

CORRECTED ARBITRAL AWARD

(BAT 1579/20)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Mr. Zachary Auguste

and

Pensack Sports Management Group (Ben Pensack),

and

Kariyer Spor Gida Ilac San. Dis Tic. Ltd Sti (Yaman Eymür and Irfan Yücesoy),

all represented by Messrs. Ergun Benan Arseven and Metin Abut, attorneys at law

vs.

Galatasaray Spor Kulübü Dernegi,

represented by Mr. Suleyman Anil Ozguc, attorney at law

- Claimant 1 -

- Claimant 2 -

- Claimant 3 -

- Respondent -

1 The Parties

1.1 The Claimants

1. Mr. Zachary Auguste (the "Player" or "Claimant 1") is an American-Greek professional basketball player, who played the 2019/2020 season for the basketball club Galatasaray Spor Kulübü Derneği.
2. Pensack Sports Management Group is a professional basketball agency from the USA ("Claimant 2").
3. Kariyer Spor Gıda Ilac San. Dis Tic. Ltd Sti is a professional basketball agency from Turkey ("Claimant 3").

1.2 The Respondent

4. Galatasaray Spor Kulübü Derneği (the "Club" or "Respondent") is a professional basketball club competing in the Turkish Basketball Super League.

2 The Arbitrator

5. On 18 July 2020, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (the "BAT"), appointed Mr. Stephan Netzle 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 his declaration of independence.

3 Facts and Proceedings

3.1 Summary of the Dispute

6. On 18 July 2019, the Player and the Club entered into an agreement whereby the latter engaged the Player for the 2019/2020 season (the "Employment Contract"). Claimants 2 and 3 acting as the Player's representatives were also parties to the Employment Contract.
7. According to Article 2 Employment Contract, the Player is entitled to a fully guaranteed salary of total USD 350,000.00, to be paid as follows:
- USD 10,000.00: upon Player's medical exam
 - USD 25,000.00: on or before 20 September 2019
 - USD 35,000.00: on or before 20 October 2019
 - USD 35,000.00: on or before 20 November 2019
 - USD 35,000.00: on or before 20 December 2019
 - USD 35,000.00: on or before 20 January 2020
 - USD 35,000.00: on or before 20 February 2020
 - USD 35,000.00: on or before 20 March 2020
 - USD 35,000.00: on or before 20 April 2020
 - USD 35,000.00: on or before 20 May 2020
 - USD 35,000.00: on or before 20 June 2020
8. Pursuant to Article 12 Employment Contract, Claimant 2 is entitled to an agent fee of USD 21,000.00 and Claimant 3 to an agent fee of USD 14,000.00 plus VAT, payable as follows:
- USD 10,500.00 to Claimant 2: on or before 20 November 2019
 - USD 7,000.00 plus VAT to Claimant 3: on or before 20 November 2019

- USD 10,500.00 to Claimant 2: on or before 20 January 2020
- USD 7,000.00 plus VAT to Claimant 3: on or before 20 January 2020

9. On 6 February 2020, Claimant 2 sent an e-mail to the Club asking about the status of the agent fee payment. Three days later, i.e. on 9 February 2020, the Club promised Claimant 2 to pay the first instalment of his agent fee in the same week.
10. Per e-mail dated 21 February 2020, Claimant 2 informed the Club that he had not received the first instalment of his agent fee and asked the Club again about the payment status.
11. On 24 February 2020, the Club asked Claimant 2 to agree on a grace period of 30 days to make the relevant payments.
12. On 25 February 2020, the counsel of Claimant 3 sent an e-mail to the Club requesting the payment of the agent fee in the amount of USD 14,000.00 plus VAT. In case the Club was not willing to pay the full amount until 20 March 2020, Claimant 3 would initiated BAT proceedings.
13. On 13 March 2020, Claimant 2 asked the Club again to provide an update regarding the agent fee payments.
14. By e-mail dated 16 March 2020, the Club informed Claimant 2 as follows:

"The situation is unfortunately going worst [sic] than last week due to the virus appeared in Turkey. I really don't know how we can handle it and concerning the dept [sic] towards you and Players, I will update tomorrow."
15. Due to the Covid-19 pandemic, the Turkish league was suspended on 19 March 2020 and cancelled on 11 May 2020.

16. On 26 April 2020, Claimant 2 sent another e-mail to the Club requesting an update regarding the payment status of the Player's salary and his agent fee.
17. By e-mail dated 29 April 2020, the Club informed Claimant 2 that the Club's board members had told him to wait until 15 May 2020 and that the payments would hopefully been made by end of June 2020.
18. On 20 May 2020, Claimant 2 informed the Club that the date of 15 May 2020 had passed and asked the Club to inform him until 21 May 2020 whether or not it intended to pay the agent fee.
19. On 7 July 2020, the Club sent an e-mail to the Claimants' counsel and acknowledged that it owed the Player a total amount of USD 185,235.00. The Club offered the following settlement agreement: According to the BAT COVID-19 Guidelines, the Player was only entitled to 50% of the salary due during the lockdown period. He was therefore only entitled to request USD 70,000.00 for the period between March and June 2020. This resulted in an outstanding amount of USD 115,235.00. The Club offered the Player to pay this outstanding amount in 11 monthly instalments starting on 31 July 2020 and ending on 31 May 2021, with 10 monthly instalments of USD 10,400.00 each and a last instalment of USD 11,235.00.
20. On 8 July 2020, Claimants' counsel informed the Club that the Player had only received USD 129,500.00 and that the outstanding amount was USD 220,500.00. The Claimants' counsel asked the Club whether this fact would change its settlement proposal.
21. On the same day, the Club's representative replied to the Claimants' counsel that, according to the files, the Player had received a total amount of USD 164,765.00.

22. On 21 July 2020, the Claimants' counsel sent an e-mail to the Club informing that his clients had decided to initiate the present BAT proceedings.

3.2 The Proceedings before the BAT

23. On 21 July 2020, the BAT received a (revised) Request for Arbitration dated 22 June 2020 filed by the Claimants in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 3,033.80¹ was received in the BAT bank account on 26 June 2020.
24. By letter dated 22 July 2020, the BAT Secretariat (a) notified the parties of the Arbitrator's appointment; (b) invited the Respondent on behalf of the Arbitrator to file an Answer to the Request for Arbitration in accordance with Article 11.4 BAT Rules by no later than 12 August 2020; and (c) fixed the amount of the Advance on Costs to be paid by the parties by 3 August 2020 as follows:
- *Claimant 1:* EUR 3,966.20 (after deduction of the overpaid handling fee);
 - *Claimant 2:* EUR 1,000.00;
 - *Claimant 3:* EUR 1,000.00;
 - *Respondent:* EUR 6,000.00.
25. By e-mail dated 30 July 2020, the Claimants' counsel requested a deadline extension to pay the shares of the Advance on Costs until 10 August 2020 because of the closure of banks in Turkey due to the national holiday.
26. On the same day, the BAT Secretariat granted this request and invited both parties to pay their shares of the Advance on Costs by no later than 10 August 2020.

¹ The applicable handling fee was EUR 3,000.00 pursuant to Article 17.1 of the BAT Arbitration Rules. The overpaid amount of EUR 33.80 were deducted from the Advance on Costs by the BAT Secretariat.

27. On 12 August 2020, the Respondent submitted its Answer to the Request for Arbitration.
28. By letter dated 12 August 2020, the BAT Secretariat acknowledged that the Claimants had paid their shares of the Advance on Costs and that the Respondent had submitted its Answer to the Request for Arbitration. In the same letter, the BAT Secretariat acknowledged that the Respondent failed to pay its share of the Advance on Costs and fixed a final deadline until 24 August 2020 for the Claimants to substitute for the Respondent's share of the Advance on Costs.
29. By e-mail dated 1 September 2020, the BAT Secretariat acknowledged that the Claimants had paid the Respondent's share of the Advance on Costs on 17 and 20 August 2020, thus having paid a total of EUR 12,031.40 towards both shares of the Advance on Costs. In the same e-mail, the BAT Secretariat informed the parties that they had failed to submit English translations of certain exhibits. For this reason, the BAT Secretariat invited the parties to provide a translation of all exhibits on which they would like to rely on by no later than 11 September 2020.
30. By letter dated 18 September 2020, the BAT Secretariat acknowledged receipt of the parties' translations in reply to the Procedural Order of 1 September 2020. Furthermore, the BAT Secretariat informed the parties that the Arbitrator had declared the exchange of submissions complete and that the final award would be rendered as soon as possible. Finally, the BAT Secretariat granted the parties a deadline until 25 September 2020 to provide a detailed account of their costs.
31. On 24 September 2020, the parties submitted their cost statements for legal services and disbursements.

4 The Positions of the Parties

4.1 The Claimants' Position

32. Claimant 1 submits the following in substance:
33. According to Article 11 Employment Contract, the Player's salary is determined as fully and unconditionally guaranteed even in case of illness.
34. As the Player passed the medical examination and started playing for the Club, the Employment Contract entered into force and the fully guaranteed salary of USD 350,000.00 net should have been paid to the Player by 20 June 2020 at the latest. However, the Club only paid salaries in the amount of USD 164,500.00 to the Player. The Player is therefore entitled to outstanding salaries in the total amount of USD 185,500.00 net.
35. During the lockdown period, which started on 19 March 2020, the Club did not propose a settlement agreement. Nevertheless, by acting in good faith, the Player decided to reduce the outstanding salary amount and only requested in the Request for Arbitration a salary payment of USD 138,357.36 net based on the following considerations:
36. As the medical examination took place on 14 August 2019, the Employment Contract entered into force on that date and the first salary instalment was due on 20 September 2019. This means that the salary payment on 20 September 2019 was determined to compensate the Player's services in the period between 14 August 2019 and 13 September 2019. In other words, the salary payments made on 20th of each month were actually meant for the Player's services provided between the 14th of the previous months until the 13th of the respective month in which the salary was due for payment.

37. The salary payment due by 20 March 2020 was therefore intended to compensate the Player's services between 14 February 2020 and 13 March 2020. Therefore, the salary instalment for March as well as all other instalments due before 20 March 2020 did not fall within the lockdown period and can thus not be subject to any reduction based on the BAT COVID-19 Guidelines.
38. The salary instalment for April was intended for the Player's services between 14 March 2020 and 13 April 2020. Five days of this period (14 to 18 March 2020) were before the lockdown. The salary for these five days ($\text{USD } 35,000.00 / 30 \times 5 = \text{USD } 5,833.00$) is due without reduction.
39. Applying the BAT COVID-19 Guidelines and the principle of good faith, the Player accepts a reduction of the remaining part of the April instalment of USD 29,167.00 (i.e. $\text{USD } 35,000.00 - \text{USD } 5,833.00 = \text{USD } 29,167.00$) and the salary instalments for the months May (i.e. USD 35,000.00) and June (i.e. USD 35,000.00) by 20% on the first EUR 2,500.00 and by 50% on the amounts exceeding EUR 2,500.00, as follows:

Salary	Contractually agreed salary amount	USD equivalent of first EUR 2,500.00	Rest of relevant salary payment	20% of USD equivalent of first EUR 2,500.00	50% of rest of relevant salary payment	Total amount of reduction made in respective salary payment
Remaining part of April salary subject to reduction	USD 29,167.00	USD 2,716.25 (currency rate on 20 April 2020)	USD 26,450.75	USD 543.25	USD 13,225.38	USD 13,768.63
May salary	USD 35,000.00	USD 2,745.75 (currency rate on 20 May 2020)	USD 32,254.25	USD 549.15	USD 16,127.13	USD 16,676.28
June salary	USD 35,000.00	USD 2,794.25 (currency rate on 20 June 2020)	USD 32,205.75	USD 594.85	USD 16,102.88	USD 16,697.73

40. Based on this calculation, the Player accepts a reduction of his salary to USD 47,142.64 (i.e. USD 13,768.63 + USD 16,676.28 + USD 16,697.73). As the Club paid a total amount of only USD 164,500.00, the Player would therefore be entitled to an outstanding salary of USD 138,357.36 (i.e. outstanding agreed salary of USD 185,500.00 – reduction of USD 47,142.64 in line with the BAT COVID-19 Guidelines).
41. Claimants 2 and 3 submit the following in substance:
42. According to Article 12 Employment Contract, the agent fee payments of USD 21,000.00 to Claimant 2 and of USD 14,000.00 plus VAT to Claimant 3 are not subject to any terms or conditions under the Employment Contract except the entry into force of that contract. As the Player passed the medical examination, the Employment Contract became valid and enforceable. Therefore, the instalments for the agent fees became due on 20 November 2019 and 20 January 2020, i.e. before the lockdown period.

43. The full agent fees were due about two months before the Covid-19 pandemic caused the suspension of the Turkish basketball league. Furthermore, Article 12 Employment Contract does not require any further services by the Claimants 2 and 3 to earn the agent fees. For all these reasons, the agent fees shall not be subject to any reduction based on the BAT COVID-19 Guidelines. Claimant 2 is therefore entitled to an agent fee of USD 21,000.00 net, and Claimant 3 to an agent fee of USD 14,000.00 net plus VAT. As the Turkish VAT rate is 18%, Claimant 3 requests the payment of USD 16,520.00.

44. In their Request for Arbitration dated 22 June 2020, the Claimants request the following relief:

"Claimants request, in reservation of any further rights, relief and requests:

- a) *The Respondent to be ordered to immediately pay to the Claimant 1*
- *salary of **net USD 138,357.36**,*
 - *5% interest, amounting to **net USD 38** as from 20 June 2020 until filing of this Request for Arbitration,*
 - *5% interest continuing to be accrued as from 20 June 2020 until completion of this payment.*
- b) *The Respondent be ordered to immediately pay to the Claimant 2*
- *agent fee of **net USD 21,000**,*
 - *5% interest, amounting to **net USD 313**, accruing over USD 10,500 as from 20 November 2019 until filing of this Request for Arbitration,*
 - *5% interest, amounting to **net USD 224**, accruing over USD 10,500 as from 20 January 2020 until filing of this Request for Arbitration,*
 - *5% interest continuing to be accrued over USD 10,500 as from 20 November 2019 until completion of this payment,*
 - *5% interest continuing to be accrued over USD 10,500 as from 20 January 2020 until completion of this payment.*

- c) *The Respondent be ordered to immediately pay to the Claimant 3*
- *agent fee of **net USD 16,520 (including VAT)**,*
 - *5% interest, amounting to **net USD 246**, accruing over USD 8,260 (including VAT) as from 20 November 2019 until filing of this Request for Arbitration,*
 - *5% interest, amounting to **net USD 176**, accruing over USD 8,260 (including VAT) as from 20 January 2020 until filing of this Request for Arbitration,*
 - *5% interest continuing to be accrued over USD 8,260 (including VAT) as from 20 November 2019 until completion of this payment,*
 - *5% interest continuing to be accrued over USD 8,260 (including VAT) as from 20 January 2020 until completion of this payment.*
- c) *The Respondent be ordered to pay all BAT handling fees plus additional costs of arbitration, legal fees, and/or expenses related to this BAT case.*

*Total amount in dispute: **USD 176,874.36***

4.2 Respondent's Position

45. The Respondent submits the following in substance:
46. Due to the Covid-19 pandemic, the Turkish league was suspended on 19 March 2020 and cancelled on 11 May 2020.
47. The Player participated in 41 games with the Club. However, if the Covid-19 pandemic had not occurred, the Club would have played another 22 games. Hence, due to the Covid-19 outbreak, the Player only participated in 60% of all games. For this reason, entitling the Player to payments with due dates of 20 March 2020, 20 April 2020, 20 May 2020 and 20 June 2020 would be contrary to equity and fairness even though the Player agrees on a certain amount of deduction based on the BAT COVID-19 Guidelines.

48. Based on the principle of *ex aequo et bono*, the Arbitrator shall deviate from the wording of the Employment Contract and take into account the unforeseeable circumstances of the Covid-19 outbreak. The Arbitrator shall thereby be guided by the principle of *clausula rebus sic stantibus*. It is clear that (i) the circumstances have changed and this has led to a fundamental distortion of the Employment Contract, (ii) this change in circumstances was not foreseeable by the Club when the Employment Contract was concluded, (iii) the Club did not accept the risk of such a change at the time when the Employment Contract was signed, (iv) the changes in the circumstances have not been caused by the Club, and (v) the changes in circumstances have caused a significant disparity between the parties' obligations. The Club's economic situation has severely been damaged because of the loss of game-days as well as the loss of income from sponsorship, marketing and broadcasting. Therefore, the Club shall not be held liable for the payments requested by the Player that became due on 20 March 2020, 20 April 2020, 20 May 2020 and 20 June 2020.
49. In case the Arbitrator concludes that the Player is entitled to salary payments for the months March to June 2020, these payments shall at least be reduced based on the BAT COVID-19 Guidelines. As the due date of the March salary was on 20 March 2020 and the suspension of the Turkish basketball league was announced on 19 March 2020, also the salary instalment for the month of March is subject to reduction based on the BAT COVID-19 Guidelines. This is also evident from the fact that a club pays a player a salary for the whole season, not for his services provided for a respective period.
50. The Club will do its utmost to find amicable solutions with the players and already reached settlement agreements with 14 players and 2 agents in men's basketball and 8 players and 1 agent in women's basketball.
51. The agent fees shall be calculated on a pro-rata basis in accordance with the amount that the Player shall receive by applying the principle of *clausula rebus sic stantibus*. It

is evident that the agents' total remuneration corresponds to 10% of the Player's salary for the whole season. Therefore, the Claimants 2 and 3 shall only be entitled to 10% of the Player's seasonal salary, which shall be determined by applying the principle of *clausula rebus sic stantibus* and after the deduction based on the BAT COVID-19 Guidelines.

52. In its Answer to the Request for Arbitration dated 12 August 2020, the Respondent requests the following relief:

"Galatasaray shall not be held liable for the Player's payments with due dates of 20 March 2020, 20 April 2020, 20 May 2020 and 20 June 2020 due to the change of circumstances. If the Arbitrator agrees otherwise, the Player's payments with due dates of 20 March 2020, 20 April 2020, 20 May 2020 and 20 June 2020 shall be reduced in accordance with BAT Guidelines and Galatasaray's good-faith effort to reach an amicable solution shall be taken into account while reducing the compensation."

Galatasaray shall not be held liable for paying the Agents' fee in full as such fee shall be calculated on a pro-rata basis in accordance with %10 of the Player's seasonal fee which shall be determined after the principle of rebus sic stantibus is applied to the present dispute or after a deduction is applied to that fee as per BAT Guidelines and Galatasaray's good-faith effort to reach an amicable solution shall be taken into account while determining the Agents' fee."

5 The jurisdiction of the BAT

53. Pursuant to Article 2.1 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 (the "PILA").
54. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

55. 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.²
56. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under Article 10 Employment Contract, which reads as follows:
- "Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono. [...]"*
57. The Agreement is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
58. 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).
59. The jurisdiction of BAT over the Claimants' claims arises from the Employment Contract. The wording *"[a]ny dispute arising from or related to the present contract [...]"* clearly covers the present dispute.
60. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimants' claims.

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

6.1 Applicable Law – ex aequo et bono

61. 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".

62. Under the heading "Law Applicable to the Merits", Article 15 BAT Rules reads as follows:

"15.1 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.

15.2 If, according to an express and specific agreement of the parties, the Arbitrator is not authorised to decide ex aequo et bono, he/she shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to such rules of law he/she deems appropriate. In both cases, the parties shall establish the contents of such rules of law. If the contents of the applicable rules of law have not been established, Swiss law shall apply instead."

63. Article 10 Employment Contract provides that the Arbitrator shall decide the dispute *ex aequo et bono*.
64. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to him in this proceeding.

65. The concept of "équité" (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) Concordat intercantonal sur l'arbitrage³ (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

66. This is confirmed by Article 15.1 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".

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

6.2 Findings

6.2.1 Player's salary claims based on the Employment Contract

68. According to Article 2 Employment Contract, the Player is entitled to a "*guaranteed*" salary of USD 350,000.00. Pursuant to Article 3 Employment Contract, all amounts are "net of all taxes, social (employer and employee) charges, and other costs". The Arbitrator understands this to refer to any such taxes, social charges or costs that are levied in Turkey.

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).

69. In Article 11 Employment Contract, the parties agreed that the Employment Contract *"is an unconditionally guaranteed contractual 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."*
70. While the Club acknowledges in its e-mail dated 7 July 2020 to owe the Player a total amount of USD 185,235.00, Claimant 1 is of the view that he is entitled to outstanding salaries in the amount of USD 185,500.00, after taking all payments made into calculation.
71. The Club neither provided the BAT with evidence that it paid more than USD 164,500.00 as argued by the Player nor contested the amount received by the Player from the Club in its Answer to the Request for Arbitration. For this reason, the Arbitrator concludes that the Player has only received salary payments in the amount of USD 164,500.00 and is, therefore, in principle, entitled to an outstanding salary in the amount of USD 185,500.00.

6.2.2 Player's salary reduction because of the COVID-19 lockdown

72. Due to the Covid-19 pandemic, the Turkish league was suspended on 19 March 2020 and cancelled on 11 May 2020. The Respondent requests at least a reduction of the salary instalments based on the BAT COVID-19 Guidelines.
73. The BAT COVID-19 Guidelines (the "Guidelines") provide that it would be *"fair and just that the obligation of the club to pay salaries during the Lockdown Period be subject to a general reduction"*. While the Guidelines are not binding on the Arbitrator, he finds that it is fair and just to apply the principles laid down therein to the present case.

74. According to Article 16 of the Guidelines, the size of the salary reduction depends on the player's monthly salary, with the following scale guiding the arbitrators' assessment of the equitable reduction: The first EUR 2,500.00 per month are subject to a reduction by 0 to 20%. Every euro exceeding EUR 2,500.00 per month are subject to a reduction by 50% as a starting point, but subject to adjustment by the arbitrators.
75. When deciding the precise percentages to apply, the Arbitrator will take the following non-exhaustive criteria into account based on the BAT COVID-19 Guidelines:
- "the overall amount of the salary, keeping in mind that, in principle, lower salaries shall be submitted to a lower reduction than higher salaries;*
 - the financial situation of the club as a result of the COVID-19 crisis;*
 - the individual circumstances of the player/coach, in particular his or her reasonable living costs and the extent to which he or she is financially responsible also for others;*
 - whether the parties have complied with their duty pursuant to no. 2 above of these Guidelines and, more generally, have acted in good faith. A club will not have acted in good faith if it discriminates against a player/coach compared to its other similarly situated players/coaches; and*
 - the principle of proportionality and reasonableness, in particular how the club will use any liquidity saved through the salary reduction."*
76. The Guidelines also state that "[...] *salaries that became due before the Lockdown Period are not subject to above reduction.*"
77. As stated above (see section 6.2.1), the Player is, in principle, entitled to an outstanding salary amount of USD 185,500.00. First, the question arises which part of the outstanding salary amount became due before the beginning of the lockdown period on 19 March 2020. While the Player argues that a part of the March salary refers to services provided before the lockdown period and is, therefore, not subject to any reduction, the Club argues that the entire March salary shall be reduced.

78. Based on their clear wording, the Guidelines do not link a possible reduction to the period during which the services have been provided, but to the dates when the financial obligations became due. Since the salary for the month March became due on 20 March 2020 and the lockdown period started on 19 March 2020, the full March salary is subject to reduction based on the Guidelines. Therefore, the entire salaries for the months March, April, May and June 2020 in the total amount of USD 140,000.00 are subject to a reduction pursuant to the principles of the Guidelines.
79. The remaining outstanding salary, in the amount of USD 45,500.00 (i.e. USD 185,500.00 – USD 140,000.00), became due before the lockdown period and is, therefore, not subject to any reduction due to the Covid-19 pandemic.
80. With regard to the percentage of the reduction in relation to the amount of USD 140,000.00 that fell due before the lockdown period, the Arbitrator takes into account that (i) the Player was entitled to a substantial salary, (ii) the Player did not provide the BAT with further information about his living costs and the extent to which he is financially responsible also for others, (iii) the Club submitted a settlement offer to the Player, which the latter declined in July 2020, and, on the other hand, (iv) the Player voluntarily reduced his salary in these BAT proceedings. Considering these facts and applying the principle of *ex aequo et bono*, the Arbitrator finds it fair and appropriate to reduce the salaries for March to June 2020 by 20% on the first EUR 2,500.00 per month and by 50% on the remaining monthly salary:

Salary	Contractually agreed salary amount	USD equivalent of first EUR 2,500.00	Rest of relevant salary payment	20% of USD equivalent of first EUR 2,500.00	50% of rest of relevant salary payment	Total amount of reduction made in respective salary payment
March salary	USD 35,000.00	USD 2,698.27 (currency rate on 20 March 2020: EUR 1 = USD 1.07931)	USD 32,301.73	USD 539.65	USD 16,150.87	USD 16,690.52
April salary	USD 35,000.00	USD 2,717.17 (currency rate on 20 April 2020: EUR 1 = USD 1.08687)	USD 32,282.83	USD 543.43	USD 16,141.42	USD 16,684.85
May salary	USD 35,000.00	USD 2,732.53 (currency rate on 20 May 2020: EUR 1 = USD 1.09301)	USD 32,267.47	USD 546.51	USD 16,133.74	USD 16,680.25
June salary	USD 35,000.00	USD 2,800.26 (currency rate on 20 June 2020: EUR 1 = USD 1.12010)	USD 32,199.74	USD 560.05	USD 16,099.87	USD 16,659.92
Total	USD 140,000.00	USD 10,948.23	USD 129,051.77	USD 2,189.64	USD 64,525.90	USD 66,715.54

81. Based on this calculation, the salaries for the months March to June 2020 are reduced by a total of USD 66,715.54 and the Player is, therefore entitled to a salary payment of in total USD 73,284.46 for the period between March and June 2020 (USD 140,000.00 – USD 66,715.54) plus USD 45,500.00, i.e. the amount that became due before the lockdown period. In sum, the Player is entitled to outstanding salaries in the total amount of USD 118,784.46.

6.2.3 Agent fee claims

82. Article 12 of the Employment Contract provides the following agent fee regulations:

"The CLUB agrees to pay AGENTS Benjamin Pensack and Yaman Eymür & İrfan Yücesoy acting as the Representatives for the PLAYER an agent fee of Thirtyfive Thousand US Dollars (USD 35,000.00) for 2019-2020 season. Benjamin Pensack (Pensack Sports) will receive Twenty One Thousand US Dollars (USD 21,000.00); whereas Yaman Eymür & İrfan Yücesoy (Kariyer Spor Ltd. Sti) will receive Fourteen Thousand US Dollars + VAT (USD 14,000.00 + KDV). The agent fees will be paid as follows:

\$ 10,500 to Pensack Sports on November 20, 2019.

\$ 7,000 to Kariyer Spor Ltd Sti on November 20, 2019.

\$ 10,500 to Pensack Sports on January 20, 2020.

\$ 7,000 to Kariyer Spor Ltd Sti on January 20, 2020."

83. The first question is whether Claimants 2 and 3 have standing to sue in the present case.
84. The two agencies are named in the Request for Arbitration as Claimants 2 and 3. The names of the agents appear in parentheses.
85. According to Article 12 of the Employment Contract, the agent fee installments should have been paid to the agencies and not to the natural persons behind the companies. Therefore, the Arbitrator concludes that both agencies have standing to sue and are, therefore, entitled to claim payment of the agent fees.
86. The Respondent argues that Claimants 2 and 3 are only entitled to 10% of the amount that the Club is obliged to pay to the Player after the reduction based on the Guidelines.
87. According to Article 20 of the Guidelines, the arbitrators may rely on the principle established in the Guidelines also for contractual relations with other actors, such as agents, to the extent deemed appropriate.
88. Claimants 2 and 3 had brought the Player to the Club well before the outbreak of the pandemic and any lockdown. Furthermore, the instalments became due on 20 November 2019 and 20 January 2020 and, therefore, do not fall within the lockdown period. Based on Article 16 lit. d of the Guidelines, all payments which became due before the lockdown period are, in principle, not subject to any reduction. While one can argue that the Player had a lower value for the Club due to the lockdown and the fact that he played fewer games for the Club than expected, the fact remains that

Claimants 2 and 3 had already completely fulfilled their contractual duties months before the lockdown period..

89. Therefore, the Arbitrator concludes that no reduction of the agent fees is appropriate.
90. Therefore, Claimant 2 is entitled to an agent fee in the amount of USD 21,000.00 and Claimant 3 to an agent fee of USD 14,000.00 plus VAT, i.e. USD 16,520.00.

6.3 Interest

91. The Claimants request interest of 5% per annum until the date of payment.
92. The Employment Contract does not expressly provide for interest. However, According to standing BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. This is a generally accepted principle, which is embodied in most legal systems. As requested by the Claimants and in correspondence with the standing BAT jurisprudence, the default interest rate is of 5% per annum.
93. As to the date from which the interest regarding the outstanding salary starts to run, the Employment Contract foresees the following due dates for the salary instalments: 20 September 2019, 20 October 2019, 20 November 2019, 20 December 2019, 20 January 2020, 20 February 2020, 20 March 2020, 20 April 2020, 20 May 2020 and 20 June 2020. Therefore, the interest for the unpaid salary instalments that fell due before the lockdown period (in the amount of USD 45,500.00) would, in principle, start on 21 February 2020, at the latest. The interest for the unpaid, reduced March salary would, in principle, start on 21 March 2020, for the reduced April salary on 21 April 2020, for the reduced May salary on 21 May 2020 and for the reduced June salary on 21 June 2020.

94. However, as the Claimant 1 only requests interest from 20 June 2020 and in order to avoid a decision *ultra petita*, the Arbitrator orders interest on the full outstanding salary amount of USD 102,684.77 from 20 June 2020.
95. As to the date from which the interest regarding the agent fees starts to run, the Employment Contract foresees the following due dates for the instalments: 20 November 2019 for the first instalments of the agent fees (i.e. USD 10,500.00 for the Claimant 2 and USD 7,000.00 for the Claimant 3) and 20 January 2020 for the second instalments corresponding to the same amounts. Therefore, the interests for the mentioned amounts start on 21 November 2019 and 21 January 2020.

7 Conclusion

96. Based on the foregoing, and after taking into due consideration all the evidence submitted and all arguments made by the parties, the Arbitrator finds that the Respondent is obliged to pay the Claimants the following payments:
- To Claimant 1: USD 118,784.46 net (outstanding salary), plus interest of 5% per annum from 20 June 2020 until payment;
 - To Claimant 2: USD 21,000.00, including VAT (agent fee), plus interest of 5% per annum on USD 10,500.00 from 21 November 2019 and on USD 10,500.00 from 21 January 2020 until payment;
 - To Claimant 3: USD 16,520.00, including VAT(agent fee), plus interest of 5% per annum on USD 7,000.00 from 21 November 2019 and on USD 7,000.00 from 21 January 2020 until payment.

8 Costs

97. In respect of determining the arbitration costs, Article 17.2 BAT Rules provides as follows:

"At the end of the proceedings, the BAT President shall determine the final amount of the arbitration costs, which shall include the administrative and other costs of the BAT, the contribution to the BAT Fund (see Article 18), the fees and costs of the BAT President and the Arbitrator, and any abeyance fee paid by the parties (see Article 12.4). [...]"

98. On 15 October 2020, the BAT Vice-President determined the arbitration costs in the present matter to be EUR 7,200.00.

99. Article 12 Employment Contract provides, in addition to the valid arbitration clause, the following costs regulation in case of a dispute:

"[...] The prevailing party shall be entitled to recover all costs, fees, and attorneys' fees from the other party in any such dispute. [...]"

100. However, Article 17.3 BAT Rules provides as follows:

"The award shall determine which party shall bear the arbitration costs and in which proportion. [...] When deciding on the arbitration costs [...], 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."

101. Moreover, Article 17.4 BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses.

102. The Claimants request a contribution to their legal fees in the total amount of USD 31,306.75 (including VAT), which represents 15% of the value in dispute including VAT. This does not include the non-reimbursable handling fee of EUR 3,000.00.

103. The Respondent requests a contribution to its legal fees in the total amount of EUR 22,610.00.

104. Neither of the parties provided the BAT with a detailed account of what kind of work has been done at what hourly rate.
105. The maximum contribution for an amount in dispute between EUR 100,001.00 and EUR 200,000.00 excluding handling fee according to Article 17.4 BAT Rules is EUR 10,000.00. In case of multiple Claimants, the maximum contribution is determined separately for each party. The amount in dispute in this case is USD 175,877.36 (i.e. ca. EUR 156,993.00) plus 5% interest.
106. Considering the outcome of the proceedings, the Arbitrator finds it as fair and adequate that the Respondent shall bear 85% of the arbitration fees and costs and the Claimants 15% of the arbitration costs. Given that the Claimants paid the entire Advance on Costs of EUR 12,031.40 and that an amount of EUR 4,831.40 will be reimbursed to the Claimants by the BAT as the difference between the arbitration costs and the Advance on Costs paid by the Claimants, the Club shall reimburse EUR 6,120.00 as arbitration costs to the Claimants.
107. In addition, considering that only one round of written submissions has been exchanged in which both counsel only submitted a rather limited number of pages and exhibits, and given that the Claimants were not fully successful, the Respondent shall contribute an amount of EUR 8,000.00 to the Claimants' legal fees and expenses including the non-reimbursable handling fee of EUR 3,000.00.

9 AWARD

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

- 1. Galatasaray Spor Kulübü Dernegi shall pay Mr. Zachary Auguste outstanding salaries in the amount of USD 118,784.46 net, plus interest of 5% per annum from 20 June 2020 until payment.**
- 2. Galatasaray Spor Kulübü Dernegi shall pay Pensack Sports Management Group outstanding agent fee in the amount of USD 21,000.00 (including VAT), plus interest of 5% per annum on USD 10,500.00 from 21 November 2019 and on USD 10,500.00 from 21 January 2020, each until payment.**
- 3. Galatasaray Spor Kulübü Dernegi shall pay Kariyer Spor Gida Ilac San. Dis Tic. Ltd Sti outstanding agent fee in the amount of USD 16,520.00 (including VAT), plus interest of 5% per annum on USD 7,000.00 from 21 November 2019 and on USD 7,000.00 from 21 January 2020, each until payment.**
- 4. Galatasaray Spor Kulübü Dernegi shall pay Mr. Zachary Auguste, Pensack Sports Management Group and Kariyer Spor Gida Ilac San. Dis Tic. Ltd Sti jointly an amount of EUR 6,120.00 as reimbursement for their arbitration costs.**
- 5. Galatasaray Spor Kulübü Dernegi shall pay Mr. Zachary Auguste, Pensack Sports Management Group and Kariyer Spor Gida Ilac San. Dis Tic. Ltd Sti jointly an amount of EUR 8,000.00 as reimbursement for their legal fees and expenses.**
- 6. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 29 October 2020 (original award dated 21 October 2020)

Stephan Netzle
(Arbitrator)