

ARBITRAL AWARD

(BAT 1734/21)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Amani Khalifa

in the arbitration proceedings between

Mr. Seketoure Henry

- Claimant -

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

vs.

Karsiyaka Spor Kulübü Derneği
Selcuk Yasar Spor Tesisleri Atasehir Mah. Yeni Havaalani Yolu
No: 13 Cigil/Izmir, Turkey

- Respondent -

represented by Mr. Mehmet Yaya, attorney at law

1. The Parties

1.1. The Claimant

1. Mr. Seketoure Henry (hereinafter also referred to as “the Player” or “the Claimant”) is an American professional basketball player.

1.2. The Respondent

2. Karsiyaka Spor Kulübü Dernegi (hereinafter also referred to as “the Club” or “the Respondent”, together with the Claimants, “the Parties”) is a professional basketball club competing in the Turkish professional basketball league.

2. The Arbitrator

3. On 10 November 2021, Mr. Raj Parker, the President of the Basketball Arbitral Tribunal (the “BAT”), appointed Ms. Amani Khalifa as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). Neither 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

4. On 26 June 2020, the Player and the Club entered into an agreement whereby the latter engaged the Player for the 2020/2021 season (the “Agreement”).
5. Section 2.A of the Agreement provides that (i) the term of the Agreement ends after the last official game of the 2020/2021 season, and (ii) the Respondent will pay the Claimant USD200,000.00 as a total, guaranteed net salary for the season, split into ten equal payments of USD20,000.00 payable on 25th of each month, starting on 25 September 2020.
6. Under Section 2.B, the Claimant is eligible to receive bonuses as follows:
 - *For qualifying to play off semi-finals: USD 10,000.00*
 - *For qualifying to play off finals: USD 15,000.00*
 - *For winning the play off championship: USD 20,000.00*
 - *For qualifying to Turkish Cup semi-finals: USD 5,000.00*
 - *For qualifying to Turkish Cup final: USD 10,000.00*
 - *For winning Turkish Cup title: USD 15,000.00*
 - *For qualifying to Top 8 in FIBA Champions League: USD 10,000.00*
 - *For qualifying to semi-finals in FIBA Champions League: USD 15,000.00*
 - *For qualifying to final in FIBA Champions League: USD 20,000.00*
 - *For winning the title in FIBA Champions League: USD 25,000.00.”*

7. Section 2 also provides that the Respondent is responsible for all Turkish taxes, that bonuses will be paid together with the next salary payment, and that the last payment will be paid within 2 days after the last game of the season before the Claimant leaves Turkey. It goes on to provide for late payment penalties to accrue 30 days from the due date of payment at USD 100 per day and for the Claimant to have the right to terminate on notice after 30 days plus 5 working days as follows:

“Bonus payments are guaranteed as part of Salary. Any delay from the scheduled payment day of salary and bonuses will result in a \$100 USD (one hundred dollars) per day payment starting on the 30th day from the date of delinquency. The Club accepts that in the case any payments described in this contract including agent fees will be delayed for more than (30) days, the Player or his agents may present written notice to the President of Club by electronic mail, fax or regular mail at the Club’s address; after this notice, if the Club does not make the payment in next five (5) working days, the Player or his agents may send a final notice to the Club’s address upon presentation of this notice Club agrees here-in to grant to Player his release and makes him an unrestricted free-agent world-wide. In addition, all salaries and/or bonuses under this agreement are due and payable upon this 30th day of non-performance (including payment of agent fee) by way of acceleration. The \$100 USD (one hundred dollars) per day penalty as described here-in shall continue to accrue daily, as a penalty. In addition, all other benefits granted to Player here-in shall remain in the Player’s possession until Club meets and pays its debt (including payment of agent fee) including Apartment and Automobile. If at any time a scheduled payment, including payment of Agent’s fees, is thirty (30) or more full days late, Player will not have to perform any of his obligations under this Agreement until such time as all scheduled payments including Agents’ fees have been paid and such nonperformance will not be considered a breach by Player, as granted here-in by Club. As specified earlier in this Agreement, Salary shall include any and all bonus payments, which Player earns, and are to be paid by Club when earned by Player.”

8. On 10 August 2021, counsel for the Claimant wrote to the Respondent requesting payment of unpaid salaries and bonuses totalling USD 85,000.00 including a special bonus of USD 10,000.00 as follows:

“25 August 2021 30,000 USD

25 October 2021 15,000 USD

25 November 2021 15,000 USD

25 December 2021 15,000 USD

25 January 2021 10,000 USD”

9. On 17 August 2021, the Respondent replied proposing some amendments to the payment plan (but without commenting on the liability for the USD 10,000) as follows:

“25 August 2021 15,000 USD

25 October 2021 20,000 USD

25 November 2021 20,000 USD

25 December 2021 20,000 USD

25 January 2021 10,000 USD”

10. On 17 August 2021, counsel for the Claimant replied to the Respondent requesting confirmation as to the dates payments will be made.
11. After receiving no response, counsel for the Claimant followed up with the Respondent on 20 August 2021.
12. On 22 August 2021, the Respondent wrote that they would not be able to issue a cheque to the Claimant at the time but suggested moving forward by agreeing a new payment plan.
13. On 31 August 2021, counsel for the Claimant presented the protocol as suggested by the Respondent and notified the Respondent of the Claimant’s desire to move forward with arbitration unless the matter was resolved quickly.
14. On 7 September 2021, counsel for the Claimant sent a follow-up email to the Respondent regarding the protocol. After receiving no response, he sent another follow-up email on

9 September 2021.

3.2. The Proceedings before the BAT

15. On 14 October 2021, the Claimant filed a Request for Arbitration in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 3,000 on 26 October 2021.
16. On 16 November 2021, the BAT informed the parties that Ms. Amani Khalifa had been appointed as the Arbitrator in this matter and fixed the advance on costs to be paid by the Parties as follows:

<i>“Claimant (Mr. Seketoure Henry)</i>	<i>€ 4,000</i>
<i>Respondent (Karsiyaka Spor Kulübü Dernegi)</i>	<i>€ 4,000”</i>

17. On 25 November 2021, the Claimant’s representative requested an extension to pay the advance on costs until 10 December 2021, *“due to Thanksgiving and national holiday in United States of America”*. On the same day, the Arbitrator granted that extension.
18. On 7 December 2021, the Respondent’s attorney wrote a letter to the BAT seeking a further 15-day extension of time from 7 December 2021 to submit its Answer. On 8 December, the Arbitrator granted the extension, noting that the Respondent was to pay its share of the Advance on Costs, and file its Answer, by no later than 21 December 2021.
19. On 9 December 2021, the Claimant’s representative requested a second extension *“for a last time”* to pay the advance on costs until 24 December 2021. On 10 December 2021, the Claimant confirmed payment of his advance on costs and withdrew the request to

extend the payment deadline until 24 December 2021.

20. On 21 December 2021, the Respondent submitted its Answer to the Request for Arbitration.
21. By letter on 22 December 2021, the BAT Secretariat acknowledged receipt of the Claimant's share of the Advance on Costs and directed the Respondent to pay its share by Wednesday, 5 January 2022.
22. On 4 January 2022, the Claimant paid the Respondent's share of the Advance on Costs.
23. On 11 January 2022, the parties were invited to set out (by no later than 18 January 2022) how much of the applicable maximum contribution to costs should be awarded to them and why. The parties were also invited to include a detailed account of their costs, including any supporting documentation in relation thereto. Finally, the parties were also notified that the exchange of submissions was closed in accordance with Article 12.1 of the BAT Rules.
24. The Claimant filed his costs submission on 12 January 2022. The Respondent failed to submit an account of its costs.

4. The Positions of the Parties

4.1. The Claimant's Position

25. The Claimant submits the following in substance:

26. The Claimant alleges that including interest and late payment penalties, the Respondent owes the Claimant a total of USD 94,978.48 (as of the date of filing the Request for Arbitration), broken down as follows:
- a) salary payments of USD 45,000.00, in breach of Section 2A of the Agreement;
 - b) a bonus payment of USD 20,000.00 after the Respondent qualified to the final in the Basketball Champions League. It did so by 7 May 2021, such that the bonus fell due with the payment of his salary on 25 May 2021;
 - c) a bonus in the amount of USD 10,000 after the Respondent qualified to the play-off semi-final in the Turkish Basketball Super League. The final game of the season took place on 26 May 2021 and therefore the bonus fell due by 28 May 2021 (i.e. within two days of the Club's last official game);
 - d) a special bonus of USD10,000.00 that the Claimant alleges the Respondent verbally agreed to provide for winning the FIBA Champions League Semi-Final game, such entitlement being acknowledged in writing by the Respondent's general manager;
 - e) interest at a rate of 5% *per annum* on the outstanding payments described above until the date of full payment (including USD 1,478.48 accruing prior to the date of filing the Request for Arbitration); and
 - f) Late payment penalties of USD100.00 per day starting from the 30th day following the date of due payment for each of the salary and bonus payments until the full payment (amounting to USD 8,500.00 prior to the date of filing the Request for Arbitration).

27. The Claimant also claims the costs of these proceedings and his legal fees.
28. The Claimant alleges that he has made several attempts to contact the Respondent to receive the payment in the amount of USD 85,000 (representing the total of Items (a)-(d) above). However, the Respondent refused to provide payment.
29. In his Request for Arbitration dated 14 October 2021, the Claimant requested the following relief:

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

- Remaining part of fully guaranteed salary of 2020/2021 season amounting to net USD 45.000,*
- Bonus of 2020/2021 season amounting to net USD 40.000,*
- 5% interest, amounting to net USD 693,75 accruing over net USD 45.000 as from 25 June 2021 until filing of this Request for Arbitration,*
- 5% interest, amounting to net USD 591,67, accruing over net USD 30.000 as from 25 May 2021 until filing of this Request for Arbitration,*
- 5% interest, amounting to net USD 193,06, accruing over net USD 10.000 as from 28 May 2021 until filing of this Request for Arbitration,*
- 5% interest continuing to be accrued over net USD 40.000 as from 25 June 2021 until full completion of this payment,*
- 5% interest continuing to be accrued over net USD 30.000 as from 25 May 2021 until full completion of this payment,*
- 5% interest continuing to be accrued over net USD 10.000 as from 28 May 2021 until full completion of this payment,*
- Penalty amount (USD 100,00 per day) for the delay period starting from the 30th day following the date of non-performance, separately, for each salary and bonus payments until the fully payment.”*

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

Total amount in dispute: “USD 94.978,48 (USD 85,000 + 5% interest accrued prior to the date of filing of the Request for Arbitration + penalty amount of USD 8,500, less than accrued total penalty amount before filing date of this Request for Arbitration, reserving Claimant’s rights to be entitled to be awarded more penalty amount, but at least required to be paid according to principle of ex aequo et bono)”

4.2. Respondent's Position

30. The Respondent submits the following in substance:
31. The Respondent acknowledges its obligation to pay the Claimant the remaining portion of his guaranteed salary of USD 45,000.00 as well as bonus payments totalling USD 30,000.00.
32. The Respondent denies the claim of a verbal agreement to pay the Claimant an additional USD 10,000.00 as a special bonus.
33. The Respondent also asserts that the Claimant’s claims for the USD 100.00 per day late payment penalty *“is not comply with legal and equity”* and requests that only legal interest be applied, in an amount to be determined *“after arbitration”*.
34. In its Answer dated 21 December 2021, the Respondent requested the following relief:

“Inlight [sic] of the explanations and the excuses, listed and indicated above, we would kindly request, the refuse of the demand of 10.000 Usd bonus, which was indicated verbal bonus and the refuse of the demand of late payment fees”.

5. The jurisdiction of the BAT

35. 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).
36. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
37. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA¹.
38. The jurisdiction of the BAT over the dispute results from the arbitration clause contained under Section 9 of the Agreement, 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”.

39. The Agreement is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PILA.
40. With respect to substantive validity, the Arbitrator considers that there is no indication in

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

the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).

41. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimant's claims.

6. Discussion

6.1. Applicable Law – ex aequo et bono

42. 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”.

43. Under the heading "Applicable Law", 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 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.”

44. In addition, the arbitration clause contained under Section 9 of the Agreement expressly provides that “[t]he arbitrator shall decide the dispute *ex aequo et bono*”.
45. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to her in this proceeding.
46. 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’arbitrage² (Concordat)³, under which Swiss courts have held that arbitration “*en équité*” is fundamentally different from arbitration “*en droit*”:
- “When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”⁴*
47. This is confirmed by Article 15.1 of the BAT Rules, according to which the Arbitrator applies “*general considerations of justice and fairness without reference to any particular national or international law*”.
48. In light of the foregoing considerations, the Arbitrator makes the findings below.

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

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

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

6.2. Findings

49. The Claimant claims unpaid salaries and bonuses of USD 85,000.00 as well as interest (including interest of USD1,478.48 accruing prior to the Request for Arbitration) and late payment penalties (including late payment penalties of USD 8,500.00 accruing prior to the Request for Arbitration).

6.2.1. The Claimant's claim for unpaid salaries and bonuses

50. The Claimant claims USD 85,000.00 in unpaid salaries and bonuses including a discretionary bonus of USD 10,000.00 that was promised to the Claimant verbally. Of these amounts, the Respondent has expressly conceded its liability to pay all but the USD 10,000.00 bonus. The Respondent's liability for USD 75,000.00 is therefore evident.

51. In its Answer, the Respondent falls short of denying that it promised the Claimant the discretionary bonus. It simply states that the Claimant's claim to it is unsubstantiated as it "*does not have a base and a support*". This statement is inconsistent with the evidence on record and, in particular, the Respondent's own proposed payment plan which included the full claimed amount of USD 85,000.00 including this sum. In fact, the Respondent appears never to have contested its liability to pay the USD 10,000.00 bonus until these proceedings. Given the contemporaneous evidence that shows the parties mutually understood that the Respondent was indebted to the Claimant for the full amount, and in the absence of a clear denial from the Respondent that it agreed to pay this sum, the Arbitrator considers that the Respondent is indeed liable to pay the full USD 85,000 claimed.

52. In this regard, the Agreement itself foreshadows the payment of such discretionary

bonuses and, in particular, the relevant part of Article 2 which provides that “*The Club further reserves its rights for issuing other special bonuses*”.

53. For these reasons, the Arbitrator finds the Respondent liable to pay the Claimant USD 85,000.00 in unpaid salaries and bonuses.

6.2.2. The Claimant’s claim for late payment penalties

54. The Claimant claims late payment penalties pursuant to Article 2 of the Agreement at USD 100 per day in the total amount of USD 41,100.00 as at the date of the Request for Arbitration or “*at least in a manner not less than 10% of the net USD 85,000.00*” or, put differently in the requests for relief “*penalty amount of USD8,500 [...] reserving the Claimant’s right to be entitled to be awarded more penalty amount, but at least required to be paid according to principle of *ex aequo et bono**”.
55. The Claimant’s request for relief appears to recognise the fact that BAT arbitrators have consistently held that late payment penalties should be interpreted in a restrictive manner and reviewed carefully in order to prevent excessive recovery.
56. In BAT 0840/16 and BAT 0238/11, the arbitrators held that late payment penalties should only accrue from the day after payment fell due until the day on which the debtor could have terminated the contract. In other cases, arbitrators have held that late payment penalties accrue until the date of filing the Request for Arbitration, including BAT 1313/18 and BAT 0911/16.
57. In deciding *ex aequo et bono* whether the payment of contractually agreed penalties would yield excessive results, the Arbitrator can and should consider the totality of the

circumstances including the length of the delay, the principal sum that remains unpaid and the parties' conduct.

58. Article 2 is clear on its face in that the Parties agreed that the Claimant could claim a USD100 per day penalty in respect of late payments and that the Claimant would have the right to terminate the Agreement upon service of two notices and after a total of 35 days of payment delay, with penalties beginning to accrue after 30 days of delay.
59. Under Article 2 of the Agreement, the period between the date when late payment penalties start to accrue (day 30) and the date on which the Claimant became entitled to serve a second notice and terminate the Agreement (day 35) is short. The award of USD 500.00 (USD 100.00 per day accruing over the five-day period referred to above) in late payment penalties on such a large principal claim would not give effect to the Parties' underlying bargain and would go too far in limiting the Claimant's recovery to prevent excessive results. Therefore, the Arbitrator considers it would not be fair and reasonable to apply the practice that late payment penalties are awarded only until the Claimant could have terminated the contract in the present case.
60. The Claimant in this case has been forced to finance a relatively expensive arbitration proceeding to enforce a largely uncontested claim. Before proceedings were commenced, the Respondent offered to pay the Claimant according to an agreed payment plan but then failed to cooperate in negotiating such a plan and stopped responding to the Claimant's communications. Ultimately, it has used the intervening time to its own financial benefit to defer its agreed liability to pay the Claimant and shifted the burden of enforcement to the Claimant, its creditor.
61. In all the circumstances, deciding *ex aequo et bono* the Arbitrator considers that the Respondent should pay the Claimant for 110 days of late payment penalties at USD 100

per day which is equal to the period between 26 June 2021 (which is the day following the day the Claimant's last salary payment fell due and the date from which the Claimant claims USD45,000 of the unpaid salaries) and 14 October 2021 (the date of the Request for Arbitration).

62. In reaching this conclusion, the Arbitrator is mindful that the daily penalty is comparatively low relative to the value of the principal claim and the penalties are therefore overall reasonable and proportionate. Finally, prior BAT cases confirm the general principle that late payment penalties may be awarded until the date of the request for arbitration.
63. The Arbitrator therefore finds the Respondent liable to pay the Second Claimant USD 11,000.00 in late payment penalties.

6.2.3. Interest

64. The Claimant claims interest at 5% *per annum* between the date the payments fell due until the date of full payment on an overlapping basis as follows:

"5% interest, amounting to net USD 693,75 accruing over net USD 45.000 as from 25 June 2021 until filing of this Request for Arbitration,

5% interest, amounting to net USD 591,67, accruing over net USD 30.000 as from 25 May 2021 until filing of this Request for Arbitration,

5% interest, amounting to net USD 193,06, accruing over net USD 10.000 as from 28 May 2021 until filing of this Request for Arbitration,

5% interest continuing to be accrued over net USD 40.000 as from 25 June 2021 until full completion of this payment,

5% interest continuing to be accrued over net USD 30.000 as from 25 May 2021 until full completion of this payment,

5% interest continuing to be accrued over net USD 10.000 as from 28 May 2021 until full completion of this payment.”

65. It is well established in BAT case law (see, for example, BAT 0895/16 and BAT 0836/16) that, if a claimant has pursued their claim diligently, they can claim interest at a rate of 5% *per annum* (which coincides with the Swiss statutory rate) from the day after the date the payment fell due until the date of full payment.
66. BAT arbitrators have also consistently held that interest and late payment penalties cannot accrue for the same period (BAT 0911/16, BAT 1365/19).
67. Considering that late payment penalties have already been awarded on the principal sum claimed from the day after the date the Claimant’s last salary payment fell due until the date of the request for arbitration, the Arbitrator finds the Respondent liable to pay interest on the principal claim from 15 October 2021, the day after the Request for Arbitration, until the date of full payment.

7. Costs

68. 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). [...]”

69. On 16 November 2021, the BAT President determined the arbitration costs in the present matter to be EUR 5,650.00.

70. In its costs submissions on 12 January 2022, the Claimant sought recover of the following costs. The Claimant did not provide any underlying documents substantiating the costs incurred:

- a) EUR 3,000.00 in respect of the Handling Fee settled on 26 October 2021;
- b) EUR 4,000.00 in respect of the Claimant's share of the Advance on Costs, settled on 10 December 2021;
- c) EUR 4,000.00 in respect of the Respondent's share of the Advance on Costs, which the Claimant settled on its behalf on 4 January 2022;
- d) USD 16,811.19 in respect of the Claimant's attorney fees, calculated at 15% of the amount in dispute, plus VAT.

71. The Respondent did not make any submissions on costs.

72. 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."

73. 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."

74. 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.
75. Except for his claims for interest and late payment penalties, which are marginal (and in the case of late payment penalties, tempered by the request for a range of between a minimum of USD 8,500.00 and a maximum of USD 41,100.00), the Claimant has been entirely successful with his claims.
76. The Arbitrator therefore finds that the Respondent should bear the entire cost of the present proceedings.
77. Under Article 17.4 of the BAT rules, based on the value of the Claimant's claim, the maximum contribution to his legal fees is EUR 7,500.00 which is roughly USD 8,225.00 at the prevailing exchange rate.
78. As concerns the Claimant's legal fees, the Arbitrator is not satisfied that attorneys' fees in the amount of USD 16,811.19 were actually incurred by the Claimant. The fee itself appears to have been simply calculated as 15% of the amount in dispute plus the applicable VAT. Although it is clear that the Claimant has retained external counsel for this case, no supporting invoices or fee notes in support of this sum were provided. Moreover, the sum claimed exceeds the maximum allowable contribution. Given the relative simplicity of the case, the fees claimed are disproportionate.
79. Deciding *ex aequo et bono*, the Arbitrator therefore finds the Respondent liable to pay the Claimant EUR 6,500.00 in legal fees and expenses, including EUR 1,500.00 on account of the non-reimbursable handling fee.

80. In summary, therefore, the Arbitrator decides that in application of Articles 17.3 and 17.4 of the BAT Rules:

- (i) The Respondent shall pay EUR 5,650.00 to the Claimant as reimbursement of the arbitration costs advanced by the Claimant;
- (ii) The BAT shall reimburse EUR 2,350.00 to the Claimant, being the difference between the costs advanced by the Claimant (on behalf of himself and the Respondent) and the arbitration costs fixed by the BAT President;
- (iii) The Respondent shall pay to the Claimant EUR 6,500.00, representing the amount of his legal fees and other expenses (including the non-reimbursable handling fee).

8. AWARD

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

- 1. Karsiyaka Spor Kulübü Dernegi shall pay Mr. Seketoure Henry a sum of USD 85,000.00, net of taxes, as compensation for unpaid salary and bonus payments, together with interest at 5% per annum on any outstanding balance (as may be the case from time to time) from 14 October 2021 until payment in full.**
- 2. Karsiyaka Spor Kulübü Dernegi shall pay Mr. Seketoure Henry a sum of USD 11,000.00 in late payment penalties.**
- 3. Karsiyaka Spor Kulübü Dernegi shall pay Mr. Seketoure Henry an amount of EUR 5,650.00 as reimbursement for his arbitration costs.**
- 4. Karsiyaka Spor Kulübü Dernegi shall pay Mr. Seketoure Henry an amount of EUR 6,500.00 as reimbursement for his legal fees and expenses.**

Geneva, seat of the arbitration, 8 April 2022

Amani Khalifa
(Arbitrator)