ARBITRAL AWARD

(BAT 0949/16)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Brianna Quinn

in the arbitration proceedings between

Mr. Oderah Anosike,

- Claimant -

represented by Mr. Branko Pavlovic, attorney at law,
Brace Radovanovica 16 Street, 11000 Belgrade, Serbia

vs.

BC Sidigas Avellino
C. da Vasto 15, 83100 Avellino, Italy

- Respondent -

represented by Mr. Edoardo Lombardi, attorney at law,
Via Borgogna 8, 20122 Milan, Italy

1. The Parties

1.1 The Claimant

1. Mr. Oderah Anosike (the “Player”) is an American professional basketball player, who played for the basketball club BC Sidigas Avellino in the 2014-2015 basketball season.

1.2 The Respondent

2. BC Sidigas Avellino (the “Club”) is a professional basketball club competing in the Italian professional basketball league.

2. The Arbitrator

3. On 11 April 2017, Prof. Richard H. McLaren O.C., the President of the Basketball Arbitral Tribunal (the "BAT") appointed Ms. Brianna Quinn as arbitrator (the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

4. The relevant facts and allegations presented in the Parties’ written submissions and evidence are summarised below. Additional facts and allegations in the Parties’ written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows.

5. Although the Arbitrator has considered all the facts, allegations and evidence submitted by the Parties in the present proceedings, she refers in this Award only to the submissions and evidence necessary to explain its reasoning.

3.1.1 The Employment Agreement

6. In July 2014, the Player and the Club entered into an agreement whereby the Claimant was engaged as a basketball player for the Club during the 2014-2015 season (the "Employment Agreement").

7. The Employment Agreement was "entered into" on 2 July 2014, however appears to have been signed by the Club on 13 July 2014 and by the Player on 14 July 2014.

8. Exhibit 1 of the Employment Agreement provided for a base salary of EUR 205,000 and bonuses as follows:

> *"A. Base salary*
>
> *For rendering his services as a basketball player, The Club agrees to pay Oderah Anosike a base salary of €205,000 (Two Hundred and Five Thousand Euros) according to the following schedule:*
>
> *Upon passing Medical Exams - €20,000.00 (Twenty Thousand Euros)*
> *September 28, 2014 - €20,000.00 (Twenty Thousand Euros)*
> *October 28, 2014 - €20,000.00 (Twenty Thousand Euros)*
> *November 28, 2014 - €20,000.00 (Twenty Thousand Euros)*
> *December 28, 2014 - €20,000.00 (Twenty Thousand Euros)*
> *January 28, 2015 - €20,000.00 (Twenty Thousand Euros)*
> *February 28, 2015 - €20,000.00 (Twenty Thousand Euros)*
> *March 28, 2015 - €20,000.00 (Twenty Thousand Euros)*
> *April 28, 2015 - €20,000.00 (Twenty Thousand Euros)*
> *May 28, 2015 - €20,000.00 (Twenty Thousand Euros)*
> *June 1st, 2015 - €20,000.00 (Twenty Thousand Euros)*
> *September 28, 2015 - €20,000.00 (Twenty Thousand Euros)*
>
> *Payments mentioned above, and/or the bonuses mentioned in Exhibit 1(b) below, and/or the representative's fee mentioned in Exhibit 2 below, which are received Seven (7) days later than the dates noted shall be subject to a penalty of eur 50.00 per day of delay. In*

the case of payment not being made by the Club within ten (10) days to the Player, the Player shall not have to perform in practice sessions or games until all scheduled payments have been made, plus appropriate penalties. In case of failure to perform after fourteen (14) days the Player will have a right to terminate this agreement, but the Club will still obligated to pay the full amount of the base salary, accruing late fees, and the full Agents fees.

B. Bonuses

Regular Season Individual Bonuses:

- *For Averaging 10 or more Rebounds per game in regular season, no matter the amount of games or minutes played - €10,000.00 (Ten Thousand Euros)*
- *[…]*
- *For Advancing to the Italian Cup Final Eight - €5,000.00 (Five Thousand Euros) […]"*

9. The Employment Agreement also provided, at article 3b that:

"The Club shall provide the Player, at the Club's expense, a fully-insured personal car with automatic transmission during the duration of the contract. The Club shall pay all routine maintenance and services to the car. The Player shall pay his own fuel/petrol costs. Or, the Player shall provide the rental of a car and the Club shall reimburse the Player the necessary sum up to a limit of 720 Euros + IVA per month. Such sum shall be reimbursed by the Club to the Player within the 10th day of each month."

3.1.2 The Addendum and the Image Rights Agreements and League Contract

The Addendum

10. According to the Claimant, on 12 July 2014 the Parties entered into an addendum to the Employment Agreement in order to rectify the currency of the Agreement from EUR to USD (the "Addendum").

11. The Addendum was undated and it is undisputed that it was not signed by the Player.

12. However, the Addendum bears the stamp of the Club and what appears to be the signature of the same Club representative who signed the Employment Agreement. The Club disputes that it ever signed the Addendum.

13. The Addendum stated as follows:

> *"Addendum to Anosike-Scandone Avellino Contract 2014/2015*
>
> *This Addendum to Agreement signed by S.S. Scandone Avellino (hereinafter referred to as "The Club") and Oderah Anosike (hereinafter referred to as "The Player") on 12th of july 2014 determines as follows*
>
> *a) The Club and the Player signed the abovementioned Agreement considering US Dollars as sole currency in regards to any payments to be made to the Player.*
>
> *b) The Club rectified the above payment currency into Euros considering as a valid exchange rate USD/Euros $1=€1.36.*
>
> *c) The Club shall pay the Player any decreasing differential occurred in the abovementioned exchange rate in point b).*
>
> *d) The abovementioned differential shall be paid to the Player by the Club in two lump sums divided as follows: within the 28th of February 2015 for payments made within that date to the Player and within the 30th of june 2015 for payments made within that date to the Player."*

The Image Rights Agreements and the League Contract

14. According to the Club, following the signature of the Employment Agreement: (i) the Parties each entered into license agreements with a Hungarian company, Freeway Entertainment Kft ("Freeway") concerning the image rights of the Player; and (ii) the Player entered into a league contract for his sport performances which was filed with the Italian Basketball Federation.

15. In a signed document dated 14 July 2014, the Player's representative stated as follows:

> *"The undersigned Federico Paci, as representative of the Nigerian player Oderah Anosike, declares that within 30 September 2014 the parties will sign a Lega Basket contract for a gross amount of Eur 185.000,00 (one hundred and eighty-five thousand/00), equal to the net amount of Eur 100.000,00 (one hundred thousane/00) and an image right agreement for an amount of Eur 105.000,00 (one hundred and five thousand/00), with a maximum fee of 7%. The sums due will be paid in accordance with the due dates laid down in the general contract."*

16. The Club alleges that, in line with this arrangement, the Parties split the payments

under the Employment Agreement as follows: (i) EUR 100,000 to be paid under the sport performances contract, which was "concordantly reduced to EUR 85,000"; and (ii) EUR 105,000 to be paid under the image rights agreements, which was "concordantly increased to EUR 120,000".

The Freeway Player Agreement

17. The Club submitted a copy of a license agreement, effective as of 15 September 2014, between the Player and Freeway. This document was signed only by Ms. Kim Temmerman and Ms. Eva Makra of Freeway, i.e. not by the Player (the "Freeway Player Agreement").

18. According to Article 3.1 of the Freeway Player Agreement:

> *"[…] Freeway shall pay Oderah Anosike out of the Gross Receipts […] the remuneration set out in Annex I by means of a transfer to the account that Oderah Anosike will indicate."*

19. Annex I of the Freeway Player Agreement specified that:

> *"Out of the Gross Receipts received by Freeway pursuant to any agreements entered into by Freeway with any sub-licensee for rights to use and exploit the Image Rights of the Player, and pursuant to Clause 3.3, Freeway shall pay to Oderah Anosike one hundred thousand Euros (EUR 100,000.00) of the amounts actually received on Freeway's bank account (Gross Receipts) […]"*

20. The Player disputes that he ever signed or agreed to the Freeway Player Agreement.

The Freeway Club Agreement

21. On 22 September 2014, the Player's representative wrote to the Club, attaching a draft license agreement (which was to be effective as of 15 September 2014) between the Club and Freeway. The Player's representative stated in the accompanying email:

> *"Hi Antonello,*

> *Attached is the agreement in question. If it is ok, bank's details are still required, but we agree with all. You can sign the agreement and send it back to me duly signed so we can move on.*
> *Tomorrow I also have to send to you a supplement for OD for the USD-Euro change of his contract."*

22. The Club did eventually sign a license Agreement with Freeway, effective as of 15 September 2014 (the "Freeway Club Agreement").

23. The Freeway Club Agreement confirmed that Freeway had obtained the image rights of the Player and had agreed to, *inter alia*, the following payment terms:

> *"In consideration for the rights hereby granted and the agreements on the part of [Freeway] herein contained, [the Club] shall pay [Freeway] a remuneration of net EUR 107,000.00 by means of a transfer to the account that [Freeway] will indicate."*

24. It is undisputed by the Club that various addendums to the Freeway Club Agreement were entered into (according to which the Club agreed to pay Freeway additional amounts), however only one such addendum has been filed in the present arbitration.

The League Contract

25. On 10 October 2014, the Player entered into a "Simple Contract" with the Italian Basketball Federation which provided for a "before-tax" total "yearly consideration" of EUR 166,000 (the "League Contract").

26. It is not disputed that the Player entered into and signed the League Contract.

3.1.3 Car damages

27. The Claimant alleges that he left Italy in mid-May 2015 after the end of the season.

28. The Club alleges that on 20 May 2015 it was reported that the Player had damaged the car which had been provided to him by the Club.

29. On 29 May 2015, the Club allegedly sent two notices to the Player's personal email address as follows:

> *"With reference to the claim for damages reported on 20 May 2015, (damage certified for 708,00 eur) the Club has not received any justification about the damage caused to the car of the SS Felice Scandone.*
> *For this reason the club informs you that the amount of damages will be withheld from the salaries owed to you.*
>
> *With reference to the claim for damages reported on 20 May 2015, (damage certified for 2221,37 eur) the Club has not received any justification about the damage caused to the car of the SS Felice Scandone.*
> *For this reason the club informs you that the amount of damages will be withheld from the salaries owed to you."*

30. The Club submitted an invoice allegedly received from its car dealer, dated 14 May 2015, in the amount of EUR 2,200.

3.1.4 Payments made and received by the Parties

31. The Respondent paid the amount of EUR 118,400 to Freeway (in seven instalments between October 2014 and July 2015)[1] and the amount of EUR 90,160.97 to the Claimant (in nine instalments between November 2014 and September 2015) in relation to the 2014-15 season.

32. The Claimant does not dispute that he received the following payments:

- Six payments from Freeway between October 2014 and April 2015 which correspond to six of the seven payments made by the Club to Freeway;
- Nine payments from the Respondent between November 2014 and

[1] Freeway has suggested that the Club paid only EUR 108,400 in relation to the Freeway Club Agreement and the relevant addendums thereto, however the Club submitted bank statements indicating a total of EUR 118,400 was in fact paid to Freeway.

September 2015 which correspond to the nine payments made by the Club to the Player.

33. The Claimant further suggested in his Reply of 20 September 2017 that he received two payments from an unknown source in November and December 2014.

3.1.6 Correspondence between the Parties

34. On 1 February 2016, the Claimant wrote to the Club requesting payment of amounts allegedly unpaid under the Agreement. The Claimant stated, *inter alia*, as follows:

> *"The employment agreement was amended by a written agreement on 12 July 2014.*
>
> *According to the employment agreement your Club was obliged to pay Mr. Anosike a total amount of €205,000,-. The currency was changed from Euros to United States Dollars at an exchange rate of 1 Euro equaling 1.36 Dollars with the above mentioned addendum. Therefore Mr. Anosike's base wage was $278,800,-."*

35. The Claimant requested the payment of the amount of USD 166,661.45 in relation to allegedly unpaid salary, bonuses and late payment penalties.

36. On 16 February 2016, the Club responded, providing what it considered to be a "wrap up" of all payments made to the Claimant under the Agreement and the Freeway Agreements (including bank transfer receipts concerning payments made to the Claimant and to Freeway).

37. The Club then stated:

> *"We left apart the 1.36 exchange rate because the account department says the never saw the document you sent us and they're trying to reach the previous GM that run the papers here last year.*
>
> *Of course that doesn't mean anything regarding its validity. But I'm asking you in this phase first to agree on the main numbers and then it'll take a minute to adopt the 1.36*

exchange rate on these figures that haven't been paid."

38. On 24 February 2016, the Claimant responded, suggesting that he did not accept that any of the payments made to Freeway could be deemed to have been made directly to him. The Claimant further noted that he had not received a response concerning the application of the exchange rate set out in the Addendum.

39. On 1 March 2016, the Respondent replied to the Claimant's email, however the copy of the email provided to the Arbitrator was not legible. Despite a request from the Arbitrator, no legible copy of this email was ever submitted.

3.2 The Proceedings before the BAT

40. On 31 December 2016, the Claimant filed a Request for Arbitration in accordance with the BAT Rules. The Claimant had already paid the non-reimbursable handling fee of EUR 3,000 on 15 June 2016.

41. Notably, the Claimant originally filed the Request for Arbitration together with his agent, however the agent and the Club ultimately settled the proceedings between them and the agent's Request for Arbitration was therefore withdrawn.

42. On 13 April 2017, the BAT informed the Parties that Ms. Brianna Quinn had been appointed as the Arbitrator in this matter and fixed the advance on costs to be paid by the Parties as follows:

"Claimant 1 (Mr. Oderah Anosike)	*€ 5,000*
Claimant 2 (Sports International Group Inc.)	*€ 1,000*
Respondent (BC Sidigas Avellino)	*€ 6,000"*

43. On 24 April 2017, the Respondent paid its share of the foregoing advance on costs.

44. On 3 May 2017, the BAT informed the Parties that the Claimants had failed to pay their

share of the advance on costs and fixed a new deadline for the Claimants to do so.

45. On 4 May 2017, the BAT forwarded its correspondence of 3 May 2017 to the Claimant directly and noted that his representative was not communicating with the BAT.

46. On 12 May 2017, the Respondent submitted its Answer to the Request for Arbitration. In its Answer, the Respondent asked that "in cases of dispute of the above facts", the following persons be examined as witnesses: (i) Mr. Federico Paci (the Player's agent at the time of the Employment Agreement); (ii) Ms. Kim Temmerman (Legal Counsel at Freeway); and (iii) Ms. Eva Makra (Senior Relationship Manager at Freeway).

47. On 30 May 2017, the BAT informed the Parties that the Claimant had failed to pay his share of the advance of costs. The BAT fixed a new time limit for the Claimant to pay his share of the advance of costs.

48. On 1 June 2017, the Claimant paid his share of the advance of costs.

49. On 5 July 2017, the Claimant informed BAT that he was represented by new counsel and requested that a copy of the complete file be sent to him. The BAT forwarded the complete case file the same day.

50. Between July and early August the proceedings were suspended whilst the Player's agent and the Club discussed the settlement of the agent's claim.

51. On 17 August 2017, the BAT informed the Parties that regardless of any settlement between the Player's agent and the Club, the Arbitrator would proceed with the case insofar as the Claimant was concerned.

52. On 30 August 2017, the Player's agent confirmed that the Club had paid the amount agreed between them for settlement of the dispute and that the agent's Request for

Arbitration was therefore withdrawn.

53. On 6 September 2017, the Arbitrator issued a procedural order: (i) confirming that the Player's agent's claim had been settled and the Request for Arbitration withdrawn; and (ii) inviting the Claimant to comment on the Respondent's Answer. The Arbitrator further requested the Claimant to submit readable copies of certain of his exhibits.

54. On 20 September 2017, the Claimant filed his Reply. In his Reply, the Claimant objected to a hearing being held in the proceedings, suggesting that if the Freeway representatives and his prior agent were to give evidence on behalf of the Respondent it would only be in order to protect their own personal interests.

55. On 21 September 2017, the Arbitrator invited the Respondent to file a Rejoinder addressing the Claimant's Reply.

56. On 4 October 2017, the Respondent filed its Rejoinder. In its Rejoinder, the Respondent asked that "in cases of residual doubt of the BAT on the above facts", the following persons be examined as witnesses: (i) Mr. Federico Paci (the Player's agent at the time of the Employment Agreement); (ii) Ms. Kim Temmerman (Legal Counsel at Freeway); and (iii) Ms. Eva Makra (Senior Relationship Manager at Freeway).

57. On 18 October 2017, the Arbitrator issued a Procedural Order, requesting the parties to address, *inter alia*, the following:

- The Respondent was requested to provide further information on the alleged agreements with Freeway, including providing copies of the addendums that were referred to in documents in the case file but had not been submitted to the Arbitrator.

- The Respondent was requested to obtain a signed statement from each of

the proposed witnesses referred to in its submissions, together with any and all evidence to substantiate the facts alleged by the Respondent in relation to such witnesses.

- The Respondent was requested to confirm whether it considered the Addendum to be a fraudulent document and, if so, to advise whether it had taken any action to address such alleged fraud.

- The Claimant was asked to confirm whether he had received a payment that the Respondent alleged to have paid but was not reflected in the Claimant's submissions.

- Both parties were requested to address Article 3b of the Employment Agreement, in particular the reference to a "fully insured personal car".

58. On 2 November 2017, the Claimant filed his response to the Procedural Order.

59. On 6 November 2017, the Respondent filed its response to the Procedural Order together with:

- A copy of "addendum 3" to the Freeway Club Agreement. The Respondent stated that this was the only addendum in its possession and that "*no additional compensation for the Player were agreed with the addendums, which pertained to Freeway's fees only*".

- A copy of a written statement from Ms. Temmerman and Ms. Makra of Freeway confirming that:

> *"Freeway has entered into a License Agreement with Oderah Anosike […] on September 15, 2014, (the License Agreement") […]*

Freeway has entered into a License Agreement with S.S. Felice Scandone S.P.A […] on September 15, 2014 (the "Agreement") […]

Freeway and S.S. Felice entered into two addendums regarding the Agreement. The parties entered into "Addendum nr.1" on October 10, 2014 for the amount of EUR 10,700 and into "Addendum" on August 4, 2015 for the amount of EUR 11,000 ("Addendums"). The total due from the Addendums are EUR 21,700.

Under the Agreement and the Addendums, S.S. Felice has paid Freeway a remuneration of EUR 108,400.

Under the License Agreement, Freeway has paid out EUR 100,000 to the Player.

Freeway and S.S. Felice agreed to sign a 2nd Addendum as well for the amount of EUR 16,500 but that was never fully signed.

The total outstanding amount to be paid to Freeway on the day of this statement is EUR 36,800, in accordance with the Agreement, the Addendums and the 2nd Addendum."

- Confirmation that Mr. Paci had not answered the Respondent's questions nor issued a statement.

- Confirmation (but no further explanation) that it did not consider the Addendum to be a "*true and genuine contract between parties*".

60. On 23 November 2017, the Arbitrator requested the parties to comment on the respective parties' submissions. The Respondent was also specifically requested to confirm whether it considered the Addendum to be <u>fraudulent</u> and, if so, whether it intended to take or had taken action against the alleged fraud.

61. On 5 December 2017, the Respondent replied to the Procedural Order of 23 November 2017. With respect to the Addendum, the Respondent stated as follows:

"Both stamp and signature in the bottom of the addendum have been affixed not by the

Respondent neither by its legal representative (the signature appears to be far from the stamp as it has been printed on the document), while Mr. Giannandrea De Cesare, legal representative of the Respondent has not ever signed this addendum and the latter has not ever been sent out from the official email of the Respondent neither of its legal representative: this leads the Respondent to the conclusion that this addendum is fraudulent (in the sense that it has not been signed by the person whose signature is supposed to be on the document), even though the Respondent isn't in a position to know who and when has made such stamp on the document."

62. The Respondent confirmed that it did not intend to take action against the "supposed fraud" because: (i) the Addendum had not been signed by the Claimant and thus was not valid and binding in any case; and (ii) assuming the Addendum was considered true and binding, the exchange rate to be applied by the Arbitrator would be 1 USD = 1.36 EUR in which case the Club would be recognised as the creditor (and not debtor) of the Player.

63. On 13 December 2017, the Claimant was given a final opportunity to respond to the Arbitrator's Procedural Order of 23 November 2017.

64. On 18 December 2017, the Claimant replied to the Procedural Order of 23 November 2017.

65. On 16 January 2018, the parties were invited to set out (by no later than 23 January 2018) how much of the applicable maximum contribution to costs should be awarded to them and why. The parties were also invited to include a detailed account of their costs, including any supporting documentation in relation thereto. Finally, the parties were also notified that the exchange of documentation was closed in accordance with Article 12.1 of the BAT Rules.

66. The Claimant filed his costs submission on 20 January 2018 and the Respondent filed its costs submission on 23 January 2018.

4. The Positions of the Parties

4.1 The Claimant's Position

4.1.1 The Addendum

67. Insofar as the Addendum is concerned, the Claimant submits that it was validly concluded on 12 July 2014 and that its terms reflect the Parties' agreement that:

> *"The Club should pay the Player's remuneration in United States Dollars at an exchange rate of €1 = $ 1.36. Claimant's state that the wording in the addendum ($1 = €1.36) was a clerical error and parties real will was the exchange rate in favour of the Claimants."*

68. The Claimant submits that the validity of the Addendum is "indirectly" proved by the fact that he received only two payments in EUR, whereas the rest of the payments were converted and received in his account in USD. The Claimant further suggests that the Club initially did not deny the existence of the Addendum, merely stating that it could not find a copy in its files.

69. On that basis, the Claimant submits that the total amount owed under the Employment Agreement was, in fact, USD 278,800 (EUR 205,000 x 1.36) plus bonuses of USD 20,400 (EUR 15,000 x 1.36).

70. Finally, the Claimant initially suggested that the Addendum was valid despite the fact that it did not bear his signature because "*one signature is sufficient when the missing signature is the one belonging to party submitting contract, which is in the possession of the contract signed by the opposite party*".

71. However, in the Player's submission of 27 October 2017, the Claimant stated that he did not in fact sign the Addendum for the following reasons:

> *"I didn't sign the addendum because it was a contract that was in my best interest to have. I was the one forcing and pushing them to sign it, I needed it as protection in case they never wanted to honor what was on the contract. The contract stated duties and requirements that only Sidigas Avellino had to uphold – therefore I didn't see the need to sign it."*

4.1.2 The Freeway Agreements, the League Contract and the Payments Received by the Claimant

72. Insofar as the Freeway Agreements are concerned, the Claimant submits that he never signed the Freeway Player Agreement and, as such, that agreement cannot form a legal basis for an alteration to the contractual obligations between him and the Club.

73. Furthermore, whilst the Player does not dispute that he received payments from Freeway, he submits that this cannot be interpreted as an acceptance on his part that the Respondent's liability was transferred to a third party (i.e. Freeway).

74. Finally, the Player suggests that the fact that he signed the League Contract does not prove that he accepted the Respondent's obligation to him to be either reduced or transferred to any third party, Freeway included.

75. On that basis, the Player submits that he was entitled to receive the full amount under the Employment Agreement and Addendum and that the Club remains liable for any unpaid amounts.

76. In terms of the amounts received by the Claimant, the latter does not dispute that he received six payments from Freeway (between October 2014 and April 2015) and nine payments directly from the Respondent (between November 2014 and September 2015).

4.1.3 The Alleged Car Damages

77. With respect to the amounts withheld by the Club in relation to alleged car damages, the Claimant submits that: (i) he heard about this for the first time in the Answer; (ii) the notice of 29 May 2015 concerning the damage to the car was sent to him two weeks after his departure to the United States; (iii) before he left, he had returned the car and there was no damage to same; (iv) the Respondent cannot claim compensation for damage to the car when it did not immediately inform the Claimant of same and allow him to inspect the car before leaving Italy; and (v) in any event, the Employment Agreement provided for a "fully insured" car, which meant that the car was insured from all types of liabilities, not just "liability for damages to a third party".

4.1.4 Late Payment Penalties

78. The Player has not substantiated his request for late payment penalties save for suggesting that the Employment Agreement provides for same and the Respondent initially agreed that late payment penalties were applicable in its "wrap up" of the amounts due to the Claimant.

4.1.5 The Claimant's Requests for Relief

79. In his Request for Arbitration dated 30 December 2016, the Claimant requested the following relief:

> *a) "An amount of $95.513,45 net as unpaid salaries and bonuses with interest at %5 per annum starting from 1 February 2015*
>
> *b) Contractual penalties of €50,- per day starting from 28 March 2015 until effective date of payment*
>
> *c) All costs and legal expenses related to the hereby arbitration."*

80. After receiving the Respondent's Answer, the Claimant amended his request for relief in his Reply of 20 September 2017 as follows:

> *"Claimant alters his previous Request for Relief only in provision "a)" as follows: instead of request in the amount of 95.513,45 USD, Claimant requests 69.622,96 USD, while he withdraws request for the remaining amount of 25.890,49 USD.*
>
> *In everything else, Claimant remains by Request for Relief stated in Request for Arbitration."*

81. Upon confirming to the Arbitrator that the Claimant had received an additional payment from the Respondent, the Claimant further amended his request for relief in his submission of 27 October 2017 as follows:

> *"Claimant alters his previous Request for Relief only in provision "a)" as follows: instead of request in the amount of 69.622,96 USD, Claimant requests the amount of 62.204,34 USD, while he withdraws request for the remaining amount of 7.418,62 USD.*
>
> *In everything else, Claimant remains by Request for Relief stated in Request for Arbitration."*

82. The Claimant confirmed this final request for relief in his submission of 17 December 2017.

4.2 Respondent's Position

4.2.1 The Addendum

83. Insofar as the Addendum is concerned, the Respondent submits that it is not a valid and binding contract because: (i) it appears to be a fraudulent document; and (ii) it was not signed by the Player.

84. The Respondent further submits that it has always paid the Claimant in EUR, and the

conversion of any amounts into USD must have been carried out by the Player's bank. The Respondent also denies that the Club initially accepted the applicability of the Addendum, suggesting that it had merely informed the Claimant that it was attempting to verify the document.

85. Finally, the Respondent submits that, in any case, the Addendum provides for an exchange rate of €1.36 = $1, therefore, if the Addendum has any legal effects at all, the Respondent has in fact paid too much to the Claimant and should be reimbursed.

4.2.1 The Freeway Agreements, the League Contract and the Payments Made by the Respondent

86. Insofar as the Freeway Agreements are concerned, the Respondent maintains that the amounts in the Employment Agreement were split such that the Club would pay the Claimant EUR 85,000 directly for sport performances and EUR 120,000 through Freeway for the image rights of the Player.

87. The Respondent suggests that this arrangement is proven by Mr. Paci's email of 14 July 2014, the Freeway Agreements and the League Contract in the amount of EUR 166,000 gross (which equated to EUR 85,000 net).

88. The Respondent then suggests that it has, for the most part, met its salary and bonus obligations to the Claimant by paying the amount of EUR 118,400 to Freeway and EUR 90,160.97 directly to the Player.

89. The Respondent further suggests that the amount of EUR 2,980.00 should be considered as having been paid to the Claimant as it was validly withheld from the payments made to the Player after damage to the car (see below).

90. In terms of any amounts owed to the Claimant, the Respondent initially accepted that a

"residual" amount of EUR 6,859.03 was payable to the Player, however in its final submission of 5 December 2017 suggested that "*[n]o residual amounts are due to the Claimant*".

4.2.3 The Alleged Car Damages

91. With respect to the alleged amounts withheld from the Player's salary in relation to car damages, the Club submits that: (i) the Player has not denied that he caused a car accident; (ii) the Club sent the Player a notice that the amounts would be withheld from his salary and he did not reply to same; (iii) the amount of EUR 2,980 in damages is proven by the invoice issued by the car dealer; (iv) the Club met its contractual obligations by "fully insuring" the car, however this only required it to cover "all damages caused to third persons or things, not to car used by the Player"; and (v) the insurance company has not agreed to reimburse the Club for the damages to the car.

4.2.4 Late Payment Penalties

92. With respect to the late payment penalties claimed by the Player, the Respondent suggested that the very minor (if any) amount of residual payments due to the Player did not warrant the imposition of contractual penalties, particularly considering that the Player had claimed money he had already collected.

4.2.5 The Respondent's Requests for Relief

93. In its Answer dated 12 May 2017, the Respondent requested (insofar as the Claimant was concerned) the following relief:

> *"1) the rejection of Claimant's 1 requests, except for the residual amount of €6,859.03;*

2) payment by Claimant 1 to the Respondent of all arbitration proceeding costs, also taken into account his procedural behaviour highly unfair;

3) payment by Claimant 1 to the Respondent of all legal fees and expenses accrued by S.S. Scandone, taken into account the difference between his requests and the amount potentially due to Mr. Anosike; […]"

94. After receiving the Claimant's Reply, the Respondent amended its requests for relief in its Rejoinder of 4 October 2017 as follows:

"1) the declaration that a settlement with Claimant 2 has been agreed and performed by the Club and that the request for arbitration has been withdrawn from Sport International Group Inc [i.e. the Player's agent];

2) the rejection of Claimant's 1 requests, except for the residual amount of €6,859.03;

3) having considered the substantial fail of the Claimant 1 in this proceeding and his highly unfair procedural conduct, the payment by Claimant 1 to the Respondent of all arbitration proceeding costs;

4) the payment by Claimant 1 to the Respondent of all legal fees and expenses accrued by S.S. Scandone, taken into account the difference between his requests and the amount potentially due to Mr. Anosike."

95. The Respondent did not further develop its requests for relief in its additional submissions on 6 November 2017 and 5 December 2017. However, as mentioned above, in its final submission of 5 December 2017 Respondent suggested that "*[n]o residual amounts are due to the Claimant*".

5. The Jurisdiction of the BAT

96. Pursuant to Article 2.1 of the BAT Rules, "*[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland*". Hence, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

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

98. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[2]

99. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under article 7 of the Employment Agreement, which reads as follows:

> *"Any dispute arising from or related to the present contract (and/or its exhibit) shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT 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.*
>
> *Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law.*
>
> *The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono."*

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

101. 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 agreement under Swiss law (referred to by Article 178(2) PILA).

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

102. Furthermore, the Club actively participated in the arbitration and did not challenge the jurisdiction of BAT.

103. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimant's claim.

6. Other Procedural Matters

6.1 Hearing and Proposed Witnesses

104. The Respondent suggested on several occasions throughout the proceedings that, in the event of dispute or residual doubt concerning the facts it had alleged, certain witnesses should be heard by the Arbitrator. The Respondent did not, however, ever specifically request that a hearing be held in these proceedings.

105. The Claimant objected to the holding of any hearing, suggesting that if the proposed witnesses were to give evidence on behalf of the Respondent it would only be to protect their own interests.

106. Article 13 of the BAT Rules reads as follows:

> *"13.1 No hearings are held in arbitration proceedings under these Rules unless the Arbitrator decides to hold a hearing after consultation with the parties. Hearings before the BAT shall be in private.*
>
> *13.2 The Arbitrator shall determine in his/her sole discretion whether a hearing is to be held be telephone or video conference or whether and where a hearing in person is to be held."*

107. The Arbitrator considered that a hearing was not necessary to determine this dispute for the following reasons:

- The Parties provided multiple written submissions and accompanying evidence; and

- The witnesses proposed by the Respondent either submitted signed witness declarations or refused to be involved in the proceedings. In view of the nature of the dispute, the statements already provided by the proposed witnesses and the issues in contention, the Arbitrator did not consider that a hearing would have been of material assistance in deciding this dispute.

7. Discussion

7.1 Applicable Law – ex aequo et bono

108. 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" instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

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

109. 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."*

110. Article 7 of the Employment Agreement expressly provides that the Arbitrator shall decide the dispute *ex aequo et bono*.

111. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to her in this proceeding.

112. 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[3] (Concordat)[4], under which Swiss courts have held that arbitration "en équité" is fundamentally different from arbitration "en droit":

> *"When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*[5]

113. 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".

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

7.2 Findings

115. The primary issue to be determined in this arbitration is whether the Respondent owes residual amounts of salaries and bonuses to the Claimant and, if so, how much.

116. Ancillary issues include the Claimant's request for late payment penalties and interest.

117. The Arbitrator considers each of these issues in turn below.

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

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

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

7.2.1 Unpaid salaries and bonuses for the 2014-15 season

118. Turning first to the issue of unpaid salaries and bonuses, the Arbitrator must consider and rule on the following: (i) whether the Addendum was valid and binding and, if so, its effects; (ii) whether the Club met its payment obligations to the Claimant; and (iii) whether the Club was entitled to withhold the amount of EUR 2,980 in relation to alleged car damages.

119. As a threshold matter, it is not disputed by the Club that, according to the terms of the Employment Agreement, the Club was obliged to pay the Claimant the amount of EUR 205,000.

120. It is further undisputed by the Club that the Player was entitled to bonuses in the amount of EUR 15,000.

121. What is in dispute is whether the Club was required to apply an exchange rate of EUR 1 = USD 1.36, whether the Club validly discharged its payment obligations (including through payments to Freeway) and whether the Club was entitled to withhold payments to the Player.

(i) The Addendum

122. As far as the Addendum is concerned, the Arbitrator does not accept the Claimant's submission that an exchange rate of EUR 1 = USD 1.36 must be applied to the base salary of EUR 205,000 and the bonuses of EUR 15,000 in the Employment Agreement and that this results in the amount of USD 299,200 being due and payable to the Claimant.

123. Indeed, whilst the Claimant has submitted a copy of the Addendum which appears to have been signed by the Club, he has failed to establish either that this was a valid and

binding agreement or the precise effects that it could have had on the Parties' contractual arrangements.

124. As far as the validity and binding nature of the document, the Arbitrator notes that the Respondent suggests that it appears to be "fraudulent", however does not go as far as to suggest that it was the Claimant who was responsible for fixing the Club's stamp and signature on the document.

125. With that said, the Arbitrator does not consider it necessary to delve into who did (or did not) sign the document in view of the following:

- The Claimant does not dispute that he did not sign the Addendum.

- There is no evidence on file to suggest that the Claimant ever actually sent a copy of the Addendum (whether signed or not) to the Club, nor any correspondence between the Parties indicating that the agreement was finalised and formalised.

- In addition, the Claimant has suggested that the Parties "concluded" the Addendum Agreement on 12 July 2014. Not only is the Addendum undated, there is no other evidence which indicates that it was validly concluded on 12 July 2014. To the contrary, the only document on file which appears to refer to the Addendum is the Claimant's representative's email of 22 September 2014 in which he stated "*[t]omorrow I also have to send to you a supplement for OD for the USD-Euro change of his contract*". The Claimant has not, however, relied on this email nor produced any evidence that his representative did, in fact, send such a "supplement" to the Club.

- Finally, the events subsequent to the signing of the Employment Agreement do not support the Claimant's position that the Parties considered the

Addendum to be binding. In particular, neither the Club nor Freeway appears to have executed payments in USD and both the Freeway Club Agreement and the Freeway Player Agreement (which were effective well after the date of 12 July 2014) were based on EUR amounts.

126. For these reasons, the Arbitrator does not consider that the Claimant has established that the Addendum constituted a final and binding agreement between the Parties.

127. Whilst, in view of this finding, it is unnecessary to consider the effects of the Addendum, the Arbitrator is reinforced in her conclusion by the lack of clarity in the Addendum itself.

128. Indeed, it is difficult to follow the Claimant's suggested interpretation of the Addendum considering: (i) that the express terminology refers to "a valid exchange rate USD/Euros $1=€1.36"; and (ii) that the Claimant's suggestion that this was a typographical error is not supported by the subsequent behaviour (i.e. payments in EUR) of the Club or Freeway.

129. In these circumstances, the Arbitrator finds that the amount due to the Claimant for the 2014-15 season was EUR 220,000 as specified in the Employment Agreement (EUR 205,000 in salaries and EUR 15,000 in bonuses).

(ii) The payments made by the Club

130. Having determined the amount due to the Claimant under the Employment Agreement, it is next necessary to determine whether the Club fully paid such amount.

131. In this respect, the Arbitrator accepts that:

- The Club paid the amount of EUR 90,160.97 directly to the Player.
- The Club paid the amount of EUR 118,400 to Freeway.

- Freeway paid the amount of EUR 100,000 to the Player.

132. Such payments are supported both by the documents on file and the fact that the payments allegedly made by the Club (whether to the Player or Freeway) correlate with the payments received by the Player in terms of the: (i) origin of the payment (Club or Freeway); (ii) timing; and (iii) approximate amount (after conversion from EUR to USD).

133. Turning to the Freeway Agreements, the Respondent has alleged that the Parties agreed to split the payments to the Claimant into two amounts, being EUR 120,000 by way of image rights agreements and EUR 85,000 by way of the League Contract.

134. The Respondent has not, however, addressed anywhere in its submissions the fact that neither the documents signed with Freeway nor Freeway's subsequent payments to the Claimant reflect such an arrangement.

135. To the contrary, the documents on file show that:

- Under the Freeway Club Agreement, the Club was obliged to pay to Freeway the amount of EUR 107,000 (i.e. EUR 100,000 plus the 7% fee of Freeway);
- Under the Freeway Player Agreement, Freeway was obliged to pay the Claimant the amount of EUR 100,000;
- Freeway has confirmed that it paid the Claimant the amount of EUR 100,000 and this correlates with the amounts that the Claimant received from Freeway.
- The Club itself suggested that the addendums entered into with Freeway did not concern additional amounts to be paid to the Player, but only additional amounts to be paid to Freeway.

136. The Arbitrator has also taken note of the Respondent's suggestion that the League Contract supports its position, i.e. that the amount of EUR 166,000 gross owed under

that contract proves that the Parties agreed that only EUR 85,000 net was payable to the Claimant by the Club.

137. However, in addition to the findings immediately above, the Arbitrator further notes that it is not uncommon for national federations to require basketball players to sign standard form contracts for the purposes of registration (etc). As noted in BAT jurisprudence "*in such circumstances, it does not always follow that the standard form contract will replace a similar contract signed previously between the same parties*".[6]

138. Taking into account all of the above, the Arbitrator finds that to the extent that the Parties agreed that Freeway would pay the Player a proportion of the amounts due under the Employment Agreement, such proportion was limited to EUR 100,000 and Freeway has met its obligations.

139. The Arbitrator therefore concludes that the Club was obliged to pay to the Claimant the residual amount due under the Employment Agreement, i.e. 120,000 in salaries and bonuses.

140. It being undisputed by the Club that it paid only EUR 90,160.97 to the Player, the Arbitrator finds that **the Club owes the Claimant the amount of EUR 29,839.03.**

(iii) The payments withheld by the Club

141. As a final matter as far as the quantum of the principal amounts owed to the Claimant is concerned, the Club has argued that it validly withheld the amount of EUR 2,980 from the payments due to the Claimant following damage that the Claimant caused to the car provided to him by the Club.

142. The Arbitrator does not accept this argument for the following reasons:

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6 See, for example, BAT 0841/16.

- The Arbitrator agrees with the Claimant that the reference to a "fully insured personal car" in Article 3b of the Employment Agreement ought to be interpreted as requiring the Club to obtain insurance also for damage caused by the Player to the car. Indeed, had the Club wished to provide for only third party property insurance, this ought to have been specified in the Employment Agreement.

- In addition, the Club has suggested that it sent its "complaint letters" to the Player's email address, however has not disputed that it did so only after the Player had left Italy. The Arbitrator agrees with the Claimant that the Club ought to have, in good faith, immediately informed the Claimant of the precise damage to his car and allowed him an opportunity to inspect the car. There is nothing on file that would indicate that the Club did so.

- Finally, the Arbitrator notes that not only does the Club rely on an invoice from a car dealer for the amount of EUR 2,200 (i.e. not EUR 2,980), the Club has produced no additional evidence to support that it either paid such invoice or that it was not reimbursed by its insurer for same.

143. The Arbitrator does not therefore accept that the Club was entitled to withhold any additional amounts from the salary and bonuses owed to the Player and confirms that **the Club owes the Claimant the amount of EUR 29,839.03.**

7.2.2 Late Payment Penalties

144. The Claimant has requested the payment of late payment penalties, however, save for referring to the Employment Agreement and the Club's apparent acknowledgment that such penalties could be due, has not developed his arguments in this respect.

145. The Arbitrator notes that the Employment Agreement provides for late payment penalties as follows:

> *"Payments mentioned above, and/or the bonuses mentioned in Exhibit 1(b) below […] which are received Seven (7) days later than the dates noted shall be subject to a penalty of eur 50.00 per day of delay. In the case of payment not being made by the Club within ten (10) days to the Player, the Player shall not have to perform in practice sessions or games until all scheduled payments have been made, plus appropriate penalties. In case of failure to perform after fourteen (14) days the Player will have a right to terminate this agreement, but the Club will still obligated to pay the full amount of the base salary, accruing late fees, and the full Agents fees."*

146. In considering the Player's claim the Arbitrator has also taken into account established BAT jurisprudence according to which:

> *"[…] such provisions (however described) are amenable to review by the Arbitrator. It therefore falls to the Arbitrator to determine, ex aequo et bono, whether a late payment penalty of EUR 86,000.00 is fair and appropriate in the circumstances of this case.*
>
> *In BAT (then FAT) 0036/09, the Arbitrator found that, when determining the appropriate amount for such contractual penalties, the Arbitrator may take the following considerations into account:*
>
> > *(i) The Arbitrator accepts that a contractual penalty shall constitute a credible deterrent against deliberate withholding of due payments.*
> >
> > *(ii) A contractual penalty in the form of a flat fee, applying equally to small or large sums, may be problematic and may call for adjustment depending on the circumstances.*
> >
> > *(iii) The contractual penalty should be capped. Only under exceptional circumstances (e.g. if the period of default clearly exceeds one year or if the behavior of the debtor calls for a higher sanction), shall such a cap exceed the compensation whose payment is secured by the contractual penalty.*
> >
> > *(iv) The Arbitrator should also take the behavior of the parties into account: the duty to mitigate one's own damage requires that contractual penalties should be*

reduced if the creditor deliberately delays the enforcement proceedings.[7]*"*

147. In addition, in BAT 0460/13 it was stated that:

> *"Firstly, as regards the scope of applicability, penalty clauses are interpreted in a restrictive manner, so as to prevent excessive results. On several occasions, BAT Arbitrators have decided that a respective clause – absent any indications to the contrary in the contract – is intended such that the penalty payments only accrue between the date of late payment and the date by which the respective obligation is or can be terminated (BAT 0100/10 paras. 47 et seq.; 0109/10, paras. 55 seq.). An exception is only made in cases where there is an explicit agreement between the parties that stipulates otherwise and orders late payment penalty also to apply once the player's obligation to render his services is terminated. At the utmost, BAT Arbitrators are prepared to approve accrual of late payment penalties until the filing of the Request for Arbitration (BAT 185/11, paras. 65), provided the creditor has pursued his claim in a diligent and timely manner.*
>
> *Secondly, BAT Arbitrators have repeatedly held that penalty clauses are subject to judicial review. In BAT 0036/09 (marg. no. 53 et seq.) the Arbitrator held:*
>
> > *"In most jurisdictions, contractual penalties are subject to judicial review and can be adjusted if they are excessive. Whether a contractual penalty is excessive is usually left to the discretion of the judge and depends on the individual circumstances. As a general rule, a contractual penalty is considered to be excessive if it is disproportionate to the basic obligation of the debtor."*
>
> *If one applies the above principles to the case at hand, the Player would (at maximum) only be entitled to late payment penalties until the Player Contract was or could have been terminated, since the Player Contract does not contain any provision that expressly stipulates otherwise."*

148. In the present case, the Player has claimed late payment penalties of EUR 50 per day until the effective date of payment, relying on the Employment Agreement and the fact that in the Club's email of 16 February 2016 its "wrap up" of payments due included a late fee penalty of EUR 12,700.

149. In response, the Club has suggested that to award any late payment fees would be

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[7] See BAT 0635/14.

inequitable considering the minimal amount remaining due to the Player and his "behaviour".

150. The Arbitrator has carefully considered the terms of the Employment Agreement, the abovementioned BAT jurisprudence and the Parties' positions and considers that it is fair and equitable to limit the Claimant's entitlement to late payment penalties to a total of EUR 50 for 24 days, i.e. the **amount of EUR 1,200**.

151. In limiting the late payment penalties to this amount, the Arbitrator has taken into account:

(i) the relevant contractual provision, according to which after 10 days the Player would have been entitled to refrain from training or playing until all payments had been made, and after 14 days the Player would have had the right to terminate the Employment Agreement;

(ii) the Player's failure to put the Club on notice of its default at the relevant time (including his failure to rely on his abovementioned contractual rights); and

(iii) that the Player did not, in fact, put the Club on notice until well after the season had ended, and has also failed to explain the subsequent delay in filing his Request for Arbitration.

152. The Arbitrator considers that the amount of EUR 1,200 in late payment penalties is neither disproportionate nor excessive when viewed in the context of the overall value of the outstanding obligations, and thus does not need to be adjusted further.

7.2.3 Interest

153. Finally, the Claimant has sought interest on the outstanding salaries and bonuses at a

rate of "*5% per annum starting from 1 February 2015*".

154. The Claimant has not developed this claim, and the Respondent has not addressed it.

155. The Arbitrator finds as a preliminary matter that, whilst the Employment Agreement does not provide for any obligation for the Club to pay interest in case of non-payment, such interest can nevertheless be awarded, at a rate of 5% per annum, in accordance with established BAT jurisprudence.

156. The Arbitrator therefore awards the Claimant interest on the salaries and bonuses owed at a rate of 5% per annum.

157. With that said, the Arbitrator does not consider it equitable to award the Claimant interest from the requested date of 1 February 2015. Indeed, it is undisputed that the Claimant did not put the Club on notice of the allegedly outstanding payments until 1 February 2016. In addition, there is no indication on file that the Claimant ever responded to the Respondent's email of 1 March 2016, nor has the Claimant explained why he waited so long to file the Request for Arbitration in those circumstances.

158. The Arbitrator therefore considers it fair and equitable to award interest at 5% per annum on the outstanding salaries and bonuses from the date of filing the Request for Arbitration, i.e. 31 December 2016.

7.2.4 The Respondent's request for declaratory relief

159. For the sake of completeness, the Arbitrator confirms that she has considered the Respondent's request for "a declaration that a settlement with Claimant 2 has been agreed and performed by the Club and that the request for arbitration has been withdrawn from Sport International Group Inc.".

160. Sports International Group Inc. withdrew its Request for Arbitration and is not a party to the present proceedings. This was confirmed in the BAT's procedural order of 6 September 2017.

161. The Arbitrator does not have authority to award a remedy against an entity that is not a party to the arbitration and on that basis rejects the Respondent's request.

8. Costs

162. Articles 17.2 and 17.3 of the BAT Rules provide 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 reasonable legal fees and expenses incurred in connection with the proceedings.

163. On 16 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*", and 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*", 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 arbitration costs in the present matter to be EUR 11,000.00.

164. Article 17.3 of the BAT Rules further provides that:

> *"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."

165. Considering that the Claimant prevailed with his claims in this arbitration (however with reductions of the particular amounts sought), the Arbitrator considers it fair and equitable that the Respondent bears 75% of the costs of the Arbitration.

166. The Claimant claims legal fees in the amount of EUR 5,520 as well as the expense of the non-reimbursable handling fee of EUR 3,000.

167. Taking into account the factors required by Article 17.3 of the BAT Rules, the maximum awardable amount prescribed under Article 17.4 of the BAT Rules (in this case, EUR 7,500.00), the fact that the non-reimbursable handling fee in this case was EUR 3,000.00, and the specific circumstances of this case, the Arbitrator holds that a total of EUR 5,500 (including the non-reimbursable handling fee) represents a fair and equitable contribution by the Respondent to the Claimant in this regard.

168. The Arbitrator notes in particular that the submissions filed by the Claimant were straightforward documents, and the Claimant amended his requests for relief on two occasions and only after the Respondent and/or the Arbitrator raised queries concerning payments that had indeed already been made by the Club.

169. Given that the Claimant paid advances on costs of EUR 5,000.00 as well as a non-reimbursable handling fee of EUR 3,000.00, while the Respondent paid an advance on costs of EUR 6,000.00, the Arbitrator decides that in application of Article 17.3 of the BAT Rules:

    (i) The Club shall pay EUR 2,250.00 to the Claimant; and

    (ii) The Club shall pay to the Claimant EUR 5,500.00 (3,000.00 for the non-reimbursable fee + 2,500.00 for legal fees), representing the amount of his legal fees and other expenses.

9. AWARD

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

1. **BC Sidigas Avellino shall pay Mr. Oderah Anosike a total amount of EUR 29,839.03 (net) as compensation for unpaid salary and bonus payments in the 2014-15 basketball season, plus interest at 5% per annum on such amount from 31 December 2016 onwards.**

2. **BC Sidigas Avellino shall pay Mr. Oderah Anosike a total amount of EUR 1,200.00 in late payment fees.**

3. **BC Sidigas Avellino shall pay Mr. Oderah Anosike an amount of EUR 2,250.00 as reimbursement for his arbitration costs.**

4. **BC Sidigas Avellino shall pay Mr. Oderah Anosike an amount of EUR 5,500.00 as reimbursement for his legal fees and expenses.**

5. **Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 19 April 2018

Brianna Quinn
(Arbitrator)