

ARBITRAL AWARD

(BAT 1022/17)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Ulrich Haas

in the arbitration proceedings between

Mr. John Cox

- Claimant 1 -

Pensack Sports

1000 Shelter Bay Ave. Suite #1109, Mill Valley, CA 94941, USA

- Claimant 2 -

both represented by Mr. Benjamin J. Pensack, attorney at law,
1000 Shelter Bay Ave., Suite 1109, Mill Valley, CA 94941, USA

vs.

Bucaneros de la Guaira

Av. Principal de las Mercedes, entre calle Mucuchíes con Monterrey, edif 339, piso 3,
Urb Las Mercedes Caracas, Distrito Capital postal zone: 1080, Venezuela

- Respondent -

1. The Parties

1.1. The Claimant 1

1. Mr. John Cox (hereinafter the “Player” or “Claimant 1”) is a professional basketball player.

1.2. The Claimant 2

2. Pensack Sports (hereinafter the “Agency” or “Claimant 2” and, together with Claimant 1, the “Claimants”), is an agency that represents professional basketball players, among others Claimant 1.

1.3. The Respondent

3. Bucaneros de la Guaira (hereinafter the “Club” or “Respondent”) is a professional basketball club located in La Guaira, Venezuela.

2. The Arbitrator

4. By letter of 20 July 2017, the President of the Basketball Arbitral Tribunal (hereinafter the “BAT”), Professor Richard H. McLaren, O.C., appointed Ulrich Haas as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). None of the Parties have raised any objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1. Summary of the Dispute

5. On 13 August 2015, the Player and the Respondent entered into an employment contract according to which the Player was engaged as a skilled basketball player for two seasons, namely the 2015-2016 and 2016-2017 basketball seasons in Venezuela (hereinafter the “Agreement 1”).

6. According to Article 2 “PLAYER REMUNERATION” of the Agreement 1, the Club agreed to pay to the Player the following payments:

- Per Lit. A., for season 2015-2016 a salary in the amount of USD 200,000.00;
- Per Lit. B., for season 2016-2017 a salary in the amount of USD 200,000.00.

“The payment RESPECT TO THE TOURNAMENT BY DECISION THE FEDERATION VENEZUELAN BASKETBALL FOR THE STARTING TOURNAMENT. Payments will be made at rate of \$40,000 USD per month on the last day of each month. STARTING TOURNAMENT FOR DECISION FIBA WORLD IS NOVEMBER 2016. NO MORE 5 MONTHS, FINALLY MARCH 2017”.

7. Article 8 “LATE PAYMENTS” of Agreement 1 states the following:

“If any payments to Player are more than 15 (fifteen) days late, Player shall have the right to terminate this contract while all amounts owed to Player for the entire season shall be accelerated and become immediately due and payable. Should such default of payments by Club occur, Club will immediately grant a letter of clearance to Player and Player shall be free to leave the Club while still maintaining the right to collect his full salary for the season and there will be no offset for the salary owed to the Player should the Player sign with another team.

8. Article 9 “ARBITRATION” of Agreement 1 states the following:

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

9. Also on 13 August 2015, the Agency and the Club executed an Agency Fee Contract (hereinafter the “Agreement 2”). Agreement 2 is attached to Agreement 1 and is signed by Mr. Benjamin Pensack (hereinafter the “Agent”) on behalf of the Agency and by Mr. Gregory John, Respondent’s Vice President, on behalf of the Respondent. According to Agreement 2, Respondent was obliged to pay to the Agency the following amounts for its work in relation to the Player’s transfer to the Club:

- for season 2016: USD 20,000.00 by January 30, 2016;
- for season 2016-2017: USD 20,000.00 by January 30, 2017.

10. Furthermore, Agreement 2 includes also the following dispute resolution clause:

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

11. Once Claimant 1 joined the Respondent he began practicing with the Club and performed his duties for the entire 2015-2016 basketball season.

12. Although there were delays in payment, the Respondent eventually paid all amounts due for the season 2015-2016 to the Claimants.
13. When the Parties executed Agreement 1 and 2 they were not aware of the exact dates in respect of the 2016-2017 basketball season. Once those dates were set (starting in February 2017 and ending in June 2017), the Parties began to negotiate an updated payment schedule.
14. As a result of these negotiations, the Respondent's President Mr. Alinson Chacon, the Player and the Agent signed an addendum to Agreement 1 and 2 on 19 January 2017. This addendum read as follows:

"This addendum is meant to clarify the contract between the parties entered into on August 13, 2015 [...] as the contract pertains to the 2016-17 LPB season. The parties hereby agree as follows:

1. The Player will join the Club on January 19-20, 2017 and will participate for the Club in the 2017 Ligas de Americas Tournament.

2. The total base salary to be paid by Club to Player for the 2016-2017 LPB (if the league starts from February and finishes in June) season shall remain \$200,000 (two hundred thousand) USD Net and will be paid by Club to Player as follows: February 19, 2017 - \$40,000 USD Net March 19, 2017 - \$40,000 USD Net April 19, 2017 - \$40,000 USD Net May 19, 2017 - \$40,000 USD Net June 19, 2017 - \$40,000 USD Net.

[...]

3. The agent fee of \$20,000 (twenty thousand) USD Net shall be paid by Club to Agent by March 1, 2017.

4. All other terms of the original agreement between the parties shall remain the same.

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

15. It is alleged that Claimant 1 performed his contractual duties for the season 2016-2017 and that Respondent failed to adhere to the terms of Agreement 1, Agreement 2 and of the addendum. The Respondent did not make any payments to the Claimants.
16. On 31 March 2017, Claimant 1 sent an email to the Respondent, requesting the payment of his outstanding salary.
17. On 2 April 2017, the President of the Respondent sent an email to Claimant 1 with the following content:

"Hello John, we are aware of the situation as I said in the dressing room and I told them that we are solving everything. I know you need your money and I reiterate that your money is super safe even though the government has not canceled us, we are going to respond."
18. On 7 April 2017, Mr. Pensack sent an email to the Respondent asking for the Player's outstanding salary and the unpaid agent fee.
19. By letter of 15 April 2017, Claimants terminated Agreement 1 with immediate effect in accordance with its Article 8. Furthermore, Claimants requested the immediate payment of the outstanding amounts of USD 200,000.00 in salaries and of USD 20,000.00 in agent fees.

20. It is alleged that because Claimant 1 terminated the contractual relationship with Respondent late in the basketball season there were only limited options to find a new contract in the basketball market. Claimant 1 was able to secure a contract with the French basketball club Éla Béarhais Pau-Lacq-Orthez. According to this new contract Claimant 1 was entitled to salaries in the amount of USD 15,000.00 for the remainder of the season 2016-2017.

3.2. The Proceedings before the BAT

21. On 19 June 2017, the Claimants filed their Request for Arbitration with the BAT Secretariat (received on 6 July 2017). The non-reimbursable handling fee of EUR 2,998.25 was received in the BAT bank account on 22 June 2017.
22. By letter of 27 July 2017, the BAT Secretariat acknowledged receipt of the Request for Arbitration and informed the Parties of the appointment of the Arbitrator. Furthermore, a time limit was fixed for the Respondent to file its Answer in accordance with Article 11.2 of the BAT Rules (hereinafter the “Answer”) by no later than 17 August 2017. The BAT Secretariat also requested the Parties to pay the following amounts as an Advance on Costs by no later than 7 August 2017:

<i>“Claimant 1 (Mr. John Cox)</i>	<i>EUR 5,000.00</i>
<i>Claimant 2 (Pensack Sports)</i>	<i>EUR 1,000.00</i>
<i>Respondent (Bucaneros de la Guaira)</i>	<i>EUR 6,000.00”.</i>

23. On 21 August 2017 and due to delivery problems, the BAT Secretariat asked the Federación Venezolana de Baloncesto to pass the aforementioned correspondence on to the Respondent and to inform the BAT accordingly. Furthermore, the BAT Secretariat asked the Federación Venezolana de Baloncesto to inform it whether or not the Respondent’s contact details (Bucaneros de la Guaira, Av. Francisco de Miranda Centro Comercial, Puerta del este Mezanina local 2 y 3 La California, Norte Caracas Uniforme, 1160 La Guaira, Venezuela) were correct.

24. By email of 4 October 2017, the BAT Secretariat informed the Claimants that the BAT could not serve the claim upon the Respondent. Thus, the BAT Secretariat invited the Claimants to serve the documents to the Respondent and to provide proof of receipt by the Respondent until 18 October 2017.
25. On 5 October 2017, Claimants informed the BAT that they had successfully obtained a copy of the Respondent's business card, showing the following address: Av. Principal de las Mercedes, entre calle Mucuchies y Monterrey, edf. 339, piso 3, Ofic. #5, Las Mercedes, Caracas, Venezuela. Accordingly, Claimants requested the BAT to serve the documents to this (new) address.
26. On 9 October 2017, the BAT Secretariat informed the Claimants that it would try to deliver the documents to the Respondent's new address.
27. By email of 16 October 2017, the BAT Secretariat informed the Claimants as follows:

"The shipment is processed in Miami and triage sends the shipment to Puerto Rico, Unfortunately the document is still in the container and it will take some time to be forwarded because they are still not in good shape after the hurricane hit them".
28. By email of 26 October 2017, the BAT Secretariat informed the Claimants that the documents had arrived in Caracas but could not be delivered to the Respondent because the address details provided by the Claimants were incomplete.
29. On 13 November 2017, the BAT Secretariat informed the Claimants that the documents could not be delivered to the Respondent.
30. By email of 27 November 2017, the BAT Secretariat advised that it would, once more, try to effect delivery of the documents via the Federación Venezolana de Baloncesto.

31. On the same date, the BAT Secretariat sent an email to Mr. Marin at the Federación Venezolana de Baloncesto that read as follows:

“Due to problems with the delivery of our correspondence to Bucaneros de la Guaira, and as agreed with Mr. Benjamin Schindler (FIBA), please find attached a correspondence from the Basketball Arbitration Tribunal (BAT) concerning an arbitration filed by Mr. John Cox and Pensack Sports against Bucaneros de la Guaira.

We herewith kindly ask you to pass on the said correspondence to the aforementioned club and to inform us once the documents have been duly received by the club. In addition, could you please inform us whether the following contact details we have on file are correct:

Bucaneros de la Guaira
Av. Francisco de Miranda Centro Comercial
Puerta del este Mezanina local 2 y 3 La California
Norte Caracas Uniforme
1160 La Guaira, Venezuela”

32. On 1 December 2017, the Claimants informed the BAT that they had contacted Mr. Oswaldo Narvaez, the Director of the Federación Venezolana de Baloncesto, and that Mr. Narvaez had advised them that he would make sure that the Respondent received all correspondence regarding this case. The Claimants requested the BAT to send the correspondence for the Respondent to both Mr. Narvaez and Mr. Marin.
33. On 4 December 2017, the BAT Secretariat sent the respective documents also to Mr. Narvaez and asked him to pass the correspondence on to the Respondent.
34. On 27 December 2017, Mr. Narvaez informed the BAT that the President of the Respondent, Mr. Allison Chacon, had received the correspondence relating to the case and that the Respondent’s postal address was as follows: *“BUCANEROS DE LA GUAIRA, AV. PRINCIPAL DE LAS MERCEDES, ENTRE CALLE*

MUCUCHÍES CON MONTERREY EDIF 339 PISO 3, URB LAS MERCEDES CARACAS, DISTRITO CAPITAL POSTAL ZONE: 1080”.

35. On 3 January 2018, the BAT Secretariat informed the Parties that it had received a confirmation of delivery of the documents by Mr. Narvaez. Furthermore, the BAT informed the Parties that the Respondent had failed to submit an Answer to the Request of Arbitration. Therefore, the BAT granted the Respondent a final opportunity to file an Answer to the Request for Arbitration until 22 January 2018.
36. On the same date, Mr. Narvaez from the Federación Venezolana de Baloncesto informed the BAT that the Club and the League were on holidays until 8 January 2018 and that he would deliver the documents to the Club after that date. Furthermore, he informed that he had already notified the Club's President by email.
37. On 15 January 2018, Mr. Narvaez submitted a copy of the letter sent on behalf of the Federación Venezolana de Baloncesto to the Respondent's President. The letter dated of 12 January 2018 and reads as follows (in Spanish):

“Nos dirigimos a usted en la oportunidad de saludarle y desearle a usted y los miembros del Club Bucaneros de La Guaira perteneciente a la Liga Profesional de Baloncesto (LPB) lo mejor en este 2018 que recién inicia.

Asimismo, le remitimos la documentación relativa al caso que interpuso el jugador JOHN ARTHUR COX contra su equipo y donde el BAT ha requerido nuestra intervención para notificar urgentemente al equipo ya que no han recibido respuesta alguna sobre el particular. Agradecemos de antemano toda su atención y pronta respuesta al BAT. Reiterando nuestras seguridades de estima y consideración”.

38. With letter of 1 February 2018, the Arbitrator invited the Claimants to state until 12 February 2018 whether they had sent any written warnings or notices to the Respondent regarding the alleged outstanding salary payments for the season 2016/2017 (in the amount of USD 200,000.00) and the alleged outstanding agent

fee (in the amount of USD 20,000.00). If so, the Claimants were invited to submit proof thereof.

39. A copy of the above letter was sent by the BAT secretariat to Mr. Narvaez at the Federación Venezolana de Baloncesto to be forwarded to the Respondent.
40. By letter of 2 February 2018, the Claimants submitted their reply to the Arbitrator's Procedural Order.
41. By letter of 13 February 2018, the BAT Secretariat acknowledged receipt of the Claimants' submission. Furthermore, the BAT Secretariat informed the Parties of the Arbitrator's decision to declare the exchange of documents complete. The Parties were invited to submit a detailed account of their costs by 20 February 2018.
42. On 14 February 2018, the Claimants submitted their account of costs.
43. By email of the same date, the BAT Secretariat acknowledged receipt of the Claimants' account of costs and forwarded it to the Respondent (via the Federación Venezolana de Baloncesto) for its information.

4. The Positions of the Parties

4.1. Claimants' Position

44. Claimant 1 was employed as a professional basketball player by Respondent for the seasons of 2015-2016 and 2016-2017. He submits that the Respondent failed to pay the owed salaries. Furthermore, Claimant 1 submits that the Respondent is not entitled to subtract any of the salary payments he received from the French basketball club Éla Béarhais-Pau-Lacq-Orthez for the remainder of the season.

45. Claimant 2 submits that Respondent failed to pay the owed agency fee without any justification.

4.2. Claimants' Request for Relief

46. In their Request for Arbitration, the Claimants filed the following prayers for relief:

- "1. For the BAT to hold that that Respondent must immediately pay \$200,000.00 USD to Claimant #1 plus lawful interest.*
- 2. For the BAT to hold that that Respondent must immediately pay \$20,000.00 USD to Claimant #2 plus lawful interest.*
- 3. For the BAT to hold that Respondent shall reimburse Claimants and bear the cost of 3,000 EUR handling fee to bring this arbitration.*
- 4. For the BAT to hold that Respondent shall bear all further costs of this arbitration.*
- 5. For the BAT to hold that Respondent shall pay Claimants' costs of attorney fees for this case.*
- 6. For such other and further relief that the BAT may deem appropriate."*

4.3. Respondent's Position

47. Despite being notified of the Request of Arbitration and despite repeated invitations by the BAT, Respondent decided not to engage in the arbitration proceedings at hand and did not make any submissions within the time limits set by the Arbitrator in accordance with the BAT Rules. The Arbitrator ensured that Respondent had received all communications from the BAT in conformity with the BAT rules via fax, email and via the Federación Venezolana de Baloncesto.

5. The Jurisdiction of the BAT

48. As a preliminary matter, the Arbitrator wishes to emphasize that, since Respondent did not participate in this arbitration, he will examine his jurisdiction *ex officio*, on the basis of the record as it stands.
49. Pursuant to Article 2.1 of the BAT Rules, "[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland". Hence,

this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (hereinafter “PILA”).

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

5.1. Arbitrability

51. The Arbitrator finds that both matters in dispute referred to him, i.e. the claims of both the Player and the Agent arising out of the various agreements (Agreement 1 and Agreement 2) are of a financial nature and are, thus, arbitrable within the meaning of Article 177(1) PILA.

5.2. Formal and substantive validity of the arbitration agreement

52. The arbitration clause regarding the claims of Claimant 1 is to be found in Article 9 of Agreement 1, and the one with regard to the claims of Claimant 2 in Article 9 of Agreement 2. Furthermore, also the addendum contains an arbitration clause in its Article 5. All three arbitration clauses are identical and read as follows:

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

53. These arbitration clauses (in Agreement 1, Agreement 2 and the addendum) are in written form and signed. Agreement 1 and the addendum are signed by Claimants and the Respondent. Agreement 2 is signed by Claimant 2 and Respondent. Thus, the formal requirements enshrined in Article 178(1) PILA are fulfilled.

54. With respect to the substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording “[a]ny dispute arising from or related to the present Contract” in Article 9 of Agreement 1 and 2 as well as in Article 5 of the addendum clearly covers the present dispute.

55. For the reasons above, the Arbitrator finds that he has jurisdiction to decide the present dispute and to adjudicate the Claimants’ claim.

6. Applicable Law

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

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

57. Under the heading “Applicable Law”, Article 15.1 of the BAT Rules reads 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.”

58. In Article 9 of Agreements 1 and 2, and also in Article 5 of the addendum, the Parties have explicitly empowered the Arbitrator to decide the dispute *ex aequo et bono* without any reference to national law. As a result, the Arbitrator will decide the present matter *ex aequo et bono*.

59. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l'arbitrage of 1969¹ (Concordat),² under which Swiss courts have held that “arbitrage en *équité*” is fundamentally different from “arbitrage en droit”:

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

60. This is confirmed by Article 15.1 of the BAT Rules *in fine*, according to which the Arbitrator applies “*general considerations of justice and fairness without reference to any particular national or international law*”.

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

7. Findings

62. Claimant 1 requests payment of his outstanding salary (see para 7.1 below) and interest on the outstanding amounts (see para 7.2 below).

63. Claimant 2 requests payment of the outstanding agency fee (see para 7.3 below) and interest on such amount (see para 7.4 below).

7.1. Outstanding salary in the amount of USD 200,000.00

64. Claimant 1 and Respondent are parties to Agreement 1, which entered into force on 1 January 2016. The Agreement 1 provides in Article 2B. for the payment of salaries in favour of Claimant 1.

¹ This Swiss statute governed international and domestic arbitration prior to the enactment of the PILA (governing international arbitration) and the Swiss Code of Civil Procedure (governing domestic arbitration).

² KARRER, in: *Basel Commentary to the PILA*, 2nd ed., Basel 2007, Article 187 PILA N 289.

³ JdT (*Journal des Tribunaux*), III. Droit cantonal, 3/1981, p. 93 (free translation).

65. Furthermore, the addendum stipulates that the base salary to be paid to Claimant 1 by Respondent is USD 200,000.00 (payable as follows: on 19 February 2017 USD 40,000.00 net, on 19 March 2017 USD 40,000.00 net, on 19 April 2017 USD 40,000.00 net, on 19 May 2017 USD 40,000.00 net, on 19 June 2017 USD 40,000.00 net).
66. The key question with respect to this matter in dispute is whether or not Claimant 1 validly terminated the legal relationship with the Respondent. Article 4 of the addendum refers to the terms of Agreement 1. Article 8 “LATE PAYMENTS” of the Agreement 1 states the following:
- “If any payments to Player are more than 15 (fifteen) days late, Player shall have the right to terminate this contract while all amounts owed to Player for the entire season shall be accelerated and become immediately due and payable. Should such default of payments by Club occur, Club will immediately grant a letter of clearance to Player and Player shall be free to leave the Club while still maintaining the right to collect his full salary for the season and there will be no offset for the salary owed to the Player should the Player sign with another team.”*
67. The Agreement 1, thus, provides that the legal relationship with Respondent can be terminated by the Player if the Respondent is late with the salary payments for more than 15 days.
68. The first instalment for the 2016-2017 season, in the amount of USD 40,000.00, was due on 19 February 2017. Claimant 1 submits that Respondent did not pay any salaries for the entire season 2016-2017. This allegation is corroborated by the Parties’ email correspondence submitted by the Claimants and by the termination letter, which refers to the outstanding amounts. Finally, the Respondent has not adduced any evidence that the salaries for the season 2016-2017 have been paid in the meantime.
69. Per the contractual terms agreed, 15 days after the February instalment became due (19 February 2017), i.e. as of 7 March 2017, Claimant 1 was entitled to terminate the Agreement 1 along with the addendum. Therefore, Claimant 1’s

termination notice was executed in a timely and valid manner on 15 April 2017. As a result of this termination notice Respondent was obliged to pay the full salary for the season in the amount of USD 200,000.00 to Claimant 1. Moreover, on account of the clear and explicit wording in Article 8 of the Agreement 1 (“*there will be no offset for the salary owed to the Player should the Player sign with another team*”) which was not challenged at any stage by the Respondent, the Respondent is not entitled to deduct any payments the Player received from the French basketball club Éla Béarhais Pau-Lacq-Orthez after termination of the Agreement 1.

70. The Arbitrator, thus, concludes that Respondent is under an obligation to pay to Claimant 1 the outstanding salary in the amount of USD 200,000.00.

7.2. Interest

1. Claimant 1 also requests interest on the outstanding amounts. Although the Agreement 1 and the addendum do not provide for any interest payments, it is a generally accepted principle embodied in most legal systems and reflected in the BAT jurisprudence⁴ that default interest can be awarded even if the underlying agreement does not explicitly provide for a respective obligation. Accordingly, Claimant 1 is entitled to default interest on all outstanding amounts, i.e. the Player’s salaries.
2. In line with constant BAT jurisprudence⁵ and without reference to any national law, the Arbitrator deems an interest rate of 5% p.a. appropriate and proper to prevent the Club from deriving any profit out of the non-fulfilment of its obligations. The starting date for the interest calculation shall be the day after the date Respondent fell in default of the outstanding payments under the Agreement.

⁴ See, *ex multis*, the following BAT awards: 0237/11 and 0056/09.

⁵ See, *ex multis*, the following BAT awards: 0092/10 and 0056/09.

3. Therefore, the Arbitrator awards interest payment of 5% p.a. on the total outstanding salary amount of USD 200,000.00, accruing from 16 April 2017 (one day after the termination of 15 April 2017) until payment is effectuated by the Respondent.

7.3. Outstanding Agency fee

4. Agreement 2 provides for an agency fee in the amount of USD 20,000.00 payable to Claimant 2. According to Article 3 of the addendum the agency fee was due on 30 March 2017. The Agency reminded the Respondent by email of 7 April 2017 of the outstanding agency fee. Since the Respondent has not submitted any evidence of having paid the agency fee in the meantime, the Arbitrator awards Claimant 2's claim for agency fees in the amount of USD 20,000.00.

7.4. Interest

5. Taking the foregoing into account (see paras. 7.2 and 7.3 above), the Arbitrator awards interest payment of 5% p.a. on the amount of USD 20,000.00, accruing from 1 April 2017 (the fee was due on 30 March 2017) until payment is effectuated by the Respondent.

7.5. Summary

6. The Player is entitled to the amount of USD 200,000.00, plus interest at 5% p.a. from 16 April 2017.
7. The Agency is entitled to the amount of USD 20,000.00, plus interest at 5% p.a. from 1 April 2017.

8. Costs

8. Article 17 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule, shall grant the prevailing party a contribution towards its legal fees and expenses incurred in connection with the proceedings.
9. On 28 April 2018 – considering that pursuant to Article 17.2 of the BAT Rules “*the BAT President shall determine the final amount of the costs of the arbitration, which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator*”; that “*the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the BAT President from time to time*”, and taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised – the BAT President determined the costs of the arbitration in the present matter to be EUR 8,700.00.
10. The Arbitrator notes that the Claimants were successful with all of their claims. Thus, the Arbitrator decides that in application of Article 17.3 of the BAT Rules and in light of the circumstances of the case, the Respondent shall bear the entirety of the costs of the arbitration. The balance of the advance on arbitration costs in the amount of EUR 3,300.00 will be reimbursed jointly to the Claimants by the BAT.
11. Furthermore, the Arbitrator takes note of the account of costs submitted by the Claimants while the Respondent did not submit an account of costs. The Claimants request EUR 8,118.00. This amount does not include the non-reimbursable handling fee paid (EUR 2,998.25).
12. When assessing the reasonable legal fees and expenses incurred by the Parties in connection with these proceedings (Article 17.3 of the BAT Rules), the

Arbitrator takes into consideration the outcome and the circumstances of the present case, *inter alia* the number and volume of the Parties' submissions and the maximum contributions according to Article 17.4 of the BAT Rules. Therefore, the Arbitrator considers it adequate that the Claimants are entitled to a contribution towards their legal fees and expenses in the amount of EUR 7,000.00 (including the non-reimbursable fee) while the Respondent has to bear its own legal costs and expenses.

9. AWARD

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

- 1. Bucaneros de la Guaira is ordered to pay to Mr. John Cox the total amount of USD 200,000.00 as unpaid salaries, plus interest at 5% p.a. from 16 April 2017 until payment.**
- 2. Bucaneros de la Guaira is ordered to pay to Pensack Sports the amount of USD 20,000.00 as unpaid agency fee, plus interest at 5% p.a. from 1 April 2017 until payment.**
- 3. Bucaneros de la Guaira is ordered to pay jointly to Mr. John Cox and Pensack Sports the amount of EUR 8,700.00 as a reimbursement of the advance on arbitration costs.**
- 4. Bucaneros de la Guaira is ordered to pay jointly to Mr. John Cox and Pensack Sports the amount of EUR 7,000.00 as a contribution towards their legal fees and expenses. Bucaneros de la Guaira shall bear its own legal costs.**
- 5. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 14 May 2018



Ulrich Haas
(Arbitrator)