



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1336/19)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Mr. Eric Lamont Dawson

EPM Sports Consultants Ltd.
68 Fitzwilliam Square, Dublin 2, Ireland

both represented by Mr. Giovanni Allegro, attorney at law,
Via S.C. Alessandrina n. 9, 84125 Salerno, Italy

vs.

El Club San Lorenzo De Almagro
Avenida de Mayo 1373, C 1085 ABD Buenos Aires, Argentina

represented by Mr. Juan Ramilo, attorney at law,
Buenos Aires, Argentina

- Claimant 1 -

- Claimant 2 -

- Respondent -

1. The Parties

1.1 The Claimants

1. Mr. Eric Lamont Dawson (the "Player") is a professional basketball player of U.S. nationality.
2. EPM Sports Consultants Limited (the "Agency", and together with the Player the "Claimants") is a basketball agency who represented the Player leading to his retainer by the Respondent.

1.2 The Respondent

3. El Club San Lorenzo De Almagro (the "Club" or "Respondent" and together with Claimants the "Parties") is a professional basketball club located in Buenos Aires, Argentina.

2. The Arbitrator

4. On 30 January 2019, Prof. Richard H. McLaren, 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 (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

5. On 20 July 2018, the Player and the Club entered into a contract (the “Player Contract”), pursuant to which the Club engaged the Player as a professional basketball player for the 2018-19 basketball season. The Player was to receive a base salary of USD 170,000.00 (net), payable in 10 equal instalments from 30 August 2018 until 30 May 2018 (Clause 3 and 6 of the Player Contract). The Player Contract was a “*fully guaranteed no cut*” agreement, meaning that the Club could not terminate the contract prematurely “*should any injury or illness befall the Player*” (Clause 2).
6. On the same day, the Agency and the Club signed an agreement (the “Agency Contract”) pursuant to which the Agency was to receive a net commission of USD 17,000 to be paid after the Player’s passing of the medical exam and receipt of an invoice (Clause 3 of the Agency Contract).
7. In early September 2018, the Player sustained an injury. On 25 September 2018, a WhatsApp communication took place between a Club representative and the Agency about the injury and the expected recovery.
8. On 15 October 2018, the Agency sent an e-mail to the Club, notifying the latter of its failure to pay a part (USD 2,000) of the August salary and the full September salary, a total of USD 19,000. The Agency indicated that the Player would be open to “*come to a friendly settlement of the current contract*” and “*remains open to discussion*”. By e-mail of 18 October 2018, the Agency corrected the amount of the outstanding salary payments to USD 36,000. It also repeated the Player’s willingness to settle the case by terminating the Player Contract against payment of a final settlement sum.

9. On 22 October 2018, the Player and the Club signed a settlement agreement (the “Player Settlement”), providing that the parties agree to terminate the Player Contract. By that time, the Club had paid USD 17,000 in salaries to the Player. The Settlement Agreement further stipulates the following:

“The Club and the Player agree that the Club shall render payments to the player in 4 (four) installments to be paid as follows:

- *\$ 19,000 (U.S. dollars nineteen thousand) at signature of this agreement*
- *\$ 19,000 (U.S. dollars nineteen thousand) on or before November 5th 2018*
- *\$ 12,000 (U.S. dollars twelve thousand) on or before December 5th 2018*
- *\$ 8,000 (U.S. dollars eight thousand) on or before January 5th 2019*

In the event any of these payments is made over 5 (five) business days late from the above mentioned dates the current agreement of a total amount of \$170,000 (U.S. dollars one hundred and seventy thousand) plus bonuses will be back in place and the club will be responsible to honour this agreement in full.”

10. On the same day, the Club also signed a settlement agreement with the Agency (the “Agency Settlement”, and together with the Player Settlement the “Settlement Agreements”), agreeing to pay the agency fee of USD 17,000.00 in two instalments (2x USD 8,500.00) on 5 December 2018 and 5 January 2019, respectively.
11. On 16 November 2018, the Agency notified the Club by e-mail that the Club is delinquent on the November payment under the Settlement Agreement. The Club was requested to make the outstanding payments by no later than 19 November 2018. The Agency sent additional warnings on 23 and 27 November 2018. No payments were made by the Club.
12. On 27 December 2018 and 7 January 2019, Claimants’ counsel sent final warnings to the Club regarding the outstanding amounts under the Settlement Agreements. Despite these warnings, no (further) payments were made by the Club.

13. After having left the Club, the Player signed the following additional contracts for the 2018-19 season:

- On 5 November 2018, the Player signed an employment contract with the Paraguayan Club Olimpia (the “First Additional Contract”). The Player was to earn a base salary of USD 12,000 (net) for the 2018-19 season, payable in two instalments, with the second instalment (USD 6,000) being payable only if the Player were to play in the second stage of the Liga of the Americas in the first week of December. The Player did not play this second round. He received a total of USD 6,000 under the First Additional Contract.
- In mid-December 2018, the Player signed an employment contract with the Taiwanese club Yulon Luxgen Professional Basketball Team (the “Second Additional Contract”). The Player was promised a net base salary of USD 90,000.00, payable in five monthly instalments (USD 18,000 each) between 10 January 2019 and May 2019. By an undated written notification delivered in December 2018 or January 2019, Yulon terminated the Second Additional Contract effective 31 January 2019. The Player earned USD 25,800.00 (net) under the Second Additional Contract.
- On 6 February 2019, the Player signed an employment contract with the Uruguayan Club Basketball de Defensor Sporting for the remainder of the 2018-19 season (the “Third Additional Contract”, and together with the First and Second Additional Contract the “Additional Contracts”). The Player was to earn a base net salary of USD 22,500.00, payable in two instalments on 10 March and 10 April 2019, and an additional salary of USD 500 per day for every additional day he stayed with the club beyond 5 April 2019. The Player earned USD 21,000.00 under the Third Additional Contract.

3.2 The Proceedings before the BAT

14. On 14 January 2019, the Player and Mr. Luciano Capiccioni “*as legal representative of*” the Agency filed a Request for Arbitration (received by the BAT Secretariat on 18 January 2019) together with several exhibits in accordance with the BAT Rules. The non-reimbursable handling fee of EUR 3,000 was received in the BAT bank account on 18 January 2019 (EUR 2,500) and 21 January 2019 (EUR 500).

15. On 12 February 2019, 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 11.2 of the BAT Rules by no later than 5 March 2019 (the “Answer”), and fixed the amount of the Advance on Costs to be paid by the Parties as follows:

<i>“Claimant (Mr. Eric Lamont Dawson)</i>	<i>EUR 4,000.00</i>
<i>Claimant 2 (EPM Ltd.)</i>	<i>EUR 1000.00</i>
<i>Respondent (El Club San Lorenzo De Almagro)</i>	<i>EUR 5,000.00”</i>

16. On 5 March 2019, Respondent filed its Answer. On 7 March 2019, BAT acknowledged receipt of Claimants’ shares of the Advance on Costs and the Answer. Because Respondent had failed to pay its share of the advance on costs, Claimants were invited to substitute for the missing share to ensure that the arbitration could proceed.

17. On 26 March 2019, BAT acknowledged receipt of the full Advance on Costs. Claimants were invited to comment on Respondent’s Answer by no later than 9 April 2019 (the “Reply”). Also, Claimants were requested to clarify “*whether the second Claimant is Mr. Luciano Capiccioni personally, or, rather, EPM Sports Consultants Limited*”.

18. On 8 April 2019, Claimants filed their Reply. Respondent was invited to comment on the Reply by no later than 29 April 2019. The Arbitrator further noted that it was still unclear to her whether the second Claimant was EPM Sports Consultants Ltd. or Mr. Capiccioni

personally. Claimants were again requested to expressly identify who of the two was to be considered the second claimant in this proceeding. Claimants replied to the Arbitrator's request on 12 April 2019.

19. On 29 April 2019, Respondent filed its Rejoinder. On 7 May 2019, the Arbitrator closed the proceedings and invited the Parties to submit their detailed cost accounts. Claimants filed their statement of costs on 14 May 2019. Respondent did not file any cost submission.
20. On 15 July 2019, the Arbitrator re-opened the proceedings to seek clarifications from Claimants regarding payments received under the Second and Third Additional Contract. Claimants submitted comments to the Arbitrator's questions on 22 July 2019. On 24 July 2019, Claimants filed an updated cost submission.
21. As none of the Parties requested 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 Positions of the Parties and Requests for Relief

4.1 Claimants' Position

22. Claimants submit the following in substance:
 - The Club only paid the first instalment under the Player Settlement in the amount of USD 19,000. No further payments were made. Therefore, in accordance with the terms of the Player Settlement, the full amount of his salary under the original Player Contract, minus the amounts already received (USD 17,000 under the Player Contract plus USD 19,000 under the Player Settlement), fell due as a result of the Club's payment default (i.e. a total of USD 134,000). It would be

unfair and unjust to apply BAT's damages mitigation principles in this case due to the principle of *pacta sunt servanda* and Respondent's bad faith behavior.

- The Club also failed to pay the agency fee, which must be paid in full in accordance with the Agency Settlement.
- Claimants acted in good faith all the time and made several attempts to settle the dispute amicably.

23. Claimants request the following relief:

"In force of the above the Claimants request the remaining sum in force of the con-tracts dated 20th July 2018 to be paid. The claimants request in particular that the honourable Arbitrator:

- declares the right of the Player Mr. Eric Lamont Dawson to receive from the Respondent El Club San Lorenzo De Almagro the amount of USD 134.000,00 net of all taxes as salaries, plus interests and late payment fee of Usd 50 dollar per day plus bonuses.

- declares the right of Mr Luciano Capicchioni as FIBA Agent and Legal representative of EPM LTD to receive from the Respondent El Club San Lorenzo De Almagro the amount of USD 17.000,00 plus accrued interest starting from 7 days after the Player s arrival in Argentina.

- Forces the club to pay all costs involved as legal expanses [sic], BAT fee etc"

4.2 Respondent's Position

24. Respondent submits the following in substance:

- The circumstances under which the Player Contract were executed substantially changed after the signing. As a result of an injury, the Player was unable to train and play and thus could not fulfill his essential obligations under the Player Contract. Under the principle of *clausula rebus sic stantibus*, the Player Contract has to be adjusted to reflect these new circumstances.

- Due to social, political and economic circumstances in Argentina, which are beyond the Club's control, the Club has been facing significant financial difficulties, which form another relevant change in circumstances affecting the Club's obligations under the Player Contract.
- In any event, the amounts earned by the Player after having left the Club have to be deducted when calculating the outstanding compensation.

25. Respondent requests the following relief:

"1. To partially reject the claim lodged by the Claimants due to the abovementioned and previous submission.

2. To make the Claimants liable to pay the legal fees and costs of this Arbitration due to their neglect to amicably settle the dispute."

5. The Jurisdiction of the BAT

26. Pursuant to Art. 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").
27. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
28. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Art. 177(1) PILA.
29. The Settlement Agreements, which are the basis for the claims in the present arbitration, contain the following identical arbitration agreement in favor of BAT:

“For any disputes concerning this settlement, the parties will revert to the Basketball Arbitration Tribunal (BAT)”.

30. The Player Contract (Clause 11) and the Agency Contract (Clause 3 f)) provide for the following (identical) standard BAT arbitration clause:

“Any dispute arising from or relating 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”.”

31. All of the arbitration agreements are in written form and thus fulfill the formal requirements of Article 178(1) PILA.
32. 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 agreements in the present matter under Swiss law (cf. Article 178(2) PILA). Respondent has also not disputed BAT's jurisdiction.
33. Therefore, the Arbitrator decides that she has jurisdiction to decide the present case.

6. Applicable Law – *ex aequo et bono*

34. 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”.

35. 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."

36. In Clause 5 of the Player Contract and Clause 3) e) of the Agents Agreement, 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*.

7. Other Procedural Issues

37. The Request for Arbitration was ambiguous regarding the identity of the second claimant. It designated as claimant "*Mr. Luciano Capicchioni FIBA AGENT and as legal representative of EPM SPORT CONSULTANTAS [sic] LIMITED*". Following several requests for clarification by the Arbitrator (see above at para 17 and 18), Claimants, on 12 April 2019, submitted that EPM Sport Consultant Limited (not Mr. Cappicchioni) should be considered to be the second claimant.

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

8. Findings

39. Claimants request compensation under the Settlement Agreements on behalf of the Player and the Agent, plus late payment penalties, interest and bonuses. The Arbitrator will address the separate claims in turn below.

8.1 The Player's Compensation under the Player Settlement

40. As an initial matter, the Arbitrator notes that none of the Parties has disputed the validity of the Player Settlement in principle. The Arbitrator has no indication to doubt that the

Parties entered into a valid and binding agreement and are, principally, obligated to fulfill their respective obligations thereunder. It is also undisputed that Respondent failed to adhere to its payment obligations as from November 2018 (see above at para. 9), and that the Player now intends to rely on the mechanism prescribed in the 3rd paragraph of the Player Settlement. According to this mechanism, in the event of payments under the Player Settlement being late for more than 5 business days, the original Player Contract “of a total amount of \$ 170,000 [...] plus bonuses will be back in place and the club will be responsible to honor this agreement in full.” Respondent’s failure to pay the Player his compensation as from November 2018 undoubtedly triggered this clause.

41. Respondent’s argument that the circumstances under which the original Player Contract was executed fundamentally changed as a result of the Player’s injury, and that – consequently – it is no longer bound to its payment duties under the concept of *clausula rebus sic stantibus*, has no merit. The basis for the Player’s claim is the Player Settlement, not the Player Contract. Respondent chose to sign the Player Settlement in full knowledge of the Player’s injury, which in itself prevents the application of an escape clause such as *clausula rebus sic stantibus*. Furthermore, because the concept of *clausula rebus sic stantibus* directly competes with the general rule of *pacta sunt servanda*, its application must be limited to cases in which the parties did not and could not contemplate the change in circumstances. In the basketball industry (just as in any other sports industry), an athlete’s injury is one of the most typical disturbances for the contractual relationship, and one that the parties typically address in their contractual agreements. The Player Contract is no different in this respect. It expressly provides, in Clause II, that the contract is guaranteed and no cut, i.e. shall not be affected by an injury befalling the Player. Thus, there is no room for a departure from the Parties’ contractual arrangements.
42. Similarly, Respondent cannot successfully argue that its alleged financial problems, which Respondent argues result from the social, political and economic situation in

Argentina, relieve it of its payment obligations. Respondent has not substantiated, let alone proven, the alleged circumstances.

43. The only question which remains to be addressed by the Arbitrator is how to apply the resurrection mechanism provided for in the Player Settlement. More specifically, the question is whether – beyond the payments already received by the Player from the Club – the amount to be received by the Player needs to be further reduced by the amounts he subsequently earned under the Additional Contracts, under BAT’s established principles of damages mitigation. The total amount earned by the Player under the Additional Contracts is USD 52,800.00.
44. Whether or not the principle of mitigation developed in BAT’s jurisprudence applies to payment obligations provided for in settlement agreements (which are different in nature from employment agreements) depends on the legal nature of these very obligations. It is not uncommon in settlement or termination agreements between basketball players and clubs that in the event that the club fails to timely pay the agreed settlement amount, the parties – in one way or the other – refer back to the original player contract and the original salary payments stipulated therein. In some cases, such as here, the parties agree to resurrect the original payment obligations, with the consequence that the Club is then obligated to pay the Player in accordance with the original payment schedule. In other cases, the parties provide for one single payment amounting (in total or partially) to the original salaries. However, in none of these cases will the Player be re-obligated to offer his playing services to the Club; the perceived resurrection of the original contract usually remains one-sided and relates only to the Club’s payment obligations.
45. Therefore, such payments, although they might be linked in quantum to the original salaries, can usually not be qualified as a performance-related remuneration. They are not a *quid pro quo* for any performance of the player. Rather, these claims are usually intended to penalize the Club for breaching (again) its contractual commitments. Hence, the compensation claim provided for in the Player Settlement constitutes a contractual

penalty.¹ The mitigation principles developed by BAT arbitrators in relation to a Player's damages claim for a breach of the original player contract cannot be applied in the same manner to such monetary penalties. Instead, BAT jurisprudence has determined that the mitigation principles should only be applicable, as a matter of principle, under particular circumstances, e.g.

- when the settlement agreement provides for a “resurrection” of the original player contract so that the Player's claim becomes a damages claim subject to the terms of the original contract; or
- when the amounts the Player is to receive under the settlement agreement would result in a significant windfall for the Player, which is disconnected from the quantum of any (mitigated) damages the Player would have received under the original player contract; or
- when the Player had very obvious opportunities to mitigate his damages (e.g. by signing a contract with a new club), but unreasonably refused to realize such opportunity.²

46. In application of these principles, the Arbitrator finds that the amounts the Player earned under the Additional Contracts must be deducted from the compensation amount agreed in the Player Settlement. The Player Settlement provides in clear terms that the original Player Contract shall be “*back in place*” and the club “*responsible to honor this agreement in full*”, should the Club fail to honor the terms of the Player Settlement. This demonstrates the Parties' intent to treat the Player's compensation claim in accordance

¹ See also BAT 826/16, para 62-64.

² See BAT 826/16, BAT 828/16.

with the terms of the original Player Contract, including application of the principle of damages mitigation.

47. Hence, the compensation amount of USD 170,000 is to be reduced not only by the amounts already paid by the Club (USD 36,000), but also by the net amounts received under the Additional Contracts (USD 52,800.00). The total amount the Player is entitled to receive from the Club is USD 81,200.00 (net).
48. The Arbitrator does not consider further reductions to this amount necessary. In particular, the fact that the Player did not receive the full salary amounts promised under the Second and Third Additional Contract does not go to his detriment. The Player did not forego his claims under these contracts in bad faith. Any risk of non-payment beyond factors that can be clearly attributed to the Player must be borne by the Club.
49. As a result, the Player is entitled to receive the amount of USD 81,200.00 from the Club. Claimants request that these amounts be paid by the Club as “net” amounts, which is principally appropriate in light of the fact that the Settlement Agreements both provide for payments “net of any taxes”. However, in order to avoid any ambiguity as to which taxes this is to include territorially, the Arbitrator considers it necessary to specify that “net” shall mean “net of any Argentine taxes.” It cannot be assumed that a basketball club would readily commit to cover a player’s taxes and charges other than in the country where the Club is located, unless there is a specific indication in the contract to the contrary (which is not the case here).

8.2 The Agent’s Compensation under the Agent Settlement

50. Under the Agency Settlement, the Agency is entitled to receive a total amount of USD 17,000.00, which the Club has undisputedly not paid to date. The Club has not disputed its obligation to pay the Agency the claimed amount. Because there is no

indication which could cast doubt on the Club's obligation to pay the Agency the claimed compensation, the Arbitrator grants the claim for a payment of USD 17,000.

8.3 Bonuses, late payment penalties, and interest

51. Claimants further claim bonuses, late payment penalties, and interest, without, however, substantiating the legal basis or calculation of such claims.

8.3.1 Bonuses

52. Claimants request the payment of "*bonuses*" without further explaining this request. The legal basis and quantum of this request are unclear and unspecific. It is not for the Arbitrator to speculate what the Claimant meant or could have meant here. Claimants had ample opportunity to explain their case, and it was indeed their duty to do so. Hence, because the request for bonuses is too vague and unspecific, the Arbitrator has to reject it.

8.3.2 Late payment penalties

53. Claimants request late payment penalties of USD 50 per day. The (resurrected) Player Contract indeed provides for a late payment penalty of USD 50 per day for payments that are overdue for more than 5 days (Clause III.). This constitutes a contractual penalty. BAT arbitrators have frequently dealt with this kind of penalty clauses. BAT jurisprudence on penalty clauses shows that these clauses and the time window for which they can be applied should generally be interpreted narrowly in order to prevent excessive results. The Arbitrator finds that a daily penalty of USD 50 is principally appropriate in the case at hand, compared to the contractual amounts at issue.

54. The question which remains to be addressed is the starting date for the late fees, which Claimants fail to identify. The Player Contract says that late fees should accrue as of the

6th day of delinquency. Because the Club failed to honor its obligations under the Player Settlement, the original Player Contract was put “*back in place*”. As part of the penalty inherent in the resurrection of the original contract, the Club also became (again) bound to the late penalty mechanism addressed therein. The Club began to be in default of its payment obligations starting with the 30 September 2018-payment. Accordingly, late fees accrued as of 6 October 2018, until the date of the filing of the Request for Arbitration, as per constant BAT jurisprudence. Furthermore, late payment penalties are awarded only once and not consecutively for more than one outstanding payment.

55. As a result, the Player is entitled to late payment fees as follows: USD 50 per day from 6 October 2018 until 14 January 2019 (= 101 days), totaling USD 5,050.00.
56. The Agent is not entitled to any late payment penalties, because neither the Agency Contract nor the Agency Settlement provide for such claim.

8.3.3 Interest

57. Claimants also request the payment of interest on the requested amounts. The following principles have been derived in BAT’s jurisprudence regarding interest payments:
 - Absent any contractual provision, the standard interest rate to be paid on overdue amounts is 5% p.a.;
 - The starting date for the payment of interest is the day after the respective payment fell due under the contract between the parties;
 - For the time that the Respondent is obligated to pay late payment penalties, no interest can be awarded;
 - No interest can be awarded on the amount of late payment penalties.
58. In accordance with these principles, interest must be awarded as follows:

59. The Player is entitled to interest at 5% p.a. on the amount of USD 81,200.00 (net) from 15 January 2019 until payment.
60. The Agency is entitled to interest at 5% p.a. on the amount of USD 8,500.00 from 6 December 2018, and on the amount of USD 8,500.00 from 6 January 2019, until payment (see paragraph 2 of the Agency Settlement).

8.4 Summary

61. In accordance with all of the above,
 - the Player is entitled to salary compensation in the amount of USD 81,200.00 (net of Argentine taxes), plus interest of 5% p.a. from 15 January 2019;
 - the Player is entitled to late payment penalties in the amount of USD 5,050.00;
 - the Agency is entitled to a commission fee in the amount of USD 17,000.00 (net of Argentine taxes), plus interest of 5% p.a. from 6 December 2018 on the amount of USD 8,500.00, and from 6 January 2019 on the amount of USD 8,500.00.

9. Costs

62. Article 17 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule, shall grant the prevailing party a contribution towards its legal fees and expenses incurred in connection with the proceeding.
63. On 9 September 2019 – 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”; 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”, and taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised – the BAT President determined the arbitration costs in the present matter to be EUR 8,400.00.

64. Claimants prevailed with the majority of their claims, but lost on a part of the quantum side, because the Arbitrator had to mitigate Claimants’ damages considerably. Accordingly, the Arbitrator deems it appropriate and consistent with the provisions of the BAT Rules that 80% of the fees and costs of the arbitration, as well as 80% of Claimants’ reasonable costs and expenses, be borne by Respondent. 20% of the arbitration costs shall be borne by Claimants. Respondent shall bear all of its own legal fees and expenses.
65. In accordance with these principles, Claimants, who advanced the total of the Advance on Costs in the amount of EUR 9,925.58, are entitled to receive a reimbursement for the advanced costs from the Respondent in the amount of EUR 6,720. The balance of the Advance on Costs in the amount of EUR 1,528.58 shall be jointly reimbursed to the Claimants by the BAT.
66. Furthermore, Claimants purport to have incurred legal fees in the amount of EUR 7,000, plus the handling fee of EUR 3,000. Claimants’ submissions in this proceeding were not complex, but rather straight-forward. No hearing took place. Accordingly, the Arbitrator considers Claimants’ legal fees excessive under the circumstances. Deciding *ex aequo et bono*, the Arbitrator finds that a total amount of EUR 5,000 is reasonable in respect of Claimants’ necessary efforts in the present case. Accordingly, Respondent is obligated to reimburse Claimant for EUR 4,000 (80%) of their reasonable legal fees and expenses, plus EUR 2,400 (80%) for the handling fee.

10. AWARD

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

- 1. El Club San Lorenzo De Almagro is ordered to pay Mr. Eric Lamont Dawson salary compensation in the amount of USD 81,200.00 net of Argentine taxes, plus interest of 5% p.a. from 15 January 2019 until payment.**
- 2. El Club San Lorenzo De Almagro is ordered to pay Mr. Eric Lamont Dawson USD 5,050.00 in late payment penalties.**
- 3. El Club San Lorenzo De Almagro is ordered to pay EPM Sports Consultants Limited agency fees in the amount of USD 17,000.00 net of Argentine taxes, plus interest of 5% p.a. until payment**
 - from 6 December 2018 on the amount of USD 8,500.00;**
 - from 6 January 2019 on the amount of USD 8,500.00.**
- 4. El Club San Lorenzo De Almagro is ordered to pay Mr. Eric Lamont Dawson and EPM Sports Consultants Limited, jointly and severally, EUR 6,720.00 as a reimbursement of the arbitration costs.**
- 5. El Club San Lorenzo De Almagro is ordered to pay Mr. Eric Lamont Dawson and EPM Sports Consultants Limited, jointly and severally, EUR 6,400.00 as a contribution towards their legal fees and expenses. El Club San Lorenzo De Almagro shall bear its own legal fees and expenses.**
- 6. Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 16 September 2019

Annett Rombach
(Arbitrator)