BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1377/19)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Mr. Axel Toupane

- First Claimant -

Athlete Management Group
c/o Mr. Michael Silverman, 1014 Larrabee St. #301,
West Hollywood, CA, 90069, USA

- Second Claimant -

both represented by Mr. Alexander Engelhard, attorney at law,
Hamburger Allee 4, 60486 Frankfurt am Main, Germany

vs.

Olympiacos S.F.P. B.S.A.
Ethnarchou Makariou 1 Ave., 187 47 N. Faliro, Piraeus, Greece

- Respondent -

represented by Mr. Lampros Adamos, attorney at law,
15 Voukourestiou Str., 10671, Athens, Greece

1. The Parties

1.1 The Claimant

1. Mr. Axel Toupane (hereinafter the “First Claimant") is a professional basketball player from France.

2. Athlete Management Group (hereinafter the “Second Claimant”) is a licenced players’ agent.

1.2 The Respondent

3. Olympiacos S.F.P. B.S.A. (hereinafter the "Respondent") is a professional basketball club in Greece.

2. The Arbitrator

4. On 25 April 2019, the then Vice-President of the Basketball Arbitral Tribunal (hereinafter the "BAT"), Prof. Dr. Ulrich Haas, appointed Mr. Raj Parker as arbitrator (hereinafter the “Arbitrator”) pursuant to Articles 0.4 and 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules").

5. None of the parties has raised any objection to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

3.1.1 The Player Contract

6. On 15 July 2018, the First Claimant and the Respondent entered a contract relating to the 2018/19 and 2019/20 playing seasons that was headed "CONTRACT FOR THE PROVISION OF ATHLETIC SERVICES" ("the Player Contract").

7. Article 1 of the Player Contract was headed "*TERM*". It contained, amongst other things, the following express terms in Articles 1.1 and 1.2:

> *"**1.1** This present agreement is valid for two (2) seasons.*
>
> ***1.2** Subject to the terms of this agreement, the CLUB hereby confirms and the PLAYER agrees to the employment of the Player by the Club as a skilled basketball player for the 2018/2019 & 2019/2010 seasons. The duration of this agreement is set from the present date until 30th June 2020 or one (1) day after the last official game and/or obligation of the Club for the 2019-2020 season, whichever comes later.*
>
> […]
>
> ***1.4** Such employment of the PLAYER by the CLUB will include the PLAYER's attendance and participation in exhibition games, regular season games, practices, post-season playoffs, All-Star game, European Competition games and Tournament games scheduled or entered into by the Club during the term.*
> *It is the Club's sole discretion in which competition the Player will be used that is for the Greek Championship and/or the Euroleague."*

8. Article 2 of the Player Contract was headed "*SALARY COMPENSATION*". It included the following express term in Article 2.1.A:

> *"Provided that the Player successfully passes the physical, medical and doping examination performed by doctor(s) of the Club's choice and that the Player fulfils the terms of this present*[sic]*, the CLUB agrees to pay the PLAYER the following:*
>
> *As compensation for the 2018-2019 season, it is agreed that the Player shall be paid the amount of Euros 400.000,00 (four hundred thousand) net to the Player's account, payable in ten (10) equal monthly installments of Euros 40.000,00 (forty thousand) each, payable on the last working day of each month commencing with September 2018 and concluding June 2019 (inclusive).*
>
> *As compensation for the 2019-2010 season, it is agreed that the Player shall be paid the amount of Euros 475.000,00 (four hundred seventy five thousand) net to the Player's account, payable in ten (10) equal monthly installments of Euros 47.500,00 (forty seven thousand five hundred) each, payable on the last working day of each month commencing with September 2019 and concluding June 2020 (inclusive)."*

9. Article 9 of the Player Contract was headed "*TRANSLATION and DISPUTE RESOLUTION*". It contained the following express terms:

> *"**9.1** This agreement will be incorporated in the final contract, signed in the Greek League (HEBA) form in both English and Greek. In case of any controversy the English version of the Greek League (HEBA) Contract will prevail.*
>
> ***9.2** Furthermore, the rules and regulations of the Greek Basketball Association, FIBA and or* [sic] *EUROLEAGUE will prevail, with any inconsistent terms, rule or regulations being resolved in favor of the FIBA General Statutes and Internal Regulations.*
>
> ***9.3** This Agreement shall be governed by the laws of Greece and shall be interpreted and enforced in accordance with the Laws of Greece, the provisions of HEBA and the provisions of FIBA.*
>
> *The parties agree as competent authorities for the resolution of any dispute that might arise between the Club and the Player from the interpretation or application of this present agreement, including financial disputes, the following authorities:*

a) *The sports, judicial and arbitrative instruments of the Greek Basketball Association and HEBA according to the Greek legislation and Greek regulations ("EOK / ESAKE").*
b) *The Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland 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. In such case, Awards of the BAT can be appealed to the Court of Arbitration of Sports (CAS), Lausanne, Switzerland.*
The said authorities will be equally and alternatively competent for the resolution of any dispute that might arise between the parties, whereas it will be at the absolute discretion of the claimant which of the two jurisdictions will be seized. A specific dispute can only be submitted to one of the said authorities.
Any other jurisdiction, including US Courts is expressly excluded."

10. Article 10 of the Player Contract was headed "*BREACH*". It contained the following express terms:

> *"**10.1** The CLUB agrees that the PLAYER may avoid this agreement in the event that:*
>
> ***10.1.1** Any payment mentioned by this contract is past due more than thirty (30) days.*
>
> ***10.1.2** Any non-economical clause is not performed by the CLUB for thirty (30) days or longer.*
>
> ***10.2** In order to exercise his rights under this present clause if a case mentioned in 10.1.1 and/or 10.1.2 occurs, PLAYER is obliged to make a request in writing to the CLUB requesting the CLUB to comply with its obligations within a time-limit of fifteen (15) days. If the CLUB does not comply with such request within the said time-limit, PLAYER will be entitled to request: a) his unconditional release and free agency and CLUB shall take all necessary steps to issue a Letter of Clearance immediately, and b) Payment of all monies due during the entire term of his agreement, which shall become immediately due and payable. PLAYER is under no obligation to mitigate his damages and CLUB*

shall receive no offset."

11. Article 13 was headed "*ENTIRE AGREEMENT*". It contained the following express term:

> *"This Contract, including any exhibits hereto, contains the entire agreement between the Parties and supersedes all prior communications, whether oral or written, by either party. Any change has to be made in writing, dated and duly signed by both Parties."*

3.1.2 The Athletics Services Contract and the Addendum

12. In addition to signing the Player Contract, the First Claimant and the Respondent signed a pro forma "*Athletic Services Contract*" dated 1 September 2018 ("the Athletics Services Contract") and an Addendum that was headed "ADDENDUM TO THE CONTRACT FOR THE PROVISION OF ATHLETIC SERVICES" ("the Addendum").

13. Article 5 of the Athletics Services Contract contained, amongst others, the following express terms:

> "*5.1 During the term hereof, the Company shall pay to the Basketball Player the following amounts of money:*
>
> ***A. Regular monthly salary:***
>
> *The regular monthly salary of the Basketball Player is agreed to be the sum of See addendum from See addendum, to See addendum* [sic] *and shall be paid to him by the Company at the end of each month, during the whole term hereof. Furthermore, the Basketball Player will also receive Christmas, Easter and holiday bonus according to the provisions of the applicable legislation.*
>
> ***To be filled out in case benefits have been agreed otherwise delete.***
>
> […]*"*

14. Article 6.4 of the Athletics Services Contract provided:

> *"Exclusively and only for the financial disputes that may arise out of the terms hereof between the Company and the Basketball Player, the following bodies shall be exclusively competent for their resolution:*
>
> *a) The Courts of the City of See addendum* sic] *or*
>
> *b) the relevant committees for the resolution of financial disputes.*
>
> ***Section a or b must be selected in accordance with the agreement of the contracting parties. The relative deletion must be done. In case that section a is selected, the relative completion must be done."***

15. Article 2 of the Addendum headed "*SALARY COMPENSATION*". It stated that the First Claimant's salary for the 2018/19 season was EUR 494,971.12, payable in ten almost identical monthly instalments beginning on 30 September 2018 and ending on 30 June 2019, and that the First Claimant's salary for 2019/20 was EUR 587,925.03, payable in ten almost identical monthly instalments between 30 September 2019 and 30 June 2020. It provided as follows:

> *"**2.1** Provided that the Player fulfils the terms of this present* [sic]*, the CLUB agrees to pay the PLAYER the following:*
>
> ***A. For the 2018-2019 Season:***
> *i) It is agreed that the regular monthly salary of the Basketball Player is fixed to the gross sum of 860,29 Euros (€ eight hundred sixty and twenty nine cent). The Basketball Player shall also receive Christmas Bonus and Easter Bonus and allowances for leave according to the current Greek legislation.*
> *ii) As a signing bonus for the 2018-2019 season, it is agreed that the Player shall be paid the gross amount of **494,971.12 €** payable as follows:*
>
> *€ 49,481.40 30-Sep18*
> *€ 49,481.40 31-Oct-18*
> *€ 49,481.40 30-Nov-18*

€	*49,481.40*	*31-Dec-18*
€	*49,507.58*	*31-Jan-19*
€	*49,507.58*	*28-Feb-19*
€	*49,507.58*	*31-Mar-19*
€	*49,507.58*	*30-Apr-19*
€	*49,507.58*	*31-May-19*
€	*49,507.58*	*30-Jun-19*

B. For the 2019-2020 Season*:*
i) It is agreed that the regular monthly salary of the Basketball Player is fixed to the gross sum of 860,29 Euros (€ eight hundred sixty and twenty nine cent). The Basketball Player shall also receive Christmas Bonus and Easter Bonus and allowances for leave according to the current Greek legislation.
ii) As a signing bonus for the 2019-2020 season, it is agreed that the Player shall be paid the gross amount of ***587,925.03*** *payable as follows:*

€	*58,659.41*	*30-Sep-19*
€	*58,659.41*	*31-Oct-19*
€	*58,659.41*	*30-Nov-19*
€	*58,659.41*	*31-Dec-19*
€	*58,881.23*	*31-Jan-20*
€	*58,881.23*	*28-Feb-20*
€	*58,881.23*	*31-Mar-20*
€	*58,881.23*	*30-Apr-20*
€	*58,881.23*	*31-May-20*
€	*58,881.23*	*30-Jun-20*

2.2 *The Club shall be liable towards the Player for timely payments of any such amounts to the tax and social security authorities, and for filing with them any required documents. The Player shall bear the responsibility of complying with his own tax and social security obligations and of filing any personal income tax return in accordance with the applicable laws."*

16. Article 10 of the Addendum (headed "*BREACH*") was identical to Article 10 of the Player Contract. Article 9 of the Addendum (headed "*GOVERNING LAW – JURISDICTION*") was very similar (albeit not identical) to Article 9 of the Player Contract. Article 9 of the Addendum provided as follows:

> *"This Agreement shall be governed by the laws of Greece and shall be interpreted and enforced in accordance with the Laws of Greece, the provisions of HEBA and the provisions of FIBA. The parties agree as competent authorities for the resolution of any dispute that might arise between the CLUB and the Player from the interpretation or application of this present agreement, including financial disputes, termination or suspension of the terms of this present*[sic]*, the following authorities:*
> *a) The sports, judicial and arbitrative instruments of the Greek Basketball Association and HEBA according to Greek legislation and Greek regulations ("EOK / ESAKE").*
> *b) The Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland 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. In such case, Awards of the BAT can be appealed to the Court of Arbitration of Sports (CAS), Lausanne, Switzerland.*
> *The said authorities will be equally and alternatively competent for the resolution of any dispute that might arise between the parties, whereas it will be at the absolute discretion of the claimant which of the two jurisdictions will be seized. A specific dispute can only be submitted to one of the said authorities.*
> *Any other jurisdiction, including US Courts is expressly excluded."*

3.1.3 The Agent Contract

17. Also on 15 July 2018, the Second Claimant and the Respondent entered an agent agreement (the "Agent Contract").

18. The Agent Contract contained the following express terms:

> *"**1.** The Agent mediated in the conclusion of the Contract between the Club and the professional basketball player **AXEL TOUPANE**, France national, with Passport No* […] *(hereafter called the **'Player'**) with the Club on 15/7/2019 (hereafter called the **"Contract"**).*
>
> ***2.** For its services in negotiations as well as agent fees for and all and any other services in relation to the Player or performance of the*

Contract during the whole term thereof, the Club agrees to pay to the Agent the following amounts net of taxes, according to invoices issued by the Agent, as described below:

(i) Euros 20.000,00 (twenty thousand) no later than October 30th, 2018;
(ii) Euros 20.000,00 (twenty thousand) no later than February 28th, 2019;
(iii) Euros 23.750,00 (twenty three thousand seven hundred fifty) no later than October 30th, 2019;
(iv) Euros 23.750,00 (twenty three thousand seven hundred fifty) no later than February 28th, 2019;

[…]

3. *Such payments shall be due to the Agent upon the following conditions: a) that the Player successfully passes the medical exams to which the Club will submit the Player upon his arrival in Greece, as per Contract terms, b) that the Contract comes into full force and effect and that the Contract is still in effect when payments are due.*

[…]

7. *The parties agree as competent authorities for the resolution of any dispute that might arise between them from the interpretation or application of this present agreement, including financial disputes, the following authorities:*
a) The Courts of Piraeus according to Greek laws and Greek regulations.
b) The Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland 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. In such case, Awards of the BAT can be appealed to the Court of Arbitration of Sports (CAS), Lausanne, Switzerland.

The said authorities will be equally and alternatively competent for the resolution of any dispute that might arise between the parties, whereas it will be at the absolute discretion of the claimant which of the two

jurisdictions will be seized. A specific dispute can be submitted to one of the said authorities.

Any other jurisdiction, including US Courts is expressly excluded."

3.1.4 Correspondence between the Claimants and Respondent regarding unpaid remuneration

19. Following the conclusion of the above agreements, the First Claimant began playing for the Respondent. The Respondent made several payments of the First Claimant's salary to the First Claimant.

20. On 12 March 2019, however, the Claimants' representative, Mr. Michael Silverman, sent a letter to the Respondent which stated:

"Christos,

This letter shall serve as the official 15-day notice of breach of contract.

Olympiacos (The Club) is currently in breach of contract with regards to multiple salary payments due to Axel Toupane (The Player) and agent fee payments due to Michael Silverman (The Agent). The following amounts are more than 30 days late and due immediately:

***40,000 Euros** due on December 31, 2018;*

***40,000 Euros** due on January 31 2019;*

***40,000 Euros** agent fee (20,000) on October 30, 2018 and (20,000) on February 28, 2019;*

Additionally, the following amount will be in breach after March 28, 2019:

***40,000 Euros** due on February 28, 2019.*

According to the contract, "if the CLUB does not comply with such request within the said time-limit, PLAYER will be entitle to request: a) his unconditional release and free agency and CLUB shall take all necessary steps to issue a Letter of Clearance immediately, and b) Payment of all monies due during the entire term of his agreement, which shall become immediately due and payable."

Let us know how you plan to move forward."

21. On 21 March 2019, the Respondent made a payment of EUR 40,000.00 to the First Claimant.

22. On 26 March 2019, the Respondent's General Manager, Mr. Christos Th. Stavropoulos, replied to that email stating:

"Dear Mike,

Following your last e-mail, we hereby inform you that, during last week, we have paid one instalment into Axel's account in France.

However, kindly note that due to capital control measures in force and until "new money" (i.e. funds coming out of Greece) to be deposited into the Club's Greek account, we are not able to proceed to any further payments abroad. Therefore in case Axel wishes to be paid in Greece, please do inform us, so as to proceed accordingly.

Thank you for your understanding."

23. On 1 April 2019, Mr. Silverman sent a further letter to the Respondent, which stated:

"Christos,

In response to your most recent e-mail, this letter shall serve as the official update to my initial letter filed March 12, 2019.

Axel Toupane (The Player) received a payment of 40,000 Euros from Olympiacos (The Club) on March 21, 2019.

The Club remains in breach of contract with regards to multiple salary payments due to The Player and multiple agent fee payments due to Michael Silverman (The Agent).

The following amounts are more than 30 days late and beyond the 15-day notice of breach of contract, which expired on March 28, 2019:

***40,000 Euros** due on January 31, 2019;*

***40,000 Euros** agent fee due (20,000 Euros) on October 30, 2018 and (20,000 Euros) on February 2018, 2019;*

Additionally, this letter shall serve as the official 15-day notice of breach of contract regarding the following amount, which is now more than 30 days late;

***40,000 Euros** due on February 28 2019;*

According to the contract, "if the CLUB does not comply with such request within the said time-limit, PLAYER will be entitle to request: a) his unconditional release and free agency and CLUB shall take all necessary steps to issue a Letter of Clearance immediately, and b) Payment of all monies due during the entire term of his agreement, which shall become immediately due and payable."

Let us know how you plan to move forward."

24. On 2 April 2019, Mr. Stavropoulos sent an email replying to the letter dated 1 April 2019. The reply stated:

"[…] *Following my email dated March 26th, 2019, I hereby repeat that due to capital control measures in force and until "new money" (i.e. funds coming out of Greece) to be deposited into the Club's Greek bank account, we are not able to proceed to any further payments abroad.*

Therefore, please do confirm whether Axel wishes to be paid in Greece, so as to proceed accordingly."

25. On 11 April 2019, Mr. Silverman sent an email to Mr. Stavropoulos which stated:

> *"Christos,*
>
> *Your explanations are insufficient and provide no explanation of the alleged capital control measures or when the "new money" is expected to arrive. Furthermore, if Axel cannot freely transfer money from payments to his Greek account, then I would argue that he is not paid at all. Until the payments from my most recent letter are made in full to Axel's bank account of choice (for salary payments) and my bank account of choice (for agent fee payments), he remains entitled to request his unconditional release into free agency and immediate payment of all monies due during the entire term of his agreement.*
>
> *Let me know how you plan to proceed."*

26. On 13 April 2019, Mr. Silverman sent a letter dated 12 April 2019 to the Respondent which stated:

> *"Christos,*
>
> *This letter shall serve as the official notice of **termination** of the contract signed on July 15, 2018 between Olympiacos (The Club) and Axel Toupane (The Player) effective immediately.*
>
> *The Club is currently in breach of contracts with regard to multiple salary payments due to the Player and agent fee payments due to Michael Silverman (The Agent). The following amounts are more than 30 days late and beyond the 15-day notice of breach of contract, which expired on March 28, 2019:*
>
> ***40,000 Euros** due to the Player on January 31, 2019; notified on March 12, 2019*
>
> ***40,000 Euros** agent fee due to the Agent (20,000 Euros due on October 30, 2018 and 20,000 Euros due on February 28, 2019); notified on March 12, 2019*
>
> *The following amount will be beyond the 15-day notice of breach of*

contract after April 16, 2019:

***40,000 Euros** due on February 28, 2019; notified on April 1, 2019*

According to the contract, "if the CLUB does not comply with such request within the said time-limit, PLAYER will be entitle to request: a) his unconditional release and free agency and CLUB shall take all necessary steps to issue a Letter of Clearance immediately, and b) Payment of all monies due during the entire term of his agreement, which shall become immediately due and payable."

***240,000 Euros** for the remainder of the 2018-2019 season and **475,000 Euros** for the 2019-2020 season are now immediately due and payable to the Player.*

***40,000 Euros** agent fee for the 2018-2019 season and **47,500 Euros** agent fee for the 2019-2020 season are now immediately due and payable to the Agent.*

The Player is unconditionally a free agent and is no longer required to participate in any activities related to the Club effective immediately."

27. On 13 April 2019, the Respondent's General Manager, Mr. Stavropoulos, sent a letter to Mr. Silverman in response to his letter dated 12 April 2019. Mr. Stavropoulos´ letter stated:

"[…] *Further to your letter dated April 12th, 2019 and in relation to the alleged termination of the contract signed between Olympiacos S.F.P. B.S.A. (the "Club") and Mr. Axel Toupane (the "Player"), note the following:*

***(a)** As you know, by virtue of the consecutive e-mails dated March 26th, 2019 and April 2nd, 2019, which have been sent to you by the Club's General Manager Mr. Christos Stavropoulos, we made known to the Player our explicit intention to immediately pay any overdue salaries into his Greek bank account and therefore, asked for the Player to inform us in writing whether he agrees that we proceed accordingly.*

***(b)** To this extent, and by virtue of your e-mail dated April 10th, 2019,*

you explicitly denied, in your capacity as the Player's agent, both payments, asking for the Player to be paid outside Greece.

(c) *Finally, on 12.04.2019, a meeting has also been held between the principals, the Vice-President, the General Manager, the coach David Blatt and the Club's players, where the latter, including, Mr. Axel Toupane, agreed with the proposed payment scheme in relation to the overdue salaries.*

Following the above and taking into consideration that (a) there is no contract term that obliges Olympiacos S.F.P. B.S.A. to pay into Mr. Axel Toupane's salaries outside Greece, (b) the Player has unconventionally denied to be paid into his Greek bank account and (c) the Player has accepted the owner's proposed payment scheme in relation to the overdue salaries, ***we consider the Notice of Termination dated April 12th, 2019 as null and void****.*

Reserving our right to take all possible measures to protect our lawful interests and remedy any damage that may be caused to the Club by the Player's abusive and unconventional behaviour."

28. The letter was accompanied by a covering email, which stated that the Respondent expected the First Claimant to be present for the game that day against PAOK.

29. Later that day, Mr. Stavropoulos sent a letter to the First Claimant with the subject "*RE: Invitation for hearing*". The letter stated:

"Mr. Toupane,

Your unjustified absence from today's game of the Club against P.A.O.K. B.C. for the Regular Season of the Greek Basket League 2018 – 2019 constitutes infringement of art. 6.3.2. of the Internal Regulations; and of the relevant terms of the Contract for the Provision of Athletic Services signed between the Club and yourself, as in force.

Therefore, you are hereby invited to submit by e-mail your written explanations for the said incident to the General Manager of the Club Mr. Christos Stavropoulos […] *by April 13th, 2019 at 10.00 p.m."*

3.1.5 Respondent's commencement of proceedings against the First Claimant before the Committee of the Hellenic Basketball Association

30. On 15 April 2019, the Respondent sent a letter to the First Claimant which stated:

> *"**RE: Complaint before the First Instance Financial Dispute Resolution Committee of Hellenic Basketball Association (H.E.B.A.) – Notice of Termination.***
>
> *Mr. Toupane,*
>
> *Further to your unjustified absent*[sic] *from Saturday's game against P.A.O.K. B.C. for the Regular Season of the Greek Basketball League 2018 – 2019 and given that you omitted to reply to the Invitation for hearing dated April 13th, 2019, we hereby inform you that the Club has decided to impose a fine equal to 50% of your total (net) monthly wages, i.e. Euros twenty thousand (€ 20.000,00) and to proceed to the termination of the Athletic Services Contract bearing HE.B.A. bearing*[sic] *protocol number 27/01.09.2018, as well as of any addendums or amendments signed between the Club and yourself, which were submitted along with the Contract or at a later stage.*
>
> *To this extent and pursuant to art. 12 of M.D. 144/2001, art. 95 of L. 2725/1999, term no. 6 of the Contract and term no. 9 of the Addendum to the Contract, the Club has filed, today, before the First Instance Dispute Resolution Committee of Hellenic Basketball Association (HE.B.A.) the Complaint – Notice of Termination dated April 15th, 2019, as attached hereto, which is, henceforward, the only competent arbitral authority to resolve the present dispute (see term no. 9 of the Addendum to the Contract providing that "A specific dispute can only be submitted to one of the said authorities"). A copy of the attached Complaint – Notice of Termination dated April 15th, 2019, will also be served to you by a competent bailiff.*
>
> *Reserving the right to take all possible legal measures so as to remedy any damage provoked to the public image and reputation of the Club due to your defamatory behaviour*."

31. The letter enclosed an "*OFFICIAL TRANSLATION*" of a "*REQUEST – NOTICE OF TERMINATION*" filed before the HEBA First Instance Financial Dispute Resolution

Committee for Professional Basketball Players (hereinafter the "HEBA Committee"). This stated:

> *"**1.** The Club and the professional basketball player AXEL JOSEPH JEAN-JACQUES TOUPANE (hereinafter called the "**Player**") signed the Athletic Services Contract based on a template provided by the Hellenic Basketball Association (HEBA) bearing protocol number 27/06.09.2018, with the terms and mutual obligations therein contained, including the terms and obligations contained in any addendums or amendments, which were submitted along with the Contract or at a later stage (hereinafter collectively called the "**Contract**").*
>
> ***2.** The duration of the Contract was agreed for two years until 30.06.2010, whereas the Club, in accordance with term no. 8.1 of the Addendum, reserved the right to unilaterally terminate the Contract, by providing the Player or his Agent with written notice of such intent after the conclusion of season 2018 – 2019 and by no later than 10.07.2019, by playing the Player the amount of Euros twenty five thousand (€ 25.000,00).*
>
> ***3.** By virtue of the explicit terms of the Contract, the Player was obliged to provide his athletic services to the Club as a professional basketball player in accordance with the relevant athletic and employment legislation (term no. 4 of the Contract) and with the specific terms of the Contract, and abide by the Internal Regulations of the Club, which are an integral part of the Contract (term no. 4.c. of the Addendum).*
>
> ***4.** More specifically, the Club hired the Player as a skilled player, who agreed to provide his athletic services to the Club as professional athlete in full readiness, to lead the proper athletic style of life, to attend regularly all game and training sessions, all medical and physical examinations, all theoretical meetings and in general, all events organized by the Club (term no. 3.1 of the Contract).*
>
> ***5.** Finally, in this respect, it was also explicitly agreed that (a) any unjustified delay of the Player before any game (home or away, friendly or official), or other Club's mission regardless of the length of the delay, is subject to a fine up to 40% of his total monthly wages (term no. 6.3.1. of the Internal Regulations, (b) any unjustified absence of the Player from a training session is subject to a fine up to 50% of his total monthly*

wages (term no. 6.2.2. of the Internal Regulations) and (c) any unjustified absence of the Player from a Club's mission or from any game or part of it or the departure from the court during a game or in the half time is subject to suspension or termination of the Contract (term no. 6.3.2. of the Internal Regulations).

***Whereas**, on 13.04.2019, a basketball game was held at Peace and Friendship Stadium (S.E.F.) between the Club and P.A.O.K. B.C. for the 24th round of the Greek Basket League.*

***Whereas** the Player, without any reason, violated the agreed terms of the Contract and the Internal Regulations of Club, since he was absent from the above official game of the Club, omitting also to respond to the invitation for hearing dated 13.04.2019, which was sent to him, on the same date, via e-mail.*

***Whereas**, following the above, the Club, on 13.04.2019, and in exercising its rights that arise from* [sic] *the Contract and the Internal Regulations, decided to impose a fine equal to 50% of the total (net) monthly wages of the Player, i.e. Euros twenty thousand (€ 20.000,00) and to terminate the Contract, reserving, in any case, its right to take all possible legal measures against the Player so as remedy*[sic] *any damage provoked to the public image and reputation of the Club due to his above mentioned unconventional behaviour.*

***Whereas** the Committee is competent to resolve the present dispute pursuant to art. 12 of M.D. 144/2001, in combination with art. 95 of L. 2725/1999, term no. 6 of the Contract and term no. 9 of the Addendum, according to which the sports, judicial and arbitrative instruments of H.E.B.A. are competent for the termination of the Contract.*

***Whereas**, in according* [sic] *to term no. 9 of the Addendum, it is provided that any dispute that may arise between the contracting parties can only be submitted to one arbitral authority.*

***Whereas** this present is lawful, grounded and true.*

FOR THESE REASONS

and for any other that we may add until the hearing

WE TERMINATE

The Athletic Services Contract bearing HE.B.A. protocol number 27/06.09.2018, as well as any addendums or amendments, which were submitted along with the Contract or at a later stage, and

WE REQUEST FOR THE COMMITTEE

To ratify the termination of the Athletic Services Contract bearing the HE.B.A. protocol number 27/06.09.2018, which were signed between the Club and the Player, due to the unconventional behaviour of the Player.

To ratify the decision of the Club dated 15.04.2019, according to which the latter imposed to the Player a fine equal to 50 % of his total (net) monthly wages, i.e. Euros twenty thousand (€ 20.000,00).

A competent judicial clerk is ordered to serve this document to ***AXEL JOSEPH JEAN-JACQUES TOUPANE*** *son of* ***JEAN AIME****, professional basketball player resident of* […] *for his information and for the above legal set-off consequences to occur.*

Athens, 15.04.2019*"*

32. On 15 April 2019, the bailiff of the Athens Court of Appeal, Nikolaus Dim. Chronis, signed a declaration. According to an "*Official Translation*" provided by the Respondent, the declaration stated that:

"In Vouliagmeni, today, April fifteenth (15th) of the year two thousand nineteen (2019), Monday at 18:15, I […] ***came here to serve towards AXEL JOSEPH JEAN – JACQUES TOUPANE son of JEAN AIME, professional basketball player, resident of*** **[…],** ***the COMPLAINT – NOTICE OF TERMINATION dated 15.04.2019*** *against him,* ***BEFORE THE FIRST INSTANCE DISPUTE RESOLUTION COMMITTEE FOR PROFESSIONAL BASKETBALL PLAYERS (A' EEDOK – HEBA) bearing protocol number 417/15.04.2019****, as per copied in the next pages of my present report, which serves as a piece of information thereof and also of the legal consequences.*

Since I did not find him at his residence in […]*, and since it was not*

> *possible for me to enter the building, I affixed the above document to the door of its main entrance, in the presence of the witness Katerina Kitrou, resident of Nikaias."*

33. On 23 April 2019, the President of the HEBA Committee sent a letter to the Claimant. According to an "*Official translation*" provided by the Respondent, the letter stated:

> *"You are summoned to be present on Tuesday 7-5-2019 and hours 17:30 at the hearing of A' EEODAK, where it would be held:*
>
> *The Complaint - Notice of Termination of the Contract for the Provision of Athletic Services of the société anonyme OLYMPIACOS S.F.P. B.S.A. against the Player AXEL JOSEPH JEAN JACQUES TOUPANE.*
>
> *The above hearing will take place at the premises of HEBA (HEBA, Olympic Center of Tennis (O.A.K.A.), Amarysias Atermidos & G. PITTARA – MAROUSI, 1st Floor)."*

3.2 The Proceedings before the BAT

34. On 15 April 2019, the Claimants filed a Request for Arbitration (hereinafter the "RFA") in accordance with the BAT Rules, which was received by the BAT on the same date. The non-reimbursable handling fee of EUR 7,000.00 was received by the BAT from the Claimants on 16 April 2019.

35. By letter dated 3 May 2019, the BAT Secretariat (a) notified the parties of the Arbitrator's appointment; (b) invited the Respondent to file its Answer in accordance with Article 11.2 of the BAT Rules by 24 May 2019; and (c) fixed the amount of the Advance on Costs to be paid by the parties as follows:

- Claimant 1: EUR 4,000.00;
- Claimant 2: EUR 2,000.00; and

- Respondent: EUR 6,000.00.

36. On 20 May 2019, the sum of EUR 6,000.00 was received by the BAT from Olympiakos Syndesmos Fliathlon towards the Respondent's share of the Advance on Costs.

37. On 23 May 2019, the Respondent requested an extension of the deadline for filing its Answer to 31 May 2019. The Arbitrator granted the extension the same day.

38. On 25 May 2019, EUR 4,500.00 was received from the Second Claimant towards the Claimants' share of the Advance on Costs.

39. On 30 May 2019, the Respondent requested a further extension of the deadline for filing its Answer until 14 June 2019. On 31 May 2019, the Arbitrator granted the extension sought.

40. On 13 June 2019, the Respondent filed its Answer. The exhibits to the Answer included, amongst other things, an affidavit dated 13 June 2019 from Mr. Stavropoulos. The affidavit stated, amongst other things, that at a meeting on 12 April 2019 attended by the First Claimant and the Respondent's Vice-President and coach, the representatives of the Respondent "*proposed*" that one of the overdue instalments would be paid within the next week and that the First Claimant "*did not disagree*" with that proposal.

41. On 26 June 2019, the Arbitrator issued a procedural order by letter (the "First Procedural Order") which requested the Claimants to file a short written submission responding to any disputed factual or legal statements contained in the Answer and, in particular, to answer the following questions, all by 15 July 2019:

> *"1. What is the Claimants' response to the Respondent's submission that, in view of Article 9 of the contract between the First Claimant and the Respondent, the only competent authority to adjudicate the dispute is the First Instance Final Dispute Resolution Committee of the Hellenic Basketball Association?*

2. What is the Claimants' response to the Respondent's request for a stay of the proceedings until the First Instance Financial Dispute Resolution Committee of the Hellenic Basketball Association renders its award?

3. What is the Claimants' response to the Respondent's contention that the First Claimant "abusively terminated the Contract"?

4. Do the Claimants agree with the account of the meeting dated 12 April 2019 contained in paragraph 6 of the affidavit of Mr. Christos Stavropoulos?

5. What is the Claimants' response to the Respondent's request for a hearing to be held in this matter?"

42. On 15 July 2019, the Claimants filed a response to the First Procedural Order.

43. On 31 July 2019, the Arbitrator issued a further procedural order by letter (the "Second Procedural Order") which requested the Respondent to file a written submission regarding any contested factual or legal statements contained in the Claimant's response to the First Procedural Order. The Respondent was requested, in particular, to address the following questions, all by 16 August 2019:

"1. Does the Respondent have any evidence to support its claim that it initiated proceedings before the Financial Dispute Resolution Committee of the Hellenic Basketball Association ("HEBA") before the Claimants filed their Request for Arbitration with the BAT at 11:50 on 15 April 2019?

2. Does the Respondent agree with the Claimants that even if the proceedings before HEBA were initiated before the Request for Arbitration was filed at the BAT, the BAT would still have jurisdiction by virtue of Article 186 of the Swiss Private International Law Act?"

44. On 16 August 2019, the Respondent filed its response to the Second Procedural Order. In that response the Respondent submitted (amongst other things) that the Arbitrator should render a preliminary award on the issue of jurisdiction. The Respondent also stated that it wished to notify the BAT that it had paid the total amount of EUR

100,000.00 to the First Claimant, which "*correspond*[ed] *to the monthly instalments owed to him until the termination of the* [Player] *Contract*".

45. On the same date, the Claimants notified the BAT that the Respondent had made two payments of EUR 60,000.00 and EUR 40,000.00 to the First Claimant's bank account on 15 July 2019 and 13 August 2019 respectively. The Claimants therefore requested to amend their prayers for relief to reflect the receipt of those payments.

46. On 6 September 2019, the Arbitrator issued a further procedural order by email (the "Third Procedural Order") which requested the Claimants to notify the Arbitrator by 18 September 2019 whether they agreed or disagreed with the Respondent's submission that the Arbitrator should render a preliminary award on the issue of jurisdiction.

47. On 18 September 2019, the Claimants filed a response to the Third Procedural Order. The response stated that the Claimants objected to the Respondent's request for a preliminary award on jurisdiction. In summary, the Claimants submitted that:

    (a) Bifurcating the proceedings and delivering separate awards on jurisdiction and the merits would result in higher costs being incurred without in any way streamlining the progress of the arbitration.

    (b) The request for bifurcation should be rejected because the Respondent's jurisdictional challenge is unfounded and unsubstantiated.

48. On 27 September 2019, the Arbitrator issued a further procedural order by email (the "Fourth Procedural Order") which invited the Respondent to file a short written submission by 9 October 2019 responding to any new arguments contained in the Claimant's response to the Third Procedural Order which the Respondent had not previously addressed.

49. On 9 October 2019, the Respondent filed its response to the Fourth Procedural Order. In summary, the Respondent stated that:

(a) The Respondent had been informed that on 21 August 2019, the First Claimant had entered into an agreement with the Spanish basketball club, Baloncesto Màlaga S.A.D., for the 2019/20 basketball season. The Claimants had failed to inform the Arbitrator regarding this development. Accordingly, the Arbitrator should (i) order the First Claimant to disclose a copy of that agreement; and (ii) order the Second Claimant to disclose a copy of the corresponding agency agreement relating to the First Claimant's transfer to that Spanish club.

(b) On 20 August 2019, the Euroleague announced that, "*the overdue payables that originated the opening of the proceeding have been settled*".

50. On 16 October 2019, the Arbitrator issued a further procedural order by letter (the "Fifth Procedural Order") which referred to the Respondent's response to the Fourth Procedural Order and requested that the Claimants file a short written submission addressing the following questions by 30 October 2019:

"1. Is it correct that the First Claimant has entered into a contract with Baloncesto Málaga S.A.D. for the 2019/20 basketball season?

2. If the answer to (1) is yes, does the First Claimant accept that the remuneration which the First Claimant is entitled to under that contract must be taken into account as mitigation of damage in these arbitral proceedings?

3. If the answer to (2) is yes, the First Claimant is requested to file a copy of the contract between him and Baloncesto Málaga S.A.D. If the answer to (2) is no, the First Claimant is requested to explain why he submits that his remuneration under the contract with Baloncesto Málaga S.A.D. is irrelevant to his claim against the Respondent.

4. Did the Second Claimant enter into any agency agreement with

respect to the First Claimant's transfer to Baloncesto Málaga S.A.D.?

5. *If the answer to (4) is yes, does the Second Claimant accept that the fees which the Second Claimant is entitled to under that agency agreement must be taken into account as mitigation of damage in these arbitral proceedings?*

6. *If the answer to (5) is yes, the Second Claimant is requested to file a copy of the agency agreement between him and Baloncesto Málaga S.A.D. If the answer to (5) is no, the Second Claimant is requested to explain why he submits that his remuneration under the agency agreement with Baloncesto Málaga S.A.D. is irrelevant to his claim against the Respondent."*

51. On 30 October 2019, the Claimants filed a response to the Fifth Procedural Order. In summary, the response stated:

(a) It is correct that the First Claimant has signed a contract with the professional basketball club Baloncesto Malaga (hereinafter "Malaga") for the 2019/20 playing season. The First Claimant accepts that his salary of EUR 350,000.00 for the 2019/20 season should be deducted from the amount of compensation due from the Respondent.

(b) The Second Claimant was not involved in the First Claimant's transfer to Malaga. The First Claimant and Second Claimant "*have ended their cooperation*". Since the Second Claimant did not participate in the transfer and will not derive any financial benefit from the First Claimant's new employment, no deduction shall be made from the compensation owed by the Respondent to the Second Claimant.

(c) In light of the First Claimant's entry into a new contract with Malaga for the 2019/20 playing season, the third paragraph of the Claimants' prayer for relief in the RFA should be amended to read:

"Olympiacos S.F.P. B.S.A shall pay to Mr. Axel Toupane 245,000 Euros plus 5% interest per annum as of 14 April 2019."

(d) The HEBA Committee has dismissed the Respondent's complaint against the First Claimant. The Claimants have requested a copy of that decision and will provide it to the Arbitrator as soon as possible.

52. On 15 November 2019, the Arbitrator issued a further procedural order by letter (the "Sixth Procedural Order") which invited the Respondent, should it wish to do so, to file a short submission responding to any points or arguments contained in the Claimants' response to the Fifth Procedural Order. The deadline for filing any such submission was 29 November 2019.

53. On 28 November 2019, the Claimants wrote to the Arbitrator enclosing a copy of the decision of the HEBA Committee. The letter also explained that:

(a) The HEBA Committee had concluded that (i) the Respondent breached its obligations by not paying the First Claimant and (i) the First Claimant had lawfully exercised his right to terminate the Player Contract. The Respondent's allegation that it had offered to pay the First Claimant's salary to an account in Greece was rejected.

(b) While seeking to obtain a copy of the decision of the HEBA Committee, the First Claimant's counsel discovered that on 23 September 2019 the Respondent had filed an appeal against that decision to the HEBA Second Instance Committee. The Respondent had failed to notify the Claimants about the appeal.

(c) The Claimants maintain their position that the proceedings lodged by the Respondent do not affect the Arbitrator's jurisdiction. In particular, the Respondent has not established that it initiated the HEBA proceedings prior to the Claimants filing their Request for Arbitration with the BAT. In any event, the

proceeding before the HEBA Committee concerns a different subject matter to the present arbitral proceedings. Since the requirements for a stay under Article 186 (1bis) of the Swiss Act on Private International Law (hereinafter "PILA") are not met, there is no justification for staying the present arbitration proceeding.

54. On 29 November 2019, the Respondent filed a response to the Sixth Procedural Order. The response stated that the Respondent had no comments in relation to the amendment of the First Claimant's prayer for relief. However, in respect of the Second Claimant's prayer for relief, the Respondent noted that Article 3 of the Agent Agreement expressly stated that the payments provided for in that agreement "*shall be due to the Agent upon the following conditions: …b) that the Contract comes into full force and effect and that the Contract is still in effect when payments are due.*" Since the Player Contract was terminated in April 2019, the Agent's request for payment of EUR 47,500.00 plus interest is abusive since it relates to future instalments that would not have fallen due until 30 October 2019 and 28 February 2020 (i.e. sometime after the Player Contract ceased to be in force).

55. On 11 December 2019, the BAT informed the parties that the Arbitrator was presently minded not to direct a hearing and instead intended to proceed to render an award dealing with both jurisdiction and (if jurisdiction is found to exist) the merits of the dispute. The Arbitrator issued a further procedural order by letter (the "Seventh Procedural Order") which noted that the Respondent's Answer to the RFA made references to the First Claimant having a bank account in Greece. Accordingly, the First Claimant was requested to answer the following two questions by 18 December 2019:

> *"1. Did the First Claimant have any bank account in Greece at the time when his contract with the Respondent was in force?*
>
> *2. If the answer to (1) is yes, were any payments ever made by the Respondent into that Greek bank account? If any such payments were made, please specify the dates and amounts of those payments."*

56. On 18 December 2019, the First Claimant filed a response to the Seventh Procedural Order. The First Claimant stated that the Respondent had required him to open a Greek bank account towards the beginning of his employment. The First Claimant was told that this bank account would be used for the purpose of paying the First Claimant's housing and air travel allowance, which he was entitled to under the Player Contract "*in addition to*" his salary. This bank account was "*never intended*" to be used (nor was it ever in fact used) for the First Claimant's salary payments. In addition, the Claimants informed the Arbitrator that on 7 December 2019 HEBA had informed the Claimants that the HEBA Second Instance Committee had decided to suspend the appeal proceedings in Greece until after the BAT has rendered an award in these proceedings. According to the English translation provided by the First Claimant, the order of the HEBA Second Instance Committee states:

> *"Decision Number 1/2019* […]
>
> - *Hears the appeal in the absence of the Respondent;*
>
> - *Suspends the proceedings until a decision is rendered on the claim dated 15-4-2019 lodged with the Basketball Arbitral Tribunal."*

57. Also on 18 December 2019, the Respondent filed an unsolicited two-page submission purportedly in response to the Seventh Procedural Order. The Respondent stated that the First Claimant held two Greek bank accounts during the relevant period and that the Respondent had made two payments of EUR 10,000.00 into one of those accounts on 2 October 2018 and 18 February 2019. However, the First Claimant "*repeatedly (and abusively) denied to accept any salary payments into*" either of those bank accounts. The Respondent also confirmed that the HEBA Second Instance Committee had decided to stay the proceedings in Greece until the BAT has determined the present proceedings.

58. On 15 January 2020, the Arbitrator notified the parties that in accordance with Article

12.1 of the BAT Rules, the exchange of documents was completed. The parties were therefore directed to set out how much of the applicable maximum contribution to their costs should be awarded to them and why by 22 January 2020.

59. On 22 January 2020, the Claimants submitted their account of costs to the BAT.

60. The Respondent did not submit an account of costs to the BAT.

61. On 28 January 2020, the BAT Secretariat informed the parties of the decision to increase the Advance on Costs in view of the time spent by the Arbitrator on this matter thus far and given also the volume of the documents on record. The parties were requested to pay an additional Advance on Costs by 10 February 2020 as follows:

    - Claimant 1: EUR 750.00;
    - Claimant 2: EUR 750.00; and
    - Respondent: EUR 1,500.00.

62. On 14 February 2020, the BAT Secretariat confirmed receipt of the full additional Advance on Costs.

63. Having carefully considered the documents on the record and the parties' respective submissions, the Arbitrator decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to deliver the Award on the basis of the written submissions and evidence submitted by the Claimants and the Respondent.

4. The Positions of the Parties

4.1 The Claimants' Position

64. The Claimants' original requests for relief in the RFA stated:

> *"On the basis of the above facts, the Claimants request the BAT to rule as follows:*
>
> 1. *Olympiacos S.F.P. B.S.A. shall pay to Mr. Axel Toupane 120,000 Euros plus 5 % interest as follows:*
>
>   - *for an amount of 40,000 Euros as of 1 February 2019*
>   - *for an amount of 40,000 Euros as of 1 March 2019*
>   - *for an amount of 40,000 Euros as of 1 April 2019.*
>
> 2. *Olympiacos S.F.P. B.S.A. shall pay to Mr. Axel Toupane 595,000 Euros plus 5 % interest as of 14 April 2019.*
>
> 3. *Olympiacos S.F.P. B.S.A. shall pay to Athlete Management Group 40,000 Euros plus 5 % interest as follows:*
>
>   - *for an amount of 20,000 Euros as of 1 November 2019*
>   - *for an amount of 20,000 Euros as of 1 March 2019*
>
> 4. *Olympiacos S.F.P. B.S.A. shall pay to Athlete Management Group 47,500 Euros plus 5 % as of 14 April 2019.*
>
> 5. *The costs of the arbitration shall be borne by Olympiacos S.F.P. B.S.A..*[sic]
>
> 6. *Olympiacos S.F.P. B.S.A. shall pay the full contribution to the Claimants' legal fees and expenses, to be specified at a later stage."*

65. A footnote to the prayer for relief in the RFA stated that:

> *"The following requests are subject to amendment based on the*

Claimant's duty to mitigate damages. As explained in these submissions, the Claimants will inform the BAT of any developments in this regard without undue delay. […]*"*

66. Following the payment referred to at paragraphs 44 and 45 above, the Claimants notified the Arbitrator that they wished to amend their prayers for relief so that they now read as follows:

> *"1. Olympiacos S.F.P. B.S.A. shall pay to Mr. Axel Toupane 20,000 Euros plus 5 % interest per annum as of 1 April 2019.*
>
> *2. Olympiacos S.F.P. B.S.A. shall pay to Mr. Axel Toupane 2,108.34 Euros.*
>
> *3. Olympiacos S.F.P. B.S.A. shall pay to Mr. Axel Toupane 595,500 Euros plus 5 % interest per annum as of 14 April 2019.*
>
> *4. Olympiacos S.F.P. B.S.A. shall pay to Athlete Management Group 40,000 Euros plus 5 % interest per annum as follows:*
>
> - *For an amount of 20,000 Euros as of 1 November 2019*
> - *For an amount of 20,000 Euros as of 1 March 2019*
>
> *5. Olympiacos S.F.P. B.S.A. shall pay to Athlete Management Group 47,500 Euros plus 5 % interest per annum as of 14 April 2019.*
>
> *6. The costs of the arbitration shall be borne by Olympiacos S.F.P. B.S.A..*[sic]
>
> *7. Olympiacos S.F.P. B.S.A. shall pay the full contribution to the Claimants' legal fees and expenses, to be specified at a later stage."*

67. The amount of EUR 2,108.34 was said to reflect the amount of interest accrued up to the date of the payments of EUR 60,000.00 and EUR 40,000.00 made by the Respondent to the First Claimant on 15 July 2019 and 13 August 2019 respectively.

68. As explained at paragraph 51 above, on 30 October 2019 the Claimants notified the

Arbitrator that the third paragraph of the Claimants' prayer for relief should be further amended to read:

> *"Olympiacos S.F.P. B.S.A shall pay to Mr. Axel Toupane 245,000 Euros plus 5% interest per annum as of 14 April 2019." (Emphasis added)*

69. In its submission on costs dated 22 January 2020, "*for the sake of clarity*", the Claimants submitted updated requests for relief as follows:

> *"1. Olympiacos S.F.P. B.S.A. shall pay to Mr. Axel Toupane 20,000.00 Euros plus 5 % interest per annum as of 1 April 2019.*
>
> *2. Olympiacos S.F.P. B.S.A. shall pay to Mr. Axel Toupane 2,108.34 Euros.*
>
> *3. Olympiacos S.F.P. B.S.A. shall pay to Mr. Axel Toupane 245,000.00 Euros plus 5 % interest per annum as of 14 April 2019.*
>
> *4. Olympiacos S.F.P. B.S.A. shall pay to Athlete Management Group 40,000.00 Euros plus 5 % interest per annum as follows:*
>
> - *For an amount of 20,000.00 Euros as of 1 November 2019*
> - *For an amount of 20,000.00 Euros as of 1 March 2019*
>
> *5. Olympiacos S.F.P. B.S.A. shall pay to Athlete Management Group 47,500.00 Euros plus 5 % interest per annum as of 14 April 2019.*
>
> *6. The costs of the arbitration shall be borne by Olympiacos S.F.P. B.S.A.*
>
> *7. Olympiacos S.F.P. B.S.A. shall pay jointly to Mr. Axel Toupane and Athlete Management Group 27,500.00 Euros as a contribution to their legal fees and expenses."*

70. The First Claimant submits that by virtue of the Respondent's failure to pay several instalments of the First Claimant's contractual remuneration on time, the First Claimant

was entitled to terminate the Player Contract for cause in accordance with the procedure set out in Article 10 of the Player Contract. The First Claimant submits that he validly exercised that right to terminate the Player Contract on 12 April 2019. Accordingly, by virtue of the provisions of Article 10 of the Player Contract, the Respondent became immediately liable to pay both the sums outstanding on that date (EUR 120,000.00) plus all other remuneration that was due during the entire term of the Player Contract (a further EUR 595,000.00). The First Claimant subsequently adjusted the quantum of his claim to make allowance for (a) the fact that he signed a new contract for the 2019-20 playing season under which he would receive a total salary of EUR 350,000.00; and (b) the fact that the Respondent subsequently paid a total of EUR 100,000.00 of the outstanding amounts in July/August 2019. Accordingly, the First Claimant contends that he is entitled to an award of EUR 265,000.00 plus interest (including interest in respect of the EUR 100,000.00 that was belatedly paid by the Respondent in July/August 2019).

71. The Second Claimant claims that the Respondent failed to pay any of the agency fees that were due to the Second Claimant under the terms of the Agent Contract. The Second Claimant contends that there was no good cause for the Respondent's failure to make those payments, which constitutes a breach of the Agent Contract. Accordingly, the Second Claimant claims that he is entitled to an award of EUR 87,500.00 (being the total amount of fees the Respondent was required to pay to the Second Claimant under the Agent Contract) plus interest.

4.2 The Respondent's Position

72. The Respondent's request for relief in the Answer to the RFA stated:

> *"**61.** Based on the foregoing developments, the Respondent respectfully requests the sole arbitrator to issue an award:*
>
> ***62. Rejecting Mr. Axel Toupane prayers for relief in the Request***

for Arbitration dated April 15th, 2019.

63. Solidarily condemning Mr. Axel Toupane to pay all arbitration costs in accordance with Article 17 of the BAT Arbitration Rules.

64. Solidarily condemning Mr. Axel Toupane to pay Olympiacos a contribution towards it legal fees and other expenses incurred in connection with the proceedings, which shall be specified at a later stage.

65. Award any other remedy the Arbitrator deems fair and equitable under the circumstances when deciding ex aequo et bono."

73. The Respondent submits that the Arbitrator lacks jurisdiction to hear the Claimants' claims. Alternatively, the Respondent submits that the Arbitrator should stay both Claimants' claims before the BAT until the determination of the Respondent's claim against the First Claimant before HEBA. The Respondent's position is set out in greater detail at paragraphs 83 to 89 below.

74. As to the merits, the Respondent submits that the First Claimant is not entitled to any further payment from the Respondent. In particular, it submits that the Respondent wrongly refused the Respondent's offers to pay the overdue instalments of the First Claimant's salary into the First Claimant's Greek bank account. As a result of that wrongful refusal, the First Claimant had no right to terminate the parties' contractual relationship. The First Claimant's purported termination of the contract was therefore "*abusive*" and constituted a breach of contract.

75. The Respondent further alleges that the First Claimant attended a meeting with representatives of the Respondent on 12 April 2019 at which the First Claimant assented to a "*proposed payment scheme*" whereby some of the overdue payments would be paid the following week. The Respondent further submits that the quantum of the First Claimant's claim is "*disproportionate*" since "*given his poor performance,*

the Respondent aimed to unilaterally terminate the Contract at the end of the season 2018-2019".

5. The jurisdiction of the BAT

76. 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 PILA.

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

78. The Arbitrator notes that the dispute referred to him is clearly of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[1]

79. Article 9.3 of the Player Contract provides as follows:

> *"This Agreement shall be governed by the laws of Greece and shall be interpreted and enforced in accordance with the Laws of Greece, the provisions of HEBA and the provisions of FIBA.*
>
> *The parties agree as competent authorities for the resolution of any dispute that might arise between the Club and the Player from the interpretation or application of this present agreement, including financial disputes, the following authorities:*
> *a) The sports, judicial and arbitrative instruments of the Greek Basketball Association and HEBA according to the Greek legislation and Greek regulations ("EOK / ESAKE").*
> *b) The Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland 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*

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

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. In such case, Awards of the BAT can be appealed to the Court of Arbitration of Sports (CAS), Lausanne, Switzerland.
The said authorities will be equally and alternatively competent for the resolution of any dispute that might arise between the parties, whereas it will be at the absolute discretion of the claimant which of the two jurisdictions will be seized. A specific dispute can only be submitted to one of the said authorities.
Any other jurisdiction, including US Courts is expressly excluded."

80. Article 9 of the Addendum similarly provides:

"This Agreement shall be governed by the laws of Greece and shall be interpreted and enforced in accordance with the Laws of Greece, the provisions of HEBA and the provisions of FIBA. The parties agree as competent authorities for the resolution of any dispute that might arise between the CLUB and the Player from the interpretation or application of this present agreement, including financial disputes, termination or suspension of the terms of this present [sic]*, the following authorities:*
a) The sports, judicial and arbitrative instruments of the Greek Basketball Association and HEBA according to Greek legislation and Greek regulations ("EOK / ESAKE").
b) The Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland 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. In such case, Awards of the BAT can be appealed to the Court of Arbitration of Sports (CAS), Lausanne, Switzerland.
The said authorities will be equally and alternatively competent for the resolution of any dispute that might arise between the parties, whereas it will be at the absolute discretion of the claimant which of the two jurisdictions will be seized. A specific dispute can only be submitted to one of the said authorities.

Any other jurisdiction, including US Courts is expressly excluded."

81. Article 7 of the Agent Contract similarly provides:

> "*The parties agree as competent authorities for the resolution of any dispute that might arise between them from the interpretation or application of this present agreement, including financial disputes, the following authorities:*
> *a) The Courts of Piraeus according to Greek laws and Greek regulations.*
> *b) The Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland 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. In such case, Awards of the BAT can be appealed to the Court of Arbitration of Sports (CAS), Lausanne, Switzerland.*
>
> *The said authorities will be equally and alternatively competent for the resolution of any dispute that might arise between the parties, whereas it will be at the absolute discretion of the claimant which of the two jurisdictions will be seized. A specific dispute can be submitted to one of the said authorities.*
>
> *Any other jurisdiction, including US Courts is expressly excluded."*

5.1 The Claimants' submissions on jurisdiction

82. As set out above, the Claimants submit that BAT has jurisdiction in respect of both Claimants' claims. In overview, they submit that:

(a) The Respondent has failed to establish that it initiated the proceedings before the HEBA Committee prior to the Claimants filing their Request for Arbitration with the BAT. In this regard, the Respondent has not adduced any evidence regarding the initiation of the proceedings before the HEBA Committee. Furthermore, it is not clear that the HEBA Committee is a real arbitral tribunal.

(b) In any event, the BAT has jurisdiction with respect to this proceedings because the HEBA Committee is dealing with a different subject matter. The Respondent has overlooked the fact that the most relevant part of Article 9.3 of the Player Contract and Article 9 of the Addendum states that, "*a specific dispute can only be submitted to one of the said authorities*" (emphasis added). This means that the Player Contract permits either party to file a claim before the other dispute resolution body provided that the subject matter of the later proceeding is different to the subject matter of the earlier proceeding. In this regard, the proceedings before the BAT concern "*outstanding salaries, agent fees and compensation*" arising from the First Claimant's unilateral termination of the Player Contract due to the Respondent's failure to pay him for several months. In contrast, the proceedings before the HEBA Committee concern the Respondent's attempt to ratify a unilateral termination by the Respondent and to ratify its decision to sanction the First Claimant with a EUR 20,000.00 fine.

(c) The BAT also has jurisdiction to determine the Second Claimant's claims. The Respondent's challenge to the Arbitrator's jurisdiction with respect to the Second Claimant's claim was not made until 16 August 2019. This is too late since any jurisdictional objection should have been contained in the Respondent's Answer pursuant to Article 11.2 of the BAT Rules. Further, since the relevant jurisdiction clause was drafted by the Respondent, in any case of doubt as to its meaning the *contra proferentem* principle requires the clause to be interpreted against the interests of the party who produced the wording. Accordingly, the clause should be interpreted as establishing a clear and enforceable arbitration agreement in favour of the BAT.

(d) A stay of the proceedings before the BAT would not be justified under Article 186(1bis) PILA. In particular:

(i) The Respondent has not established that the HEBA Committee is a real

court of arbitration for the purposes of Swiss law. In this regard, it is relevant that parties to a HEBA Committee proceeding cannot nominate arbitrators for particular cases. Accordingly, if the ability to nominate an arbitrator is a cornerstone of arbitration, then the HEBA Committee would not be a true court of arbitration. It is also relevant that parties to a HEBA Committee proceeding may appeal against the decision of that Committee. In the Claimants' submission, "*real courts of arbitration do not provide for full-fledged appeal proceedings after an arbitral award*".

(ii) The proceedings before the HEBA Committee and the BAT do not concern the same subject matter.

(iii) The parties in the proceedings before the HEBA Committee are not identical to the parties before the BAT. In particular, the First and Second Claimants have each filed claims before the BAT which are interrelated. The Second Claimant's claim is affected by the BAT's assessment of the First Claimant's termination. The Second Claimant, however, is not a party at all to the HEBA proceedings.

(iv) The decision of the HEBA Committee will not be recognised in Switzerland. The recognition and enforcement of foreign arbitral awards in Switzerland is governed primarily by the provisions of the New York Convention of 1958. The Swiss Federal Tribunal has held that recognition and enforcement of foreign arbitral awards may be refused where there is "*a deficiency falling within procedural public policy, such as compliance with the right to be heard*" (Judgment of 26 February 2015 – 4A_374/2014). The First Claimant has not been properly invited by the HEBA Committee to participate in those proceedings. Accordingly, since the proceedings before the HEBA Committee clearly violated the First Claimant's right to be heard, any decision rendered by the HEBA

Committee would necessarily be unenforceable in Switzerland.

(v) In any event, there is no good reason to stay the arbitration pending the outcome of the HEBA proceedings. On the contrary, the HEBA Second Instance Committee has in fact stayed the proceedings before the HEBA until the determination of these proceedings by the BAT.

5.2 The Respondent's submissions on jurisdiction

83. The Respondent submits that the BAT lacks jurisdiction over the Claimants' claims.

84. With respect to the First Claimant's claim, the Respondent submits that the key question when interpreting Article 9 of the Addendum and Article 9.3 of the Player Contract is to identify the true and common intent of the parties. In this regard, the wording makes it clear that:

(a) The parties agreed that there were, in principle, two arbitration bodies which were equally and alternatively competent to resolve any dispute arising from the Player Contract.

(b) The party initiating an action had the right to choose which of the two arbitral bodies to seize.

(c) Once that choice had been made, the body selected would become exclusively competent to deal with any dispute arising from the contract. In other words, once one of the parties becomes the claimant, the other party is bound to pursue any claim or counterclaim before the originally chosen body.

85. The Respondent submits that unilateral arbitration clauses such as Article 9.3 of the Player Contract and Article 9 of the Addendum are not unusual. The case law

examining the effect of such clauses establishes that once a party has made a choice as to which forum to bring a claim in, that choice binds the other party and excludes the possibility of the other party bringing a claim in another forum. In support of this submission, the Respondent cites CAS 2013/A/3364 *FC Steaua Bucuresti SA v. Cristiano Bergodi & FIFA* where the Court of Arbitration for Sport (CAS) examined such a clause and held that there were "*no doubts that under such contractual clause the choice of the forum pertained to the party deciding to act against the other*".

86. Accordingly, the Respondent submits that since it seized the HEBA Committee before the First Claimant had filed his request for arbitration with the BAT, the Respondent automatically became "*the claimant*" for the purposes of Article 9.3 of the Player Contract and Article 9 of the Addendum. Therefore, the First Claimant is prevented from bringing proceedings against the Respondent before the BAT.

87. The Respondent further submits that:

(a) Although only one set of proceedings was underway before the BAT, the proceedings concern two entirely separate disputes based on different contracts and involving different parties. It follows that the First Claimant's RFA is completely independent from the dispute between the Second Claimant and the Respondent.

(b) The Respondent filed its claim against the First Claimant before the HEBA Committee at 09:30 EEST (Eastern European Summer Time) on 15 April 2019. The claim was not filed electronically, since such a procedure is not available before HEBA. HEBA is, however, able to provide official confirmation of the exact timing of the submission upon the issuing of a procedural order by the Arbitrator.

(c) It is "*widely accepted in international arbitration*" that for the purpose of rules

regarding *lis pendens* "*a proceeding is pending from the time of the claim's receipt by the arbitral institution*". Accordingly, the only possible conclusion is that the Respondent's claim against the First Claimant before the HEBA Committee was already pending when the First Claimant filed his Request for Arbitration with the BAT.

(d) Since the Respondent's claim against the First Claimant was filed with the HEBA Committee before the Claimants filed their Request for Arbitration with the BAT, this necessarily means that the BAT lacks jurisdiction to hear the First Claimant's claim.

88. With respect to the claim of the Second Claimant, the Respondent submits that BAT lacks jurisdiction because it cannot be established with certainty that the parties wished to exclude the jurisdiction of the Greek courts. In this regard, the Respondent submits that while under Swiss law an arbitration clause should be interpreted liberally, in the event of doubt regarding the parties' intention to arbitrate a restrictive interpretation must be applied (citing the decision of the Swiss Federal Tribunal in decision 4A_244/2012 of 17 January 2013).

89. In the alternative, the Respondent submits that even if the Arbitrator considers that he has jurisdiction to determine either of the Claimants' claims, the proceedings should be stayed. In support of this argument, the Respondent submits that:

(a) The proceedings before the BAT and the HEBA Committee have the same subject matter for the purposes of Article 186 of the PILA. In both proceedings the subject matter is *"the early termination of the contractual relationship between the Player and the Respondent, and the questions of the party responsible for such termination and the consequences thereof are raised in both proceedings*". Accordingly, if the proceedings before the BAT are not stayed there is a real risk that the HEBA Committee and the BAT will deliver

contradictory rulings regarding liability for the early termination of the Player Contract.

(b) The parties to both sets of proceedings are identical. The procedure before the BAT "*is effectively dealing with two different matters involving different parties*". One of those matters involves *"only the* [First Claimant] *and the Respondent – i.e. the same parties as are involved in the HEBA FDRC proceedings*".

(c) The decision of the HEBA Committee will be capable of being recognised in Switzerland. The HEBA Committee has strictly followed the procedure envisaged in Rule 44 of Greek Law no. 2527/1999 regarding arbitration proceedings within a Greek sports federation. Accordingly, there is no reason why the decision would be incapable of being recognised in Switzerland. The evidence on the file demonstrates that the First Claimant's due process rights and his right to be heard were respected. In this regard, the First Claimant has expressly confirmed that he received the Respondent's claim. Further, he has not made any objection to the HEBA Committee's jurisdiction in those proceedings before the HEBA Committee.

(d) Finally, the Respondent emphasises that it never acted in bad faith as alleged by the Claimants. The Respondent filed its claim with the HEBA Committee before the Claimants filed their Request for Arbitration with the BAT.

5.3 The Arbitrator's conclusions on jurisdiction

5.3.1 Formal requirements under Article 178(1) PILA

90. The Player Contract, the Addendum and the Agent Contract are both in written form and thus the arbitration clauses fulfil the formal requirements of Article 178(1) PILA.

5.3.2 Substantive validity of the arbitration clauses in the Player Contract and Agent Contract

91. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreements under Swiss law (referred to by Article 178(2) of the PILA). In particular, the words "*any dispute that might arise between the Club and the Player from the interpretation or application of this present agreement, including financial disputes*" under Article 9.3 of the Player Contract and Article 9 of the Addendum clearly covers the present dispute between the First Claimant and the Respondent. Similarly, the words "*any dispute that might arise between them from the interpretation or application of this present agreement, including financial disputes*" in Article 7 of the Agent Contract clearly cover the present dispute between the Second Claimant and the Respondent.

5.3.3 Construction of the arbitration clauses in the Player Contract and the Agent Contract

92. Article 9(3) of the Player Contract, Article 9 of the Addendum and Article 7 of the Agent Contract all provide that: "*A specific dispute can only be submitted to one of the said authorities.*"

93. The Arbitrator is satisfied that in each of the contracts this sentence is intended to establish that in the event that one of the two "*equally and alternatively competent*" tribunals identified in the relevant article has been seized in respect of a "*specific dispute*", no proceedings may be brought before the other "*equally and alternatively competent*" tribunal in respect of that "*specific dispute*". This is clearly intended to avoid parallel proceedings concerning the same "*specific dispute*" being brought before different tribunals at the same time, thereby avoiding undesirable duplication and preventing inconsistent decisions being rendered by different "*competent authorities*" regarding precisely the same subject matter. In other words, Article 9(3) of the Player Contract, Article 9 of the Addendum and Article 7 of the Agent Contract establish a "first in time" rule whereby the tribunal to which a "*specific dispute*" is first submitted has

exclusive jurisdiction for determining that "*specific dispute*".

94. Accordingly, if the subject matter of the proceedings before the HEBA Committee concerns the same "*specific dispute*" as the subject matter of the proceedings before the BAT, it follows that it will be necessary for the Arbitrator to determine which of the tribunals the dispute was first "*submitted to*". Conversely, if the subject matter of the proceedings before the two tribunals does not concern the same "*specific dispute*", the Arbitrator will not be required to determine which set of proceedings commenced first since the existence of proceedings before the HEBA Committee will not deprive the BAT of jurisdiction. The important question for present purposes, therefore, is what exactly is meant by the words "*A specific dispute*" in Article 9(3) of the Player Contract, Article 9 of the Addendum and Article 7 of the Agent Contract.

95. The Arbitrator begins by noting that it is significant that both articles refer to "*A specific dispute*" rather than "*A dispute*". The deliberate qualification of the term "*dispute*" with the adjective "*specific*" necessarily connotes a narrower scope than would be the case if the expression "*dispute*" were not so qualified. In particular, the Arbitrator considers that the inclusion of the words "*A specific dispute*" clearly implies that in certain circumstances it may be possible for parallel proceedings to be brought at the same time before the BAT and the HEBA Committee (or, in the case of the Agent Contract, the Courts of Piraeus) concerning the same contract and between the same parties, provided that the two sets of proceedings do not relate to the same "*specific dispute*". In other words, it is clear that Article 9(3) of the Player Contract, Article 9 of the Addendum and Article 7 of the Agent Contract are not intended to establish an absolute exclusion of any possibility of parallel proceedings in related matters before two different "*competent authorities*". On the contrary, the Articles clearly contemplate that two "*competent authorities*" may be simultaneously seized of proceedings between the same parties and arising from the same contract, provided that the two sets of proceedings do not concern the same "*specific dispute*".

96. Accordingly, where proceedings are pending before one of the two named "*competent authorities*" and a party wishes to issue proceedings in the other "*competent authorit*[y]", the mere possibility of an overlap in the factual or legal issues that arise in those proceedings does not *ipso facto* prevent that other "*competent authority*" from being seized. In particular, the Arbitrator considers that the mere fact that two claims share a common factual nexus does not, without more, mean that they constitute the same "*specific dispute*". Rather, the Arbitrator considers it necessary to examine carefully the precise factual and legal issues that arise in the two claims in order to determine whether those issues overlap in such a manner and to such a degree as to lead to the conclusion that the claims must necessarily be regarded as concerning the same "*specific dispute*", rather than merely constituting different facets of a broader underlying "*dispute*".

97. Accordingly, the Arbitrator considers it necessary to examine the key factual and legal elements of the Respondent's claim against the First Claimant before the HEBA Committee.

5.3.4 Jurisdiction with respect to the First Claimant's claim

98. According to the "*Request*" filed by the Respondent before the HEBA Committee (see paragraph 31 above), the proceedings before the HEBA Committee concern a request by the Respondent for the HEBA Committee to "*ratify*" (a) the Respondent's decision to terminate the Player Contract/Athletic Services Contract and Addendum "*due to the unconventional behaviour of*" the First Claimant; and (b) the Respondent's decision to impose a fine of EUR 20,000.00 against the First Claimant.

99. Having carefully considered the matter, the Arbitrator is satisfied that the proceedings before the HEBA Committee do not concern the same "*specific dispute*" as the First Claimant's claim against the Respondent in the present proceedings. In particular, the Arbitrator notes that while there is some overlap in the underlying factual matters and

allegations in both sets of proceedings, the dispute at the heart of the present proceedings before the BAT concerns a request for payment based on the Respondent's alleged failure to pay the First Claimant his contractually due remuneration between 31 December 2018 and 12 April 2019, and the validity and legal effects of the First Claimant's purported termination of their contractual relationship on the basis of that alleged failure. In contrast, the proceedings before the HEBA Committee concern whether the First Claimant engaged in "*unconventional behaviour*" that merited the imposition of disciplinary sanctions and the termination of their contractual relationship by reason of that "*unconventional behaviour*".

100. Accordingly, while there is undoubtedly a degree of overlap in the underlying facts and allegations in the two sets of proceedings, the Arbitrator considers that the proceedings brought by the First Claimant before the BAT do not concern the same "*specific dispute*" as the proceedings brought by the First Claimant before the HEBA Committee for the purposes of Article 9(3) of the Player Contract and Article 9 of the Addendum. In particular:

    (1) The proceedings before the BAT are essentially concerned with the issue of whether the Respondent failed to pay the remuneration that the First Claimant was contractually entitled to in late December 2018 and early January 2019 and whether that failure entitled the First Claimant to terminate the relevant contract. The Respondent's alleged failure to pay the First Claimant his contractually due remuneration does not appear to arise as an issue at all in the proceedings before the HEBA Committee, while the question whether the First Claimant was entitled to terminate his contractual relationship with the Respondent only arises indirectly in the proceedings before the HEBA Committee (since the Respondent's claim before the HEBA Committee is predicated on the assumption that the contract remained in force and had not been terminated by the First Claimant before the date when the Respondent purported to terminate that contract).

(2) One of the two issues which the HEBA Committee has been asked to determine concerns whether the Respondent was entitled to levy a fine against the First Claimant for failing to participate in a basketball game on 13 April 2019. That issue does not arise for determination at all in these proceedings before the BAT.

101. For these reasons, the Arbitrator is satisfied that the BAT has jurisdiction with respect to the First Claimant's claim and that the provisions of Article 9(3) of the Player Contract and Article 9 of the Addendum do not operate to exclude or limit that jurisdiction in any way. In view of this conclusion, it is not necessary for the Arbitrator to determine whether the Respondent filed its complaint to the HEBA Committee before or after the Respondent filed its Request for Arbitration to the BAT.

5.3.5 Jurisdiction with respect to the Second Claimant's claim

102. The Arbitrator notes that unlike with the First Claimant's claim, there are no extant proceedings between the Second Claimant and the Respondent underway before any other court or tribunal. In particular, while Article 7(a) of the Agent Agreement provides that a dispute may be referred either to the BAT or to "*The Courts of Piraeus according to Greek laws and Greek regulations*" no proceedings have been initiated before the Courts of Piraeus by the Respondent against the Second Claimant (or vice versa). Accordingly, no issue of *lis pendens* arises in respect of the Second Claimant's claim.

103. The Arbitrator is satisfied that Article 7 of the Agent Contract gave the Second Claimant an unqualified choice between initiating proceedings for an alleged breach of that contract before the BAT or before the Courts of Piraeus. The Arbitrator rejects the Respondent's submission that Article 7 of the Agent Contract does not clearly manifest an intention to exclude the jurisdiction of the Greek courts. The Arbitrator considers that the language of Article 7 is clear and free from any ambiguity. It establishes that if either party to the Agent Contract wishes to bring proceedings in connection with a dispute arising in connection to the contract, they may issue proceedings before the Courts of

Piraeus or before the BAT. Once proceedings have been issued by the Second Claimant or Respondent before one of those fora, the choice of forum becomes binding on both parties in relation to that "*specific dispute*".

104. The Arbitrator is therefore satisfied that the Second Claimant has brought a properly constituted claim against the Respondent before the BAT. For these reasons, the Arbitrator concludes that he has jurisdiction to adjudicate the Second Claimant's claim.

5.3.6 The Respondent's request for these proceedings to be stayed pending the final resolution of the proceedings before the HEBA Committee

105. Having carefully considered the parties' respective submissions, the Arbitrator concludes that the present proceedings should not be stayed pending the final resolution of the proceedings before the HEBA Committee.

106. First, the Arbitrator notes that such obligation for a stay does not follow from the respective provisions in the various agreements, since the present proceedings do not concern the same "*specific dispute*" as is the subject of the proceedings between the First Claimant and the Respondent before the HEBA Committee. Accordingly, a stay is not required in order to avoid the risk of irreconcilable decisions.

107. Second, such an obligation to stay the proceedings does not follow from Article 186 (1bis) of the PILA. According thereto, an arbitration proceeding might be stayed in view of parallel proceedings in case the matter in dispute in both proceedings is identical. Whether or not a matter in dispute is identical within the above meaning depends on whether the core of the dispute is identical. The Swiss Federal Tribunal adopts a rather broad concept when it comes to defining what the "core" of a dispute is. Irrespective of whether or not this prerequisite is fulfilled, the Arbitrator notes that Article 186 (1bis) PILA only applies in case of parallel court/arbitral proceedings. Whether the proceedings before the HEBA Committees relate to court or arbitral proceedings is

unclear. Furthermore, Article 186 (1bis) PILA grants the Arbitrator discretion whether or not to stay proceedings.

108. When exercising his discretion, the Arbitrator notes that the HEBA Second Instance Committee has stayed the proceedings before it pending the determination of the present proceedings before the BAT. In these circumstances, the Arbitrator considers that no useful purpose would be served by staying the present proceedings. On the contrary, since the proceedings before the HEBA Second Instance Committee are currently suspended, if the Arbitrator were to stay the present proceedings before the BAT then all of the dispute resolution procedures would enter a state of indefinite hiatus. This would not be in the interests of any of the parties.

109. The Arbitrator is fortified in this decision by the fact that the Second Claimant is not a party to the proceedings before the HEBA Committee. The Second Claimant's legitimate interest in a timely resolution of his claim therefore reinforces the Arbitrator's conclusion that the Respondent's request for a stay should be rejected.

110. Accordingly, the Arbitrator concludes that he should proceed to determine the substantive merits of the Claimants' claims.

6. Discussion

6.1 Applicable Law – *ex aequo et bono*

111. 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 arbitrator to decide *"en équité",* as opposed to a decision according to the rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated into

English as follows:

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

112. Under the heading "Law Applicable to the Merits", Article 15.1 of the BAT Rules provides as follows:

> *"Unless the parties have agreed otherwise 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."*

113. Article 9.3(b) of the Player Contract, Article 9 of the Addendum and Article 7(b) of the Agent Agreement each provide that:

> "*The arbitrator shall decide the dispute ex aequo et bono*."

114. In light of the above, the Arbitrator will decide the issues submitted to him in this proceeding *ex aequo et bono,* applying general considerations of justice and fairness without reference to any particular national or international law.

115. In light of the foregoing matters, the Arbitrator makes the following findings.

6.2 Findings

6.2.1 Alleged underpayment of the First Claimant's salary

116. The Arbitrator notes at the outset that there is an apparent inconsistency between the terms of the Player Contract and the terms of the Addendum insofar as they relate to the First Claimant's remuneration. The Player Contract provides that the First Claimant shall be paid a salary of EUR 400,000.00 net (comprised of ten instalments of EUR

40,000.00) for the 2018/19 playing season and shall be paid a salary of EUR 475,000.00 net (comprised of ten instalments of EUR 47,500.00) for the 2019/20 season. The Addendum, on the other hand, provides that the First Claimant shall be paid a "*regular monthly salary*" of EUR 860.29 gross plus Christmas Bonus and Easter Bonus and allowances for leave according to Greek legislation as well as a signing bonus of EUR 494,917.12 gross (comprised of four instalments of EUR 49,481.40 and six instalments of EUR 49,607.58) for the 2018/19 playing season and shall be paid a "*regular monthly salary*" of EUR 860.29 gross plus Christmas Bonus and Easter Bonus and allowances for leave according to Greek legislation as well as a signing bonus of EUR 587,925.03 gross (comprised of four instalments of EUR 58,659.41 and six instalments of EUR 58,881.23) for the 2019/20 playing season.

117. The Arbitrator notes that whereas the terms of Article 2 of the Player Contract specify the amount that the Respondent shall pay "*net to the Player's account*", the terms of Article 2 of the Addendum specify the "*gross amount*" that the Respondent shall pay and go on to state that the Respondent shall be responsible for "*timely payments of any such amounts to the tax and social security authorities*". Accordingly, the terms of Article 2 of the Player Contract and Article 2 of the Addendum appear to be in harmony with one another and reflect a common understanding and agreement as to the gross and net remuneration that the First Claimant was entitled to receive from the Respondent.

118. In this regard, the Arbitrator notes that throughout their contractual relationship the First Claimant and the Respondent apparently proceeded on the basis that the terms of Article 2 of the Player Contract were binding on them. In particular, the Arbitrator notes that the Respondent paid several instalments of EUR 40,000.00 (i.e. the net amount specified in the Player Contract) to the First Claimant in 2018 and early 2019. The Arbitrator also notes that when the Respondent fell into arrears, Mr. Silverman wrote to the Respondent highlighting its failure to make payments of EUR 40,000.00 (i.e. the net amount specified in the Player Contract) and demanding that it makes those

overdue payments in accordance with the terms of the Player Contract. Finally, the Arbitrator notes that the First Claimant's prayer for relief in the RFA has been formulated by reference to the net amounts specified in Article 2 of the Player Contract. While the Respondent denies that it is liable to pay any sum to the First Claimant, it does not deny that the terms of the Player Contract were binding on the parties. Accordingly, in these circumstances, the Arbitrator proceeds on the basis that it is common ground between the parties that the First Claimant's contractual entitlement to remuneration is set out in Article 2 of the Player Contract.

119. Under Article 10.1 of the Player Contract, the First Claimant was entitled to "*avoid this agreement*" in the event that "*Any payment mentioned by this contract is past due more than (30) days*". (An identically worded provision is contained in Article 10.1 of the Addendum.) The Arbitrator considers that the meaning and effect of this provision is clear: in the event that the Respondent was more than 30 days late in making any payment due to the First Claimant under the Player Contract, the First Claimant was entitled (but not required) to exercise his right to terminate that contract.

120. Article 10.2 of the Player Contract prescribed a specific procedure that must be followed in order to exercise that right of termination. (An identically worded provision is contained in Article 10.2 of the Addendum.) In order to terminate the agreement, the First Claimant was required "*to make a request in writing to the* [Respondent] *requesting the* [Respondent] *to comply with its obligations within a time-limit of fifteen (15) days*". In the event that the Respondent failed to comply with such a request within that time-limit, the First Claimant was "*entitled to request*" both (a) "*his unconditional release and free agency*" and (b) "*Payment of all monies due during the entire term of his agreement, which shall become immediately due and payable*".

121. The Arbitrator notes that on 12 March 2019, Mr. Silverman sent an email on behalf of the First Claimant to the Respondent noting that the Respondent had failed to pay the instalments of EUR 40,000.00 that fell due on 31 December 2018 and 31 January 2019.

The Respondent's General Manager replied on 26 March 2019 stating that the Respondent had "*paid one instalment into* [the First Claimant's] *account in France*" the previous week and asserting that, "*due to capital control measures in force and until "new money" (i.e. funds coming out of Greece to be deposited in the Club's Greek account, we are not able to proceed to any payments abroad. Therefore in case* [the First Claimant] *wishes to be paid in Greece, please do inform us, so as to proceed accordingly.*"

122. In respect of this response, the Arbitrator notes that (a) the Respondent did not dispute that it was more than 30 days late in paying at least two instalments of EUR 40,000.00 due under the Player Contract; and (b) the Respondent acknowledged that it had only paid one of those instalments by 26 March 2019.

123. On 1 April 2019, Mr. Silverman wrote again to the Respondent noting that the instalment of EUR 40,000.00 that fell due on 31 January 2019 remained unpaid and was "*more than 30 days late and beyond the 15-day notice of breach of contract, which expired on March 28, 2019*". That description of the situation was correct.

124. Mr. Silverman proceeded to quote the provision in Article 10 of the Player Contract that entitled the First Claimant to terminate the agreement and to require immediate payment of all monies due during the entire term of the agreement. The Respondent's General Manager replied the following day. In his response he did not dispute the accuracy of the matters addressed in Mr. Silverman's message dated 1 April 2019. Instead, he simply repeated the previous assertion that the Respondent could not make any payments abroad and sought confirmation as to "*whether* [the First Claimant] *wishes to be paid in Greece*".

125. A further exchange of correspondence then ensued. This included a letter from the Respondent's General Manager dated 13 April 2019 which stated that the Respondent had stated "*our explicit intention to immediately pay any overdue salaries into his Greek*

bank account".

126. Accordingly, the Arbitrator notes that:

(a) There is no dispute that the Respondent was more than 30 days late in making certain payments of salary due to the First Claimant under the Player Contract. In this regard, although the Respondent repeatedly informed the First Claimant that it was unable to make any payments to his foreign bank account because of the existence of capital controls, for the reasons explained below the Arbitrator concludes that payments into the First Claimant's Greek bank account were a permissible means of fulfilling the Respondent's contractual obligations. The Respondent does not contend that the alleged capital controls would have prevented it from making payments to that Greek bank account. Accordingly, it is unnecessary for the Arbitrator to determine whether or not there were capital controls which prevented payments from being made to the First Claimant's foreign bank account (and, if so, whether they would have constituted a valid reason for failing to adhere to the contractually requirement payment schedule). In these circumstances, the fact that the Respondent was more than 30 days late in making certain contractually required payments to the First Claimant means it therefore breached its obligations under the Player Contract in a manner that entitled the First Claimant to terminate that agreement in accordance with the procedure specified in Article 10 of the Player Contract.

(b) On 12 March 2019, Mr. Silverman (acting on behalf of the First Claimant) made a written request for the Respondent to comply with its contractual obligations. That written request triggered the commencement of the 15-day time-limit referred to in Article 10.2 of the Player Contract.

(c) The Respondent did not pay all of the outstanding sums due to the First Claimant within that 15-day time-limit.

(d) Although the Respondent was in breach of its contractual duty to pay certain salary payments, it did, however, evince a willingness to pay those overdue salary payments to the First Claimant in Greece. The Respondent first evinced that intention on 26 March 2019 – two days before the expiry of the 15-day time-limit.

(e) Mr. Silverman (acting on behalf of the First Claimant) apparently refused to accept any payment being paid to any account in Greece. In his email dated 11 April 2019, for example, Mr. Silverman stated that, "*if* [the First Claimant] *cannot freely transfer money from payments to his Greek account, then I would argue that he is not paid at all. Until the payments from my most recent letter are made in full to Axel's bank of choice* […]*he remains entitled to request his conditional release into free agency and immediate payment of all monies due during the entire term of this agreement*" (emphasis added).

127. The Arbitrator observes that the Player Contract states that the First Claimant's salary "*shall be paid…to the* [First Claimant's] *account*". It does not, however, state that the relevant account must be an account outside Greece. Accordingly, the Arbitrator considers that Mr. Silverman's assertion that the Respondent was not entitled to pay the First Claimant's salary into his Greek bank account was wrong. Had the Respondent paid the salary into the Greek bank account, then this would have constituted an effective discharge of its obligations under Article 2 of the Player Contract.

128. In these circumstances, the important question is whether the First Claimant was entitled to terminate the Player Contract in circumstances where (a) the Respondent was more than 30 days late in making a payment due under the Player Contract; however (b) the Respondent had indicated a willingness to pay the overdue salary into the First Claimant's Greek bank account, but the First Claimant's representative had wrongly informed the Respondent that it was not permitted to do so.

129. Having carefully considered the matter, the Arbitrator concludes that there is no doubt that the Respondent was more than 30 days late in making payments due to the First Claimant under the Player Contract and the First Claimant was therefore entitled under Article 2 to "*avoid this agreement*". There is equally no doubt that the First Claimant made "*a request in writing to the* [Respondent] *requesting the* [Respondent] *to comply with its obligations within a time-limit of fifteen (15) days*". It is similarly clear that the Respondent "*d*[id] *not comply with such request within the said time limit*". Lastly, it is clear that the Respondent could have complied with that request by paying the overdue salary into the First Claimant's bank account, but did not do so.

130. Although the First Claimant's representative wrongly informed the Respondent that a payment into the First Claimant's Greek bank account would not constitute a valid performance of the Respondent's contractual duties, he did not do so until 1 April 2019. This was several days after the 15-day time-limit (which began to run on 12 March 2019) expired. Accordingly, Mr. Silverman's erroneous statement on 1 April 2019 had no bearing on the Respondent's ability to "*comply with its obligations within a time-limit of fifteen (15 days)*" of the request dated 12 March 2019. (The Arbitrator notes, as an aside, that the Respondent was at all material times privy to the relevant bank account details and therefore had the ability to make payments to that account at any time.)

131. In these circumstances, the Arbitrator concludes that the First Claimant was entitled to terminate the Player Contract and that he validly exercised that right when Mr. Silverman subsequently sent the notice of termination to the Respondent on 12 April 2019. Accordingly, pursuant to Article 2 of the Player Contract "*all monies due during the entire term of*" the Player Contract became "*immediately due and payable*" to the First Claimant upon that termination.

132. The Arbitrator observes that there is a factual dispute between the parties concerning a conversation that allegedly took place between the First Claimant and various representatives of the Respondent on 12 April 2019. The Arbitrator has carefully

considered the evidence submitted by the parties. Having done so, the Arbitrator notes that according to the Respondent, one of its representatives "*proposed*" that one of the overdue instalments of the First Claimant's remuneration would be paid within the next week and the First Claimant "*did not disagree*" with that proposal.

133. The First Claimant does not agree with the Respondent's account of events. Even taking the Respondent's evidence at face value, however, the Arbitrator does not consider that this would constitute either a waiver of the First Claimant's right to terminate the Player Contract or evidence that the First Claimant was not, in fact, entitled to terminate the Player Contract. On the contrary, in circumstances where the Respondent had failed to pay several instalments of salary to the First Claimant, it is entirely natural that the First Claimant would not object to the Respondent seeking to partially rectify that failure.

134. In light of the Arbitrator's conclusion that the First Claimant validly exercised his right to terminate the Player Contract on 12 April 2019, it follows that the Arbitrator rejects the Respondent's assertion that the First Claimant "*abusively terminated*" his contractual relationship with the Respondent. For the reasons set out above, the Arbitrator concludes that the First Claimant's decision to terminate the contractual relationship was a lawful and justified exercise of his contractual rights in response to the Respondent's persistent breach of its contractual obligations.

135. The Arbitrator notes that at the date when the 15-day notice period expired under Article 2 of the Player Contract, the First Claimant was owed a total of EUR 80,000.00 net in unpaid salary (namely the payments that ought to have been paid on 31 January 2019 and 28 February 2019). On 31 March 2019, the Respondent failed to make another payment of EUR 40,000.00 net which fell due on that date. As at 12 April 2019 – the date when the First Claimant exercised his right to terminate the Player Contact – EUR 120,000.00 net was therefore due to the First Claimant. In addition, as a consequence of exercising his right to terminate the Player Contract the First Claimant was entitled

to:

(a) a further EUR 120,000.00 net in respect of the remainder of the 2018/19 playing season (i.e. the three instalments of EUR 40,000.00 that would have fallen due on 30 April, 31 May and 30 June 2019); and

(b) a further EUR 475,000.00 net in respect of his contractual remuneration for the 2019/20 playing season.

136. The Arbitrator further notes that:

(a) In response to the Fifth Procedural Order, the First Claimant stated that he had signed a contract with Malaga for the 2019/20 playing season and that his claim in respect of unpaid remuneration for the 2019/20 season should therefore be reduced by EUR 350,000.00 net (the amount of salary he would receive from Malaga during the 2019/20 playing season).

(b) Following the commencement of these arbitral proceedings, the Respondent made two payments totalling EUR 100,000.00 to the First Claimant. This had the effect of reducing the amount of the outstanding debt to the First Claimant by EUR 100,000.00.

137. Accordingly, the Arbitrator concludes that the First Claimant is entitled to be paid a total of EUR 265,000.00 by the Respondent (EUR 715,000.00 minus EUR 350,000.00 minus EUR 100,000.00 = EUR 265,000.00) in respect of the unpaid remuneration owed to him under the Player Contract. In this regard, the Arbitrator notes that although the Requests for Relief in the RFA do not expressly seek payments on a net basis, this is clearly implicit since the figures contained in the RFA correspond with the figures contained in the Player Contract (which were expressly stated to be net figures) rather than the figures in the Addendum (which were gross figures): see paragraphs 116 and

117 above. Accordingly, the Arbitrator is satisfied that the Request for Relief is, in substance, a request for payments to be made net and that this corresponds with the First Claimant's contractual entitlement under the Player Contract.

138. Lastly, the Arbitrator considers that there is no merit in the Respondent's contention that the quantum of the First Claimant's claim is "*disproportionate*" since the Respondent "*aimed to unilaterally terminate the Contract at the end of the season 2018-2019*". In particular:

(a) The terms of the contract make it clear that the First Claimant's right to terminate the contract as a result of a breach of the contract by the Respondent was in no way qualified or diminished by any right the Respondent had to terminate the contract at the end of the 2018/19 playing season. In particular, Article 10.2 of the Player Contract makes it clear that in the event of a termination by the First Claimant under Article 10, the Respondent shall be liable to pay "*all monies due during the entire term of this agreement*" and expressly provides that the First Claimant "*is under no obligation to mitigate his damages and* [the Respondent] *shall receive no offset*". The wording of Article 10 of the Player Contract therefore clearly establishes that in the event of the First Claimant exercising his right to terminate the contract, the Respondent was immediately obligated to pay the entire amount due under the contract and could not reduce that sum by arguing that it intended to terminate the contract at the half-way point.

(b) Furthermore and in any event, there is no evidence in the record capable of corroborating the Respondent's claim that it intended to terminate the contract at the end of the 2018/19 playing season.

139. For all these reasons, the Arbitrator concludes that the Respondent is liable to pay the sum of EUR 265,000.00 to the First Claimant.

6.2.2 Alleged failure to pay agency fees due to the Second Claimant

140. The Second Claimant seeks an order requiring the Respondent to pay a total of EUR 87,500.00 (plus interest) for breach of the Agent Contract. This comprises (a) EUR 40,000.00 in respect of two unpaid instalment of EUR 20,000.00 that fell due on 30 October 2018 and 28 February 2019; and (b) EUR 47,500.00 in respect of unpaid fees for the 2019/20 playing season.

141. Regarding the claim for EUR 47,500.00 in respect of the 2019/20 season, the Arbitrator notes that the Agent Contract provides in Article 2 that in consideration for "*its services in negotiations as well as agent fees for and all and any other services in relation to the* [First Claimant] *or performance of the Contract during the whole term thereof*", the Respondent agreed to pay to the Second Claimant EUR 23,750.00 net by no later than 30 October 2019 and EUR 23,750.00 net by no later than "*28 February 2019*".

142. The Arbitrator notes, firstly, that it is apparent that Article 2(iv) of the Agent Contract contains a typographical error, and that the date intended to be recorded there was 28 February 2020, not 28 February 2019. This is apparent from the fact that:

(a) The payments listed in Article 2(i)-(iv) of the Agent Contract are clearly intended to be listed chronologically, and therefore Article 2(iv) cannot have been intended to refer to a date earlier than the date listed in Article 2(iii).

(b) Article 2(ii) of the Agent Contract already refers to a payment that fell due on 28 February 2019. It would not make any logical sense for the Agent Contract to have required two separate payments of EUR 20,000.00 and EUR 23,750.00 to have been made by the Respondent to the Second Claimant on the same date. Rather, the clear inference from the terms and structure of the contractual term is that the latter payment of EUR 23,750.00 was intended to be made one year after the former payment.

143. The Arbitrator notes that the Agent Contract provides in Article 3 that the payments "*shall be due*" to the Second Claimant upon two "*conditions*": first, the First Claimant must have passed the medical examination upon his arrival in Greece; second, the Player Contract "*is still in effect when payments are due*". There is no doubt that the first of these conditions is met. There is a dispute, however, regarding the second condition.

144. The Respondent submits that the second condition is not met since the Player Contract had been terminated by the dates when the third and fourth payments fell due. The Second Claimant disputes this. He argues that since the Respondent is responsible for the termination of the Player Contract (by virtue of its failure to comply with its obligations under that contract) it cannot rely on the termination of the Player Contract in order to avoid its obligation to pay the third and fourth instalments due to the Second Claimant under the Agent Contract.

145. Having carefully considered the parties' respective submissions, the Arbitrator concludes that the Second Claimant is only entitled to recover the payments of EUR 20,000.00 that fell due on 30 October 2018 and 28 February 2019 and is not entitled to require the Respondent to make the payments of EUR 23,750.00 that would have fallen due on 30 October 2019 and 28 February 2020. In reaching this conclusion, the Arbitrator notes that the language of Article 3 of the Agent Contract is clear and unqualified. It provides that the Second Claimant is entitled to the payments described in Article 2 of the Agent Contract if (and only if) the Player Contract "*is still in effect when* [those] *payments are due*". The Arbitrator does not consider that the quoted words are capable of being interpreted in a manner that excludes situations where the First Claimant has exercised a right to terminate the Player Contract by virtue of a breach of that contract by the Respondent.

146. The Arbitrator notes that under the Agent Contract the sums of EUR 20,000 were expressly required to be paid "*net of taxes*". The Arbitrator is satisfied that the terms of

the Request for Relief in the RFA correspond with the terms of the Agent Contract and therefore the Second Claimant is seeking, and is entitled to, payment of the unpaid amounts on a net basis. Accordingly, the Arbitrator concludes that the Respondent is liable to pay the sum of EUR 40,000.00 net to the Second Claimant in respect of unpaid agent fees due to the Second Claimant under the Agent Contract.

6.2.3 Interest

147. The Arbitrator is empowered to decide the present case *ex aequo et bono*. That said, in compliance with BAT jurisprudence the Arbitrator finds that an interest rate of 5% per annum is in principle reasonable in the circumstances of this case.

6.2.3.1 First Claimant's entitlement to interest

148. The Arbitrator notes that the Respondent failed to pay instalments of EUR 40,000.00 due to the First Claimant on 1 February 2019 and 1 March 2019 respectively. Accordingly, as of 2 March 2019 the Respondent owed a total of EUR 80,000.00 to the First Claimant.

149. Upon expiry of the 15-day time limit (triggered by Mr. Silverman´s written request of 12 March 2019 for the Respondent to comply with its contractual obligations) on 27 March 2019, the First Claimant was entitled to "*request*" payment of all monies due during the entire term of the agreement "*which shall become immediately due and payable*". Accordingly, from that date the First Claimant was entitled to be paid both the EUR 120,000.00 that was already overdue and all of the monies that were due for the rest of the term of the contract (namely EUR 120,000.00 in respect of the remainder of the 2018/19 playing season and EUR 475,000.00 in respect of the 2019/20 playing season). Consequently, from 13 April 2019 the Respondent was liable to pay a total of EUR 715,000.00 to the First Claimant.

150. The Arbitrator notes, however, that:

(a) The First Claimant amended his prayer for relief so that the EUR 350,000.00 which he is to receive from Malaga is deducted from the amount owed by the Respondent as at the date of the termination of the Player Contract. Accordingly, the total amount of the Respondent's liability to the First Claimant as at the date of termination is treated as being EUR 365,000.00 (EUR 715,000.00 minus EUR 350,000.00 = EUR 365,000.00).

(b) The Respondent made payments of EUR 60,000.00 and EUR 40,000.00 to the First Claimant on 15 July 2019 and 13 August 2019 respectively. Those payments reduced the amount of the Respondent's liability by those amounts from those dates.

(c) The First Claimant's revised prayer for relief states seeks an order that: "*Olympiacos S.F.P. B.S.A. shall pay to Mr. Axel Toupane 20,000.00 Euros plus 5 % interest per annum as of 1 April 2019"* together with "*245,000 Euros plus 5% interest per annum as of 14 April 2019"*. Accordingly, even though the Respondent's debt to the First Claimant was greater than EUR 265,000 until the Respondent made the payments described in sub-paragraph (b) above, the First Claimant does not seek interest on a sum greater than EUR 265,000.00.

151. Accordingly, the Arbitrator concludes that the Respondent must pay interest to the First Claimant at the rate of 5% per annum:

(a) On the sum of EUR 40,000.00 from 1 February 2019 until 28 February 2019;

(b) On the sum of EUR 80,000.00 from 1 March 2019 until 31 March 2019;

(c) On the sum of EUR 120,000.00 from 1 April 2019 until 13 April 2019; and

(d) On the sum of EUR 265,000.00 from 14 April 2019 until payment;

6.2.3.2 Second Claimant's entitlement to interest

152. The Arbitrator notes that the two payments which the Respondent failed to make to the Second Claimant fell due on 20 October 2018 and 28 February 2019 respectively. The Arbitrator also notes that in the Request for Relief in the RFA, the Second Claimant seeks interest on the amount of EUR 20,000.00 "*as from 1 November 2019*" and on the second amount of EUR 20,000.00 "*as from 1 March 2019*". Accordingly, the Arbitrator concludes that the Respondent must pay interest to the Second Claimant at the rate of 5% per annum:

(a) On the sum of EUR 20,000.00 from 1 March 2019 until 31 October 2019; and

(b) On the sum of EUR 40,000.00 from 1 November 2019 until payment.

7. Costs

153. On 9 February 2020, pursuant to Article 17.2 of the BAT Rules, the BAT President determined the final amount of the costs of the arbitration to be EUR 15,000.00.

154. Article 17.3 of the BAT Rules provides that:

> "*The award shall determine which party shall bear the arbitration costs and in which proportion. In addition, as a general rule, the award shall grant the prevailing party a contribution towards its reasonable legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When deciding on the arbitration costs and on 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*."

155. The First Claimant has succeeded in the entirety of his claim against the Respondent (including by successfully resisting both the Respondent's jurisdictional challenge and its defence on the merits). The Second Claimant has similarly succeeded in resisting the Respondent's jurisdictional challenge and in establishing liability against the Respondent (albeit that he has only recovered just under half of the amount sought in the Request for Arbitration). In these circumstances, the Arbitrator considers it is fair and just for 100% of the costs of the arbitration to be borne by the Respondent.

156. As to the Claimants' legal costs, the Arbitrator considers that, in light of the outcome of the case and the parties' respective conduct throughout these proceedings, in accordance with Article 17.3 of the BAT Rules the Claimants are each entitled to a contribution towards their reasonable legal fees and other expenses from the Respondent.

157. The Claimants' statement of costs seeks a total amount of EUR 27,500.00 as a contribution towards their legal costs and expenses. The Claimants submit, in this regard, that:

    (a) Because the prayer for relief initially sought a total award of EUR 715,000.00 in respect of the First Claimant's claim, the maximum contribution that the Arbitrator is empowered to award in respect of that claim is EUR 20,000.00 (this being the maximum contribution for claims where the sum in dispute is between EUR 500,001.00 and EUR 1,000,000.00). The First Claimant submits that the fact that the prayer for relief was subsequently amended so that the sum in dispute is less than EUR 500,000.00 (maximum contribution is EUR 15,000.00) does not have the effect of reducing the maximum contribution for the purposes of Article 17.4 for the BAT Rules.

    (b) Since the Second Claimant claimed an amount of EUR 87,500.00, it follows that under Article 17.4 of the BAT Rules he is entitled to a maximum contribution of

EUR 7,500.00.

(c) Accordingly, pursuant to Article 17.4 of the BAT Rules the Claimants are entitled to recover a maximum of EUR 27,500.00 in respect of their legal costs and other expenses.

158. The Claimants submit that they ought to be awarded a total contribution of EUR 27,500.00 in this case although the actual legal fees and expenses amount to EUR 33,772.20. In this regard, the Claimants submit that the proceedings were legally complex and involved the filing of multiple rounds of submissions by the parties. The complex legal issues arose, amongst other things, from the Respondent's attempt to pursue proceedings before a different dispute resolution body in Greece and the Respondent's decision to make false allegations throughout the proceedings. In this regard, the Claimants submit that the Respondent engaged in unacceptable procedural conduct. In particular, they contend that it deliberately "torpedoed" the present proceedings by lodging a claim (premised on incomplete facts) before the HEBA Committee in an effort to stymie the progress of these proceedings before the BAT. In addition, the Claimants point out that they have been required to seek advice and translation assistance from a Greek lawyer in order comprehend the proceedings in Greece and to communicate relevant information about those Greek proceedings to the Arbitrator.

159. The Arbitrator has had careful regard to these submissions. The Arbitrator agrees with the Claimants that the proceedings have entailed a degree of factual and legal complexity and the Claimants have had to file extensive written submissions in response to various Procedural Orders made throughout these proceedings. The Arbitrator also notes that the Claimants have been required to incur expenditure in obtaining translations and assistance in connection with the proceedings in Greece which the Respondent unsuccessfully sought to invoke as a basis for staying these proceedings or denying the jurisdiction of the BAT altogether.

160. At the same time, the Arbitrator does not consider that the disputed facts and issues in this case are at the very upper end of the spectrum of factual or legal complexity. In the circumstances of this case, the Arbitrator does not consider it necessary to determine whether the maximum permissible contribution in respect of the First Claimant's claim is EUR 20,000.00 or EUR 15,000.00. Having carefully considered the matter, the Arbitrator concludes that the First Claimant should receive a contribution of EUR 17,500.00 (including EUR 3,500.00 in respect of half of the non-reimbursable handling fee of EUR 7,000.00) towards its legal fees and expenses, while the Second Claimant should receive a contribution of EUR 8,500.00 towards his legal fees and expenses (including EUR 3,500.00 in respect of half of the non-reimbursable handling fee of EUR 7,000).

8. AWARD

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

1. **Olympiacos S.F.P. B.S.A is ordered to pay to Mr. Axel Toupane the total sum of EUR 265,000.00 together with interest at the rate of 5% p.a. calculated as follows:**
   a. **on the sum of EUR 40,000.00 from 1 February 2019 until 28 February 2019;**
   b. **on the sum of EUR 80,000.00 from 1 March 2019 until 31 March 2019;**
   c. **on the sum of EUR 120,000.00 from 1 April 2019 until 13 April 2019;**
   d. **on the sum of EUR 265,000.00 from 14 April 2019 until payment.**
2. **Olympiacos S.F.P. B.S.A is ordered to pay to Athlete Management Group the total sum of EUR 40,000.00 together with interest at the rate of 5% p.a. calculated as follows:**
   a. **on the sum of EUR 20,000.00 from 1 March 2019 until 31 October 2019; and**
   b. **on the sum of EUR 40,000.00 from 1 November 2019 until payment.**
3. **Olympiacos S.F.P. B.S.A shall pay EUR 7,500 jointly to Mr. Axel Toupane and Athlete Management Group as reimbursement of the arbitration costs.**
4. **Olympiacos S.F.P. B.S.A is ordered to pay to Mr. Axel Toupane EUR 17,500.00 as reimbursement of his legal fees and expenses (including 50% of the non-reimbursable handling fee).**
5. **Olympiacos S.F.P. B.S.A is ordered to pay to Athlete Management Group**

the total sum of EUR 8,500.00 as reimbursement of its legal fees and expenses (including 50% of the non-reimbursable handling fee).

6. Any other or further-reaching claims for relief are dismissed.

Geneva, seat of the arbitration, 18 February 2020

Raj Parker
(Arbitrator)