BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0769/15)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Klaus Reichert SC

in the arbitration proceedings between

Ms. Angel McCoughtry

- Claimant -

represented by Mr. Ersü Oktay Huduti, attorney at law,
Büyükdere Cad. Maya Akar Center, 100-102 C Blok Ofis
No: 13 Esentepe Sisli, Istanbul, Turkey

vs.

Fenerbahce Spor Kulübü
Barbaros Mah. Dereboyu Cad. Batı Ataşehir 34764 Istanbul, Turkey

- Respondent -

represented by Mrs. Özge Tokarli, attorney at law,
34725 Kiziltoprak Kadiköy, Istanbul, Turkey

1. The Parties

1.1 The Claimant

1. Ms. Angel McCoughtry (“Player”) is an American professional basketball player.

1.2 The Respondent

2. Fenerbahce Spor Kulübü (“Respondent”) is a professional basketball club in Istanbul, Turkey.

2. The Arbitrator

3. On 3 December 2015, Prof. Richard H. McLaren, President of the Basketball Arbitral Tribunal (the "BAT"), appointed Mr. Klaus Reichert SC as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Arbitration Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules"). None of the Parties has 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

4. On 7 May 2014, Player and Respondent entered into an agreement (the “Agreement”) whereby the latter engaged the former to play basketball for the 2014-2015 season, commencing on 15 October 2014 until the last official day of the Turkish Championship. The Parties agreed upon a guaranteed base salary for Player of USD 700,000.00, net, divided into monthly instalments. Player’s first instalment, of USD 70,000.00, was described as a signing bonus following her arrival at the club and passing a medical examination. Thereafter, Player’s salary was agreed to be paid in

seven equal monthly instalments of USD 90,000.00, at the end of each month from October 2014 to April 2015 inclusive. The Agreement further provided for a number of different bonus payments depending on certain defined on-court successes.

5. Player says that Respondent was consistently late in making the agreed salary payments to her. By the end of 2014 Player says she was owed part of her October salary, and all of her November and December salaries. Respondent also said to her that she was only allowed to take a three day break, and not seven days as per the Agreement. This led her representative to write to Respondent on 31 December 2014 stating that Player had lost confidence in the future performance of the Agreement, but that in goodwill she was not going to invoke her right to terminate. Player says that afterwards Respondent made certain payments to her, but that her December 2014 salary was still unpaid, resulting in a further letter on 6 January 2015 stating that no further breaches "will be accepted or tolerated". By early February Player's representative again wrote to Respondent noting that the salary for December was still not paid, the salary for January was not paid, and that her confidence in future performance was "completely lost". Her right not to participate in any Club activities was invoked.

6. On 14 February 2015 Player's representative wrote to Respondent noting that she had attended at a team meeting on 6 February 2015 to be told that she was going to be replaced by another player, and was given a twice-daily training schedule. The fact of disciplinary sanctions made by Respondent against Player was also recorded in that letter (stated to be in connection with her refusal to travel to Paris with the team). By this stage she says that the December 2014 salary was paid, but her January 2015 salary remained unpaid. In particular the following was stated in the letter of 14 February 2015:

> *"We kindly inform your Club that the disciplinary sanctions are not accepted by my client and we request an official written answer regarding your Club's opinion about my Clients future in your club by no later than 16 February 2015, 18.00 Turkish time. If we do not*

> *receive an official answer which satisfies my client about the legal aspects of the fine and her future in the Club by the above mentioned deadline, we will have no other option but to terminate the employment agreement on the ground of her loss of confidence in future performance in accordance with the contract. Please also note that several braches [sic] of your Club's payment obligations (in fact no amounts were paid on time) also constitute a just ground for contract termination. In addition to your Club's harassment tactics used on her."*

7. On 17 February 2015 Player's representative wrote to Respondent stating that no official written information had been received regarding her position, and that there was a failure to make the salary payment for January 2015. The Agreement was said to be terminated.

8. Respondent says that it made the payments due to Player. Respondent, therefore, says that she terminated the Agreement without a valid reason. Respondent also says that Player was in breach of discipline, and, further, was not entitled to take the seven day break asserted as of right by her.

9. In summary, the Parties are in dispute with one another as to whether the Agreement was validly terminated, or not, and any consequences which might flow from the resolution of that issue.

3.2 The Proceedings before the BAT

10. On 17 November 2015, Player filed a Request for Arbitration dated 13 November 2015 with the BAT.

11. On 17 September 2015, the BAT received EUR 4,000.00 from Player in respect of the non-reimbursable handling fee.

12. On 10 December 2015, the BAT informed the Parties that Mr. Klaus Reichert, SC had been appointed as the Arbitrator in this matter. Further, the BAT fixed the advance on costs to be paid by the Parties as follows:

"Claimant (M[s] Angel McCoughtry) *EUR 5,500.00*

Respondent (Fenerbahce SK) *EUR 5,500.00"*

On 15 December 2015, EUR 5,488.00 was paid by Player. On 21 December 2015, EUR 5,500.00 was paid by Respondent .

13. On 30 December 2015, Respondent filed its Answer.

14. By Procedural Order dated 13 January 2016, the Arbitrator directed Player to file comments on the Answer. Player filed her comments on 1 February 2016 ("the Reply"). Respondent filed its further comments on 15 February 2016 ("the Rejoinder").

15. On 16 February 2016, the Arbitrator (in accordance with Article 12.1 of the BAT Arbitration Rules) declared that the exchange of documents was completed.

16. On 22 February 2016, the Parties filed their respective statements of costs. Thereafter, neither party commented, within the time allowed by the Arbitrator, upon the statement of costs of the other.

4. The Positions of the Parties

17. Player's claim for relief in the Request for Arbitration is as follows:

- USD 90,000.00, with interest at 5% per annum from 1 March 2015, for Player's February 2015 salary;

- USD 90,000.00, with interest at 5% per annum from 1 April 2015, for Player's March 2015 salary;

- USD 90,000.00, with interest at 5% per annum from 1 May 2015, for Player's April 2015 salary;

- USD 15,000.00, with interest at 5% per annum from 1 May 2015, for bonus payments in respect of the Euroleague Women[1];

- USD 10,000.00, with interest at 5% per annum from 1 May 2015, for bonus payments in respect of the Turkish Cup[2];

- USD 6,125.00 as late payment penalties; and

- Costs.

15. Respondent's claim for relief in its Answer is as follows:

- an order that Player is in breach of contract, and, therefore, that her claims be dismissed; and

- costs.

5. The Jurisdiction of the BAT

16. 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).

17. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the

1 As clarified in the Reply.

2 As clarified in the Reply.

existence of a valid arbitration agreement between the parties.

18. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[3]

19. The jurisdiction of the BAT over Player's claims is stated to result from the Agreement's arbitration clause (clause 7), which reads as follows:

> *"This agreement is to be governed and interpreted in accordance to the FIBA regulations, the FIBA Arbitral Tribunal. All parties in this agreement (Club, Player and Agent) consent to the jurisdiction of the FIBA Arbitral Tribunal relative to any action or procedure that may arise relating to this agreement. All parties to this agreement accept the present English version of this contractual agreement as fully binding under FIBA laws and guidelines. The arbitration clause is in written form and thus fulfils the formal requirements of Article 178(1) PILA."*

20. 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 clause under Swiss law (referred to by Article 178(2) PILA).

21. The Arbitrator notes that the Parties have participated in this arbitration without reservation or qualification as to the validity or scope of the arbitration clause.

22. There is clear consent, in writing, to the jurisdiction of the FIBA Arbitral Tribunal in the context of any action or procedure. In accordance with Article 18(2) of the BAT Rules, any reference to BAT's former name "FIBA Arbitral Tribunal (FAT)" shall be understood as referring to the BAT.

23. Taking the foregoing into consideration, the Arbitrator finds that he has jurisdiction to adjudicate upon the claims of the Parties.

---

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

6. Discussion

6.1 Applicable Law – ex aequo et bono

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

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

25. 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."*

26. The arbitration clause does not make any reference directly to an authorisation to the Arbitrator to decide *ex aequo et bono*. The Arbitrator also notes that clause 5 of the Agreement states that it shall be governed and constructed according to the laws of Turkey. Claimant has not made any reference to Turkish law and rather based several of her arguments on the ex aequo et bono jurisprudence of BAT. Respondent has, in particular, specifically invoked *ex aequo et* bono at paragraph 5 of the Answer. However, in paragraph 3 of the Rejoinder, at a point beyond which Player was no longer able to respond, Respondent adopted a different position and decided to invoke the Turkish law clause. The Arbitrator does not consider it fair to allow Respondent to change its position in that manner as regards a matter as important as this at such a late stage in the arbitration. Respondent cannot approbate *ex aequo et bono* in the Answer and then reprobate it in favour of Turkish law in the Rejoinder.

27. Therefore, the Arbitrator will decide the issues submitted to him *ex aequo et bono*.

28. 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[4] (Concordat)[5], 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."*[6]

29. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives *"a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case."*[7]

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

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

6.2 Findings

32. By way of introductory comment, the doctrine of *pacta sunt servanda* (which is consistent with justice and equity – parties who make a bargain are expected to stick to

---

4 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).

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

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

7 Poudret/Besson, Comparative Law of International Arbitration, London 2007, No. 717. pp. 625-626

that bargain) is the guiding general principle by which the Arbitrator will examine the merits of the claims.

33. When applying the doctrine of *pacta sunt servanda* the proper interpretation of an agreement is of particular importance. It is abundantly clear that an arbitrator, sitting in Switzerland and mandated to rule *ex aequo et bono*, is not bound by any particular set of national legal rules. However, it is also the case that such an arbitrator is not free to do whatever it is they want and, for example, completely disregard the words used by parties in their contractual documentation. The sort of principles which might inform the exercise of interpretation in the context of a BAT arbitration include[8]:

- looking at all of the contractual language chosen by parties through the eyes of a reasonable reader to see what is the ordinary and natural meaning of the words used;
- the overall background context of professional basketball and general common understanding amongst such users together inform the ordinary and natural meaning of the words used;
- when it comes to considering the centrally relevant words to be interpreted in a particular case, the less clear they are, or, to put it another way, the worse their drafting, the more ready an arbitrator might be to depart from the ordinary and natural meaning. That is simply the obverse of the sensible proposition that the clearer the ordinary and natural meaning the more difficult it is to justify departing from it;
- the description or label given by parties to something in a contract is not inflexibly determinative of its true nature;
- the mere fact that a contractual arrangement, if interpreted according to its ordinary and natural language as described above, has worked out badly, or

[8] BAT Award 756/15.

even disastrously, for one of the parties is not a reason for departing from that language; and

- in general, it is not the function of an arbitrator when interpreting an agreement to relieve a party from the consequences of his or her imprudence or poor advice. Accordingly, when interpreting a contract, *ex aequo et bono*, an arbitrator avoids re-writing it in an attempt to assist an unwise party or to penalise an astute party. Also, parties should not seize on a literal translation of the phrase *ex aequo et bono* and consider that "justice" and "equity" provide them with a route to unprincipled and unmoored indulgence for poor contractual choices.

34. As noted above in paragraph 9, the dispute between the Parties has, at its core, whether or not Player was entitled to terminate the Agreement when she did.

35. The date of the letter which sought to terminate the Agreement is 17 February 2015, which was sent by attachment to email to Respondent at 02.51 Istanbul time. Therefore, the Arbitrator will closely examine the circumstances of the Parties as of that moment.

36. The content of the letter of 17 February 2015 is, in relevant part, as follows:

> *"Until this day we have not received any written official information regarding your Club's position about my client Ms. McCoughtry. Your Club also failed to pay the installment scheduled for 31 January 2015 and any contractual penalties despite our notices and consistent requests.*
>
> *At this point, Ms. McCoughtry has no other option but to terminate the employment agreement on the grounds that her confidence in future performance in accordance with the agreement is lost, your Club's consistent bad faith towards her and your Club's failure to meet all of its payment obligations (including salary and contractual penalties) according to Exhibit – 1 of the employment agreement.*
>
> *We hereby officially terminate the employment agreement signed for the term of the 2014-2015 basketball season. Your Club is kindly invited to pay all outstanding salaries earned until this day, remaining sums agreed in the contract and bonuses earned plus late fees and interests at 5% per annum until actual date of payment. In case your Club does not fulfill all of its obligations by 23 February 2015, we will have no option but to file*

a lawsuit before FIBA BAT and your Club will be obliged to pay any cots and expenses my client incurs.

This notice is official and send with reserve of any rights which are not mentioned herein (and especially for future success agreed in Exhibit – 1 of the employment agreement)."

37. There are a number of grounds which Player asserts in this letter: (a) failure to meet payment obligations; (b) lack of confidence in future performance; and (c) bad faith. Each will be examined in turn.

38. As regards the failure to meet payment obligations, it does appear to the Arbitrator that there was a pattern of failure on the part of Respondent to meet its payment obligations as reflected in the Agreement in a timely fashion. The correspondence attached to the Request for Arbitration shows that from the end of December 2014 onwards, there is a series of letters demanding payments then overdue. The letter of 14 February 2015 is particularly important as it is the last one in time prior to the letter asserting termination on 17 February 2015. It appears from Player's own exhibits that as of 14 February 2015 Respondent had paid her December 2014 salary (albeit after much pursuit on her part in order to secure what was unquestionably due to her). She was still owed her January 2015 salary.

39. The analysis now turns to the provisions of the Agreement as regards how the Parties agreed upon the consequences for default in payment by Respondent. Exhibit 1 to the Agreement contains the following language:

"Payments mentioned above which are received fifteen (15) days later than the dates noted shall be subject to a penalty of 25.00 US dollars per day of delay. In the case of payment not being made by the Club within twenty (20) days to the Player (or Player's representatives) 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 of payment after fifteen (15) 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 and the Agents fees."

40. This contractual language is not, on its face, entirely clear. However, bearing in mind the general principles of interpretation recorded in paragraph 33 above, a reasonable

reading leads the Arbitrator to conclude that the structure envisaged is as follows.

41. First, if there is a delay from an agreed date for a payment (and in this case, the salary payments for a month were to be paid on the last day of such month), then a daily penalty of USD 25.00 per day is triggered. Considering the entire mechanism of consequences is embedded in this clause, the Arbitrator finds *ex aequo et bono* that this penalty applies only for the first fifteen days. Specifically, the fifteen day period commences on the day after the appointed date for payment, which would mean in the case of salaries under the Agreement, the first day of each month. Thus, for example, if Respondent was not to make a salary payment on the last day of a month, but made the payment on the tenth day of the following month, ten daily penalties of USD 25.00 would become payable.

42. Secondly, while the Agreement then says if payment is not made "within twenty (20) days" Player does not have to perform in practice sessions or games, there is a lack of precision as to when such twenty day period starts and ends. It appears to the Arbitrator that this period begins on the first day of the month following non-payment, and ends on the twentieth day. On the twenty-first day of the month, and thereafter until payment, Player does not have to attend practice sessions or play in matches. Put another way, Player would be contractually entitled to withhold her playing services.

43. Thirdly, if payment is not made within the first fifteen days of a month in the event of a non-payment of a monthly salary due on the last day of the preceding month, Player has the right to terminate the Agreement. The Arbitrator did dwell at considerable length on the correct interpretation of this provision as it did appear to him to be at odds with a longer period of twenty days which would trigger a right to withhold playing services. However, the Arbitrator has arrived at the conclusion he has in light of the fact that the right to terminate is one which is exercisable at Player's option, and for whatever reason she might not choose to terminate, the Agreement allows her to continue to remain with Respondent if she so elects.

44. Thus, if Player is not paid within the first fifteen days of a month following a missed payment on the last day of the preceding month, the right to terminate emerges to her on the sixteenth day. That is the structure of the Agreement as regards the right to terminate.

45. Applying the foregoing interpretation of the Agreement to the facts at hand, as of 14 February 2015, Player had not been paid her January salary. That salary was due on 31 January 2015.

46. Respondent says that it paid her the January salary on 16 February 2015 and presents as support for that proposition a bank transfer record of that date. Player counters this argument by presenting her bank statement which shows that the money from Respondent arrived into her account on 17 February 2015, but with a value date (second column) of 18 February 2015. The evidence before the Arbitrator unequivocally establishes the following matters: (a) Respondent initiated the payment of the January salary on 16 February 2015; (b) Player's bank received the money on 17 February 2015; and (c) Player had the money available to her (the value date) on 18 February 2015.

47. The Agreement does not speak of the date of the making of the payments by Respondent as of importance, but rather (and unsurprisingly) the date of receipt by Player is the governing factor. Merely because Respondent makes a payment with its bank on a particular date is not determinative, rather, it is the moment when Player receives the money, free of any further clearing processes, into her account.[9]

48. The conclusion upon the evidence before the Arbitrator is that as on 17 February 2015 at 02.51am Istanbul time, Player had not yet received her January salary from

[9] See also FAT 0054, paras.77-79; upheld by the Court of Arbitration for Sport CAS 2010/A/2035, para.54.

Respondent. The fact that the process for payment was underway does not detract from the fact that at that moment, Respondent was unequivocally in default in its contractual obligation to pay Player her January salary and was more than fifteen days in such default. Respondent did not take any precautionary measures to ensure timeliness of the payment or communicated in any way to Player that it had effected payment.

49. As a direct consequence of this conclusion, and as a matter of the express terms of the Agreement as interpreted by the Arbitrator, Player had the right to terminate the Agreement on 17 February 2015, at 02.51am, as Respondent was in default with a payment by more than fifteen days. Player did terminate the Agreement, as already noted, and the Arbitrator upholds and affirms the validity of that termination.

50. In light of the foregoing finding, it is not strictly necessary to address the two other of Player's asserted reasons for termination, but for completeness the Arbitrator will nonetheless briefly scrutinize them.

51. First, Player says that she lost confidence in Respondent's performance of the Agreement and this entitled her to terminate. Player cites a number of CAS awards in support of this argument at paragraph 20 of the Request for Arbitration. The thrust of these CAS awards appears to be that non-payment or late payment may constitute just cause for termination, and, specifically, "whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost".

52. The Arbitrator views this reasoning with considerable caution in light of the fundamental principle of *pacta sunt servanda* which is a constant theme in BAT awards rendered *ex aequo et bono*. If parties have made specific arrangements, or described particular situations which give rise to a right of termination in the event of a delay in payment, then those are the arrangements which are applicable. In such circumstances, either a

party comes within the agreed regime for termination, or they do not. Allowing for a subjective and somewhat fluid concept of "loss of confidence" to give rise to a right to terminate (for example, in circumstances where the contractual right to terminate has not arisen) would quite possibly undermine *pacta sunt servanda*, and the entire approach of BAT awards to date. Player also complains about the way in which she was told that she was to train daily with a coach and not with the first team. This argument is superfluous in light of the fact that she was entitled to terminate the Agreement in accordance with its express terms due to default in payment of salary. The Arbitrator does not express any opinion as to the sustainability or otherwise of the argument that a demotion from the first team triggered a right to terminate.

53. Secondly, Player asserts bad faith against Respondent as a reason to terminate. As with "loss of confidence" the Arbitrator views this assertion with great caution. If parties have made specific contractual arrangements as to when termination can occur, those arrangements supersede concepts which are amorphous, and prone to subjectivity. In any event, bad faith is a particularly serious allegation, and Player has not demonstrated that Respondent conducted itself in such a manner.

54. In summary, Player validly terminated the Agreement on 17 February 2015 and triggered the obligation on the part of Respondent to pay her all remaining sums (as noted above at paragraph 39, Respondent was "still obligated to pay the full amount of the base salary"). Respondent's arguments that it had paid her in a timely fashion her are not substantiated, and therefore its termination of the TBF uniform contract later on is of no legal consequence. The relevance of the TBF uniform contract is also limited due to the provisions of clause 12 of the Agreement which states that it prevails over any uniform player contract. Also, Respondent cannot have suffered any damage (noting the allegation at paragraph 9 of the Answer) as it brought about the termination of the Agreement due to its own non-adherence to its terms. The fact that Player did not inform the Turkish Basketball Federation of the termination of the Agreement does not negate or call into question the right to terminate. Whether she was in breach of the

Turkish Federation regulations for that reason, or not, does not deprive her of the contractual remedy expressly found in the Agreement in the event of default of payment in a timely fashion. The express language of the Agreement, insofar as the rights and obligations of that contract are concerned, supersede any domestic arrangements. This renders any consideration by the Arbitrator of the arguments made by Player as to the "real will" of the Parties superfluous.

55. Shortly after termination, Player received her January salary. Thus, her remaining salary installments of USD 90,000.00 per month for February, March, and April, (*i.e.* USD 270,000.00) became due and owing upon termination as a matter of the Agreement.

56. As regards the bonus sums which Player claims, she says that she performed in more than five Euroleague Women's Games, and half of the Turkish Cup games. Exhibit 1 to the Agreement makes those threshold number of appearances in those competitions a trigger for payment of bonuses. Thus, Player is entitled to USD 15,000.00 by way of Euroleague bonus, and USD 10,000.00 by way of Turkish Cup bonus. This represents a total for bonuses of USD 25,000.00.

57. Respondent says that it imposed a total of EUR 20,500.00 in fines on Player. Player disputes these fines.

58. Clause 13 of the Agreement sets out the Parties' contractual arrangements for the establishment of rules of behaviour (*i.e.* discipline). There is a particular requirement which is of importance, namely, "*the Club, in order to be entitled to seek enforcement of such rules, must obtain the signature of the Player on a formal, written copy of such rules and fines written in English as confirmation of receipt and acceptance of the content.*"

59. The Arbitrator has not been shown any formal, written copy of rules and fines written in

English, and signed by Player nor any evidence that they were provided to Player for signature at any point in time. In such circumstances, Respondent cannot sustain any claim, pursuant to the Agreement, that it validly levied fines on Player. The Agreement is clear, and for fines to be enforced against Player there is an essential prerequisite, namely, the signed copy of rules and fines confirming that the Player had been properly advised thereof. That essential prerequisite is missing, and the Arbitrator cannot rewrite the Agreement to remove it.

60. The Arbitrator now turns to the claim for daily penalty amounts (USD 25.00) which Player seeks from 1 March 2015 to the date of the Request for Arbitration (13 November 2015). The Arbitrator is not satisfied to award any part of this claim. First, by 1 March 2015 the Agreement was terminated and all sums had become due including salary payments which, had the Agreement continued in existence, were yet to fall due. Secondly, there is no explanation as to why Player waited from 17 February 2015 (when she terminated the Agreement) until 13 November 2015 to bring this arbitration. That is a period of almost nine months and to award contractual penalties of such a magnitude would impose a burden on Respondent out of proportion to the intent of such charges. They are, in the circumstances of this Agreement, an incentive on a short-term basis for Respondent to pay promptly, and also a recompense to Player for being out of pocket. They are not designed to run for months after termination ratcheting up to a modest, but still notable amount of money. The Arbitrator considers that a period of 15 days (being the first fifteen days of February 2015) is sufficient to reflect the contractual arrangement made by the Parties as regards daily penalties. This amounts to USD 375.00.

61. Player claims interest at 5% per annum; in line with BAT jurisprudence, this is properly asserted and such interest will run from the date after the day of termination (i.e. from 18 February 2015) when all sums under the Agreement became due, until payment.

7. Costs

62. 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 reasonable legal fees and expenses incurred in connection with the proceedings.

63. On 23 May 2016 – 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 10,988.00.

64. Considering that Player was the prevailing party in this arbitration, it is broadly consistent with the provisions of the BAT Rules that the fees and costs of the arbitration, as well as the Player's reasonable costs and expenses, be borne by Respondent. Additionally, the Arbitrator notes the provisions of Article 17.4 of the BAT Rules as follows:

> *"The maximum contribution to a party's reasonable legal fees and other expenses (including the non-reimbursable handling fee) shall be as follows:*

Sum in Dispute *(in Euros)*	Maximum contribution *(in Euros)*
up to 30,000	5,000
from 30,001 to 100,000	7,500
from 100,001 to 200,000	10,000
from 200,001 to 500,000	15,000
from 500,001 to 1,000,000	20,000
over 1,000,000	40,000

"

65. Given that the sum in dispute in this case fell in the range of 200,001 to 500,000, the maximum possible amount which could be awarded by the Arbitrator as a contribution to reasonable legal fees and other expenses is EUR 15,000.00.

66. Player's actual claim for legal fees and expenses comprises: (a) EUR 4,000.00, namely the non-reimbursable handling fee; (b) EUR 3,900.00 for legal fees; (c) VAT of EUR 702.00; and (d) expenses of EUR 50.00. This is a total of EUR 8,652.00.

67. This amount of EUR 8,652.00 is well within the maximum amount which the Arbitrator could award, and bearing in mind the complexity of the case and the diversity of allegations made, is granted to Player in full.

68. The Arbitrator decides that in application of Article 17.3 of the BAT Rules:

    (i) Respondent shall pay EUR 5,488.00 to Player, being the costs advanced by her;

    (ii) Respondent shall pay EUR 8,652.00 to Player, representing a contribution by it to her legal fees and expenses.

8. AWARD

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

1. **Fenerbahce Spor Kulübü is ordered to pay Ms. Angel McCoughtry USD 270,000.00, net, for unpaid salary together with interest at 5% per annum from 18 February 2015 until payment.**

2. **Fenerbahce Spor Kulübü is ordered to pay Ms. Angel McCoughtry USD 25,000.00, net, for unpaid bonuses together with interest at 5% per annum from 18 February 2015 until payment.**

3. **Fenerbahce Spor Kulübü is ordered to pay Ms. Angel McCoughtry USD 375.00, net, for penalty fees.**

4. **Fenerbahce Spor Kulübü is ordered to pay Ms. Angel McCoughtry EUR 8,652.00 as a contribution to her legal fees and expenses.**

5. **Fenerbahce Spor Kulübü is ordered to pay Ms. Angel McCoughtry EUR 10,988.00 by way of reimbursement of arbitration costs.**

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

Geneva, seat of the arbitration, 16 June 2016

Klaus Reichert
(Arbitrator)