ARBITRAL AWARD

(BAT 0791/15)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Annett Rombach

in the arbitration proceedings between

Mr. Lasan Kromah

- Claimant 1 -

Mr. Elias Diamantopoulos
Dragoumi 149, Ano Glyfada, Greece

- Claimant 2 -

Mr. Noah Croom
121 Lakeside Ave., Seattle, WA 98122, USA

- Claimant 3 -

all represented by Mr. Noah Croom,
121 Lakeside Ave, Seattle, WA 98122, USA

vs.

Torku Konyaspor Basketbol Kulübü
Selçuklu Belediyesi Uluslararası Spor Salonu Sille Parsana Mahallesi Barış Caddesi Hicran Sokak, Selçuklu / Konya, Turkey

- Respondent -

represented by Mr. Yasar Berber, General Manager

1. The Parties

1.1 The Claimants

1. Mr. Lasan Kromah (the “Player” or “Claimant 1”) is a professional basketball player of U.S. nationality.

2. Mr. Elias Diamantopoulos (the “First Agent” or “Claimant 2”) and Mr. Noah Croom (the “Second Agent” or “Claimant 3” and together with Claimant 1 and Claimant 2 the “Claimants”) are basketball agents who represented the Player leading to his retainer by the Respondent.

1.2 The Respondent

3. Torku Konyaspor Basketbol Kulübü (the “Club” or “Respondent” and together with Claimants the “Parties”) is a professional basketball club located in Konya, Turkey.

2. The Arbitrator

4. On 17 February 2016, 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 2014 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 27 June 2015, the Player and the Agents entered into a contract with the Club (the "Player Contract"), pursuant to which the Club engaged the Player as a professional basketball player for the 2015-16 basketball season. The Player was to receive a guaranteed base salary of USD 90,000.00 (net of all taxes) to be paid in accordance with the following payment schedule (Clause 2 A of the Player Contract):

"After passing medical examination	*…… US$ 5,000.00*
September 15, 2015	*…… US$ 5,000.00*
October 15, 2015	*…… US$10,000.00*
November 15, 2015	*…… US$10,000.00*
December 15, 2015	*…… US$10,000.00*
January 15, 2016	*…… US$10,000.00*
February 15, 2016	*…… US$10,000.00*
March 15, 2016	*…… US$10,000.00*
April 15, 2016	*…… US$10,000.00*
May, 2016	*…… US$10,000.00"*

6. Pursuant to Clause 1, the Player Contract was a fully guaranteed "*no cut contract*" under which the Club "*shall not have the right to cease, restructure or in any way alter terms of payment to the PLAYER or the AGENT in the event of matters including, but not limited to, economic hardship, demotion to lower league, skill, injury, illness, and death of the PLAYER and/or the AGENT.*"

7. The Club further agreed to provide the Player with other benefits, including "*a fully furnished large 2 bedroom air-conditioned apartment*", which the Player needed to approve (Clause 4 A), and a "*full-size automobile acceptable to the PLAYER's standards*" (Clause 4 C).

8. Clause 5 of the Player Contract provides as follows:

> *"[…] In the event payments are not paid in full within Twenty-five (25) days after the scheduled payment date, the PLAYER shall not be required to practice or play in any scheduled games until all accrued penalty charges and scheduled payments have been made. For any payments not paid within Thirty (30) days after the scheduled payment date, the PLAYER shall be entitled to all remaining payments under Sections 2A and 2B of this Agreement and be free to leave the CLUB with no further obligation or withholding of clearance rights, and the AGENTS shall be entitled to the full fee as described in the Addendum to this Agreement."*

9. Pursuant to Clause 8 of the Player Contract, the Agents were to receive from the Club "*a 10% agent fee as described in the Addendum to this Agreement*". The Addendum of 27 June 2015, signed by the Agents and the Club (the "Addendum"), provided for a payment of USD 4,500.00 to the First Agent and to the Second Agent, respectively.

10. In relevant part, the Addendum reads as follows:

> *"The total net value of the agent fee for this Agreement shall be Nine Thousand US Dollars (US$9,000.00) for the season 2015-2016. This fee shall be paid separate from and in addition to the PLAYER's salary. During the term of this Agreement, the CLUB agrees to pay the AGENT'S as follows:*
>
> *For the 2015-2016 season:*
>
> *To Elias Diamantopoulos on or before December 20, 2015*
> *..... US$4,500.00*
>
> *To Noah Croom on or before November 20, 2015*
> *..... US$4,500.00*
>
> *The agent fee is fully valid upon the PLAYER reporting to the CLUB. It is agreed that the role of the AGENT'S is to bring the PLAYER and the CLUB together and for this the AGENT'S are entitled to the full fee. The payment of the full fee is not subject to the actual length of the Agreement. In addition, the CLUB shall not have the right to restructure or in any way alter terms of payment to the AGENT'S in the event of matters including, but not limited to, economic hardship, demotion to lower league, skill, injury, illness, and death of the PLAYER and/or the AGENT'S.*

> *The CLUB's obligation to pay the AGENT'S shall survive any premature termination of the Agreement or any termination of the AGENT'S services by the PLAYER.* […]*"*

11. In early October 2015, the Club informed Claimant 2 that it no longer needed the Player's services and that the Player, as the Club's 7th foreign player, would no longer be part of the team's roster. The Club offered to mutually terminate the Player Contract. The relevant e-mail by a Club representative reads as follows:

> "*Lason* [sic] *also is a good person but he is not ready to perform high level of basketball in our league and we already signed with another player which leaves him as 7th foreign player. Our club does not have financial resources to pay him 40k for settlement, we already offered you our best namely 10k. However we can increase agent's fee to 7k in order to stay in good relationship with you and your agency. Under no conditions we can register his lience* [sic] *with the federation, in other words he will not be able to play any games or practice with the team. This will be very bad for Lason and his reputation*
> *We are ready to conclude this deal with the terms mentioned above.*
> […]"

12. On 5 October 2015, Claimant 3 replied that the Club's settlement offer was unacceptable and made a counter-proposal for the termination and settlement of the Player's employment at the Club. No agreement between the Parties could be reached.

13. In the further course of events, the Player had to leave his apartment and was moved to a hotel room. The Agents, on behalf of the Player, objected to his relocation to the hotel. The circumstances of the Player's move are in dispute between the Parties.

14. On 3 November 2015, Claimant 2 sent the following e-mail to the Club's general manager, Mr. Berber:

> *"It has come to my attention that you have failed to cure the breach of Lasan's contract we reported to you last week. Specifically, moving him to a one room hotel several miles from where the team plays and practices with none of the amenities listed in his contract. You stated that:*

> *"We are facing a very unique and rare situation with Lasan's apartment complex due to apartment's owner's and the real estate agent's decision to sell the place without our knowledge and permission. We are trying to find him another place that is suitable for him, but also there is an election this sunday and it is public holiday. This election is very important for our country that is why government officials are taking every precaution necessary to stop any provocation such as the one happened in Ankara on (ankaradaki olayin tarihini yazarsin abi). We are doing the very best to make sure Lasan is staying in a suitable place. This situation will be resolved on the tuesday following the election."*
>
> *It is now Tuesday and you have failed to find suitable accommodations for Mr. Kromah. In addition, contrary to your letter dated, October 29, 2015, Lasan's apartment was not sold by its owner because one of his teammates Clay Tucker is now living in the apartment.*
>
> *Furthermore, today you left a message for Lasan asking him to leave his keys at the hotel front desk and surrender the automobile promised in his Agreement with the Club.*
>
> *It has become abundantly clear that you have no intention of abiding by their terms of our Agreement."*

15. On 16 November 2015, the Agents sent a letter to the Club, informing the Club that the Player "*is formally exercising his right to terminate his agreement with* [the Club]", due to an alleged material breach of the Player Contract (the "Termination Letter").

16. On 9 December 2015, the Player entered into an employment agreement with the Greek Club KAE Enosi Kalathosfairisis Kavala (the "Kavala Contract"). Under the Kavala Contract, the Player was to receive a total net salary of USD 25,000 for the remainder of the 2015-2016 season.

3.2 The Proceedings before the BAT

17. On 20 November 2015, the Claimants filed a Request for Arbitration together with several exhibits in accordance with the BAT Rules. The non-reimbursable handling fee

of EUR 2,003.87 was received in the BAT bank account on 16 December 2015 and on 24 December 2015.

18. On 24 February 2016, 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 16 March 2016 (the "Answer"), and fixed the amount of the Advance on Costs to be paid by the Parties as follows:

"Claimant 1 (Mr. Lasan Kromah)	*EUR 4,500.00*
Claimant 2 (Mr. Elias Diamantopoulos)	*EUR 500.00*
Claimant 3 (Mr. Noah Croom)	*EUR 500.00*
Respondent (Torku Konyasport B.C.)	*EUR 5,500.00"*

19. By letter of 17 March 2016, BAT confirmed receipt of the full Advance on Costs, with all Parties having paid their respective shares. Respondent, who did not file an Answer, was granted a final opportunity to submit an Answer by 22 March 2016.

20. On 21 March 2016, Respondent filed its Answer.

21. On 22 March 2016, the Arbitrator invited Claimant 1 to submit (by no later than 8 April 2016) any employment contracts he entered into after the termination of his employment at Respondent, or to provide evidence of the steps taken, if any, in order to find new employment.

22. On 8 April 2016, Claimant 1 submitted the new contract signed after the termination of his employment at Respondent. Claimants also submitted further unrelated comments to their case.

23. On 21 April 2016, Respondent submitted comments on Claimants' submission, including numerous notarized witness statements from Club representatives.

24. On 25 April 2016, the Arbitrator issued the following Procedural Order ("PO 1") in response to the Parties' latest submissions:

> *"The Arbitrator notes that the Parties, in their most recent submissions dated 8 April 2016 (Claimants) and 21 April 2016 (Respondent) introduced partly unsolicited comments and evidence without obtaining the Arbitrator's prior authorization, and without any explanation as to why these comments and evidence have not been submitted at an earlier stage in the proceedings.*
> *As a result, the Arbitrator decides as follows:*
>
> 1. *Claimant 1's submission of 8 April 2016 is admitted to the record only with respect to the agreement entered into with the Greek club Kavala after the termination of his employment at Respondent. All other comments and evidence not related to the issue of Claimant 1's new employment are struck from the record.*
>
> 2. *Respondent's submission of 21 April 2016 is admitted to the record only with respect to its acknowledgement of the agreement between Claimant 1 and the Greek club Kavala. All other comments and evidence are struck from the record.*
>
> *A detailed explanation of the Arbitrator's decision will be provided in the final award."*

25. On the same day, the Arbitrator (in accordance with Article 12.1 of the BAT Rules) declared that the exchange of documents was completed and requested the submission of cost accounts.

26. On 2 May 2016, Claimants filed their statement of costs, together with numerous receipts pertaining to certain alleged costs and expenses relating to the termination of the Player's employment, which form part of Claimants' request for relief. For the reasons set forth below at para. 53, these receipts are not admitted to the record and were not taken into account in reaching the present decision.

27. Respondent neither filed any cost account nor any comments on Claimants' cost account.

28. As none of the Parties requested to hold 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

4.1 Claimants' Position

29. Claimants allege that Respondent

- failed to pay the Player the October 2015 salary;
- failed to provide the Player with the promised fully furnished 2 bedroom apartment;
- illegally confiscated the contractually promised automobile;

and that as a result of these breaches, the Player was entitled to terminate the Player Contract and to accelerate all payments stipulated thereunder.

30. Claimants request the following relief:

> *"1) Order the Respondent to pay to the 1st Claimant the amount of $10,000 USD (the October 15th payment) net of all taxes for rendered services, with interest rate of 5% or, in the alternative, with the interest rate decided by the BAT Arbitrator ex aequo et bono.*
>
> *2) Order the Respondent to pay to the 1st Claimant the remaining payments due under the Agreement (beginning with the November 15, 2015 payement* [sic]*) totaling $70,000.00 USO net of all taxes for penalty charges for late payments, with interest rate of 5% or in the alternative, with the interest rate decided by the BAT Arbitrator ex aequo et bono, and net of any amounts which may be earned by the 1st Claimant for rendering his basketball services pursuant to the terms of any agreement executed subsequent to the date first written above.*

3) Order the Respondent to pay to the 2nd Claimant the amount of $4,500.00 USD net of all taxes for rendered agency services in accordance with the terms of the Agreement.

4) Order the Respondent to pay to the 3rd Claimant the amount of $4,500 USD net of all taxes for rendered agency services in accordance with the terms of the Agreement.

5) Hold that the costs of the present arbitration be borne by the Respondent alone.

6) Reimburse the Claimant for all costs incurred as a result of being moved from his apartment and securing a hotel, the confisication of his vehicle and the cost associated with changing his return flight to the US.

7) Reimburse the Claimants the arbitration fee as well as their legal fees and other expenses, to be ascertained."

4.2 Respondent's Position

31. Respondent submits the following:

> *"We fully decline the allegations submitted by the player and his manager. The Club has fulfilled all the obligations guaranteed by the player's contract."*

32. Respondent did not include in its submissions any request for relief.

5. The Jurisdiction of the BAT

33. 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").

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

35. 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.

36. The Player Contract contains the following dispute resolution clause in favor of BAT (Clause 12):

> *"Should any dispute arise out of this Agreement, best efforts will be used by all parties to first use alternate means of dispute resolution, such as arbitration.*
> *In such case, any dispute arising from or related to the present contract shall be submitted to the BAT 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."*

37. The arbitration agreement is in written form and thus fulfills the formal requirements of Article 178(1) PILA.

38. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast any doubt on the validity of the arbitration agreement in the present matter under Swiss law (cf. Article 178(2) PILA).

39. Furthermore, as part of her jurisdictional analysis, the Arbitrator needs to define the subjective scope of the arbitration agreement for the purpose of determining whether the Parties are bound by it.

40. The Player is clearly bound by the arbitration agreement as a party and signatory to the Player Contract (which contains the arbitration clause).

41. The situation is less clear with respect to the Agents. Pursuant to the preamble of the Player Contract, only the Club and the Player are defined parties to the Player Contract. The Agents acted as the Player's representative and accordingly signed the

Player Contract (including the arbitration agreement contained therein) as the "*Player's Representative*", but undisputedly not as parties.

42. The Agents are only parties to the Addendum, but the Addendum does not contain an arbitration clause. Neither does the Addendum incorporate the arbitration clause contained in the Player Contract by reference. Accordingly, the Arbitrator's jurisdiction *ratione personae* over the Agents can only be established if it is justified, under the circumstances at hand, to extend the arbitration clause in the Player Contract to the (non-party) Agents.

43. As a preliminary matter to the substantive analysis of this issue, it should be noted that the requirements of form under Art. 178 (1) PILA only apply in relation to the arbitration agreement itself, i.e. in relation to the agreement by which the original parties have demonstrated their intent to submit to arbitration.[1] As to the question of the substantive scope of an arbitration agreement that is formally valid under Art. 178 (1) PILA, that is an issue of the merits and must therefore be resolved in accordance with Art. 178 (2) PILA.[2]

44. Under the relevant test applicable to the merits of the issue of extension of the arbitration clause, the Arbitrator needs to establish if the third party, whether explicitly or implicitly, has stated its intention to be bound by the arbitration agreement.[3] This is principally assumed where the third party creates the appearance of intending to be bound by the main contract, including the arbitration agreement.[4] The Swiss Federal Tribunal has affirmed such an appearance, for example, in a case where two formally distinct contracts were so closely connected that in reality they embodied one single

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1 *See e.g.* SFT dated 16 October 2003, 4P.115/2003 (ATF 129 III, 727); SFT dated 18 December 2001, 4P.126/2001; SFT dated 7 August 2001, 4P.124/2001.

2 SFT dated 16 October 2003, 4P.115/2003 (ATF 129 III, 727).

3 *Berger/Kellerhals*, International and Domestic Arbitration in Switzerland, 2nd. ed. 2010, para 521.

4 SFT dated 1 September 1993, 4P.73/1993.

transaction,[5] or in a case where a third party was closely involved in the negotiation and/or execution of the relevant contract containing the arbitration agreement.[6]

45. In accordance with these legal principles, the Arbitrator finds that it is justified to extend the arbitration clause contained in the Player Contract to the non-signatory Agents. The Agents were, in fact, very closely involved in the negotiations and execution of the Player Contract. They are mentioned as the Player's representatives in the preamble, and they signed the Player Contract on behalf of the Player. Additionally, the Player Contract expressly references the Club's obligation to pay a fee to the Agents "*as described in the Addendum*" (Clause 8).

46. These references not only evidence the Agent's active role in the negotiation and execution of the Player Contract, but also the close connection between the Player Contract and the Addendum. Both contracts relate to the same transaction, namely the Player's employment at the Club. The Addendum specifies that it "*shall be incorporated as part of the corresponding Agreement* [the Player Contract] *signed by these parties* [the Player and the Club] *and dated the same.*"

47. By creating a material link between the two contracts and in view of the Agents' close involvement in the conclusion of both of them – relating to the same transaction – the parties clearly showed their intent to bind the Agents to the arbitration agreement contained in the Player Contract. Therefore, although non-signatories to the Player Contract, the Agents are entitled to rely on the arbitration agreement.

48. In this context, it is also important that Respondent has not challenged the jurisdiction of the BAT with respect to the Agent's purported claims.

49. For the above reasons, the Arbitrator has jurisdiction to decide the present dispute.

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5 SFT dated 5 December 2008, 4A_376/2008.

6 SFT dated 16 October 2003, 4P.115/2003 (ATF 129 III, 727).

6. Other Procedural Issues

50. The Parties submitted various comments in these proceedings, which the Arbitrator considers as procedurally inadmissible, and which she did not take into account in deciding the issues before here. In particular:

51. Claimants' comments introduced on 8 April 2016, to the extent they went beyond the submission of the Kavala Contract, were inadmissible and had to be stricken from the record. These comments were not authorized by the Arbitrator, and Claimants should and could have submitted them together with their Request for Arbitration. Furthermore, these comments were not responding to any submission filed by Respondent. Respondent's Answer was limited to the plain and blanket denial of all claims, and Claimants' unsolicited new comments thus constituted a delayed addendum to their own previous submission, and not a rebuttal of Respondent's Answer. In order to safeguard BAT's utmost prerogative to provide for an efficient and effective means of resolving basketball disputes within the framework of a simple, quick and inexpensive procedure (see Articles 0.1 and 0.2 of the BAT Rules), unsolicited and belated submissions may only be admitted under special and justified circumstances, which do not exist here.

52. Respondent's comments introduced on 21 April 2016 are a direct response to the inadmissible comments submitted by Claimant. Since Claimant's comments are not part of the record, Respondent's comments also had to be struck.

53. The additional evidence submitted by Claimants with their statement of costs were filed after the close of the proceedings and without authorization by the Arbitrator. Claimants have not proffered any explanation as to why this evidence could not have been filed earlier. The evidence relates directly to one of their claims (item 6 of the request for relief quoted above at para 30), and there is no reason to assume that it has not been available earlier. In accordance with the principles explained above at para 51, the evidence is inadmissible and therefore struck from the record.

7. Applicable Law – *ex aequo et bono*

54. 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".*

55. 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."*

56. In Clause 12 of the Player Contract, 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*.

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

8. Findings

58. The central issue that must be resolved in deciding the present dispute is whether Claimants validly terminated the Player Contract on 16 November 2015 (below at 7.1) and which, if any, consequences the findings on the contract termination issue trigger with respect to the quantum of the claims presented here (below at 7.2).

8.1 Termination of the Player Contract

59. Claimants' case rests on the premise that they validly terminated the Player Contract on 16 November 2015, and that based on such termination, they are entitled to the monetary items claimed in this arbitration. In this respect, Claimants rely on Clause 5 of the Player Contract, which provides that "[f]*or any payments not paid within Thirty (30) days after the scheduled payment date*, *the PLAYER shall be entitled to all remaining payments* […] *and be free to leave the CLUB with no further obligations*…".

60. The October 2015 salary was due on 15 October 2015. When the Player's Agent sent the Termination Letter on 16 November 2015 (i.e. 32 days after the due date), this payment had undisputedly not been made. Therefore, the Player was principally entitled to terminate the Player Contract as a result of the Club's breach.

61. The Club has also not presented any valid excuse for its refusal to pay the Player. The removal of the Player from the team's roster as a result of the Club's dissatisfaction with his performance does not justify the non-payment. Pursuant to Clause 1 of the Player Contract (quoted above at para 6), the contract guaranteed all payments to the Player irrespective of, *inter alia*, lack of skill. Therefore, based on the terms of the Player Contract and considerations of *ex aequo et bono*, which are in accordance with standard contractual practice in basketball, the Club had no right to retain salary payments or even terminate his employment because of its unhappiness with the Player's sporting performance.

62. In light of the valid termination of the Player Contract, the payment acceleration was triggered and the entire salary for the 2015-16 season became due on 16 November 2015.

8.2 Quantum of the Claimants' Claims

63. The quantum side of Claimants' case consists of four positions: (i) lost salary payments on behalf of the Player for the remainder of the 2015-16 season; (ii) reimbursement of various costs and expenses the Player allegedly incurred in connection with the termination of his employment; (iii) lost agent fee payments on behalf of the Agents; and (iv) interest on the awarded amounts.

i. Lost Salary Payments On Behalf Of the Player

64. The Arbitrator must calculate the compensation which is due by the Club for the period between the actual termination date and – following Claimants' request for relief – the end of the 2015-2016 season.

65. But for the termination of the Player Contract, the Player would have earned the October 2015 salary (USD 10,000.00), plus the monthly salary instalments from November 2015 to May 2016 (7 x USD 10,000.00 = USD 70,000.00). Because these payments became immediately due as a result of the termination of the Player's employment on 16 November 2015 (see Clause 5 of the Player Contract), the Player is principally entitled to receive these payments.

66. However, according to generally accepted principles of the law of damages and also of labor law, any amounts which the Player earned or might earn by exercising reasonable care during the remaining term of the Player Contract must be deducted.[7]

67. The Player entered into the Kavala Contract on 9 December 2015. The Kavala Contract provided for a base salary of USD 25,000.00 for the remainder of the 2015-16

[7] These principles are also reflected in BAT jurisprudence, see e.g. BAT Awards 0237/11 and 0416/13.

season (Clause 2). This amount has to be deducted from the salary payments he would have received under the Player Contract (USD 80,000.00). Claimants' unspecified submission that the Player has only received a partial amount of USD 15,000.00 out of the entire amount promised under the Kavala Contract does not change this analysis. The question of whether and under what circumstances problems in the Player's new employment may (exceptionally) influence the mitigation of the salary compensation claim can be left undecided here, in the absence of any substantiated allegations as to the reason of the alleged non-payment. Similarly, considering the point in the season when the Player Contract was terminated, the Arbitrator finds that the Player properly discharged his duty to mitigate his damages by entering into the Kavala Contract.

68. In summary, the Arbitrator finds that the Player is entitled to compensation for lost salaries in the amount of USD 55,000.00 (USD 80,000.00 minus USD 25,000.00).

ii. Further Costs and Expenses Incurred By the Player

69. Claimants request reimbursement for costs incurred as a result of the Player's relocation from his apartment to a hotel, the alleged confiscation of his vehicle, and the costs associated with the change of his return flight to the U.S. In this respect, they rely on Clauses 4 A. and 4 C of the Player Contract.

70. The Arbitrator dismisses these claims in their entirety, because Claimant has not submitted the necessary evidence on which these claims are supposed to rest. It is not clear when and under what circumstances the alleged breaches occurred, and what damage the Player indeed suffered as a result of them. The Arbitrator cannot and will not engage in any speculations about the bases and amounts of these claims. The fact that the Arbitrator decides this case *ex aequo et bono* does not relieve Claimants of their principle burden to establish the facts and the law of their claims.

iii. Agent Fees

71. Pursuant to Clause 8 of the Player Contract and the Addendum, the Agents were entitled to receive an agent fee of USD 4,500.00 (net), respectively, by 20 November 2015 (Second Agent) and by 20 December 2015 (First Agent).

72. The early termination of the Player's employment on 16 November 2015 does not affect the Agents' fee claims. The Addendum makes it clear that "*it is agreed that the role of the AGENT'S* [sic] *is to bring the PLAYER and the CLUB together and for this the AGENT'S* [sic] *are entitled to the full fee*", and that "[t]*he CLUB's obligation to pay the AGENT shall survive any premature termination of the Agreement …* ". Therefore, the Club is deemed to have agreed to pay the full fee irrespective of the fate of the Player's employment at the Club.

73. Furthermore, the question arises whether the Agent fees earned for brokering the Kavala Contract on behalf of the Player need to be deducted from the Agents' fee claim in accordance with the damages mitigation principles explained above.

74. The Arbitrator is of the opinion that these principles are not applicable to the situation of the Agents, and that, therefore, any agent fees earned for the placement of the Player at the new Cub as a result of the premature termination of the Player Contract do not reduce the agent fees earned under the latter.[8]

75. The fact that a basketball player can render his playing services only to one club at a time justifies the policy to deduct new income from his salary compensation claim. Without that deduction, the Player in the matter at hand would effectively earn two

[8] See also BAT 0416/13, Kulvietis, UAB East Players vs. Krepsinio Rytas; BAT 0441/13, Hamilton, ASM Sports vs. KK Cibona Zagreb; BAT 0558/14 Bill A. Duffy International Inc. vs. Trabzonspor Basketbol Kulübü Dernegi.

salaries while offering his services only once, and would benefit from a true windfall without any justification.

76. The situation can be different for an agent. The agent may be paid only for the service of brokering a contract between a basketball player and a club. In the present case, the Agent's remuneration is not contingent upon the Player's fulfillment of his duties over the entire contractual period. This is clearly evidenced by the express disclaimer in the Addendum (quoted above at para 72). Furthermore, in case of a premature termination of the employment, the Agent indeed provides a new and additional service when he places the Player at a new Club. It would be unfair to deduct the second fee, which he earns for a new and unrelated service, from the first fee, given that the Agent is deemed to have fulfilled his obligations from the prior contract in their entirety.

77. As a result, since the Club has undisputedly not paid the agent fees to date, the Arbitrator finds that Claimant 2 and Claimant 3 are entitled to receive the amount of USD 4,500.00 (net) each.

iv. Interest

78. Claimants request payment of interest at the rate of 5% p.a. on the outstanding salaries and agent fees.

79. Neither the Player Contract nor the Addendum provide for any obligation by the Club to pay interest in case of a non-payment. However, it is a generally accepted principle embodied in most legal systems and reflected in the BAT jurisprudence,[9] that default interest can be awarded even if the underlying agreement does not explicitly provide for

[9] See*, ex multis*, the following BAT awards: 0092/10, Ronci, Coelho vs. WBC Mizo Pecs 2010; 0069/09,Ivezic, Draskicevic vs. Basketball Club Pecsi Noi Kosariabda Kft; 0056/09, Branzova vs. Basketball Club Nadezhda); 0237/11, Ivanovic, GPK Sports Management Limited vs. Kolossos Rhodes Basketball Club.

a respective obligation. The Arbitrator, deciding *ex aequo et bono* and in accordance with constant BAT jurisprudence, considers an interest rate of 5% per annum to be fair and just to avoid that the Club derives any profit from the non-fulfillment of its obligations.

80. With respect to the starting date, it is appropriate to have interest run as of the day after the outstanding payment became due, or – absent any stipulated due date or formal warning by the creditor – as of the date of the filing of the Request for Arbitration.

81. Here, in application of these principles, the Arbitrator finds that the following starting dates should apply:

- from 16 October 2015 on the amount of USD 10,000.00 (October salary);
- from 20 November 2015 (date of the filing of the Request for Arbitration) on the amount of USD 45,000.00 (lost salaries beyond the October 2015 salary);
- from 21 November 2015 on the amount of USD 4,500.00 (agent fee Claimant 3);
- from 21 December 2015 on the amount of USD 4,500.00 (agent fee Claimant 2).

8.3 Summary

82. For the reasons set forth above, Claimant 1 is entitled to the amount of USD 55,000.00 plus interest of 5% p.a.

- from 16 October 2015 on the amount of USD 10,000.00; and
- from 20 November 2015 on the amount of USD 45,000.00.

83. Claimant 2 is entitled to the amount of USD 4,500.00 plus interest of 5% p.a. from 21 December 2015 on that amount.

84. Claimant 3 is entitled to the amount of USD 4,500.00 plus interest of 5% p.a. from 21 November 2015 on that amount.

85. All amounts are to be paid net of all deductions for social insurance and/or taxes.

9. Costs

86. 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.

87. On 25 July 2016 – 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 8,930.00.

88. Considering the outcome and the circumstances of the present case and given that Claimants succeeded in this case preponderantly, the Arbitrator deems it appropriate that Respondent shall bear 80% of the arbitration costs.

89. Therefore, considering that Claimants paid an amount of EUR 5,500.00 as their share of the advance on costs (out of the total of EUR 10,992.50) and in application of Article 17.3 of the BAT Rules, the Arbitrator decides that Respondent shall reimburse

Claimants the arbitration costs in the amount of EUR 1,651.50. The balance of the Advance on Costs, in the amount of EUR 2,062.50, will be reimbursed to Claimants by the BAT.

90. With respect to the Parties' legal fees and expenses, the Arbitrator deems it appropriate that Respondent shall reimburse Claimants for 80% of their attorney's fees and other expenses (including the handling fee, Article 17.1 and 17.3), to the extent they are reasonable.

91. In this regard, the Arbitrator is of the opinion that Claimants' legal expenses in the amount of EUR 7,500.00 are excessive and must be reduced. The Request for Arbitration was not very complex and included only a few exhibits. The proceedings required only very few submissions and Respondent only rudimentarily commented on the dispute's merits. In light of these circumstances, the Arbitrator finds, in accordance with Article 17.3 of the BAT Rules, that Claimants reasonable legal fees are to be reduced to the amount of EUR 4,000.00. Therefore, in accordance with the allocation of costs determined above, Respondent must bear 80% of these reasonable legal fees, i.e. an amount of EUR 3,200.00, plus the handling fee (EUR 2,003.87). The total amount of legal fees and expenses to be reimbursed to Claimants is EUR 5,203.87.

10. AWARD

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

1. **Torku Konyaspor Basketbol Kulübü is ordered to pay Mr. Lasan Kromah USD 55,000.00 net together with interest of 5% p.a.**
   - **from 16 October 2015 on the amount of USD 10,000.00, and**
   - **from 20 November 2015 on the amount of USD 45,000.00.**

2. **Torku Konyaspor Basketbol Kulübü is ordered to pay Mr. Elias Diamantopoulos USD 4,500.00 net together with interest of 5% p.a. from 21 December 2015.**

3. **Torku Konyaspor Basketbol Kulübü is ordered to pay Mr. Noah Croom USD 4,500.00 net together with interest of 5% p.a. from 21 November 2015.**

4. **Torku Konyaspor Basketbol Kulübü is ordered to pay jointly to Mr. Lasan Kromah, Mr. Elias Diamantopoulos, and Mr. Noah Croom EUR 1,651.50 as a reimbursement of their arbitration costs.**

5. **Torku Konyaspor Basketbol Kulübü is ordered to pay jointly to Mr. Lasan Kromah, Mr. Elias Diamantopoulos, and Mr. Noah Croom EUR 5,203.87 as a contribution towards their legal fees and expenses.**

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

Geneva, seat of the arbitration, 2 August 2016

Annett Rombach

(Arbitrator)