daryl Graham”*

15. On 5 June 2023 and on 28 June 2023, the Claimants' counsel sent two warning e-mails to the Club, which remained unanswered.

3.2 The Proceedings before the BAT

16. On 18 July 2023, the BAT Secretariat received a Request for Arbitration dated 12 July 2023 together with several exhibits filed by the Claimants 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.

17. On 9 August 2023, the BAT Secretariat 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 30 August 2023 (the "Answer"), and fixed the amount of the Advance on Costs to be paid by the Parties by 21 August 2023 as follows:

<i>"Claimant 1 (Mr. Akil Mitchell)</i>	<i>EUR 3,000.00</i>
<i>Claimant 2 (Mr. Daryl T. Graham)</i>	<i>EUR 500.00</i>
<i>Respondent (AEK BC)</i>	<i>EUR 3,500.00"</i>

18. On 6 September 2023, within the (extended) time limit, the Respondent filed its Answer.

19. By procedural order of 7 September 2023, the BAT Secretariat acknowledged receipt of the Claimants' share of the Advance on Costs and noted the Respondent's failure to pay its share. In accordance with Article 9.3 of the BAT Rules, the Claimants were invited to substitute for the Respondent's (yet unpaid) share by 14 September 2023 in order to ensure that the arbitration could proceed.

20. On 22 September 2023, the BAT Secretariat acknowledged receipt of the Respondent's Answer and of the full amount of the Advance on Costs, paid by the Claimants. In the same procedural order, the Arbitrator informed the Parties as follows:

“Having reviewed the Parties’ submissions to date, the Arbitrator notes that the Respondent has expressly recognized a considerable part of Claimants’ claims, namely the Player’s salary for the months of March and April 2023, and the agency fee. Furthermore, it seems that the Respondent does not dispute the bonus claim on the merits.

What remains in dispute between the Parties is the Player’s salary claim for May and June 2023. In this respect, the Arbitrator notes that even if such claim was justified as a matter of principle (which the Respondent contests), BAT’s established jurisprudence on mitigation of damages could potentially result in the reduction of those claims.”

The Parties were invited to explore the possibility of any amicable settlement.

21. On 2 October 2023, the BAT Secretariat prolonged the Parties’ time limit to inform the Arbitrator about a possible settlement to 4 October 2023.
22. On 4 October 2023, the Claimants’ counsel informed the BAT Secretariat that no settlement could be reached between the Parties.
23. On 17 October 2023, the BAT invited the Claimants to comment on the Respondent’s Answer by no later than 31 October 2023 (“**Reply**”). In that Reply, the BAT Secretariat requested the Player to disclose the amount of the remuneration he had received from the Puerto Rican club Grises De Humacao BC for the months of May and June 2023, by providing his employment contract or bank statements.
24. On 28 November 2023, the BAT Secretariat noted the Claimants’ failure to provide their Reply. 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 5 December 2023. Claimants submitted their cost account on 5 December 2023. Respondent did not submit any cost account.
25. As none 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 Claimants' Position and Request for Relief

26. Claimants submit the following in substance:

- The Player and the Agent have fulfilled their contractual obligations, warranting compensation according to the Player Contract.
- Therefore, the Club is required to disburse a total sum of USD 70,000.00 to the Player. This includes
 - USD 60,000.00 for unpaid salary covering the months of March, April, May, and June 2023, provided for in Clause 7 and
 - USD 10,000.00 for an outstanding bonus provided for in Clause 8 of the Player Contract.
- The Club is also obliged under Clause 13 of the Player Contract to pay the Agent the second instalment of the agent fee amounting to USD 7,500.00.
- Failure to disburse the above-mentioned amounts constitutes a breach of the Player Contract.

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

“Unpaid Salaries USD 60.000,00

Total interest of the unpaid salaries (212+ [sic] 150 + 85 + 22) USD 469.00

Unpaid Bonus USD 10.000,00

Agent Fee USD 7.500,00

Interest of the Agent Fee USD 122.00

Interest %5 [sic] per annum after the request of arbitration

Advance on costs

Non-reimbursable handling fee

Legal / Arbitration costs and expenses”

4.2 Respondent’s Position and Request for Relief

28. Respondent submits the following in substance:

- The Claimants’ request for relief is false and indefinite. Such a request is legally unacceptable and therefore must be partially dismissed.
- The Claimants’ assertion of a breach of contract is unfounded because the Player Contract had been terminated before the alleged breach could have occurred.
- The Player is not entitled to receive monthly salaries for the months of May and June 2023.
- The termination of the Player Contract is substantiated by the Player’s execution of a new contract with another club, wherein he received compensation for the monthly periods in dispute, i.e., the months of May and June 2023.
- The Club asserts an obligation to only pay the unpaid salaries for the months of March and April 2023, totalling (USD 15,000.00 x 2=) USD 30,000.00.
- The Player’s request for compensation of USD 10,000.00 as bonuses should be dismissed entirely as this amount was not due at the time the Request for Arbitration was filed.
- The Club recognizes its financial obligation to the Agent, acknowledging a debt of USD 7,500.00.

29. In the Answer, Respondent requested the following relief:

“(a) The Claimants’ request for arbitration is partially inadmissible as legally and substantially unfounded and unacceptably submitted for the reasons mentioned above.

(b) Dismiss in part the Player’s (Claimant 1) request for compensation of \$60.000 as

salaries owed either by deducting it in the amount of \$30,000 or counting the Player's salaries earned from his new Club and deducting the total sum of \$60,000.

(c) Dismiss in total the Player's (Claimant 1) request for compensation of \$10,000 as bonuses owed.

(d) The arbitration costs (Respondent's share) shall be borne by AEK BC.

(e) AEK BC is granted a significant contribution to its legal and other costs."

5. The Jurisdiction of the BAT

30. 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").

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

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

33. The Player Contract (Clause 17) 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 FIBA 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 of FIBA shall be English. The arbitrator shall decide the dispute ex aequo et bono."

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

34. The Player Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
35. 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). The Parties to this arbitration are expressly identified as parties to the Player Contract in the recitals, and are thus bound by the arbitration clause *ratione personae*. Respondent did also not dispute BAT's jurisdiction.
36. Hence, the Arbitrator has jurisdiction to decide the present dispute.

6. **Applicable Law – *ex aequo et bono***

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

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

38. 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.”

39. In the arbitration agreement quoted above at para. 33, 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*.
40. The concept of “*équité*” (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l’arbitrage² (Concordat)³, under which Swiss courts have held that arbitration “*en équité*” is fundamentally different from arbitration “*en droit*”:

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

41. 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*”.
42. In light of the foregoing considerations, the Arbitrator makes the findings below.

7. Findings

43. The Player seeks payment of (i) outstanding salaries for the months of March, April, May and June 2023 and (ii) a bonus. The Agent requests payment of the second

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

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

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

instalment of his agent fee for the 2022-23 season.

44. The following issues are – in principle – not in dispute between the Parties:

- It is not in dispute that, according to Clause 7 of the Player Contract, the Player was entitled to receive a total of USD 150,000.00 (net of Greek taxes) in 10 equal instalments of USD 15,000.00 (net of Greek taxes) monthly. However, the Club only paid 6 instalments out of the 10, amounting to USD 90,000.00 (net of Greek taxes), meaning that USD 60,000.00 (net of Greek taxes) of the originally agreed upon amount, representing the salaries for the months of March, April, May and June 2023 were not paid.
- The Club has not disputed that the Player has met the criteria to receive a bonus of USD 10,000.00 (net of Greek taxes) as set forth in the “*Games played*” section of Clause 8 of the Player Contract.
- It is not in dispute that the Request for Arbitration claiming, *inter alia*, the payment of the bonus was filed on 12 July 2023, and that as per the “*Games played*” section of Clause 8 of the Player Contract, the bonus for the games played was to be paid on 30 August 2023.
- It is undisputed between the Parties that the Club failed to pay the second instalment of the agent fee. According to Clause 13 of the Player Contract, the Agent was entitled to a total amount of USD 15,000.00 in two instalments, with the first one to be paid on 15 December 2022 and the second one on 15 March 2023. However, the Club only paid the first instalment of USD 7,500.00. Pursuant to Clause 13 of the Player Contract, referenced by the Claimants and not disputed by the Respondent, that second instalment of the agent fee consists of the principal amount and additional VAT (USD 7,500.00 plus VAT). While the Claimants’ request for relief does not indicate the “net” or “gross”

nature of the requested agent fee, the Arbitrator finds that, in accordance with constant BAT jurisprudence, payments shall principally be paid as stipulated in the contractual agreement; here: “plus” VAT.

45. To summarize, the Club has acknowledged the following parts of the Claimants’ claims and accepts an obligation to pay the following:

- to the Player, in total USD 30,000.00 (net of Greek taxes) in outstanding salary for the months of March and April 2023 (USD 15,000.00 respectively),
- to the Agent, USD 7,500.00 (plus VAT) in outstanding agent fee.

46. What is in dispute between the Parties is whether the Player is entitled

- to a salary for May and June 2023 of USD 30,000.00 in total (below at **7.1**) and
- to a bonus of USD 10,000.00 as specified in Clause 8 of the Player Contract (below at **7.2**).

47. The Arbitrator will address each of these claims, in turn, below.

7.1 Salaries for the months of May and June 2023

48. In order to decide whether the Player is entitled to receive the salaries for the months of May and June 2023, the two relevant sections of the Player Contract are the following:

“2. TERM OF AGREEMENT

The term of this Contract shall cover the 2022-2023 basketball season, starting on August 15th 2022 and ending on June 30th 2023 or three (3) days after the last official game of the Club, whichever comes first.”

“7. SALARY & SIGNING BONUS COMPENSATION

a) *The Club agrees to pay the Player for rendering his services to the Club the following NET amounts:*

Season 2022-2023

- **USD 150.000** *(One Hundred and Fifty Thousand US Dollars) net of Greek taxes per month, paid into 10 equal installments [sic] of USD 15.000 (US dollars fifteen thousand) on the last day of each month, commencing with September 30th, 2022 and ending on June 30th 2023”*

49. It is undisputed that the Club played its last game in the 2022-23 season on 27 April 2023, meaning that as per Clause 2, the Player Contract was terminated three (3) days later, *i.e.* on 30 April 2023.
50. The fact that after the public announcement of the Player joining the Puerto Rican Club Grises de Humacao BC, he played for the remainder of the season until 16 June 2023 for Grises de Humacao BC, further shows that the Player Contract was in fact terminated on 30 April 2023.
51. The Player’s request to receive salaries also for May and June 2023, despite the undisputed termination of the Player Contract as of 30 April 2023, rests on a literal understanding of Clause 7 of the Player Contract. In this clause, the salary payments for May and June 2023 are not in any way linked to the duration of the Player Contract addressed in Clause 2 of the Player Contract. In the Player’s view, they were absolute.
52. The Arbitrator rejects this argument. In accordance with the fundamental principle that a player’s salary is the consideration for his performance, Clause 7 a) of the Player Contract has to be read in conjunction with Clause 2, which means that a salary shall only be earned until the termination of the contract. The Player has failed to explain why the Club should be obligated to pay him salaries after the automatic termination of the Player Contract. The Player Contract does not foresee that all remaining salary instalments shall become due in case of the automatic end of the Player Contract. Rather, it is clear that the Parties intended to cease their respective contractual

obligations when the Player Contract ended. This is also proven by the second sentence of Clause 2 of the Player Contract, pursuant to which “[a]t the conclusion of the term, Club must immediately consent to the issuing of Player’s Letter of Clearance.”

53. That this was also the Player’s understanding at the time is evidenced by the fact that he left the Club and joined a new club.
54. Even if the Player’s interpretation was correct, *ad arguendo*, the Player would still not be entitled to any salaries for the months of May and June 2023, because he failed to disclose the remuneration he earned with the Puerto Rican club “*Grisés De Humacao BC*”. According to constant BAT jurisprudence, any alternative income earned by the Player during the remaining term of the Player Contract must be deducted from the compensation because of the early “ending” of the Player Contract. Despite the Arbitrator’s express request to do so, the Player did not disclose the amount of the remuneration he received from his new club for the months of May and June 2023. The Arbitrator would be fully entitled to draw adverse inference from the Player’s non-compliance with her procedural instructions. The Player did not explain why he did not disclose his new salary. Therefore, it would be legitimate to assume that the Player received as least as much salary at his new club as he received from the Respondent. As a result, even if the Player Contract was interpreted in favour of the Player, the Player would not be entitled to receive any additional salary for May and June 2023.
55. In conclusion, considering the automatic termination of the Player Contract three days after the last season game and the Player’s engagement with a different Club since May 2023, the Arbitrator finds that the Player’s claim for salaries pertaining to May and June 2023 shall be dismissed.

7.2 Bonus

56. As regards the bonus payment, the relevant part of the Player Contract is the following:

“8. BONUSES

[...]

Games played

- In case the player participates in, at least, 30 official games of the club for the season 2022-2023, he will receive the amount of USD 10.000 net of Greek taxes to be paid on August 30th 2023”

57. While the Club’s assertion that the payment of the Player’s bonus was not yet due when the Request for Arbitration was received (on 18 July 2023) is factually accurate, its relevance to the Player’s bonus claim is insignificant. The Player Contract explicitly provides that the bonus for participation in 30 official matches is to be paid on 30 August 2023, meaning that the payment of the bonus fell due during this BAT arbitration. The Club also failed to pay the bonus on its due date, despite the pendency of the present BAT arbitration, and despite the fact that it has principally acknowledged the legitimacy of this claim against it.
58. The Arbitrator therefore finds that the Club shall pay a bonus of USD 10,000.00 net of Greek taxes to the Player.

7.3 Interest

59. Pursuant to their prayers for relief, the Claimants request default interest for the time before the filing of the Request for Arbitration (without, however, providing the basis for such calculation) as follows:
- USD 469.00 for the unpaid salaries (allocated as follows to the respective salary instalments: USD 212.00 (March 2023 instalment), plus USD 150.00 (April 2023 instalment), plus USD 85.00 (May 2023 instalment), plus USD 22.00 (June 2023 instalment));
 - USD 122.00 for the unpaid agent fee.

60. For the time after the filing of the Request for Arbitration, they request default interest of 5% p.a. on all claims, including the bonus.
61. 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 Claimants, and in line with BAT's jurisprudence, the interest rate shall be 5% per annum.
62. With respect to the starting date, the Arbitrator notes that interest principally begins running as of the day after the principal debt falls due. Because the Player is only entitled to receive salary for the months of March and April 2023 (USD 15,000.00 each), interest shall be payable as of 1 April 2023 (March salary) and 1 May 2023 (April salary). For the agent fee, interest shall be running from 16 March 2023. Regarding the bonus, because the bonus became due only on 30 August 2023, interest on the bonus claim shall run as of 31 August 2023.
63. Hence, the Player is entitled to receive interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof until payment in full
- from 1 April 2023 on the amount of USD 15,000.00;
 - from 1 May 2023 on the amount of USD 15,000.00;
 - from 16 March 2023 on the amount of USD 7,500.00; and
 - from 31 August 2023 on the amount of USD 10,000.00.

7.4 Summary

64. The Player is entitled to receive USD 30,000.00 (net of Greek taxes) in outstanding salary for the months of March and April 2023, together with interest of 5% per annum

on any outstanding balance (as may be the case from time to time) thereof until payment in full

- from 1 April 2023 on the amount of USD 15,000.00; and
- from 1 May 2023 on the amount of USD 15,000.00.

65. The Player is entitled to receive USD 10,000.00 (net of Greek taxes) in outstanding bonus payments, together with interest of 5% per annum from 31 August 2023 on any outstanding balance (as may be the case from time to time) thereof until payment in full.

66. The Agent is entitled to receive USD 7,500.00 (plus VAT) in outstanding agent fees, together with interest of 5% per annum from 16 March 2023.

8. Costs

67. 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). [...]”

68. On 19 April 2024, the BAT President determined the arbitration costs in the present matter to be EUR 7,000.00.

69. 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.”

70. The Claimants have lost 50% of the Player's salary claim (amounting to USD 30,000.00), and won on the other 50% of the salary claim and fully on the bonus and agent fee claim. In total, the Claimants' success amounts to USD 47,500.00. In light of these numbers, it is consistent with the provisions of the BAT Rules that 60% of the costs of the arbitration, as well as 60% of the Claimants' reasonable fees and expenses, be borne by the Respondent. Claimants have to bear 40% of the arbitration costs and 40% of the Respondent's reasonable legal fees and expenses (if any).
71. The Claimants have paid the entire amount of the Advance on Costs. 60% of EUR 7,000.00 are EUR 4,200.00. Accordingly, the Respondent has to reimburse the Claimants for the arbitration costs advanced by the latter in the amount of EUR 4,200.00.
72. Regarding 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."*
73. 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 (excluding the non-reimbursable handling fee). In case of multiple Claimants, the maximum contribution is determined separately for each party on the basis of the relief sought by this party.
74. The Claimants jointly request reimbursement of legal fees and expenses in the total amount of approx. EUR 6,909.00 (USD 7,500.00)⁵. Hence, the Claimants did not

⁵ Exchange rate as of 5 December 2023 (USD 1.00 = EUR 0.92131) (date of filing the Claimants' cost account).

differentiate between Player and Agent as suggested by the BAT Rules. The named amount is almost the maximum amount available for one party according to Article 17.4 of the BAT Rules. In light of the circumstances of this relatively straight-forward case, the Arbitrator finds that the amount of the claimed legal fees is excessive. The case involved only one round of (short) written submissions. Moreover, the Claimants have not submitted any further pleadings despite being requested to do so. Deciding *ex aequo et bono*, the Arbitrator finds that an appropriate contribution towards the Claimants' legal fees and expenses is USD 4,000.00 (excluding the non-reimbursable handling fee).

75. Applying on this amount the determined cost allocation quota, the Arbitrator finds that the appropriate contribution towards Claimants' legal fees and expenses is 60% of USD 4,000.00, *i.e.* USD 2,400.00, plus 60% of the handling fee (EUR 4,000.00), which corresponds to EUR 2,400.00.
76. Because the Respondent was not represented by external counsel, and did not submit any cost account, the Respondent shall not receive any contribution towards legal fees and expenses.

9. Award

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

- 1. AEK B.C. is ordered to pay Mr. Akil Mitchell an amount of USD 30,000.00 net of Greek taxes in outstanding salaries, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof until payment in full**
 - from 1 April 2023 on the amount of USD 15,000.00, and
 - from 1 May 2023 on the amount of USD 15,000.00.
- 2. AEK B.C. is ordered to pay Mr. Akil Mitchell an amount of USD 10,000.00 net of Greek taxes in outstanding bonus payments, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 31 August 2023 until payment in full.**
- 3. AEK B.C. is ordered to pay Mr. Daryl T. Graham an amount of USD 7,500.00 (plus VAT) in outstanding agent fees, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 16 March 2023 until payment in full.**
- 4. AEK B.C. is ordered to pay jointly to Mr. Akil Mitchell and Mr. Daryl T. Graham EUR 4,200.00 as reimbursement for their arbitration costs.**
- 5. AEK B.C. is ordered to pay jointly to Mr. Akil Mitchell and Mr. Daryl T. Graham USD 2,400.00 and EUR 2,400.00 as a contribution towards their legal fees and expenses.**
- 6. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 19 April 2024

Annett Rombach
(Arbitrator)