BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1136/17)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Rhodri Thomas

in the arbitration proceedings between

Mr. Tibor Pleiss

- Claimant 1 -

Bill A. Duffy International, Inc.
507 N. Getruda Ave., Redondo Beach, CA 90277, USA

- Claimant 2 -

both represented by Mr. Billy J. Kuenzinger, attorney at law,
1601 I Street, Modesto, CA 95354, USA

vs.

BC Galatasaray Spor Kulubu Dernegi
Hasnun, Galipsok 7-11 Beyoglu, Istanbul, Turkey

- Respondent -

represented by Mr. Suleyman Anil Ozguc, attorney at law,
34415 Seyrantepe Sanyer, Istanbul, Turkey

The Parties

1.1 The Claimants

1. Mr. Tibor Pleiss (hereinafter "Claimant 1") is a German professional basketball player and Bill A. Duffy International, Inc. (doing business as "BDA Sports Management") (hereinafter "Claimant 2") is a sports agency (together hereinafter the "Claimants").

1.2 The Respondents

2. BC Galatasaray Spor Kulub Dernegi (hereinafter "the Respondent") is a professional basketball club in Turkey.

2. The Arbitrator

3. On 27 December 2017, Prof. Richard H. McLaren O.C., the President of the Basketball Arbitral Tribunal (hereinafter the "BAT") appointed Mr. Rhodri Thomas as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules").

4. None of the Parties has raised objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1 Background Facts

5. On 12 September 2016, the Claimants entered into an employment contract with the Respondent in relation to the 2016-2017 basketball season (hereinafter the "Contract"). The Contract contains, among others, the following provisions:

> *"1) DURATION OF THE AGREEMENT*
>
> *The Club hereby employs the Player for the 2016-2017 season. The Player is free to leave the Club within three (3) days after the Club's last official game of the season. The Player's employment shall include attendance and participation in all training sessions, as well as all Turkish League regular season and playoff games and Euroleague and/or any other European games scheduled or entered into by the Club. Upon the expiration of the Term, Player shall be free to leave Club and shall be a free agent for all purposes with Club immediately issuing the appropriate letter of clearance.*
>
> *[…]*
>
> *2) PAYMENTS*
>
> *2. A Salary Payments:*
>
> *Club agrees to pay Player the following guaranteed compensation net of all taxes, fees, and other charges (the "Guaranteed Compensation") during the Term, according to the following schedule:*
>
> *For 2016/2017 Season:*

SEPTEMBER 20TH 2016	*70,000 EUR*
OCTOBER 20TH 2016	*70.000 EUR*
NOVEMBER 20TH 2016	*70.000 EUR*
DECEMBER 20TH 2046	*70.000 EUR*
JANUARY 20TH 2017	*70.000 EUR*
FEBRUARY 20TH 2017	*70.000 EUR*
MARCH 20TH 2017	*70.000 EUR*
APRIL 20TH 2017	*70.000 EUR*
MAY 20TH 2017	*70.000 EUR*

JUNE 20TH 2017 *70.000 EUR*

TOTAL FOR 2016-2017 *700.000 EUR*

All salary to the Player shall be fully guaranteed, vested and owed in full upon execution of this Agreement by the Player and Club.

[…]

TAXES

All the above-mentioned compensation to the Player shall be net of all taxes, social (employer and employee) charges, and other costs and Club shall be responsible for the payment of all applicable taxes and social fees on monies paid to the Player under this Agreement.

[…]

4. DELAY OF PAYMENTS

Notwithstanding anything, the delay of 30 days in the payments (salary, bonus, etc.) shall not be considered as a material breach of this Agreement. In the event that any scheduled payments are not made by the Club within thirty (30) days of the applicable payment due date, the Player or his agents has to send written notice to the Club and if the Club does not fulfil financial obligation towards the Player or his agents in total in following (15) days, the Player's performance obligations shall cease, the Player shall have the right, at the Player's option, to terminate this Agreement. The Player shall be free to leave Turkey with his FIBA Letter of Clearance to play basketball anywhere in the world the Player chooses, but the duties and liabilities of Club, including but not limited to the compensation described in Section 2 of the Agreement, under this Agreement shall continue in full force and effect.

[…]

6. PLAYER'S LIABILITIES

6.1 The player must comply with the Club's reasonable internal rules and regulations attached herein (see annex A) as an integral part of this Agreement and accepts a disciplinary action and/or penalties or fines provided in same. The Club's Head Coach's and/or technical managers' or directors' reports shall be the basis for such penalties. The Club will notify the Players' Agents in writing within 15 days from such action and provide the Player with an opportunity to explain his actions prior to imposing disciplinary penalties. For the effective realisation of the above stipulation, the Player should abide by the following guidelines, which are set forth by the Club:

6.1.1

To train and practice appropriately in order to stay in the best possible physical condition, with the objective being to obtain the best possible performance as a basketball player.

[…]

6.1.3

The player shall attend all matches-exhibitions and practices organised by the Club during the Term of this Agreement, except in case of injury or illness, or other justifiable reason, which prevents such participation, after receiving written permission in writing from the Club's representative.

[…]

8. AGENT'S FEE

Club agrees to pay the Agent the following guaranteed agent fee for each season net of taxes (the "Agent Fee"):

**for the 2016/2017 Season a total amount of 70.000.-EUR paid according to the following schedule:*

35.000 EUR by November 15, 2016;

35.000 EUR by February 15, 2017

[…]

10. DISPUTES

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

The arbitrator shall decide the dispute ex aequo et bono. The prevailing party shall be entitled to recover all costs, fees and attorney's fees from the other party in any such dispute. This agreement may be translated into any language by the Club (at the Club's expenses) for any purposes. However, it is agreed that in the case of any controversy, the English form will prevail.

11. GUARANTEE CONTRACT

The Club agrees that this Agreement is an unconditionally guaranteed contractual Agreement and that Player's salary and bonuses and the Agent Fee are fully guaranteed, due and payable, including but not limited to in the event of Player's injury, illness and/or lack of skill unless otherwise stated in this Agreement. The Club agrees that this Agreement is a no-cut guaranteed agreement, and that the Club shall not have the right to suspend or release the Player in the event that the Player does not exhibit sufficient skill or competitive ability, or in the event that an injury or illness shall befall the Player unless otherwise stated in this Agreement. Accordingly, in such event, Club agrees to meet all payment obligations to Player and Agent as though Player had performed in all games and met all obligations in this Agreement."

6. A copy of the Respondent's Disciplinary Regulations, referred to as "annex A" in clause 6.1 of the Contract, was signed by Claimant 1 (hereinafter the "Disciplinary

Regulations". The Disciplinary Regulations contain, among others, the following provisions:

> *"2. PURPOSE AND SCOPE OF DISCIPLINARY REGULATIONS*
>
> *2.1 Basketball Teams Disciplinary Regulations is the rules which should be obeyed by Professional Players, Technical Staff (Technical Director, Coaches and Conditioners), Medical Staff (Doctor, Masseur Physiotherapist and etc.) having a valid employment contract with the Club.*
>
> *The purpose herein is to determine the general and personal behaviours of the people who have come together for a common purpose in the manner of enabling Galatasaray to obtain a more superior performance and public opinion.*
>
> *2.2 Basketball Teams Disciplinary Regulations comprises of rules to be obeyed in relation to the trainings, camps, matches which are made for the above mentioned purposes and general behaviours; notices and penalties for contrary behaviours.*
>
> *2.3 Aforementioned notices and penalties are particularly for the purposes of attracting attentions of players, technical staff and medical staff and preventing maladaptive behaviour discomforting togetherness within the team more than for penalizing purposes unless otherwise stated herein.*
>
> *[…]*
>
> *2.7 Players, technical staff and medical staff are deemed to have read and acknowledge Basketball Teams Disciplinary Regulations by signing it.*
>
> *[…]*
>
> *4.2 Five days cost of the player shall be deducted from the player who has not attended the training without any apology or injury.*
>
> *[…]*
>
> *6.2 Players, technical staff and medical staff are obliged to participate in the camps planned by the Club and they could not leave the camp without permission of the Board of Management or Department Coordinator.*
>
> *Ten days costs of the party in breach shall be imposed on the players being involved in the contrary acts with the decision of Board of Management. A civil penalty not being more than 5% of the rate found in the agreement shall be imposed on the party who have made a habit out of the said circumstance with the decision of Board of Management.*
>
> *[…]*
>
> *8. COST OF THE PLAYER*
>
> *[…]*
>
> *Daily cost of the player:*

The daily cost of the player can be found as dividing "the annual cost of the player" to 300."

3.2 The Proceedings before the BAT

7. On 13 December 2017, the Claimants filed a Request for Arbitration in accordance with the BAT Rules. On 15 December 2017, the BAT received the non-reimbursable handling fee of EUR 5,000.00 from the Claimants.

8. By letter dated 4 January 2017, the BAT Secretariat fixed a deadline of 26 January 2018 for the Respondent to file an Answer to the Request for Arbitration. By the same letter, and with a deadline of 15 January 2017 for payment, the following amounts were fixed as the Advance on Costs:

"Claimant 1 (Mr. Tibor Pleiss)	*EUR 4,000.00*
Claimant 2 (Bill A. Duffy International, Inc.)	*EUR 1,000.00*
Respondent (BC Galatasaray Spor Kulubu Dernegi)	*EUR 5,000.00"*

9. Claimant 2 paid its share of the Advance on Costs on 9 January 2018 and Claimant 1 paid his share of the Advance on Costs on 10 January 2018. The Respondent did not pay its share of the Advance on Costs and accordingly the Claimants were invited, by letter dated 29 January, to pay the Respondent's share of the costs by 5 February 2018. Claimant 2 paid EUR 4,000.00 of the Respondent's share of the Advance on Costs on 1 February 2018 and Claimant 1 paid the remaining EUR 1,000.00 of the Respondent's Share of the Advance on Costs on 2 February 2018.

10. The Respondent filed an Answer on 18 January 2018.

11. By Procedural Order dated 19 February 2018, the Arbitrator requested the parties to provide further information by 1 March 2018 (hereinafter the "First Procedural Order").

12. The Claimants responded to the First Procedural Order on 27 February 2018. The

Respondent did not provide any response.

13. By Procedural Order dated 7 March 2018, the Arbitrator requested the Claimants and the Respondent to provide further information, and the Respondent to provide any submissions it had on the Claimants' response to the First Procedural Order, by 19 March 2018 (hereinafter the "Second Procedural Order").

14. The Claimants responded to the Second Procedural Order on 16 March 2018. The Respondent responded to the Second Procedural Order on 19 March 2018.

15. By letter dated 5 April 2018, the Arbitrator declared the exchange of documents complete, and requested that the Parties submit detailed accounts of their costs by 13 April 2018.

16. On 9 April 2018, the Claimants submitted a joint account of costs in the amount of EUR 1,462.50 in respect of legal fees and EUR 5,000.00 in respect of the non-reimbursable handling fee paid by the Claimants. On 10 April 2018, the Respondent submitted an account of costs in the amount of EUR 1,270.00 in respect of legal fees.

17. Since none of the Parties filed an application for a hearing, the Arbitrator decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to deliver the award on the basis of the written submissions of the Parties.

4. The Parties' Submissions

4.1 Claimant 1's submissions

18. Claimant 1 alleges that the Respondent has failed to perform its obligations under the

Contract to make the April, May and June 2017 salary payments due to Claimant 1. On 17 July 2017, Claimant 2 sent a formal letter of demand on behalf of Claimant 1 to the Respondent, requesting full payment of the unpaid salary payments by 31 August 2017.

19. Claimant 1 alleges that the Respondent also failed to make the September, December and January 2017 salary payments on or before the dates that such payments were due, but that it did eventually do so after receiving formal letters of demand.

20. Claimant 1 further alleges that the Respondent breached its obligations under clause 6.1 of the Contract by imposing certain penalties on him for failing to attend and participate in a camp that was arranged to take place on 27 February 2017 and for failing to attend and participate in a morning training session that was arranged to take place on 28 February 2017. The Respondent notified Claimant 2 of the imposition of these penalties on 6 February 2017. Claimant 2 responded on behalf of Claimant 1 in a letter dated 8 March 2017, stating that the imposition of the penalties was a breach of the Contract because:

    a) The Respondent had not, as required under clause 6.1 of the Contract, provided Claimant 1 with an opportunity to explain his actions prior to the penalties being imposed.

    b) Claimant 1 had been informed by his captain that a decision had been taken by the team not to attend the camp and Claimant 1 had an obligation under the Disciplinary Regulations not to *"discomfort the togetherness"* of the team.

    c) The camp had been scheduled for punitive reasons at an unreasonable time (at 10.00 pm immediately after a defeat in a game that same evening) and was *"under any review of the circumstances"* not reasonable.

d) Claimant 1 had been informed by his captain that a decision had been taken by the team not to attend the morning training session and Claimant 1 had an obligation under the Disciplinary Regulations not to discomfort the unity of the team.

e) Claimant 1 had not played in the game on 27 February 2017 due to a ___ injury and therefore could not participate in the morning training on 28 February 2017. Pursuant to clause 4.2 of the Disciplinary Regulations, a penalty can only be imposed on a player for failing to attend training if the player is "*without injury*".

21. In its response to the First Procedural Order, Claimant 1 submitted that:

a) After the game on 27 February 2017 (in which he did not play due to a _____ injury), he was informed that the camp had been arranged for 10.00 p.m. that evening and returned home to get his personal items for staying at the hotel where the camp was to take place. On returning to the venue of the game, Claimant 1 was informed by other members of the team that a decision had been taken not to go to the camp.

b) On 28 February 2017, he did not attend the morning training session but did attend a meeting beforehand with the team's coach and the President of the Respondent.

c) The size of the financial penalty imposed by the Respondent on the players was unfair, particularly given that the players were trying to "stay together" as a team and fix the problems relating to the team's poor performance.

d) The players were also punished for losing games by being made to stay at hotels for up to seven days at a time, which meant that some players were

unable to see their families.

22. Claimant 1 claims:

    i. EUR 210,000.00 in respect of the unpaid salary payments, as follows:

        a. EUR 70,000 in respect of the April 2017 salary payment;

        b. EUR 70,000 in respect of the May 2017 salary payment; and

        c. EUR 70,000 in respect of the June 2017 salary payment.

    ii. The costs of the arbitration and legal fees incurred by Claimant 1.

4.2 Claimant 2's submissions

23. Claimant 2 alleges that the Respondent did not pay either of the agent's fees that were payable to it under clause 8 of the Contract.

24. On 20 February 2017, Claimant 2 sent a formal letter of demand to the Respondent in respect of the unpaid agent's fees due on 15 November 2016. Claimant 2 sent further formal letters of demand in respect of both unpaid agent's fees on 7 April, 31 May and 18 July 2017.

25. Claimant 2 accordingly claims:

    i. EUR 70,000 in respect of the unpaid agency fees, as follows:

        a. EUR 35,000 in respect of the unpaid agent's fee that was due to be paid by 15 November 2016; and

b. EUR 35,000 in respect of the unpaid agent's fee that was due to be paid by 15 February 2017.

ii. The costs of the arbitration and legal fees incurred by Claimant 2.

26. The Claimants' request for relief states:

> *"Due to the failure of the Club to pay the unpaid balance payments, the amounts are now due and payable. The Club owes to Claimant 1, Mr. Pleiss, 210,000 EUR and also owes Claimant 2, Representative, 70,000 EUR. These amounts are due immediately.*
>
> *Claimant(s) request(s):*
>
> *The Club currently owes Claimant 1, Mr. Tibor Pleiss, the following:*
>
> *1. 210,000 EUR for the 2016/2017 season*
>
> *The Club currently owes Claimant 2, Bill A. Duffy International, Inc. the following:*
>
> *1. 70,000 EUR for the agent fee pertaining to the 2016/2017 season*
>
> *For both Claimants, costs of this action plus attorney's fees."*

4.3 The Respondent's submissions

27. The Respondent accepts that it failed to pay EUR 210,000.00 in salary to Claimant 1. However, not all of that sum is payable to Claimant 1 because of penalty sanctions that the Respondent is entitled to offset.

28. The Respondent submits that Claimant 1 failed to attend and participate in the camp that was arranged to take place on 27 February 2017 and a morning training session that was arranged to take place on 28 February 2017 and so the Respondent imposed on Claimant 1:

a) In respect of the camp: a disciplinary penalty (in accordance with clause 6.2 of the Disciplinary Regulations) amounting to EUR 23,333.00, being the equivalent of 10 "days' costs" of Claimant 1 under the Contract.

b) In respect of the morning training session: a disciplinary penalty (in accordance with clause 4.2 of the Disciplinary Regulations) amounting to EUR 11,667.00, being the equivalent of 5 "days' costs" of Claimant 1 under the Contract.

29. On 6 March 2017 the Respondent sent to Claimant 2 a notification of the penalties that it had imposed on Claimant 1, informing Claimant 2 that the penalties would be deducted from Claimant 1's salary. On 10 March 2017, the Respondent replied to Claimant 2's letter dated 8 March 2017, maintaining that the imposition of the penalties was not a breach of the Contract and stating in particular that:

a) It was not mandatory under the Contract and the Disciplinary Regulations for the Respondent to provide Claimant 1 with an opportunity to explain his actions prior to imposing disciplinary penalties.

b) Claimant 1 had not acted in accordance with clause 2.3 of the Disciplinary Regulations, which "*promotes togetherness within the team*" because the clause applies to the togetherness of the team which includes players *and* coaching staff. By disobeying the Respondent's coach and missing the training session, Claimant 1 had actually acted in breach of clause 2.3 of the Disciplinary Regulations.

30. In its response to the Second Procedural Order, the Respondent submitted that it has never punished players for losing games by making them stay at hotels.

31. In summary, the Respondent submits that, as a result of the imposition of the penalties,

the Respondent is only liable to Claimant 1 for EUR 175,000.00 and that any claim by Claimant 1 exceeding EUR 175,000 *"must be denied"*.

32. The Respondent did not address Claimant 2's claims in its Answer. In the First Procedural Order, the Arbitrator requested the Respondent to confirm whether it accepted that it was obliged to pay EUR 70,000.00 to Claimant 2 in respect of unpaid agent's fees. The Respondent did not respond to the First Procedural Order, nor did it respond to this request in its response to the Second Procedural Order.

5. Jurisdiction

33. 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).

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

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

36. The existence of a valid arbitration agreement is to be examined in light of Article 178 PILA, which reads as follows:

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

> *"1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.*
>
> *2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law.*
>
> *3 The validity of an arbitration agreement may not be contested on the grounds that the principal contract is invalid or that the arbitration agreement concerns a dispute which has not yet arisen."*

37. Clause 10 of the Contract stipulates:

> *"Any disputes arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL) irrespective of the Parties' domicile. The language of the arbitration shall be English.*
>
> *The arbitrator shall decide the dispute ex aequo et bono. The prevailing party shall be entitled to recover all costs, fees and attorney's fees from the other party in any such dispute. […]"*

38. The Contract is in written form and thus its arbitration clause fulfils the formal requirements of Article 178(1) PILA. 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 respective arbitration agreements contained in the Contract under Swiss law (referred to by Article 178(2) of the PILA). In addition, the Respondent did not object to the jurisdiction of the BAT over it.

39. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claims.

6. Discussion

6.1 Applicable Law – ex aequo et bono

40. 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",* as opposed to a decision according to the rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

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

41. 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."*

42. Clause 10 of the Contract provides that *"[t]he arbitrator shall decide the dispute ex aequo et bono"*.

43. Accordingly, the Arbitrator will decide the issues submitted to him in this proceeding ex aequo et bono.

44. The concept of *équité* (or *ex aequo et bono*) used in 187(2) PILA originates from Article

31(3) of the *Concordat intercantonal sur l'arbitrage*[2] (Concordat),[3] under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

> *"When deciding ex aequo et bono, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*[4]

45. 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*".[5]

46. 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*".

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

6.2 Findings

6.2.1 Claimant 1's claim

48. The Respondent accepts that it failed to make any payments to Claimant 1 in respect

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

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

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

5 POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

of the April, May and June salary amounts, as required under the Contract. The crux of this dispute (as far as Claimant 1 is concerned) is whether the Respondent was entitled to impose the two penalties that it did on Claimant 1 and therefore offset those amounts against the outstanding salary payments.

49. Both Claimant 1 and the Respondent have sought to rely on provisions in the Contract and in the Disciplinary Regulations. Clause 6.1 of the Contract provides:

> *"6.1 The player must comply with the Club's reasonable internal rules and regulations attached herein (see annex A) as an integral part of this Agreement and accepts a disciplinary action and/or penalties or fines provided in same. The Club's Head Coach's and/or technical managers' or directors' reports shall be the basis for such penalties. The Club will notify the Players' Agents in writing within 15 days from such action and provide the Player with an opportunity to explain his actions prior to imposing disciplinary penalties. For the effective realisation of the above stipulation, the Player should abide by the following guidelines, which are set forth by the Club:*
>
> *6.1.1*
>
> *To train and practice appropriately in order to stay in the best possible physical condition, with the objective being to obtain the best possible performance as a basketball player.*"

50. Claimant 1 signed a copy of the Disciplinary Rules and neither Claimant 1 nor the Respondent has disputed that they were bound by them. The Arbitrator therefore finds that Claimant 1 and the Respondent were under an obligation to comply with the Disciplinary Rules.

The Respondent's entitlement to impose penalties

51. It is not disputed that Claimant 1 failed to attend the camp on 27 February 2017 and the morning training session on 28 February 2017. The Respondent argued that this entitled it to impose two penalties on Claimant 1. However, Claimant 1 argued that the Respondent is not entitled to impose the penalties.

52. The starting point for the imposition of penalties is the Contract. Clause 6.1.3 of the Contract states:

> *"The player shall attend all matches-exhibitions and practices organised by the Club during the Term of this Agreement, except in case of injury or illness, or other justifiable reason, which prevents such participation, after receiving written permission in writing from the Club's representative.*"

53. Hence, under the Contract, Claimant 1 was obliged to attend all practices, unless he: (i) was suffering from an injury which prevented him from participating; and (ii) had received written permission from the Respondent. In the Second Procedural Order, the Arbitrator asked Claimant 1 whether he had received such written permission to miss the camp or the practice session. Claimant 1 did not provide any evidence that he had received such permission. Instead he submitted that, pursuant to clause 4.2 of the Disciplinary Regulations, "*a penalty can only be imposed when a player has not attended the training "without any … injury.""*

54. The Arbitrator notes that the full text of clause 4.2 of the Disciplinary Regulations states: "*[f]ive days cost of the player shall be deducted from the player who has not attended the training without any apology or injury*." This is not the same as a term providing that a player is entitled to miss training without permission, provided they have an injury. Moreover, clause 6.1.3 of the Contract places a positive obligation on the player to obtain written permission to miss training, even if injured. Even if the Disciplinary Regulations contradicted this obligation in the Contract (and the Arbitrator finds that they do not), then the Arbitrator would determine that the provisions in the Contract prevail because the Contract is the primary (and negotiated) document which governs the relationship between the Parties. The Arbitrator therefore rejects Claimant 1's implication that he had written permission to miss the practice session. As such, the Respondent was, under the terms of the Contract, entitled to impose a financial penalty on Claimant 1 for missing the practice session on 28 February 2018.

55. While there is an express obligation in the Contract for Claimant 1 to attend practices, there is no express obligation on Claimant 1 to attend camps (such as the camp that Claimant 1 missed). However, clause 6.2 of the Disciplinary Rules provides that "*Players, technical staff and medical staff are obliged to participate in the camps*

planned by the Club and they could not leave the camp without permission of the Board of Management or Department Coordinator." In light of this, the Arbitrator finds that Claimant 1 was required to attend the camp on 27 February 2017, regardless of his injury.

56. Clause 6.2 of the Disciplinary Regulations provides that "*[t]en days costs of the party in breach shall be imposed on the players*." in the event that players fail to attend camps without permission. Accordingly, the Arbitrator finds that the Respondent was entitled to impose a financial penalty on Claimant 1 for missing the camp on 27 February 2018.

The Respondent's obligation to provide notice of the sanction

57. The Respondent argued that there was no "formal requirement" under the Contract for the Respondent to provide Claimant 1 with the opportunity to be heard before imposing penalties for missing the camp and practice, nor was it "mandatory" under the Disciplinary Regulations to do so.

58. The Arbitrator rejects this submission. While there is no requirement under the Disciplinary Regulations for Claimant 1 to be heard, clause 6.1 of the Contract clearly states: "*The player must comply with the Club's reasonable internal rules and regulations […] and accepts a disciplinary action and/or penalties or fines provided in same. […] The Club will notify the Players' Agents in writing within 15 days from such action and provide the Player with an opportunity to explain his actions prior to imposing disciplinary penalties.*"

59. The Respondent does not dispute that it failed to provide Claimant 1 with the opportunity to be heard. It therefore falls to the Arbitrator to determine what impact the Respondent's failure should have on the sanction that it imposed on Claimant 1.

60. It is established BAT jurisprudence that as a matter of procedural fairness, where a

contract is terminated for cause by one party, the other party must be given fair notice of the alleged breach and, where relevant, the opportunity to be heard before the contract is terminated.[6] In such cases where no notice is given of the sanction, Arbitrators have commonly held that the sanction (i.e. the termination) is invalid. While this approach is relevant for present purposes, it relates to circumstances in which the contract is purportedly *terminated*. In the present case, the Respondent did not terminate the Contract; rather, it imposed much lesser sanctions, namely two fines. As such, the Arbitrator does not consider it appropriate to determine that the Respondent's sanctions were completely invalid. Instead, the Arbitrator finds, *ex aequo et bono*, that the sanctions should be reduced to reflect the fact the Respondent failed to comply with the terms of the Contract when imposing the sanctions. Claimant 1 still breached the Contract and the Disciplinary Regulations by failing to attend the camp and practice, and so it is fair that he is still penalised, to some extent, for this. The Arbitrator determines, *ex aequo et bono*, that the sanctions imposed on Claimant 1 should be reduced by 50% to reflect the fact that Claimant 1 was not given the opportunity to be heard before the penalties were imposed. In reaching this determination, the Arbitrator has considered all relevant circumstances, including in particular:

(i) The fines were imposed as a result of Claimant 1's breach of both the Contract and the Disciplinary Regulations.

(ii) The breaches (missing night of camp and one practice) were not at the high end of seriousness.

(iii) The fines imposed were relatively high given: (a) the value of Claimant 1's contract; and (b) the fact that they were the maximum amounts imposable under the Disciplinary Regulations.

[6] See, for example, BAT 0535 at paragraphs 31 – 40 and BAT 0640 at paragraph 47.

(iv) Given the nature of the breaches, the opportunity of being heard would not have afforded Claimant 1 the chance to cure or mitigate the breaches.

(v) Claimant 1 was injured at the time he missed the camp and practice.

(vi) The right for Claimant 1 to be heard was not just a right arising as a matter of procedural fairness, but it was also a term of the Contract.

(vii) The Respondent has benefitted from the fact that Claimant 1 has been without the full amount of the penalties for more than a year and has not sought compensation (for example by claiming interest on any sums awarded).

61. The Arbitrator therefore finds that the penalties imposed by the Respondent for missing the camp and the practice shall be reduced from a total of EUR 35,000.00 to a total of EUR 17,500.00. This amount shall be set off against the outstanding salaries payable to Claimant 1 and means that the Respondent shall pay to Claimant 1 EUR 192,500.00.

Other arguments raised

62. For the sake of completeness, the Arbitrator notes Claimant 1's arguments that it avoided the camp and practice in order to promote a sense of "*togetherness*" within the team and, in doing so, to comply with clause 2.3 of the Disciplinary Regulations. The Arbitrator rejects this argument. When read in the context of clause 2.1 of the Disciplinary Regulations, it is apparent that clause 2.3 applies holistically to the team of coaches, technical staff and players, not just to the players. By conspiring to skip a camp or a practice session arranged by the coach, the players cannot be said to have been promoting the togetherness of the team as a whole, however disgruntled they

may have been by the short notice or the nature of the camp.

63. The Arbitrator also notes Claimant 1's submission that he was punished by the Respondent requiring him and the rest of the team to spend time overnight in hotels. The Arbitrator finds that Claimant 1 did not provide any evidence to prove that such a requirement was in fact a "punishment" and notes that, in any event, this aspect of Claimant 1's submissions was of limited relevance to the relief he sought.

6.2.2 Claimant 2's claim

64. The Respondent's obligation to pay the agent's fees to Claimant 2 is clearly provided for in the Contract.

65. As noted above, Claimant 2 sent several formal letters of demand to the Respondent in respect of the unpaid agent's fees, however the Respondent still failed to pay Claimant 2's agent's fees. Despite being specifically requested to, the Respondent failed to make any submissions in relation to the agent's fees.

66. No reason has been provided by the Respondent for its failure to pay the agent's fees in accordance with the terms of the Contract and so the Arbitrator finds that the Respondent is required to pay Claimant 2 EUR 70,000.00 in compensation.

7. Costs

67. Article 17.2 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and may either be included in the award or communicated to the Parties separately. Furthermore, Article 17.3 of the BAT Rules provides that the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

68. On 15 August 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 at EUR 9,800.00.

69. Article 17.3 of the BAT Rules provides that the award shall determine which party shall bear the arbitration costs and in which proportion and that, as a general rule, the award shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings. In doing so, "*the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and financial resources of the parties.*"

70. The Claimants have been awarded 94% of the total sum that they claimed. The Arbitrator considers that this measure of the success of the Claimants' claim is the starting point for determining the allocation of the arbitration costs. The Arbitrator notes the Parties' conduct in the proceedings, in particular, the fact that the Respondent failed to provide its share of the Advance on Costs. In light of this, and the circumstances of the case, the Arbitrator considers that the Respondent should bear all of the costs of the arbitration.

71. The Claimants have claimed EUR 6,462.50 in legal fees and expenses (including the non-reimbursable handling fee of EUR 5,000.00). Given the volume and complexity of the Claimants' submissions, the Arbitrator considers that this is a reasonable amount and notes that it does not exceed the highest amount that can be awarded as contribution to legal fees and expenses under Article 17.4 of the BAT Rules.

72. The Respondent has claimed EUR 1,270.00 in respect of its legal fees. Given the success of the Claimants' claim, the Arbitrator makes no award in respect of the Respondent's legal costs.

73. Therefore, the Arbitrator decides:

(i) the Respondent shall pay to the Claimants EUR 9,800.00, as reimbursement of arbitration costs advanced by them;

(ii) the balance of the Advance on Costs, in the amount of EUR 200.00 will be reimbursed to the Claimants by the BAT;

(iii) the Respondent shall pay to the Claimants EUR 6,462.50, as a contribution towards the Claimant's legal fees and expenses, including the non-reimbursable handling fee.

8. AWARD

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

1. **BC Galatasaray Spor Kulubu Dernegi shall pay Mr. Tibor Pleiss EUR 192,500.00 as compensation for unpaid salary.**

2. **BC Galatsaray Spor Kulubu Dernegi shall pay Bill A. Duffy International, Inc. EUR 70,000.00 as compensation for unpaid agent's fees.**

3. **BC Galatasaray Spor Kulubu Dernegi shall pay jointly to Mr. Tibor Pleiss and Bill A. Duffy International, Inc the amount of EUR 9,800.00, as reimbursement of the advance on BAT costs.**

4. **BC Galatasaray Spor Kulubu Dernegi shall pay jointly to Mr. Tibor Pleiss and Bill A. Duffy International, Inc. jointly the amount of 6,462.50 as a contribution towards their legal fees and expenses.**

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

Geneva, seat of the arbitration, 23 August 2018.

Rhodri Thomas
(Arbitrator)