

ARBITRAL AWARD

(BAT 1544/20)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Mr. Jordan Theodore

- Claimant 1 -

Assist Sports Management, Inc.
P.O. Box 458, Chappaqua, NY 10514, USA

- Claimant 2 -

Kariyer Spor Gida Ilac San. Dis Tic. Ltd. Sti.
Zühtüpaşa Mh. Şehirkahya Sk. Pembe Köşk,
Site A Blok No: 29/9 Kızıltoprak, İstanbul, Turkey

- Claimant 3 -

all represented by Mr. Ergun Benan Arseven and Mr. Metin Abut

vs.

Besiktas Basketbol Jimnastik Kulübü Derneği
Visnezade Mahallesi, Kadırgalar Cad. No: 1,
Vodafone Park Otopark Girişi Kat: 1, Beşiktaş, 34357 İstanbul, Turkey

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. Jordan Theodore (the “**Player**” or “**Claimant 1**”) is a professional basketball player of US nationality.
2. Assist Sports Management, Inc. (the “**First Agency**” or “**Claimant 2**”) is a basketball agency with its registered seat in Chappaqua, USA.
3. Kariyer Spor Gida Ilac San. Dis Tic. Ltd. Sti. (the “**Second Agency**” or “**Claimant 3**”, and together with the First Agency the “**Agencies**”) is a basketball agency with its registered seat in Istanbul, Turkey.
4. The Player, the First Agency and the Second Agency are collectively referred to as the “**Claimants**”.

1.2 The Respondent

5. Besiktas Basketbol Jimnastik Kulübü Dernegi (hereinafter the “**Club**” or the “**Respondent**”) is a professional basketball club competing in the Turkish Basketball Super League.

2. The Arbitrator

6. On 13 May 2020, Prof. Ulrich Haas, the President of the Basketball Arbitral Tribunal (the “**BAT**”), appointed Ms. Annett Rombach as arbitrator (the “**Arbitrator**”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal in force as from 1 December 2019 (the “**BAT Rules**”). None of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3. Facts and Proceedings

3.1 Summary of the Dispute

7. On 22 July 2019, the Player, the Agencies and the Club entered into an employment agreement pursuant to which the Club engaged the Player as a professional basketball player for the playing season 2019-20 (the “**Player Contract**”). The Agencies were represented by FIBA-licensed agents “Eric Fleisher”, “Yaman Eymür” and “İrfan Yücesoy”.
8. With respect to the Player’s remuneration, Clause 2 of the Player Contract provided the following:

“The total guaranteed net value of the base salary in this Agreement shall be Four Hundred Thousand Dollars (US\$400,000.00) for 2019-2020 season. The term of the Agreement shall end on the last official game of the League. During the term of this Agreement, the CLUB agrees to pay the PLAYER as follows.

A. Payments:

For 2019-2020 season

<i>September 15, 2019</i>	<i>US\$40,000.00</i>
<i>October 15, 2019</i>	<i>US\$40,000.00</i>
<i>November 15, 2019</i>	<i>US\$40,000.00</i>
<i>December 15, 2019</i>	<i>US\$40,000.00</i>
<i>January 15, 2020</i>	<i>US\$40,000.00</i>
<i>February 15, 2020</i>	<i>US\$40,000.00</i>
<i>March 15, 2020</i>	<i>US\$40,000.00</i>
<i>April 15, 2020</i>	<i>US\$40,000.00</i>
<i>May 15, 2020</i>	<i>US\$40,000.00</i>
<i>June 15, 2019</i>	<i>US\$40,000.00</i>

B. Bonuses

[...]

All amounts described in Sections 2A and 2B shall be paid as net in U.S. Dollars to an account(s) of the Player’s choice. The CLUB shall be responsible for all appropriate Turkish taxes, duties, and

other withholdings.”

9. Regarding the Agencies' fees, Clause 6 of the Player Contract sets forth that

“[t]he CLUB agrees to pay AGENTS Eric Fleisher and Yaman Eymür & İrfan Yücesoy acting as the Representatives for the PLAYER an agent fee of Forty Thousand US Dollars (US\$40,000.00) for 2019-2020 season that shall be paid in two equal instalments, 1st installment will be paid on 20th of October 2019, and 2nd installment on 20th January 2020. Eric Fleisher (Assist Sports Management, Inc.) will receive Twenty Four Thousand US Dollars (US\$24,000.00); whereas Yaman Eymur & İrfan Yücesoy (Kariyer Spor Ltd. Sti.) will receive Sixteen Thousand US Dollars+VAT (US\$16,000.00+VAT). [...]”

10. As a result of the Club's failure to pay the Player's November and December 2019 salary as well as the Agencies' first instalment of the agent fee, on 28 December 2019, the Player, the Agencies and the Club signed a termination agreement titled “PROTOCOL” (the “**Protocol**”), pursuant to which the Parties agreed to mutually terminate the Player Contract with immediate effect (Clause 1 of the Protocol).

11. Per Clause 2 of the Protocol, the Parties agreed to compensate the Player for the premature termination of the Player Contract as follows (the “**Player Compensation**”):

“2. Club agrees, declares and undertakes to pay to Player USD 80.000 in four installments on due dates listed as follows:

- USD 20.000 on 31 January 2020,*
- USD 20.000 on 28 February 2020,*
- USD 20.000 on 31 March 2020, and*
- USD 20.000 on 30 April 2020.”*

12. The Agencies' compensation was agreed in Clause 3 and 4 of the Protocol (the “**Agencies' Compensation**”):

“3. Club agrees, declares and undertakes to pay USD 24.000 to Assist on 31 January 2020.

4. Club agrees, declares and undertakes to pay USD 18.880

(including VAT) to Kariyer Spor on 31 January 2020.”

13. With regard to the Club's remaining payment obligations under the Player Contract, the Protocol (Clause 6 and 7) provided that:

“6. The Parties agree and accept that (save for clauses 2, 3, 4 and 5 above) the Parties will not pay or request any compensation towards each other due to the present mutual termination.

7. On the condition that the all [sic] payments determined with this Protocol are made in accordance with the terms and conditions determined with this Protocol, Parties agree, declare and undertake to acquit each other.”

14. The Club has neither paid the Player's Compensation nor the Agencies' Compensation to date. The stipulated amounts remain unpaid in their entirety.
15. On 1 February 2020, the Claimants' legal counsel sent a warning e-mail to the Club's legal counsel requesting payment of the outstanding first instalment of the Player's Compensation and the Agencies' Compensation, without any avail.

3.2 The Proceedings before the BAT

16. On 12 March 2020, the BAT received a Request for Arbitration (“**RfA**”) from the Claimants. On 29 April 2020, the Claimants requested permission from the BAT to amend their RfA. On 30 April 2020, the BAT accepted the Claimants' request.
17. On 4 May 2020, the BAT received a revised RfA together with several exhibits filed by the Claimants in accordance with the BAT Rules. A non-reimbursable handling fee of EUR 2,985.00 had been received in the BAT bank account on 29 and 30 April 2020.
18. On 18 May 2020, the BAT informed the Parties that Ms. Annett Rombach had been appointed as Arbitrator in this matter, invited the Respondent to file its Answer in accordance with Article 11.4 of the BAT Rules by no later than 8 June 2020 (the

“Answer”), and fixed the amount of the Advance on Costs to be paid by the Parties by 28 May 2020 as follows:

<i>“Claimant 1 (Mr. Jordan Theodore)</i>	<i>EUR 3,015.00 (cf. p. 2 above)</i>
<i>Claimant 2 (Assist Sports Management)</i>	<i>EUR 1,000.00</i>
<i>Claimant 3 (Kariyer Spor)</i>	<i>EUR 1,000.00</i>
<i>Respondent (Besiktas Jimnastik Kulübü)</i>	<i>EUR 5,000.00“</i>

19. By procedural order of 15 June 2020, the BAT acknowledged receipt of the Claimants’ share of the Advance on Costs in the total amount of EUR 4,967.50 and noted Respondent’s failure to pay its advance share and failure to submit the Answer. The BAT provided the Respondent with a final opportunity to pay its share of the Advance on Costs and to file its Answer, both by no later than 22 June 2020.

20. On 24 June 2020, the BAT noted Respondent’s failure to file its Answer and to pay its share of the Advance on Costs within the set time limit. Accordingly, pursuant to Article 9.3.1 of the BAT Rules, the amount of the Advance on Costs was adjusted as follows:

<i>“Claimant 1 (Mr. Jordan Theodore)</i>	<i>EUR 2,750.00</i>
<i>Claimant 2 (Assist Sports Management)</i>	<i>EUR 750.00</i>
<i>Claimant 3 (Kariyer Spor)</i>	<i>EUR 750.00</i>
<i>Respondent (Beşiktaş Jimnastik Kulübü)</i>	<i>EUR 4,250.00“</i>

21. In accordance with Article 9.3 of the BAT Rules, the Claimants were invited to substitute for Respondent’s share in the amount of EUR 3,532.50 (EUR 8,500.00 – EUR 4,967.50) by no later than 6 July 2020 in order to ensure that the arbitration could proceed.

22. On 4 August 2020, the BAT acknowledged receipt of the full amount of the adjusted Advance on Costs. The Arbitrator invited the Claimants to explain, by no later than 13 August 2020, the basis of their requests for payments “net of taxes”.

23. On 13 August 2020, the Claimants replied to the Arbitrator’s questions (the **“Reply”**) and submitted further evidence.

24. On 27 August, the BAT acknowledged receipt of the Claimants' Reply and invited the Respondent to comment on the Reply by no later than 11 September 2020.
25. On 5 October 2020, the BAT took note of Respondent's failure to file comments on the Claimants' Reply. The Arbitrator (in accordance with Article 12.1 of the BAT Rules) declared that the exchange of documents was completed and requested the Parties to submit their detailed cost accounts by no later than 12 October 2020. The Claimants submitted their cost account on 12 October 2020. The Respondent did not submit any cost account.
26. As none of the Parties requested the holding of a hearing, the Arbitrator decided, in accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to render the award based on the written record before her.

4. The Position of the Parties

4.1 Claimants' Position and Request for Relief

27. The Claimants submit the following in substance:
- The Respondent has failed to pay the requested Player's Compensation and the Agencies' Compensation agreed in the Protocol.
 - The Claimants are entitled to receive the compensation agreed in the Protocol as "net" payments. The Protocol had the purpose of terminating the Player Contract, in which the Player's and the Agencies' remuneration were identified as payments "net of taxes". The requested amounts in the Protocol equal the original amounts provided for in the Player Contract. It is a mere clerical error that the Protocol does not expressly mention the "net" nature of the payments to be made thereunder.

- Moreover, according to Turkish law, agent fee payments are identified as business profit and are not subject to any withholding tax and/or income tax deduction.

28. The Claimants, in their RfA, request the following relief:

“a. The Respondent be ordered to immediately pay to the Claimant 1

- **net USD 80,000,**
- 5% interest, amounting to **net USD 261**, accruing over USD 20.000 as from 31 January 2020 until filing of this Request for Arbitration,
- 5% interest, amounting to **net USD 183**, accruing over USD 20.000 as from 28 February 2020 until filing of this Request for Arbitration,
- 5% interest, amounting to **net USD 94**, accruing over USD 20.000 as from 31 March 2020 until filing of this Request for Arbitration,
- 5% interest, amounting to **net USD 11**, accruing over USD 20.000 as from 30 April 2020 until filing of this Request for Arbitration,
- 5% interest continuing to be accrued over USD 20.000,00 as from 31 January 2020 until completion of this payment,
- 5% interest continuing to be accrued over USD 20.000,00 as from 28 February 2020 until completion of this payment,
- 5% interest continuing to be accrued over USD 20.000,00 as from 31 March 2020 until completion of this payment,
- 5% interest continuing to be accrued over USD 20.000,00 as from 30 April 2020 until completion of this payment.

b. The Respondent be ordered to immediately pay to the Claimant 2

- **net USD 24.000,**
- 5% interest, amounting to **net USD 313**, accruing over USD 20.000 as from 31 January 2020 until filing of this Request for Arbitration,
- 5% interest continuing to be accrued over USD 24.000 as from 31 January 2020 until completion of this payment.

c. The Respondent be ordered to immediately pay to the Claimant 3

- **net USD 18.800 [sic] (including VAT),**

- 5% interest, amounting to **net USD 246**, accruing over 18.880 (including VAT) as from 31 January 2020 until filing of this Request for Arbitration,
- 5% interest continuing to be accrued over 18.880 (including VAT) as from 31 January 2020 until completion of this payment.

d. The Respondent be ordered to pay all BAT application fee plus additional costs of arbitration, legal fees, and/or expenses related to this BAT case.”

4.2 Respondent’s Position and Request for Relief

29. The Respondent did not participate in the present proceedings.

5. The Jurisdiction of the BAT

30. As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not participate in the arbitration, she will examine her jurisdiction *ex officio*, on the basis of the record as it stands.¹

31. 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”).

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

33. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus

¹ Judgement of the Swiss Federal Tribunal, 120 II 155, 162.

arbitrable within the meaning of Article 177(1) PILA.

34. The Protocol (Clause 8) contains the following dispute resolution clause in favour of BAT:

“Any dispute arising from or related to this Protocol 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 and the language of arbitration shall be English. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the Parties’ domicile. The arbitrator shall decide the dispute ex aequo and bono.”

35. The arbitration agreement is in written form and thus fulfils the formal requirements of Article 178(1) PILA.
36. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast any doubt on the validity of the arbitration agreement in the present matter under Swiss law (cf. Article 178(2) PILA). The Parties to this arbitration are expressly identified as parties to the Protocol in the recitals, and are thus bound by the arbitration clause *ratione personae*.
37. Hence, the Arbitrator has jurisdiction to decide the present dispute.

6. Respondent’s Non-Participation in the Present Proceeding

38. Article 14.2 of the BAT Rules specifies that “*the Arbitrator may [...] proceed with the arbitration and deliver an award*” if “*the Respondent fails to submit an Answer*.” The Arbitrator’s authority to proceed with the arbitration in case of default by one of the

parties is in accordance with Swiss arbitration law and the practice of the BAT.² However, the Arbitrator must make every effort to allow the defaulting party to assert its rights.

39. This requirement is met in the present case. The Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator in accordance with the relevant rules. It was also given sufficient opportunity to respond to the Claimants' Request for Arbitration and Reply. The Respondent, however, chose not to participate in this arbitration.

7. 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” instead of choosing the application of rules of law. Article 187(2) PILA reads as follows:

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

41. Under the heading "Law Applicable to the Merits", Article 15 of the 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

² See *ex multis* BAT cases 0001/07; 0018/08; 0093/09; 0170/11.

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.”

42. In the arbitration agreement quoted above at para. 34 , the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to any other law. Consequently, the Arbitrator will decide the issues submitted to her in this proceeding *ex aequo et bono*.

43. 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’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

44. 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*”.

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

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).

8. Findings

46. The Player seeks payment of the outstanding Player's Compensation in the total amount of USD 80,000.00 net (below at 8.1). The Agencies request payment of the Agencies' Compensation in the amount of USD 24,000.00 net and USD 18,880.00 (including VAT) (below at 8.2).
47. The Arbitrator notes, in respect of the Agencies' Compensation, that the Claimants, in their request for relief, erroneously quantified the second amount at USD 18,800.00, while in the establishment of the facts they identify the compensation at USD 18,880.00, the same amount that is mentioned in the Protocol. Because the Protocol, to which the Claimants refer, expressly provides for an amount of USD 18,880.00 payable to the Agencies, the Arbitrator considers the slightly different number in the Request for Relief to be a mere clerical error. There is no reason and no explanation as to why Claimants would request USD 80 less than they are entitled to other than that it may easily occur to mix up the number 18,880 with 18,800. Hence, the Arbitrator interprets Claimants' request for relief in respect of the Agencies' Compensation to include the amount of USD 18,880.00.
48. The Claimants also seek the payment of default interest on the outstanding amounts (below at 8.3). The Arbitrator will address each of these claims, in turn, below:

8.1 The Player's Compensation

49. According to Clause 2 of the Protocol, the Player was entitled to receive the Player's Compensation in the total amount of "USD 80,000.00", payable in four equal instalments of "USD 20,000.00", respectively, between January and April 2020. Based on the record before her, the Arbitrator finds that there is no indication on the record that would cast doubt on the validity of the Protocol or the existence of the Club's obligation to pay the compensation stipulated thereunder. Hence, the Arbitrator finds

that the Player is principally entitled to receive “USD 80,000.00”.

50. The only question which remains to be addressed is whether the Player’s Compensation is to be paid net of taxes (as requested by the Claimants), or whether it represents a gross amount. The Protocol does not expressly identify the “net nature” of the Player’s Compensation which the Claimants allege was agreed by the Parties. However, based on the circumstances at hand, the Arbitrator is convinced that it was the Parties’ mutual intent to qualify the Player’s Compensation as a “net” compensation. The amount of USD 80,000.00 precisely matches the amount that the Club had owed the Player under the Player Contract up to the date of the execution of the Protocol. In the Player Contract, the Player’s salary is unequivocally identified as a “net” salary (“*net value of the base salary*”, see Clause 2 of the Player Contract quoted above at para. 8). When they terminated the Player Contract and executed the Protocol, the Parties evidently wished to settle the outstanding amounts under the Player Contract, which were net amounts. There is no plausible explanation for the assumption that the Parties – without any reason – would have wanted to shift the nature of the salary the Player had earned but not received from a “net” salary to a “gross” salary. Hence, the Arbitrator accepts the Claimants’ explanation that the omission of the words “net” from the amounts agreed in the Protocol was the result of a clerical error, which can be corrected by means of interpretation.
51. As a result, the Arbitrator awards the outstanding Player’s Compensation in the amount of USD 80,000.00 as a “net” compensation.

8.2 The Agencies’ Compensation

52. Pursuant to Clause 3 and 4 of the Protocol, the Club promised to pay:
- the First Agency “USD 24.000” by 31 January 2020; and
 - the Second Agency “USD 18.880 (including VAT)” by the same date.

53. The Agencies duly executed the Protocol. Hence, because the Club has not participated in this this arbitration and because the Agencies' entitlement to receive the Agencies' Compensation has not been disputed before the initiation of this arbitration, the Arbitrator finds that the Agencies are, in principle, entitled to receive the requested amounts.
54. With respect to the "net" or "gross" nature of the Agencies' Compensation, the Arbitrator notes that (other than for the Player's Compensation), the wording of the Protocol exactly reiterates the wording of the Player Contract. For the Second Agency, the Parties, by adding the words "including VAT" made clear that the agency fee was intended to be a gross amount from which the Second Agency would have to pay VAT. For the First Agency, the words "including VAT" were not added. At the same time, there is no express mention of the net nature of this amount. Given that the agency fees for the First and Second Agency are addressed in the same paragraph, the Arbitrator finds that the Parties must have meant the agency fee of the First Agency to be a "net" compensation. Otherwise, it would have been redundant to add for the Second Agency, which received a gross amount, the words "including VAT", but to leave these words out for the remuneration of the First Agency. This important addition means, *arg e contrario*, that the First Agencies' fee was not supposed to be "including VAT", i.e. was meant to be a "net" compensation.

8.3 Interest

55. The Claimants request interest on the claimed amounts at 5% per annum from the respective due dates of the outstanding instalments until full payment.
56. Clause 5 of the Protocol includes the Parties' agreement as to the 5% -rate requested by the Claimants in this arbitration:

"Club agrees, declares and undertakes in advance that if Club fails to make the payments determined in this Protocol on due dates,

Club will pay to relevant Party interest at 5% per annum from the date of delinquency until completion of payment in full."

57. With respect to the starting date requested by the Claimants (the respective due dates agreed in the Protocol), the Arbitrator notes that interest principally begins running as of the day after the principal debt falls due. Hence, the Arbitrator finds that the Claimants' claims for interest may only start to run as of the day after the respective due date of the instalment pursuant to Clauses 2, 3 and 4 of the Protocol, i.e.:

- as of 1 February 2020 for the first instalment of the Player's Compensation and the Agencies' Compensation;
- as of 29 February 2020 for the second instalment of the Player's Compensation;
- as of 1 April 2020 for the third instalment of the Player's Compensation; and
- as of 1 May 2020 for the fourth instalment of the Player's Compensation.

8.4 Summary

58. The Player is entitled to receive USD 80,000.00 (net) in outstanding salary compensation together with interest of 5% p.a. until complete payment

- from 1 February 2020 on the amount of USD 20,000.00 (net);
- from 29 February 2020 on the amount of USD 20,000.00 (net);
- from 1 April 2020 on the amount of USD 20,000.00 (net);
- from 1 May 2020 on the amount of USD 20,000.00 (net).

59. The First Agency is entitled to receive USD 24,000.00 (net) in outstanding agency fees together with interest of 5% p.a. from 1 February 2020 until complete payment.

60. The Second Agency is entitled to receive USD 18,880.00 (including VAT) in

outstanding agency fees together with interest of 5% p.a. from 1 February 2020 until complete payment.

9. Costs

61. In respect of determining the arbitration costs, Article 17.2 of the 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). [...]”

62. On 17 February 2021, the BAT President determined the arbitration costs in the present matter to be EUR 6.850,00.

63. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 of the 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.”

64. Considering that the Claimants entirely prevailed in the present arbitration, it is consistent with the provisions of the BAT Rules that 100% of the fees and costs of the arbitration, as well as 100% of the Claimants' reasonable costs and expenses, be borne by Respondent. The difference between the (adjusted) Advance on Costs paid by the Claimants (in the amount of EUR 8,483.50) and the arbitration costs determined by the BAT President (in the amount of EUR 6,850.00) in the amount of EUR 1,633.50 will be reimbursed to the Claimants by BAT.

65. In relation to the Parties' legal fees and expenses, Article 17.3 of the BAT Rules provides that

"as a general rule, the award shall grant the prevailing party a contribution towards any reasonable legal fees and other expenses incurred in connection with the proceedings (including any reasonable costs of witnesses and interpreters). When deciding [...] on the amount of any contribution to the parties' reasonable legal fees and expenses, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties."

66. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses. In case of multiple claimants and/or respondents (as in this case) the maximum contribution is determined separately for each party on the basis of the relief sought by/against this party.
67. The Claimants request the payment of attorney's fees in the amount of USD 21.931,72, which – the Claimants explain – are "15% of the Amount in Dispute + VAT". The Claimants do not explain the basis for this request. In particular, despite BAT's express invitation to provide "a detailed account of their costs, including any supporting documentation in relation thereto" (emphasis in the original), the Claimants have abstained from submitting any evidence explaining or corroborating the legal fees they seek. Hence, it is unclear to the Arbitrator whether the "15%" is a pure success fee which becomes payable only in case of the Claimants' success in the arbitration, or whether this is a flat fee which the Claimants have to pay irrespective of the conduct, complexity and outcome of the arbitration.
68. In compliance with Article 17.3 of the BAT Rules, which calls the Arbitrator to grant a "reasonable" contribution towards prevailing party's legal fees, the Arbitrator – in line with BAT's jurisprudence – finds it appropriate to also consider the complexity of the case. Under the circumstances of this relatively straight-forward case, in which the

Claimants submitted rather short submissions, with no participation of the Respondent and in which no hearing took place, the Arbitrator finds the claimed amount to be grossly excessive. Deciding *ex aequo et bono*, the Arbitrator finds that an appropriate contribution towards the Claimants' legal fees and expenses is USD 3,500.00 (including VAT).

69. Furthermore, the Claimants are entitled to a reimbursement of the non-reimbursable handling fee in the amount of EUR 3,000.00.

10. Award

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

- 1. Besiktas Basketbol Jimnastik Kulübü Dernegi is ordered to pay Mr. Jordan Theodore the amount of USD 80,000.00 net for unpaid salary compensation, plus interest of 5% per annum until payment in full:**
 - from 1 February 2020 on the amount of USD 20,000.00 net;
 - from 29 February 2020 on the amount of USD 20,000.00 net;
 - from 1 April 2020 on the amount of USD 20,000.00 net;
 - from 1 May 2020 on the amount of USD 20,000.00 net.
- 2. Besiktas Basketbol Jimnastik Kulübü Dernegi is ordered to pay Assist Sports Management, Inc. the amount of USD 24,000.00 net for unpaid agency fees, plus interest of 5% per annum on such amount from 1 February 2020 until payment in full.**
- 3. Besiktas Basketbol Jimnastik Kulübü Dernegi is ordered to pay Kariyer Spor Gida Ilac San. Dis Tic. Ltd. Sti. the amount of USD 18,880.00 (including VAT) for unpaid agency fees, plus interest of 5% per annum on such amount from 1 February 2020 until complete payment.**
- 4. Besiktas Basketbol Jimnastik Kulübü Dernegi shall pay jointly to Mr. Jordan Theodore, Assist Sports Management, Inc. and Kariyer Spor Gida Ilac San. Dis Tic. Ltd. Sti. EUR 6,850.00 as reimbursement for their arbitration costs.**
- 5. Besiktas Basketbol Jimnastik Kulübü Dernegi is ordered to pay jointly to Mr. Jordan Theodore, Assist Sports Management, Inc. and Kariyer Spor Gida Ilac San. Dis Tic. Ltd. Sti. USD 3,500.00 and EUR 3,000.00 as a contribution towards their legal fees and expenses.**
- 6. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 22 February 2021

Annett Rombach
(Arbitrator)