ARBITRAL AWARD

(BAT 0739/15)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Raj Parker

in the arbitration proceedings between

Ms. Kelsey Bone

- Claimant -

vs.

Galatasaray Spor Kulübü Derneği
Ali Sami Yen Spor Kompleksi TT Arena Seyrantepe,
34415 Istanbul, Turkey

- Respondent -

represented by Mr. Burçin Çelen, attorney at law

1. The Parties

1.1 The Claimant

1. The Claimant is a professional basketball player from the USA.

1.2 The Respondent

2. The Respondent is a professional basketball club based in Istanbul, Turkey.

2. The Arbitrator

3. On 30 September 2015, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (the "BAT") appointed Mr. Raj Parker 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 objections to the Arbitrator's appointment or to his declaration of independence.

3. Facts and Proceedings

3.1 Background Facts

4. On 24 May 2013 the Claimant and the Respondent entered into a contract under which the Claimant would play for the Respondent during the 2013-2014 season (the "2013-2014 Contract"). The 2013-2014 Contract contains, among others, the following provisions:

(i) the Claimant was entitled to bonus payments, including in particular:

(a) USD 7,500.00 for winning the Turkish Cup; and

(b) USD 1,500.00 for each "*single game win (not valid for the Presidency and Turkish cup games)*" against Fenerbahçe,

which bonuses are payable "*within 20 days from the last game of the Club*",

(Art. 2B); and

(ii) a dispute resolution clause in the following terms:

> *"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."*

(Art. 12).

5. On 17 June 2014 the Claimant and the Respondent entered into a contract under which the Claimant would play for the Respondent during the 2014-2015 season and the 2015-2016 season (the "2014-2016 Contract"). The 2014-2016 Contract contains, among others, the following provisions:

(i) it is a guaranteed, no-cut contract (Art. 1);

(ii) the Claimant's total net base salary for the 2014-2015 season was

USD 374,000.00, to be paid as follows, in each case to a specified bank account in the Claimant's name:

(a) USD 45,000.00 within five days of "*passing physical control*";

(b) further payments of USD 45,000.00 on the 15th day of every month from and including 15 November 2014 to and including 15 March 2015; and

(c) payments of USD 52,000.00 on each of 15 April and 15 May 2015,

(Art. 2A);

(iii) the Claimant was entitled to bonus payments, including in particular:

(a) USD 30,000.00 for "[w]*inning Turkish play off*"; and

(b) USD 3,000.00 or USD 8,000.00 (the first number is unclear in the document submitted in these proceedings) for "*reaching the Final Round (Final 8 or Final 4, whichever is organized)*" of the FIBA Women's Euroleague,

which bonuses are payable "*within 20 days from the last game of the Club*",

(Art. 2B);

(iv) a provision concerning discipline and penalties in the following terms:

> *"The Player must comply with the Club's internal rules and regulations and accepts a disciplinary action and/or penalties or fines provided in same. The Player must be provided with a copy of the Club's rules in English upon the Player's arrival in Turkey.*

> *The total amount of the penalties can not [sic] exceed 10% of the total amount of this agreement. The Player agrees to sign the internal rules.*
>
> *For the effective realization of the above stipulation, the Player should abide by the following guidelines, which are set forth by the Club. . .”*

(Art. 8);

(v) an “Escape Clause” in favour of the Respondent in the following terms:

> *“The Club, at the end of the first season, by no later than May 25, 2014 [sic], at its sole discretion, may terminate this Agreement unilaterally by only paying 50.000 (fifty thousand) USD to the Player as a compensation fee. In this case, all other liabilities of the Club whatsoever under this Agreement shall cease.”*

(Art. 10);

(vi) at Art. 18, a dispute resolution clause identical to that which is referred to at paragraph 4(ii) above.

6. On 23 February 2015 the Claimant and the Respondent executed an addendum to the 2014-2016 Contract (the “Addendum”). The Addendum is stated to “*amend the terms and conditions of the* [2014-2016 Contract]” and it contains, among others, the following provisions:

(i) the Respondent will make payments to the Claimant totalling USD 170,000.00 on three dates (USD 90,000.00 on 24 February 2015 (Art. 1), USD 45,000.00 on 4 March 2015 (Art. 2), and USD 35,000.00 on 1 April 2015 (Art. 3)) and will also make payments to the Claimant’s agents (Arts. 4 to 7);

(ii) on receipt of the first payments due to her and her agent under the Addendum the Claimant will immediately return to Istanbul on the first available flight arranged by the Respondent and “*continue to fulfil its contractual obligations*”

(Art. 8); and

(iii) if the Respondent does not make payments specified in the Addendum at the relevant times the Respondent:

> *"shall have effectively breached the Player Contract and […] all remaining salary, bonus and Agent fee payments for the 2014-2015 term of the contract plus $50,000 USD termination fee for the 2015-2016 part of the contract shall accelerate and become immediately payable in addition to the Player becoming a free agent worldwide (including Turkey) with no compensation of any kind payable to the Club"*

(Art. 9).

7. On 25 May 2015, the Respondent sent the Claimant a letter stating that the Respondent was terminating the 2014-2016 Contract in accordance with its Art. 10.

3.2 The Proceedings before the BAT

8. The Claimant filed the Request for Arbitration on 28 August 2015. The non-reimbursable handling fee of EUR 4,000.00 was received on 10 September 2015. The Arbitrator was appointed on 30 September 2015.

9. On 1 October 2015 the Advance on Costs was fixed at EUR 10,000.00 payable by the Claimant (EUR 5,000.00) and the Respondent (EUR 5,000.00). At the Claimant's request, the deadline for payment of the Advance on Costs was extended from 13 October 2015 to 27 October 2015. The Claimant paid EUR 5,000.00 in respect of her share of the Advance on Costs on 19 October 2015. On 23 October 2015 the Claimant was given until 3 November 2015 to pay the Respondent's share of the Advance on Costs, and on 5 November 2015 she did so.

10. The Respondent did not file an Answer to the Request for Arbitration in time for the deadline of 22 October 2015 and, on 23 October 2015, was given a final opportunity to file its Answer by 30 October 2015. It did so on 30 October 2015.

11. On 21 December 2015, the BAT wrote to the Parties with questions from the Arbitrator (the "First Procedural Order"). The Claimant replied to the First Procedural Order on 15 January 2016 (having requested and been granted an extension of time until that date to file her reply). The Respondent replied on 5 January 2016, also in compliance with (i.e. on) the applicable deadline.

12. On 4 February 2016, BAT wrote to the Parties informing them that the exchange of documents was complete and requesting detailed accounts of costs by 11 February 2016.

13. On 11 February 2016, the Claimant submitted the following account of costs which was not, as requested, detailed, but which referred to:

    (i) USD 46,374.00 attorney's fees (explained only as being "15 % of the Amount in Dispute + VAT");

    (ii) The amounts paid in respect of the Advance on costs, totalling EUR 10,000.00; and

    (iii) The Non-refundable handling fee of EUR 4,000.00.

14. The Respondent did not submit an account of its costs or exercise its right to comment on the Claimant's account of costs (which opportunity the BAT Secretariat offered it on 12 February 2016).

15. Since none of the Parties filed an application for a hearing, the Arbitrator decided, in

accordance with Article 13.1 of the BAT Rules, not to hold a hearing and to deliver the award on the basis of the written submissions of the Parties.

4. The Positions of the Parties

4.1 The Claimant's Position

16. The Claimant submits in essence that:

(i) the Respondent owes her USD 70,000.00 for contractual bonuses under the 2013-2014 Contract. Specifically, the Respondent is required to pay her:

(a) USD 25,000.00 for winning the Turkish Championship;

(b) USD 7,500.00 for winning the Turkish Cup;

(c) USD 30,000.00 for winning the FIBA Women's Euroleague Championship; and

(d) USD 7,500.00 for five wins against Fenerbahçe outside of Presidency and Turkish Cup games (at USD 1,500.00 per such win);

but the Respondent has not paid her that money;

(ii) the Respondent owes her USD 104,000.00 for salary due under the 2014-2016 Contract. Specifically, the Respondent is required to pay her:

(a) USD 52,000.00 which was due on April 15 2015; and

(b) USD 52,000.00 which was due on May 15 2015,

but the Respondent has not paid her that money;

(iii) the Respondent owes her USD 38,000.00 for contractual bonuses under the 2014-2016 Contract. Specifically, the Respondent is required to pay her:

(a) USD 30,000.00 for winning the Turkish Cup; and

(b) USD 8,000.00 for qualifying for the quarter finals of the FIBA women's Euroleague,

but the Respondent has not paid her that money; and

(iv) she is entitled to payment of the outstanding amounts, plus interest and costs.

17. Based on those arguments, in her request for relief, the Claimant asks that the Arbitrator order the Respondent to pay her:

(i) USD 70,000.00 for bonuses due under the 2013-2014 Contract plus interest at an unspecified rate from 25 May 2014 until payment;

(ii) USD 104,000.00 for salary due under the 2014-2016 Contract plus interest at an unspecified rate from 15 May 2015 until payment;

(iii) USD 38,000.00 for bonuses due under the 2014-2016 Contract plus interest at an unspecified rate from 29 May 2015 until payment;

(iv) USD 50,000.00 for the termination fee due under the Addendum plus interest at an unspecified rate from 9 May 2015 until payment; and

(v) the non-refundable fee, the costs of these proceedings and her legal fees and expenses.

4.2 The Respondent's Position

18. In relation to the bonuses due under the 2013-2014 Contract, the Respondent submits that:

(i) it paid USD 7,500.00 due for winning the Turkish Cup, and the Respondent submitted a bank payment receipt for that amount; and

(ii) while it won five games against Fenerbahçe, only one was in the regular season while three were in the playoffs and one was in the Euroleague final. The Respondent argues that it is implicit in the relevant wording of the 2013-2014 Contract (i.e. a bonus payment for each "*single game win (not valid for the Presidency and Turkish cup games) against Fenerbahçe* […]") that the bonuses apply to regular season games only, and not to play-offs or the Euroleague, even though the only specified exclusions are Presidency and Turkish cup games.

19. In relation to the bonuses due under the 2014-2016 Contract, the Respondent submits that:

(i) the Claimant is not entitled to USD 8,000.00 claimed as a bonus for reaching the final round of the Euroleague, for 2 reasons:

(a) the bonus is only USD 3,000.00, not USD 8,000.00; and

(b) in fact they did not get to the final round. Rather, they got to the

quarter-finals, and there was a 'final four' round after that.

20. The Respondent accepts liability in principle to pay USD 104,000.00 for outstanding salary payments due under the 2014-2016 contract, but argues that USD 50,000.00 should be deducted from the amount to be paid because of a financial penalty it imposed on the Claimant. Specifically, the Respondent submits:

    (i) the Claimant left the Respondent and went to the USA on 3 April 2015, and she stayed away for 25 days, during which time she did not answer calls, and missed a regular season game, four play-off games and several trainings; and

    (ii) when the Claimant returned, the Respondent imposed a USD 50,000.00 penalty on her, to keep discipline in the team, and communicated that to the Claimant and the Claimant's agents, none of whom objected.

21. The Respondent further submitted that the termination fee claimed under the Addendum was only payable if the 2014-2016 Contract was terminated by the Claimant because the Respondent did not make payments in a timely manner, but in this case the agreement continued in full effect until the Respondent terminated it.

22. The Respondent further submitted that it was forced to terminate the agreement, because the Claimant's acts and statements made it impossible for her to continue playing for the Respondent. The Respondent did not state specifically what acts and statements it was referring to but submitted a copy of an email and what appears to be a social media message, both apparently from accounts in the Claimant's name, which indicate that she had been deeply unhappy, and that that is the real reason her contract had ended (respectively, the "Email" and "the Social Media Message").

23. The Respondent requests that the Arbitrator:

(i) deduct the bonus payments to which the Respondent has objected from the bonus payments which the Claimant has claimed;

(ii) deduct USD 50,000.00 from the outstanding salary claimed for under the 2014-2016 Contract, reflecting the financial penalty that the Respondent has imposed on the Claimant; and

(iii) reject the Claimant's claim for a USD 50,000.00 termination fee under the Addendum.

4.3 The Parties' Further Submissions

4.3.1 The First Procedural Order

24. In response to questions in the First Procedural Order, the Claimant submitted that:

(i) the circumstances giving rise to the Parties executing the Addendum were that the Respondent had failed to pay amounts owed for the 2013-2014 and 2014-2015 seasons. The Claimant sent warning letters seeking payment, and left Turkey with the Respondent's permission while the situation was resolved. In due course the parties agreed that the Claimant would return and the payments in the Addendum would be made to her;

(ii) she did not accept that the bonus payable for wins against Fenerbahçe in the 2013-2014 season would not apply to wins in the play-offs or in the Euroleague final. There are specific carve-outs in the otherwise general provision and those carve-outs relate to the Turkish Cup and the Presidency Cup. If play-offs and the Euroleague were also supposed to be carved out then that would have been made clear. The natural meaning of the relevant

provision is that a bonus is payable for wins against Fenerbahçe in the playoffs or in the Euroleague;

(iii) she did not accept that the Respondent did not reach the final round of the Euroleague in the 2014-2015 season. The Respondent reached the quarter finals – i.e. the 'final eight' round of the 2014-2015 Euroleague;

(iv) the Email is not relevant. She always did what was required of her when playing for the Respondent and the Respondent repeatedly failed to pay her. She entered into a negotiation to resolve that situation and in fact played to the end of the season, and still did not get paid;

(v) the same goes for the Social Media Message;

(vi) the 2014-2016 Contract was terminated by a letter sent by Respondent dated 25 May 2015. The Claimant does not know why Respondent terminated, but notes that the Respondent was entitled to terminate unilaterally on or before 25 May 2015 although if so it was required to pay a USD 50,000.00 termination fee for the following season; and

(vii) the Claimant does not accept that the Respondent was entitled to impose a USD 50,000.00 financial penalty on her. The 2014-2016 Contract required that the Respondent give the Claimant a copy of its rules in English, which it never did. The Claimant was not given an opportunity to make any representations before the financial penalty was decided, she was informed of the penalty the day after the 2014-2016 Contract was terminated, and it appears to be an attempt to avoid paying the termination fee.

25. In response to questions in the First Procedural Order, the Respondent submitted that:

(i) the circumstances giving rise to the Parties executing the Addendum were that the Respondent had been having financial difficulties and the Parties agreed to rearrange the Respondent's financial obligations by means of the Addendum;

(ii) the 2014-2016 Contract was terminated by the Respondent's letter dated 25 May 2015. The Respondent wanted to continue with Claimant for the 2015-2016 season, but Claimant had personal problems apart from basketball which caused the Respondent to lose faith in the Claimant; and

(iii) the Respondent imposed a financial penalty on the Claimant after a decision made by the Respondent's board on 20 May 2015 which was subsequently communicated to her by letter on 26 May 2015. The Respondent referred to a number of provisions in its disciplinary rules which it asserted the Claimant was bound by and implied she contravened. The substance of the alleged breaches is her absence from Turkey for a period of time.

5. Jurisdiction

26. 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 PILA.

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

5.1 Arbitrability

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

5.2 Formal and substantive validity of the arbitration agreement

29. Articles 12 and 18 of the 2013-2014 Contract and the 2014-2016 Contract (together, the "Contracts") respectively are arbitration clauses in favour of the BAT. They both read 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"*

30. The Contracts are both in written form and thus the arbitration clause fulfils the formal requirements of Article 178(1) PILA.

31. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreements under Swiss law (referred to by Article 178(2) of the PILA). In particular, the wording "*Any dispute arising from or related to the present contract*" in Articles 12 and 18 clearly covers the present dispute.

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

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

claim.

6. Discussion

6.1 Applicable Law – *ex aequo et bono*

33. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the Parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the Parties may authorize the arbitrators to decide *"en équité",* as opposed to a decision according to the rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

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

34. 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."*

35. Articles 12 and 18 of the Contracts respectively state "*[t]he arbitrator shall decide the dispute ex aequo et bono*".

36. In light of the above, the Arbitrator will decide the issues submitted to him in this proceeding *ex aequo et bono*.

37. 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'arbitrage*[2] (Concordat),[3] under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

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

38. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives "*a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case*".[5]

39. 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*".

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

6.2 Findings

41. The Respondent does not deny all liability to the Claimant, but rather asserts that some of the items claimed are not owed. Accordingly, the issues which the Arbitrator must

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

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

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

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

decide are those items which the Respondent contests.

6.2.1 Bonuses due under the 2013-2014 Contract

42. As stated above (paragraph 18(i)) the Respondent submits that it paid USD 7,500.00 due for winning the Turkish Cup, and the Respondent submitted a bank payment receipt for that amount.

43. The relevant payment receipt appears on its face to record a payment to the account specified for payments in the 2013-2014 Contract, and the Claimant has not submitted, since receiving the Respondent's Answer, that the payment was not received. In the circumstances, the Arbitrator finds that the Respondent has paid the Claimant the USD 7,500.00 due under the 2013-2014 Contract for winning the Turkish Cup and so that part of the Claimant's claim in these proceedings is rejected.

44. As stated above (paragraph 18(ii)) the Respondent submits that while it won five games against Fenerbahçe, only one was in the regular season while three were in the play-offs and one was in the Euroleague final. The Respondent submits that the latter four games do not give rise to the relevant bonus.

45. The Arbitrator notes the wording of the relevant provision in the 2013-2014 Contract (see paragraph 4(i) above). The Arbitrator finds that the meaning and effect of the provision is that the bonus is payable for wins against Fenerbahçe generally, except for in the case of specified exceptions (which are "Presidency and Turkish Cup games"). The Arbitrator further finds that the bonus does apply to wins against Fenerbahçe in the play-offs or Euroleague, because such games are not included within the specified exceptions. If the parties had intended and agreed play-off or Euroleague games should be excepted from the bonus, they would have said so in the contract. Accordingly, the Respondent must pay the Claimant USD 7,500.00 for bonuses due for

wins against Fenerbahçe in the 2013-2014 season.

46. The Respondent has accepted that the bonuses for winning the Turkish Championship (USD 25,000.00) and FIBA Women's Euroleague (USD 30,000.00) are payable, and the Arbitrator finds that that is so.

47. The Arbitrator notes that according to the 2013-2014 Contract the relevant bonuses are payable "*within 20 days from the last game of the Club*", that the Claimant has claimed that interest should run on the bonuses claimed for the 2013-2014 season from 25 May 2014, and that according to publicly available sources the Respondent's last game of the 2013-2014 season was on 5 May 2014. In the circumstances, the Arbitrator finds that the bonuses for the 2013-2014 season fell due for payment 20 days after 5 May 2014, i.e. on 25 May 2014.

48. Accordingly, the Arbitrator finds that the Respondent was required to pay the Claimant total contractual bonuses for the 2013-2014 season of USD 62,500.00, which fell due for payment on 25 May 2015.

6.2.2 Bonuses due under the 2014-2016 Contract

49. As mentioned above (paragraph 19(i)), the Respondent argues that the Claimant is not entitled to USD 8,000.00 claimed as a bonus for reaching the final round of the Euroleague, for 2 reasons:

    (i) first, the bonus is only USD 3,000.00, not USD 8,000.00; and

    (ii) second, the Respondent did not get to the final round. Rather, it reached the quarter-finals, and there was a 'final four' round after that.

50. It appears from publicly available sources that there was a 'final four' round in the

Euroleague women's championship in 2014-2015, and that the Respondent played in the 'final eight' round (i.e. the quarter-finals) but not the final four. Accordingly the Arbitrator accepts the Respondent's submission on that issue and finds that the Respondent did not reach the final round of the Euroleague women's championship in 2014-2015. Accordingly, the bonus under the 2014-2016 Contract for reaching the final round of the Euroleague did not become payable.

51. Having so found, it is not necessary for the Arbitrator to decide whether the amount which would be payable in respect of the relevant bonus if it arose would be USD 3,000.00 or USD 8,000.00.

52. The Respondent has accepted that the bonus for winning the Turkish Championship (USD 30,000.00) is payable, and the Arbitrator finds that that is so.

53. The Arbitrator notes that according to the 2014-2016 Contract the relevant bonuses are payable "*within 20 days from the last game of the Club*", that the Claimant has claimed that interest should run on the bonuses claimed for the 2014-2015 season from 29 May 2015, and that according to publicly available sources the Respondent's last game of the 2014-2015 season was on 9 May 2015. In the circumstances, the Arbitrator finds that the bonus due for the 2014-2015 season fell due for payment 20 days after 9 May 2015, i.e. on 29 May 2015.

6.2.3 Salary due under the 2014-2016 Contract

54. As mentioned above (paragraph 20), the Respondent argues that USD 50,000.00 should be deducted from the amount to be paid in respect of Salary under the 2014-2016 Contract because of a financial penalty it imposed on the Claimant.

55. The Arbitrator notes the Respondent's submissions as to the reasons it imposed the financial penalty, which largely relate to the Claimant's absence from the Respondent

before the Addendum was executed.

56. The Arbitrator also notes the Parties' submissions as to the circumstances in which the Addendum was executed. In particular:

(i) both parties acknowledge that the Addendum was executed following a period during which, for one reason or another (the Respondent says it was financial difficulties) the Respondent had not made a number of payments which were due to the Claimant under the 2013-2014 Contract and the 2014-2016 Contract;

(ii) the Claimant submits that she was absent from the Respondent with the Respondent's permission and while the payment issues were resolved; and

(iii) the Respondent does not say expressly that the Claimant did not have permission to be absent, but the Respondent's replies to the First Procedural Order imply that.

57. Having considered those submissions, and the terms of the Addendum itself, the Arbitrator finds that the Parties signed the Addendum in circumstances where:

(i) the Respondent had not made a number of payments which were due to the Claimant under the Contracts;

(ii) the Claimant had sought payment of those amounts and the Addendum was executed as a result of an agreement between the Parties to resolve the situation;

(iii) the Claimant had been absent from the Respondent for a period before the Addendum was executed, which absence was at least in part because of the

Respondent's failure to make some payments which were due to her; and

(iv) the Claimant's absence at that time was either with the Respondent's permission or was, in the circumstances, justifiable.

58. Having considered the Parties' submissions on imposition of a financial penalty, the Arbitrator finds that:

(i) under Art. 8 of the 2014-2016 Contract, the Respondent was required to give the Claimant a copy of its rules in English (see paragraph 5(iv) above);

(ii) the Respondent did not give the Claimant a copy of its rules in English;

(iii) the Respondent did not give the Claimant an opportunity to make representations or engage with a disciplinary process in any way before it decided to impose a financial penalty on the Claimant;

(iv) the Respondent only notified the Claimant of the financial penalty after it had terminated the 2014-2016 Contract;

(v) the Respondent has not submitted any evidence, and the Arbitrator is not persuaded, that any purported decision in respect of the financial penalty (whether or not such decision was properly made) was made before the 2014-2016 Contract was terminated; and

(vi) (having regard to the Arbitrator's findings at paragraph 57 above) the Respondent purports to have based the financial penalty on an absence which was either permitted or justified.

59. In light of those findings, and acting *ex aequo et bono*, the Arbitrator finds that the

Respondent was not entitled to impose a financial penalty on the Claimant and, accordingly, no deduction should be made from any amount that the Claimant is owed to reflect such a financial penalty.

60. The Respondent appears to have accepted that the salary payments which were due under the 2014-2016 Contract on 15 April 2015 and 15 May 2015, in the amount of USD 52,000.00 each, are due and payable (subject to the supposed financial penalty). The Arbitrator finds that those payments are due and payable.

6.2.4 The termination fee

61. As mentioned above (paragraph 21), the Respondent argues that:

(i) the termination fee under the Addendum was only payable if the 2014-2016 Contract was terminated by the Claimant because the Respondent did not make payments in a timely manner, but

(ii) in this case the agreement continued in full effect until the Respondent terminated it.

62. Noting that the Addendum itself does not include a dispute resolution provision, the Arbitrator must consider its legal status and effect and his jurisdiction, if any, in relation to it. The Arbitrator notes his findings as to the circumstances in which the Addendum was executed (see paragraph 57 above). The Arbitrator also notes the terms of the Addendum, that it is described as an "*addendum*" to (and therefore a part of) the 2014-2016 Contract, that it is stated to "*amend the terms and conditions of*" the 2014-2016 Contract (see paragraph 6 above) and that its last provision states that "*all other terms and conditions of the Agreement shall remain in effect*".

63. In the circumstances, the Arbitrator finds that the Addendum amends, and forms part

of, the 2014-2016 Contract. Accordingly, the Arbitrator has jurisdiction to determine any dispute in relation to it (see paragraphs 26 to 33 above).

64. As set out at paragraph 6(iii) above, the Addendum provides that if the Respondent does not make the payments specified in it then according to Article 9 of the Addendum, (among other things):

(i) the Respondent shall have breached the 2014-2016 Contract;

(ii) remaining amounts payable for the 2014-2015 season shall become payable;

(iii) the Claimant shall become a free agent worldwide including Turkey; and

(iv) a USD 50,000.00 termination fee for the 2015-2016 season shall become payable.

65. The Arbitrator notes the "escape clause" in the 2014-2016 Contract (see paragraph 5(v) above), which permits the Respondent to terminate that contract unilaterally by 25 May 2014 provided that it pay the Claimant a USD 50,000.00 (i.e. the same amount as the termination fee payable under the Addendum) "compensation fee".

66. The Arbitrator finds that the "termination fee" payable under Article 9 of the Addendum and the "compensation fee" payable under the 2014-2016 Contract are commercially the same thing, i.e. an obligation that the Respondent pay the Claimant USD 50,000.00 as compensation if the 2015-2016 part of the 2014-2016 Contract is terminated (albeit that the termination fee under the Addendum only becomes payable if the Respondent fails to make a payment which is due under the Addendum). Reading Article 9 of the Addendum in the context of Article 10 of the 2014-2016 Contract and interpreting those provisions *ex aequo et bono*, the Arbitrator finds that the Claimant is entitled to payment of the termination fee referred to in Article 9 of the Addendum or alternatively

to payment of the compensation fee referred to in Article 10 of the 2014-2016 Contract if the Respondent, having failed to make a payment due under the Addendum, exercises its right to cancel the 2014-2016 Contract.

67. The Arbitrator notes the Claimant's submission that the USD 35,000.00 due on 1 April 2015 under Art. 3 of the Addendum was not paid, and that the Respondent has not denied that fact. The Arbitrator finds that that payment was not paid on the date due or at all.

68. In light of the above findings, the Arbitrator finds that the Respondent must pay the Claimant USD 50,000.00 being the termination fee due under the Addendum, and that that amount fell due on 2 April 2015.

6.2.5 The Claimant's conduct

69. As mentioned above (paragraph 22), the Respondent argues that it was forced to terminate the agreement because the Claimant's acts and statements made it impossible for her to continue playing for the Respondent.

70. As set out in the foregoing findings, the Arbitrator has found that the 2014-2016 Contract terminated because of the Respondent's actions. Accordingly, it is not necessary for the Arbitrator to make any findings about the Claimant's conduct.

6.2.6 Interest

71. The Claimant has requested interest on the unpaid salaries owed to her by the Respondent. Although the Contracts do not provide for the payment of default interest, this is a generally accepted principle which is embodied in most legal systems. Indeed, payment of interest is a customary and necessary compensation for late payment, and the Arbitrator considers that there is no reason why the Claimant should not be

awarded interest in this case. Also, according to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. The Arbitrator further considers, in line with the jurisprudence of the BAT, that 5% per annum is a reasonable rate of interest and that such rate should be applied in this case as of the day after the respective due date.

7. Costs

72. Article 17.2 of the BAT Rules provides that the final amount of the costs of the arbitration (which include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator) shall be determined by the BAT President and may either be included in the award or communicated to the Parties separately. It also provides 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*".

73. On 19 May 2016 pursuant to Article 17.2, 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 at EUR 10,000.00.

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

75. The Claimant was awarded 94% of the sum that she claimed. The Arbitrator therefore considers, in the first instance that it is fair that 94% of the costs of the arbitration (i.e. 94% of EUR 10,000.00 = EUR 9,400.00) be borne by the Respondent.

76. The Arbitrator does not consider it necessary in the circumstances to increase or decrease the proportion of costs of the arbitration to be borne by the Respondent as a result of either party's conduct in these proceedings.

77. The Claimant has claimed legal fees of USD 46,374.00, plus expenses (i.e. the non-reimbursable handling fee of EUR 4,000.00). At the date of this award that amounts to a total of approximately EUR 41,223.23.

78. The substantive amount claimed in these proceedings was USD 262,000.00, i.e., at the date of this award, approximately EUR 232,899.58. The maximum amount which can be claimed in BAT proceedings for legal fees and expenses in cases of this value is EUR 15,000.00 (rule 17.4, BAT Rules). Accordingly, the Claimant cannot recover an amount in respect of legal fees and expenses which is greater than EUR 15,000.00. The Arbitrator also notes that these proceedings were not particularly complex, and required the Parties to answer only one Procedural Order. The Arbitrator further notes that the Claimant failed to provide any detail at all in respect of her legal costs, save to note the (irrelevant) fact that the attorney's fees claimed amounted to 15% of the amount in dispute plus VAT. The Arbitrator finds that a reasonable amount for legal fees and expenses, including the non-reimbursable handling fee, would have been EUR 13,000.00.

79. Considering that the Claimant was awarded 94% of the sum that she claimed, the Arbitrator considers, in the first instance, it is fair that 94% of her reasonable legal fees and expenses (i.e. 94% of EUR 13,000.00 = EUR 12.200,00) be borne by the Respondent.

80. The Arbitrator does not consider it necessary in the circumstances to increase or decrease the proportion of the Claimant's legal fees and expenses which are to be borne by the Respondent as a result of either party's conduct in these proceedings.

81. Therefore, the Arbitrator decides:

(i) the Respondent shall pay to the Claimant EUR 9,400.00, as reimbursement of arbitration costs advanced by the Claimant; and

(ii) the Respondent shall pay to the Claimant EUR 12,220.00, as a contribution towards the Claimant's legal fees and expenses.

8. AWARD

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

1. **Galatasaray Spor Kulübü Derneği is ordered to pay to Ms. Kelsey Bone USD 62,500.00 as compensation for unpaid contractual bonuses relating to the 2013-2014 season, with interest at 5% from 26 May 2015 until payment.**

2. **Galatasaray Spor Kulübü Derneği is ordered to pay to Ms. Kelsey Bone USD 30,000.00 as compensation for unpaid contractual bonuses relating to the 2014-2015 season, with interest at 5% from 30 May 2015 until payment.**

3. **Galatasaray Spor Kulübü Derneği is ordered to pay to Ms. Kelsey Bone USD 52,000.00 as compensation for unpaid salary relating to the 2014-2015 season, with interest at 5% from 16 April 2015 until payment.**

4. **Galatasaray Spor Kulübü Derneği is ordered to pay to Ms. Kelsey Bone USD 52,000.00 as compensation for unpaid salary relating to the 2014-2015 season, with interest at 5% from 16 May 2015 until payment.**

5. **Galatasaray Spor Kulübü Derneği is ordered to pay to Ms. Kelsey Bone USD 50,000.00 as compensation for an unpaid termination fee relating to the 2015-2016 season, with interest at 5% from 3 April 2015 until payment.**

6. **Galatasaray Spor Kulübü Derneği is ordered to pay to Ms. Kelsey Bone EUR 9,400.00 as reimbursement of the advance on BAT costs.**

7. **Galatasaray Spor Kulübü Derneği is ordered to pay to Ms. Kelsey Bone EUR 12,220.00 as a contribution towards her legal fees and expenses.**

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

BASKETBALL
ARBITRAL TRIBUNAL

Geneva, seat of the arbitration, 17 June 2016

Raj Parker
(Arbitrator)