EXHIBIT "G"

AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT ARBITRATION TRIBUNAL

IN THE MATTER OF ARBITRATION BETWEEN:

Piotr Nowak The Claimant/ Counterclaim Respondent	:	Interim Opinion
v.	:	and
Pennsylvania Professional Soccer LLC and Keystone Sports and Entertainment LLC The Respondent/ Counterclaim Claimant	:	Award
v. Pino Sports LLC Counterclaim Respondent	:	

Re: AAA Case No. 14 120 1200 1589

Before
Margaret R. Brogan, Esquire
Arbitrator

Appearances

For the Claimant/Counterclaim Respondent
Clifford E. Haines, Esquire
Hollie B. Knox, Esquire
Haines & Associates
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For the Respondent/Counterclaim Claimant
Thomas G. Collins, Esquire
Anthony F. Andrisano, Jr.
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Background

This matter is premised upon the claims of Piotr Nowak (Claimant or Mr. Nowak), former head coach, manager and Executive Vice President of Soccer Operations for the Philadelphia Union (Respondent or Philadelphia Union), a Major League Soccer Club. In short, the Claimant contends that Respondent terminated him on June 13, 2012 without cause, and in bad faith, contrary to the terms of the parties' Employment Agreement, from which my jurisdiction as arbitrator is based.

To the contrary, Respondent contends that it had cause to terminate the Claimant under the Employment Agreement for specific alleged misconduct. Respondent also has made counter-claims in this proceeding: 1) alleging that the Claimant has failed to reimburse Respondent the remaining monies advanced pursuant to an agreement reached between the Respondent and Pino Sports LLC, Claimant's limited liability company. (The Pino Agreement) Under the Pino Agreement, Claimant had granted his marketing rights to Respondent; and 2) Claimant failed to repay the remaining balance of a loan made to Claimant by Respondent.

Initially, Claimant sought to litigate this matter in the United States District Court for the Eastern District by filing a Complaint on July 20, 2012. Counsel for Respondent filed a Motion to Dismiss the Complaint and Compel Arbitration, as the Employment Agreement has an arbitration clause which governs these

disputes. On September 26, 2012, the Court issued an Order compelling Claimant to pursue his claims through arbitration. On December 5, 2012, Claimant filed a Demand for Arbitration with the American Arbitration Association, and the undersigned was selected as arbitrator in line with the Association's procedures.

Arbitration hearings were held in this matter on May 28, 29 and 30, 2014, and August 19 and 20, 2014, at which time all parties were granted the full opportunity to present testimonial and documentary evidence in support of their positions. Both sides filed written briefs and reply briefs which were received by the undersigned by December 24, 2014. The parties granted the undersigned an extension until April 24, 2015 within which to issue her Award on the merits of the disputes.

At arbitration hearing, the following witnesses testified: **Piotr Nowak**, Claimant; **Nicholas Sakiewicz**, Chief Executive Officer, Operating Partner and co-founder of the Philadelphia Union; **Dave Debusschere**, Executive Vice President and CFO of Keystone Sports & Entertainment and subsidiaries; **Todd Durbin**, Executive Vice President of Competition, Player and Labor Relations for Major League Soccer (MLS); **Robert Foose**, Executive Director of the Major League Soccer Players' Union (MLSPU); [redacted] Philadelphia Union player [redacted] Philadelphia Union player [redacted]

[redacted] Philadelphia Union player [redacted] player for the Philadelphia Union; [redacted] player for the Philadelphia Union; **Paul Rushing**, Head Athletic Trainer for the Philadelphia Union; **Steve Hudyma**, Assistant Athletic Trainer for the Philadelphia Union; **Shep Messing** sports commentator and former sports agent and soccer player; **Mike Morris**, sports agent; and **Diego Guitierrez**, former Sporting Director and head of scouting and player development for the Philadelphia Union. The deposition of **Jay Sugarman**, co-owner of the Philadelphia Union, was received as evidence in lieu of testimony. (CL 12)

As an initial matter, Claimant has named both Pennsylvania Professional Soccer LLC and Keystone Sports Entertainment LLC as Respondents in this matter. Counsel for Respondent avers in their brief that Claimant was at all times employed by Pennsylvania Professional Soccer LLC and not Keystone Sports and Entertainment. This is contrary to the evidence (See Employment Agreement Addendum RX 5). In any event, Respondent has made no motion to dismiss Keystone as Respondent in these proceedings. Accordingly, both entities will be referred to jointly as Respondent or the Philadelphia Union.

ISSUE

At arbitration hearing, the parties stipulated to the following issue:

Whether any claim or counterclaim should be sustained. If sustained, the damages will be subject to proof. (T. 4)

I. BACKGROUND

Summary

Claimant Piotr Nowak was born in Poland and began playing professional soccer at age 15. In 1998, Mr. Nowak was signed to play soccer for the Major League Soccer team Chicago Fire. Mr. Nowak was captain of the team, and played for them for five years. Mr. Nowak retired as a player, and then was hired by DC United as head coach. He had success as coach with DC United, taking them to the playoffs and winning the Supporter Shield in 2006. After leaving DC United, the Claimant became the interim coach of the U.S. Men's National Team. He also became the head coach of the U.S. U23 Olympic Team. Mr. Nowak had a reputation for being a good coach, but one with a passionate and fiery streak.

The Philadelphia Union franchise was created in 2008, their first season being 2010. Mr. Nowak was hired as manager and head coach after Respondent paid monies to U.S. Soccer to release Mr. Nowak. As shown below,

the parties entered into an employment agreement and marketing rights agreement in June 2009.

The Claimant had initial success as coach of the Philadelphia Union, with the team making the playoffs in 2011, only the second year of their franchise. Mr. Sakiewicz testified that going into the 2012 season, he had no intention of terminating the Claimant as head coach. (T. 546) Demonstrating this, the parties entered into an addendum Employment Agreement at the end of 2011, increasing the Claimant's compensation and extending the term of the Employment Agreement until December, 2015. The Respondent also gave monies to the grievant, through an advance and loan, totaling $145,000, so that Mr. Nowak could buy a house in the Philadelphia area.

However, due to a series of events, Respondent terminated the Claimant on June 13, 2012. Respondent contends that the Claimant was fired for cause; therefore it has refused to pay Claimant any monies owed under the Employment Agreement beyond the June 13, 2012 termination date. Respondent also claims that, given Mr. Nowak's termination, the unpaid monies it advanced and loaned to Claimant became immediately due upon his separation from employment.

Players are employed by Major League Soccer (MLS), not by the Philadelphia Union. On the other hand, as demonstrated by the Employment Agreement, Claimant was employed by Respondent. Players are represented

for collective bargaining purposes by the Major League Soccer Players' Union (MLSPU). The Players' Union Executive Director, Mr. Foose, met with Philadelphia Union players on March 12, 2012. After that meeting, and in response to an issue raised about [redacted] Mr. Nowak allegedly engaged in interference with the players' rights to contact the MLSPU, including demanding the names of players who had spoken to the Players' Union, and telling players they should not contact their Players' Union. On or about [redacted] was traded.

On April 21, 2012, the Claimant received a red card ejection for leaving the Technical Area and initiating contact with an opposing player, resulting in a fine and suspension to him, and a fine to the Club. (RX 7; T. 556)

In May 2012, Mr. Messing told Mr. Sakiewicz of a conversation he had with the Claimant in which the Claimant allegedly asked him to find him a new job, and said disparaging things about the Philadelphia Union franchise. Both of these acts violate the Employment Agreement.

On May 26, 2012, Mr. Durbin Executive Vice-President of MLS informed Mr. Sakiewicz that it was beginning an investigation of the Claimant over the alleged interference issue.

On the same date, the Philadelphia Union lost to Toronto, a team that going into the match had not won that season. The Claimant allegedly was angry and told the players that he was cancelling planned days' off and he was scheduling additional training.

On May 31, 2012, Mr. Nowak led a long training run under very hot and potentially dangerous conditions in which he allegedly denied players' the right to water, and required injured players to participate. This led to complaints by Head Trainer Rushing to the League, and was the subject of further MLSPU complaints to the MLS.

On June 6, 2012, Mr. Durbin informed Mr. Sakiewicz that it was going to add further allegations to its investigation, including the May 31 run and Mr. Nowak's alleged interference with the team's medical staff, communicating the League and Players Union concerns over Mr. Nowak's alleged conduct.

On June 10, 2012 MLS staff members interviewed Mr. Rushing and Philadelphia Union players. In those interviews, the MLS learned of further alleged misconduct of Mr. Nowak, involving the hazing of rookie players, and his treatment of players complaining of concussion symptoms.

On June 10, 2012, after the interviews were concluded, Mr. Durbin advised Mr. Sakiewicz of the results of the interviews. The MLS later issued a report which was sent to Mr. Sakiewicz by email (the MLS report) (CX 2).

On June 13, 2012 Mr. Sakiewicz had a meeting with Mr. Nowak in which he advised him of his termination and presented him with a termination letter.

The evidence elicited at arbitration regarding the above allegations is discussed below.

The Termination Letter

The June 13, 2012 letter issued to Mr. Nowak states as follows:

Reference is hereby made to that certain (i) Manager Employment Agreement between Pennsylvania Professional Soccer LLC ("Club") and Piotr Nowak ("Manager"), dated June 1, 2009, as amended (the Employment Agreement" and (II) Agreement between Club and Pino Sports, LL/c, a Florida limited liability company ("Pino"), dated June 1, 2009, as amended (the "Pino Agreement"). Capitalized terms used but not defined in this letter have the meanings given to them in the Employment Agreement.

Club hereby notifies Manager that it is terminating the Employment Agreement, and Manager's employment thereunder, for cause pursuant to Paragraph III(A) due to:

1. various material breaches of League Rules (including the League's Collective Bargaining Agreement), including physical confrontations with players and officials during a Team game resulting in a fine and multi-

game suspension, interfering with the rights of Team players to contact the players' union with concerns, subjecting Team players to inappropriate hazing activities and engaging in behavior that puts the health and safety of team players at risk.

2. material breaches of the Employment Agreement, including engaging in discussions regarding, and otherwise actively seeking, employment by other professional soccer teams in Europe and making disparaging remarks to third parties regarding Club, it's management and ownership.

3. demonstrating gross negligence, including putting the health and safety of Team members at risk by requiring injured players to participate in strenuous training activities, not allowing players to have water during such activities despite temperatures in excess of 80 degrees, ignoring the advice of the head athletic trainer regarding which players are healthy enough to play in games and participate in training sessions and creating an atmosphere where medical issues should be hid from medical staff and not treated.

4. Committing actions that have reflected in a materially adverse manner on the integrity, reputation and goodwill of Club and the Team (in the eyes of the League, U.S. Soccer, current and potential team players, sponsors and fans), including the unusually harsh treatment of players described above, actions during Team games that have resulted in fines and suspensions, the multiple breaches of League Rules and a discussion (by you or an agent on your behalf) with the head of U.S. Soccer that was in very poor taste and left a very bad impression with U.S. Soccer.

5. Multiple incidents of insubordination with respect to the Club's Chief Executive Officer, including claiming at one point (in direct contradiction to the terms of the Employment Agreement) that he does not report to the Club's Chief Executive Officer.

6. Various material breaches of Team Rules, including creating a hostile work environment and culture of fear for Team players and other front office employees by orally berating and physically intimidating fellow employees.

Club has determined that the above infractions are not capable of being cured and believes your continued employment by Club would continue to cause material harm to Club.

Club wishes to remind you in connection with termination of your employment that the Pino Agreement also is automatically terminated (and you now owe the club the portion of the marketing rights fees ($46,041) that were prepaid thereunder to Pino for the remainder of the

> *2012 year), the outstanding principal of, and accrued but unpaid interest on, the Loan are now due and payable and you remain subject to covenants in the Employment Agreement regarding confidentiality, non-solicitation, return of Club property and non-disparagement.* (RX 36)

Employment Agreement

Pennsylvania Professional Soccer LLC a/k/a Philadelphia Union, entered into a Manager Employment Agreement with the Claimant, Piotr Nowak on June 1, 2009. (RX 1) The employment agreement was reached after negotiation by both sides, and the Claimant was represented by counsel. The original agreement had a term set to expire on December 31, 2012. On December 20, 2010, by letter agreement, the parties agreed to extend the employment agreement's term to December 31, 2015, giving the Claimant the additional title of Executive Vice President of Soccer Operations. (RX 3) On December 20, 2011, the parties agreed in writing that the December 20, 2010 addendum was null and void, to be replaced by the December 20, 2011 addendum which amended the terms of the original employment agreement with regard to Claimant's title and compensation, granted Claimant a loan, and confirmed that the employment agreement was extended to December 31, 2015, and otherwise incorporated the initial employment agreement in all relevant respects. (RX 5)

The Employment Agreement in effect as of the time of the Claimant's termination had the following terms, of relevance in this dispute:

I. EMPLOYMENT

(A) Subject to the terms and conditions set forth herein, Club hereby employs Manager to be, and Manager accepts the employment as, the sole manager of the Team and the Club's soccer operations…

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(C) Manager expressly acknowledges that Manager is subject to the jurisdiction of the Commissioner of the League and that the Commissioner (subject to any due process and appeals process provided for in League Rules) and Club (subject to Paragraph XIII) may impose sanctions and other disciplinary measures, including, without limitation, suspending Manager (with or without pay) and imposing fines (which may be deducted from amounts payable to Manager pursuant to Paragraph IV), for violations of this Agreement or for actions (including on-field actions) that materially adversely affect the integrity or reputation of the League or the Team. Without limiting the foregoing, Manager expressly acknowledges and agrees that he shall be subject to discipline by the League (subject to any due process and appeals process provided for in League rules) or Club (subject to Paragraph XIII), including, without limitation, fines, suspension (with or without pay) or termination of this Agreement, if:

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> *(v) he makes a statement or engages in conduct (including, without limitation, criticism of officiating and league disciplinary rulings) that is materially prejudicial to the interests of the League or the Team or materially detrimental to the public image and/or reputation of the League, the Club and/or the game of soccer.*

The League (subject to any due process and appeals process provided for in League rules) or Club (subject to Paragraph XIII), as applicable, shall determine, in good faith and its sole discretion, whether Manager has engaged in any of the above listed behaviors.

III. Termination

(A) This Agreement, and Manager's employment hereunder, will be deemed to be terminated prior to the expiration of the Term upon the death of Manager. In addition, Club may terminate this Agreement, and Manager's employment hereunder, upon written notice by Club to Manager in the event of the occurrence of any of the following:

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(2) Manager's willful failure, neglect or refusal to render services hereunder, or any material breach of this Agreement or the Pino Agreement as defined below by Manager;

(3) Manager's gross negligence or willful misconduct in performing his duties hereunder;

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(5) Manager's commission of any action or involvement in any occurrence that (x) brings Manager into public disrepute or (y) reflects in a materially adverse manner on the integrity, reputation or goodwill of Club or the Team

(6) Manager engages in any activity set forth in paragraph I(C);

(7) Manager's failure to comply in all material respects with Team Rules (consistently applied to the coaching staff of the Team) or League Rules; or

(8) Club is directed by the Commissioner of the League to terminate or suspend this Agreement as a result of the acts or omissions of Manager.

(B) Club may also terminate this Agreement upon written notice to the Manager for any reason other then as set forth in Paragraph III(A) above or for no reason….

(C) Upon termination of this Agreement pursuant to Paragraph III(A) or (B) above, all of the rights and obligations of the parties hereunder…., shall forever cease, including, without limitation, the rights and obligations of the parties under Paragraphs IV (Compensation) and V (Additional Benefits), except that (1) Club shall remain obligated to pay Manager any portion of the applicable Base Salary Amount and all bonuses that have been earned by Manager pursuant to Paragraph IV (A) or IV (C), as applicable, below but have not yet been paid as of the date of termination and (2) in the event of Manager's termination by Club pursuant to Paragraph III(B) above…, Club shall remain obligated to pay Manager, in accordance with the payment schedule set forth in Paragraph IV(B) below and subject to the terms of Paragraph III(D) below, the applicable Base Salary Amount provided for in Paragraph IV(A) below through December 31, 2015 (the Severance Payments").

Whether Club has terminated this Agreement pursuant to Paragraph III(A) or (B) shall be determined in good faith by Club at it's reasonable discretion; provided that (i) prior to terminating Manager pursuant to

Paragraph III(A), Club shall specify in reasonable detail the reason Manager is being so terminated and give Manager an opportunity to respond thereto, (ii) such determination shall be subject to Paragraph XIII, and (iii) prior to terminating Manager pursuant to clause (2), (3), or (7) of Paragraph III(A), Club shall allow Manager fifteen (15) days to cure the occurrence, except that Club shall have no obligation to provide Manager such opportunity to cure if Club determines, in his good faith judgment, that the occurrence is of a nature that is not curable or that Manager's continued employment during a cure period could be reasonably be (sic) expected to result in material harm to Club.

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XIII GOVERNING LAW, ARBITRATION AND ATTORNEYS' FEES

This Agreement shall be governed by and construed in accordance with Pennsylvania law, without giving effect to any choice or conflict of laws provision or rule thereof. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, including, without limitation, any claims for wrongful termination or employment discrimination or disputes regarding Manager's right to Severance Payments hereunder, shall be settled by arbitration in accordance with the rules of the American Arbitration Association and under the laws of the state of Pennsylvania (without giving effect to the choice or conflict of law principles thereof); provided, however, that nothing herein shall prevent either party from seeking equitable relief from a court of competent jurisdiction. Any such arbitration shall be in the Philadelphia, Pennsylvania metropolitan area and the parties hereby consent to jurisdiction of any court located in Pennsylvania as maybe necessary to enforce this provision or from which equitable relief is sought hereunder. With respect to a dispute arising hereunder, the prevailing party shall be entitled to prompt reimbursement from the other party for reasonable attorneys' fees and costs incurred in connection therewith.

II. EVIDENCE REGARDING ALLEGATIONS AGAINST CLAIMANT

Claimant's Alleged Interference with Players' Union Activities

Mr. Foose testified that in line with his regular practice, on March 15, 2012, he went to visit the players of the Philadelphia Union in his capacity of Executive Director of the MLSPU. Mr. Foose testified that the MLSPU

representatives visit each Club in the pre-season and meet the full locker room, including new players. As stated, unlike a typical employer-employee relationship in other sports, the League employs the players, not the Club.

Mr. Foose testified that, in line with prior practice, he split up the players into two groups, one composed of those new to the league, and a larger group of veteran players, discussing pertinent issues in each group.

On March 15, 2012, according to Mr. Foose, he learned that [redacted] Since all players in every Club are employed by the League, the MLSPU usually discusses issues raised by players with the League.

Mr. Foose testified that he felt the simpler thing in this case was to discuss the issue directly with Philadelphia Union Sporting Director Diego Guitierrez, a former player and member of the MLSPU, so he gave him a call. Mr. Foose spoke to Mr. Guitierrez, and had a follow-up email exchange, in which Claimant was copied. Mr. Foose testified that the final email between them was March 20, 2012 and he considered the matter resolved, so he did not raise the [redacted] issue officially with the League, until the following events transpired. (T. 697-701)

[redacted] was a player with the Philadelphia Union from [redacted] its [redacted] until traded [redacted] was also the [redacted] a current player with the Philadelphia Union who has played there since [redacted]. After the MLSPU meeting with Mr. Foose described above, Mr. Nowak called Mr. [redacted] and Mr. [redacted] to his office. Mr. Gutierrez was also present. According to Mr. [redacted] and Mr. [redacted] Mr. Nowak said to them that if they had an issue, they should raise it with the coaches first, who could handle things internally, and not go the Players' Union. After that closed door meeting, Mr. Nowak had a team meeting and essentially said the same thing. Mr. Gutierrez echoed Mr. Nowak's comments. (T. 434-435; 948-951)

Mr. [redacted] testified that about a week later Mr. Nowak called him while he was home, asked him who had complained about the [redacted] issue to the Players' Union, specifically asking if either he or Mr. [redacted] had been the one. Mr. [redacted] said it was not him and he did not know who raised it. Mr. Nowak repeated that "we can work together, you don't need to use your Players' Union for any issues that arise." (T. 950-952)

Mr. [redacted] testified that approximately two weeks before he was traded, he got a phone call from the Claimant, who asked him if he went to the Players' Union about the [redacted] issue. Mr. [redacted] said he had no idea who went. There

was a suggestion made at hearing that Mr. [redacted] had initially complained, but Mr. [redacted] testified that the first he learned of this allegation in the arbitration proceedings. (T. 436-437; 438-439)

Mr. Foose testified that he also received a phone call from Mr. Nowak directly, in which the Claimant said that he did not understand and he did not think it was appropriate that players should be talking to the Players' Union. Mr. Nowak also said to Mr. Foose that he wanted Mr. Foose to tell him the names of players who had complained about the [redacted] issue. Mr. Foose responded that it was the job of the MLSPU to communicate with its players, it is a daily occurrence, and that he would never divulge a personal conversation he had with a player. Mr. Foose has been the Executive Director of the Players' Union since its inception, and he testified he was stunned by the conversation, and had never had a similar one before. Mr. Foose did not raise the conversation immediately with the League because he feared retaliation against his players. (T. 702-708)

[redacted] was traded on [redacted] Mr. [redacted] did not want to be traded and said so to his coaches. (T. 443-444) The MLSPU had an in-person meeting with the League on May 22, 2012 in which the above issues involving the Philadelphia Union were placed on the agenda by the MLSPU and discussed with League officials at that meeting, which included MLS Executive Vice President Todd Durbin. (T. 709-710)

In his testimony, Mr. Nowak denied that Mr. [redacted] was traded because of his activities with the Players' Union or specifically the [redacted] issue, stating that he was traded due to performance issues. Mr. Nowak and Mr. Guitierrez characterized their discussions with the team and players as telling them that they had an "open door" policy and they should feel free to resolve problems in-house. Mr. Nowak denied instructing the players not to go to the Players' Union. Mr. Nowak testified that his closed door meeting with Mr. [redacted] and Mr. [redacted] involved him complaining that Mr. [redacted] had been "storming in the front office" to complain about the [redacted] ssue. (T. 378-380; 1274)

On or about May 24, 2012, Mr. Sakiewicz received a call from Mr. Durbin of the League, advising him that the MLSPU had filed a grievance with the League, alleging that Philadelphia Union players had been told not to communicate with the Players' Union. Mr. Durbin told Mr. Sakiewicz that the League would be conducting an investigation. (T. 565) Mr. Sakiewicz testified that after he got the call from Mr. Durbin he met with the Claimant, who told him he was upset someone had filed a grievance against him, and he was determined to find out all who had complained. (T. 889)

May 31, 2012 Training Run

Respondent contends that the Claimant violated Article III(A) of the Employment Agreement by refusing to allow players water during a May 31, 2012 training run and requiring injured players to participate in the run, all against the advice of the Club's Head Athletic Trainer, Paul Rushing. Respondent contends that the required run, under difficult physical conditions, was punishment for the Team's prior loss to Toronto on May 26, 2012. Toronto had gone into that game without a previous win.

After the Toronto game, Mr. Nowak testified that he made an emotional speech to the players. (T. 316) As Philadelphia Union players testified, the Claimant told them that they were not going to have a planned four days off, and they should cancel their trips. Claimant told the players that they were going to go home, they were going to work hard, and "shake the trees," and "we are going to figure out who sticks and who doesn't." Mr. Nowak told them that he personally could not be fired, but he made reference to the fact that he had traded away [redacted] and also the leading scorer, and he made it clear he was not afraid to make moves regarding players. (T. 460; 954-956; 1030-1031)

The next game, May 29, 2012, was a U.S. Open Cup game against the Rochester Rhinos. Mr. Nowak was unable to coach as he was serving the suspension he received due to his red card ejection for leaving the Technical

Area during the Team's last U.S. Open Cup game in 2011. (T. 182-184; 320-321; RX 9)

Mr. Nowak called practice for May 31, 2012 at the Youth Soccer Center (YSC). The Claimant ordered that the players do a run on a trail about 100 yards from the YSC facility. The trail had never before been used by the players for training. The trail was pavement, uneven in places, and wound through hills and under trees. The players were required to do approximately three to four intervals on the trail, for about 8 to 12 miles. In addition to the players, Mr. Nowak, Head Trainer Rushing, Assistant Trainer Steve Hudyma, Assistant Coach Hackworth and Assistant Goal Keeper Coach Ron Vartughian were present. Weather conditions were sunny and 80 degrees, and players testified that it was very humid. (T. 213-214; 1074-1079; 1154-1156)

At the beginning of the practice, Mr. Rushing got into an argument with the Claimant regarding injured players – [redacted] (big toe), [redacted] (right ankle), and [redacted] (ankle injury). Mr. Rushing stated his opinion that the injured players should not participate in the run, and that they should stay in the facility and work on non-weight bearing bikes. The Claimant insisted that they all come out to the trail and participate. The Claimant also said that he was going to make the decisions going forward about whether a player would train or play, not Mr. Rushing or team doctors. Mr. Nowak acknowledged in his testimony that he made all players participate, even the injured players, telling

them that they had to at least walk the distance. Claimant further acknowledged that Mr. Rushing advised him that the injured players should not participate, and Mr. Nowak refused to take the Athletic Trainer's advice. (T. 339-342; 1066-1083; RXs 13, 27)

The players were allowed water prior to the run. The trainers brought out twenty four 22-ounce reusable squirt bottles to the trail. It is undisputed that after the players returned to the starting place after the first loop, which was approximately four miles, Mr. Nowak told the players that they could not have water. Instead, they were required to complete the run without water, and were not allowed to hydrate until the end. (T. 203-206; 351; 1076)

Mr. Rushing testified that the Claimant angrily took the bottles away, saying, in a harsh manner, that the players could not have water. Mr. Rushing described how he was very concerned about his players, whose safety was his responsibility to ensure. Mr. Rushing and the Claimant continued to argue about it. At one point, the trainers tried to sneak water to the players as they lapped, but Mr. Nowak grabbed the bottles and threw the bottles into bushes. Although Mr. Nowak initially denied it, he later admitted that he took bottles out of some players' hands and also dumped them into the bushes. (T. 211; 361; 1076-1077; 1258)

Players testified specifically as to what occurred. [redacted] witnessed Mr. Rushing and Mr. Hudyma, the trainers, arguing with Mr. Nowak about the water issue, and saw the Claimant take the bottles and throw them into the woods, saying "you guys don't need water." (T. 962-966) [redacted] and [redacted] testified that after the first interval, they saw and heard the Claimant telling players that they weren't going to have any more water. Mr. Nowak took a bottle out of Mr. [redacted] hand. Mr. [redacted] heard the Claimant say "I'm going to make men out of these guys." Mr. [redacted] complained to Mr. Rushing that it was "hot as hell and we're out here running, there is no reason why guys shouldn't have water." (T. 465-466; 1045-1050)

Claimant admits that he told Mr. Rushing, "No fucking water, put the water back, water will make you lose focus and if you're thirsty you are weak," but claimed he was telling a story about another coach in Germany. (T. 212)

At hearing, Mr. Nowak contended that he denied water to the players because one of the players, [redacted], was sick and he did not want other players to get sick by using the same bottles. Mr. Nowak testified that he had told Mr. Rushing to have individual bottles for each player with their player number on them, and he failed to comply. Mr. Rushing testified that the Claimant did not make this request. (1136) Assistant Trainer Hudyma testified that Mr. Nowak did not say this until before the next day's practice. (1160-1161)

However, at no time during the May 31, 2012 training run did the Claimant use Mr. [redacted] illness as a reason he was denying water to the players. Also, the trainers had individual bottles at the YSC and Claimant did not tell them to get those bottles on May 31. Finally, it was Mr. Nowak's order to have all players participate in the run, including Mr. [redacted] (T. 972; 1049-1050; 1066-1069; 1073; 1162-1163)

Mr. Nowak denied that he was attempting to hurt the players, that he would not do this because the players are the most valuable asset to the team. (T. 1270-1271)

After the May 31 run, and before the next game, [redacted] was diagnosed with a stress reaction, and he did not play for a week. Injured players [redacted] and [redacted] were unable to play for some time after the runs. Mr. [redacted] was not cleared until at least June 16. Mr. [redacted] did not play for at least ten days. Other players went to the team doctor complaining of the effects of the runs. (T. 475-476; 1039; 1126-1127; 1090-1093; 1132; RX 13)

[redacted] testified that during a training a week after the May 31 run, they were allowed to have water but everyone had their own bottle filled up to a specific limit – a half for some, a quarter for others. According to Mr. [redacted] Mr. Nowak told the players that this was "a reminder that they did not need that much water, that the more water you need, the weaker you are." The limitation of water

by Claimant in later practices was corroborated by Mr. [redacted] and Assistant Trainer Hudyma. (T. 973-974; 1049-1050; 1162-1163)

Mr. Rushing testified that he was frustrated and concerned about the May 31 incident so he first called John Galluci, MLS head medical officer, and he sent a letter to the Chief Medical Officer of the Philadelphia Union, Dr. Hummer. In it he recounted the fact that he believed the Claimant put his players' health at risk by having them run the intervals in those conditions without water. Mr. Rushing described in his letter that he attempted to bring the health and safety concerns to the Claimant's attention, and Mr. Nowak told Mr. Rushing that neither he nor their medical staff would make the determination as to which players were healthy enough to play in each game or participate in the training sessions. Mr. Rushing expressed his frustration that he felt his hands were tied in terms of his being able to treat and care for the players. (RX 13)

In addition, on May 31, 2012, Mr. Rushing called Mr. Sakiewicz and advised him of the circumstances underlying the run. Mr. Sakiewicz testified that Mr. Rushing was "pretty shaken and upset." Mr. Sakiewicz informed Mr. Rushing that he no longer reported to Mr. Nowak, but reported directly to Mr. Sakiewicz. Mr. Sakiewicz informed Mr. Galluci of this. (T. 570-577)

Dr. Hummer responded in a June 7 letter to Mr. Sakiewicz, in which he attached Mr. Rushing's letter. Dr. Hummer stated that Mr. Rushing's letter raised

concern, and he gave his opinion that players running under these conditions were subject to significant risk. The doctor also indicated that training and playing decisions should be made with input of the training and medical staff. (RX 13)

It was this incident which lead to a broader investigation by the MLS into Mr. Nowak's conduct.

Hazing of Rookie Players

A practice started in 2010 in the preseason training camps of spanking rookies. In 2012, [redacted] a rookie [redacted], was one of those spanked. Mr. Nowak initiated the practice, and engaged in the spanking of each rookie player, encouraging the rest of the veteran team members to participate. Mr. Nowak had brought the practice to the Philadelphia Union, as he had previously engaged in this when Coach of DC United. In the hazing ritual, Mr. Nowak had a bucket of ice water nearby, in which he would put his hand prior to spanking the rookies. Sometimes he used a sandal to paddle the rookies. (T. 426-427; 438; 970-971)

Claimant admits engaging in this practice, as described above. He testified that he had the approval of the players. Mr. Nowak testified that it was a good tradition and good for their identity as a team. Mr. Nowak testified that he

used the ice water to cool down his own hand, given the number of players that he was paddling. (T. 187-189; 228; 382)

Mr. Sakiewicz was made aware of the hazing in the first year of the practice, in 2010, as he saw a video of it on a cell phone. Mr. Sakiewicz testified that he told the Claimant to stop the practice. To the contrary, Mr. Nowak stated that he informed Mr. Sakiewicz from the beginning, and Mr. Sakiewicz never told him to stop. Mr. Nowak stated that Mr. Sakiewicz enjoyed watching the videos, as recently as 2012. Mr. Gutierrez confirmed Mr. Sakiewicz' knowledge, and said he saw him laughing when he was shown a video of the physical hazing. (T. 189-190; 384; 1215-1218; 1241-1242)

The hazing was brought to the attention of the League and the Players' Union in the MLS investigation of Mr. Nowak's conduct in player interviews, and was a subject of the MLS report.

Concussions

Testimony was elicited regarding Mr. Nowak's approach in the situation of a player having a possible concussion. The MLS has concussion protocols. (RX 68). Mr. Nowak acknowledged that he did not know the concussion protocols, but denied disobeying any kind of MLS regulation or rule. (T. 225-226) Mr. [redacted] testified that, while he was a player for Mr. Nowak, it was not uncommon for Mr. Nowak to call a player a "pussy" for complaining he had a concussion. (T.

479-480) Mr. [redacted] testified that Mr. Nowak told him that "if you have a concussion, you do not need to really miss much time, you're weak if you can't play through a concussion." (T. 971)

Mr. Nowak testified of two situations involving players showing concussion symptoms. Mr. Nowak testified that he went to the team equipment manager and ordered five protective helmets. He did not specifically deny making the above comments. (T. 223-224; 1272-1273)

This issue was brought to the attention of the League and the Players' Union in the MLS investigation of Mr. Nowak's conduct in player interviews, and was a subject of the MLS report.

III. INVESTIGATION BY MLS INTO CLAIMANT'S ALLEGED MISCONDUCT

As stated above, on May 26, 2012, MLS Executive Vice President Todd Durbin advised Mr. Sakiewicz that the League was going to conduct an investigation into the Claimant's alleged interference with the players' union activities.

On June 1, 2012, Mr. Foose, Executive Director of the MLSPU, learned of the May 31, 2012 training run incident and the concussion issue. That same day, Mr. Foose advised Mr. Durbin. On June 4, 2012, the League also learned about the hazing allegations through the MLSPU. On June 6, 2012, Mr. Durbin advised

Mr. Sakiewicz that the League was going to conduct a second investigation into additional allegations against the Claimant, and "the most immediate is a claim by the [Players' Union] that Peter is not following the advice/input of the trainer and medical staff." (T. 710-719; RX 12)

In order to speak to players, the League and the Player's Union entered into a confidentiality agreement. The MLSPU requested this to protect the identity of individuals interviewed, and to prevent reprisal, because, according to Mr. Foose, there was "an atmosphere in the locker room...that players were extremely afraid of anybody finding out that they were talking to anyone...there was a lot of fear amongst the player pool." This was only the second time that MLS and the MLSPU entered into such an agreement. The earlier one also involved an investigation into Claimant's conduct when he coached for D.C. United. Per the agreement, the name and other identifiable information of the players who cooperated would not be disclosed. (T. 715-717; 830)

On June 10, 2012, interviews were conducted by League representatives, who spoke with players and Mr. Rushing about the various allegations. The Claimant was not interviewed. On the same day, Mr. Durbin called Mr. Sakiewicz and advised him of the results of the interviews. Mr. Sakiewicz and Mr. Durbin had communications about what should occur regarding the Claimant. Mr. Durbin communicated the League's and the MLSPU's concerns that the Claimant's actions interfered with the health and safety of the players, and that

Mr. Nowak should be kept away from training or coaching the team while his status was pending. Mr. Durbin testified that he understood from those communications that the Philadelphia Union was going to fire the Claimant, but that he, Mr. Durbin, did not order or direct Mr. Sakiewicz to fire the Claimant. Mr. Durbin advised Mr. Sakiewicz that he would be receiving a written report from the MLS. (T. 718-721; 793-804; 827; 832-835; 847-848)

On June 12, 2012, the MLS issued a report regarding its interviews, providing a copy to Mr. Sakiewicz, but not the Claimant. In the report, which was marked "Privileged and Confidential", the interviews were summarized regarding the following allegations: 1) jeopardizing the health and safety of players by restricting access to water during training and by requiring injured players to participate in training activities against the advice of team medical staff; 2) jeopardizing the health and safety of players by creating an atmosphere where concussion symptoms should be kept from medical staff and not treated; 3) interfering with the players' rights to contact the MLSPU with concerns; 4) engaging in inappropriate contact with rookie players as part of annual "hazing"; and 5) creating an overall "culture of fear" where players do not believe they have the ability to raise and address concerns regarding their work environment. (CL X 2) The report went on to summarize the information gleaned from the players and trainer regarding these allegations, without giving the names of players who were interviewed.

As shown above, the information in the MLS report is consistent with the credible direct evidence presented, through witnesses and documents, in this arbitration.

IV. THE TERMINATION OF CLAIMANT

As stated, the Philadelphia Union employed Mr. Nowak, not the League. Mr. Sakiewicz testified that he was shocked by the June 10, 2012 call from Mr. Durbin, advising him of the results of the interviews. Mr. Sakiewicz testified that Mr. Durbin communicated that the League and the MLSPU did not want Mr. Nowak to be allowed near the team, but he, Mr. Sakiewicz, did not follow Mr. Durbin's direction. Mr. Nowak was allowed to participate in the June 11, 2012 practice, and Mr. Sakiewicz told Executive Vice President Debusschere to attend. Mr. Sakiewicz also allowed the Claimant to coach a friendly game with Harrisburg on June 12, 2012, over the objections of the League, while Mr. Sakiewicz had an opportunity to review the MLS report and speak to Mr. Sugarman and other members of the board. (T. 578-582)

Mr. Sakiewicz testified that he made the decision to terminate the grievant on June 12, 2012. (T. 581-582) Mr. Sakiewicz sent the Claimant an email early morning June 13, 2012 and told Mr. Nowak to meet him that day to discuss allegations against him. In the email, Mr. Sakiewicz listed the allegations set forth in the MLS report. (RX 34)

Mr. Sakiewicz met with the Claimant on June 13, 2012, in the presence of Mr. Debusschere. At that time, Mr. Sakiewicz gave the Claimant the termination letter, which Mr. Sakiewicz testified listed the reasons for his decision to terminate Mr. Nowak.

Mr. Sakiewicz testified that he reached his conclusions, based upon his own first-hand knowledge, the contents of MLS report, the information he had received in conversations with others, and after communicating with his colleagues at the Philadelphia Union, including Jay Sugarman. Mr. Sakiewicz testified that it was "100% his decision." Mr. Sakiewicz testified that he terminated Mr. Nowak for the primary reason that he had to protect the health and welfare of his players, as well as the other reasons outlined in the termination letter. Mr. Sakiewicz testified that he had received a strong recommendation from Mr. Durbin and Mr. Foose, who did not want Mr. Nowak to coach the players, but that he made the decision on his own. (T. 585; 588-592)

Mr. Sakiewicz testified that, at the June 13 meeting, he went over the above reasons for terminating Mr. Nowak for cause. According to Mr. Sakiewicz, he offered the Claimant an opportunity to address each allegation, but Mr. Nowak gave very short non-substantive responses, saying that "this is not true," or "this is bullshit." (T. 583-585)

Mr. Nowak testified that he received the email (RX 34) at 7:30 am on June 13, he went to the meeting with Mr. Sakiewicz and Mr. Debusschere about 9:00 am, and he was prepared that he was going to be fired. He was handed the letter of termination, and he told them that the letter was a "bunch of baloney" and he knew they were looking for a reason to terminate him. Mr. Nowak testified that Mr. Sakiewicz said that he should have fired the Claimant last year, Mr. Nowak asked if this was related to a personal matter with Mr. Sugarman, and Mr. Sakiewicz said nothing. According to Mr. Nowak, he and Mr. Sakiewicz shook hands at the end of the meeting. Mr. Debusschere asked for his keys. The Claimant gave no further description of what was said. (T. 151-153)

In the June 13 meeting, Mr. Sakiewicz did not give the Claimant the MLS report. The MLS report was not given to the Claimant until these arbitration proceedings, and after the parties entered into a confidentiality agreement.

V. RESPONDENT'S COUNTERCLAIMS

Pennsylvania Professional Soccer LLC, and Pino Sports, Claimant's limited liability company, entered into an agreement on June 1, 2009 whereby Claimant agreed to provide the Philadelphia Union with his marketing rights – the right to use Claimant's name, photographs and images for publicity purposes. (Pino Agreement) (RX 2)

On or about March 15, 2011, the parties entered into an Advance and Pledge Consent agreement, in which the Philadelphia Union agreed to advance to Pino (Claimant) the remainder of the 2011 fee and all of the 2012 fee under the Pino Agreement. (RX 4; herein **Advance**) Pursuant to the Advance, the payments were due within 30 days of Mr. Nowak's termination, and the parties have stipulated that no such payments were made. (RX 70) The parties agreed at hearing that, of the total amount advanced to Claimant, $46,680.33 was unearned at the time Claimant's was terminated. The parties further agreed that the applicable interest rate is 8%. Respondent seeks an Order requiring Claimant to remit to Respondent $46,680.33, plus accumulated interest, and associated costs and attorneys' fees.

Pursuant to the Amended Employment Agreement (RX 5) Respondent provided Claimant with a $60,000 loan which was to be paid back through payroll deductions during the remainder of the term of the Employment Agreement. (herein **Loan**). The Amended Employment Agreement required that upon Mr. Nowak's termination from the Club, the balance of the Loan became due and payable and that any delay in re-payment under those circumstances would result in interest accruing at a set rate. The parties agreed that, of the principal balance of $60,000, the amount of $53,717 remained unpaid. The parties further agreed that the interest rate applicable to the Loan is 7%. (RX 70) Respondent

seeks an Order requiring Claimant to remit to Respondent $53,717, plus accumulated interest, and associated costs and attorneys' fees.

DISCUSSION

The Claimant contends that Respondent acted in bad faith contrary to the terms of the Employment Agreement, by terminating him and alleging that his conduct was so egregious that it was incapable of being remediated. According to Mr. Nowak, the claims in whole and in part were mere pretext to avoid honoring the terms of his contract. The Claimant argues that he was fired in a fundamentally unfair manner, without granting him certain rights of process provided for under the Employment Agreement. Mr. Nowak does not dispute the Club's right to terminate him, but he does dispute the right to terminate him for "cause" and deprive him of the livelihood for which he had contracted. Claimant contends that Respondent acted in bad faith by: 1) failing to confront Mr. Nowak with their concerns or inquire of Mr. Nowak his version of the events that the Club contends are the basis for his termination; 2) by failing to provide him with an opportunity to cure any alleged defects; 3) by refusing to ever identify his accusers, other than Mr. Rushing; and 4) by ultimately deciding his termination would be for "cause" when there was no good faith support for such an assertion. Mr. Nowak requests that the arbitrator sustain his breach of contract claim and award appropriate damages, including attorneys' fees and costs, pursuant to the Employment Agreement.

To the contrary, Respondent contends that, shortly after the 2011 contract extension, Mr. Nowak engaged in a pattern of conduct that not only violated the express terms of the Employment Agreement, but left the Philadelphia Union no choice but to exercise its discretionary right to terminate the Employment Agreement, effective Jun 13, 2012. According to Respondent, Claimant's actions which form the basis for his firing were either admitted by Claimant, or established through credible testimony at arbitration. Respondent contends that the actions of both MLS and the MLSPU left the Philadelphia Union no choice but to exercise its discretionary right to terminate the Employment Agreement, and to determine that Claimant could not cure his misconduct. Respondent seeks an Order dismissing Mr. Nowak's claim, upholding its counterclaims, awarding appropriate relief regarding its counterclaims, and awarding it attorneys' fees and costs for this arbitration as well as the federal court matter in which Respondent had to seek an order compelling arbitration under the terms of the Employment Agreement.

On the basis of the record evidence and the arguments of the parties, I conclude that Claimant has failed to prove that his firing was in violation of the Employment Agreement. Rather, I conclude that Claimant, through his conduct, violated the terms of the Employment Agreement, and Respondent had the right to terminate him without being required to compensate him from the period of his termination through the end of his contract.

Mr. Nowak was a talented coach, with a fiery and passionate disposition. The Philadelphia Union was aware of these traits, and knew what they were "buying" when they brought him in as their first coach. Mr. Nowak achieved success, and at the end of 2011, the Philadelphia Union extended his contract until December 2015. However, Mr. Nowak engaged in a course of conduct in 2012 that justified his termination.

Turning to the language of the Employment Agreement, from which my jurisdiction is based, I note that the Employment Agreement was the product of joint negotiations, at which time the Claimant was represented by counsel. Paragraph 1.III sets out the respective rights of the parties in the situation of the termination of the Employment Agreement. Subparagraph III (A) lists circumstances under which Respondent could terminate Claimant for engaging in specific acts. Subparagraph III (B) grants Respondent the right to terminate the Employment Agreement upon written notice to Claimant for any other reason, or for no reason.

Remedies to Claimant upon termination differ depending upon whether the termination falls under III (A) or (B). In the situation of a III (A) termination, Respondent is only responsible to pay Claimant salary and bonuses earned but not yet paid as of the date of termination. Under a III (B) discharge, Respondent is free to terminate the Employment Agreement, but must pay Claimant the base

salary owed through the end of the contract term, which in this case would have been December 2015. The parties have agreed in the Employment Agreement that the determination of whether the termination falls under III (A) or (B) shall be made "in good faith by Club at its reasonable discretion."

The Employment Agreement goes on to state that before terminating the Claimant pursuant to clause (2), (3) or (7) of Paragraph III (A), the Club shall allow the Claimant 15 days to cure the occurrence, unless the Club determines, in its good faith judgment, "that the occurrence is of a nature that is not curable or that Manager's continued employment during a cure period could be reasonably be (sic) expected to result in material harm to the Club." Paragraphs (2), (3) and (7) relate to the following conduct:

> (2) Manager's willful failure, neglect or refusal to render services hereunder, or any material breach of this Agreement or the Pino Agreement as defined below by Manager;
>
> (3) Manager's gross negligence or willful misconduct in performing his duties hereunder;
>
> (7) Manager's failure to comply in all material respects with Team Rules (consistently applied to the coaching staff of the Team), or League Rules;

In its Termination letter to Claimant, Respondent indicated that it terminated Mr. Nowak under the III (A) section of the Agreement, and then goes on to list specific alleged acts of Claimant as Respondent's basis for it decision. Respondent does not indicate which paragraph or paragraphs it is relying upon

under III (A), but Respondent does include the cure language, concluding that the infractions were not capable of being cured and it believed Claimant's continued employment by Club would continue to cause material harm to Club.

Respondent claims in its brief that the Philadelphia Union was forced to terminate the Claimant by MLS and the MLSPU, going so far as to rely upon paragraph III (A) (8), which speaks to the situation where the Club is directed by the Commissioner of the League to terminate Claimant. This argument goes against the clear testimony of Respondent's witnesses. Mr. Sakiewicz testified that Mr. Nowak's termination was "100% his decision," and that he based his decision not just on the MLS report, but on other factors of which he had first-hand knowledge. Mr. Sakiewicz refused to follow the recommendation of Mr. Durbin to immediately move him away from players, and he allowed the Claimant to train and coach while he was reviewing the allegations and speaking to Philadelphia Union colleagues. Mr. Durbin of the League denied that he had directed Mr. Sakiewicz to fire Claimant. There is no evidence that the Commissioner of the League directed the Philadelphia Union to fire Mr. Nowak.

Moreover, this argument is contrary to the clear language of the termination letter, which discusses the cure language of the Employment Agreement. The cure language does not apply to the situation where the MLS directs the termination of the Claimant. If the Philadelphia Union was relying upon the theory that the League had directed the Club to terminate the Claimant,

there would have been no need to discuss whether Claimant could cure his misconduct. Therefore, I conclude that the MLS and/or MLSPU did not direct or require the Club to fire Mr. Nowak.

I further find, given the language of the termination letter, that Respondent relied upon subparagraphs (2), (3) and (7) of III (A) in firing Mr. Nowak. Accordingly, I shall not consider arguments raised in Respondent's brief related to other bases for termination under the Employment Agreement.

Turning to the allegations against the Claimant, I find that the record established that Mr. Nowak engaged in egregious misconduct in violation of the above provisions of the Employment Agreement. I draw the below conclusions based upon the credible testimonial and documentary evidence introduced in this proceeding.

First, I conclude that Mr. Nowak interfered with players' rights to engage in union activities. His actions are textbook examples of attempts to interfere with, restrain or coerce employees from engaging in their protected right to consult with their Players' Union representatives regarding their concerns over terms and conditions of employment without reprisal.[1] Mr. Nowak told players not to go to the Player's Union, but instead deal with issues in-house. Mr. Nowak called the [redacted] Mr. [redacted] and Mr. [redacted], into a closed door meeting, and

[1] See, Section 7 of the National Labor Relations Act, 29 U.S.C §157.

demanded to know the names of individuals who had complained to the Player's Union. Mr. Nowak called Mr. [redacted] later by phone, again to try to get him to name names. Such conduct was clearly coercive. Mr. Nowak went so far as to call Mr. Foose of the Players' Union, again demanding to know the names of those who had complained. Mr. Nowak acknowledged his behavior to Mr. Sakiewicz, demonstrating he did not understand the coercive effect of his actions on the players.

[redacted] was traded only a few weeks later. A reasonable inference may be drawn that this decision was an act of retaliation by Mr. Nowak, given Mr. Nowak's above behavior, as well as his testimony that he believed it was either Mr. [redacted] who had made the complaints about the [redacted] issue.

Turning to the next allegation, I conclude that Mr. Nowak engaged in egregious behavior, threatening the safety and health of his players, with respect to the May 31, 2012 training run. After a difficult loss to Toronto, the Claimant held a team meeting, the intent of which was clearly to threaten players with being traded, mentioning Mr. [redacted] by name, and advising them that planned days-off would be cancelled, and further training would be scheduled. Given the Claimant's prior behavior, this threat had special significance.

While a coach certainly needs to motivate players, and to that end can require them to engage in arduous training, Mr. Nowak's actions here crossed the line. Mr. Nowak required all players, including those who were injured, to engage in the training run of about 10 miles over uneven surface, against the advice of the lead trainer, Mr. Rushing. Even though the players were running in 80 degree heat, the Claimant demanded that they run without water. Although he initially denied it, Mr. Nowak admitted that he went so far as to take bottles of water out of players' hands and throw them in the woods. The Claimant admits that he said to players, "No fucking water, put the water back, water will make you lose focus and if you're thirsty you are weak." Mr. Nowak's claim that he was only telling a story about another coach is simply not believable.

Mr. Nowak claimed at hearing that he was denying players water because one of the players, Mr. [redacted], had the flu, and he did not want to spread the disease. But Mr. Nowak never said this during the training run. If this were the real reason, it could have been easily rectified, as the trainers had individual bottles at the nearby facility, or the trainers could have sprayed water into the players' mouths. Yet Mr. Nowak never directed the trainers to do either of these things. Moreover, if Mr. [redacted] presence was a risk to others, he could have been excluded from the run. But it was the Claimant's decision that all players participate, no matter what their status.

Mr. Rushing and the assistant trainer argued with the Claimant over the fact that injured players were being forced to participate, and that all were being denied water. Mr. Nowak refused to listen to the trainers, and Mr. Nowak told Mr. Rushing that neither he nor the medical staff would make the decision as to which players were healthy enough to play in each game or participate in training sessions.

Claimant argues that Respondent failed to prove that anyone was injured as a result of the training run. The record did show that some players, especially players nursing injuries, had ill effects from the run. Moreover, Claimant's argument misses the point. The grievant's conduct on May 31, 2012 threatened the safety and health of his players. Mr. Nowak put his players, his "assets" as he called them, at significant risk of harm. His attitude towards his certified trainers, in ignoring their advice, and telling them he was usurping their authority going forward, reflected very bad judgment, and showed that in his mind, he was always right. This indicates that Claimant's conduct could not have been "cured."

Also going to the "cure" issue is the fact that in a later run, prior to his firing, he allowed players water, but demanded that they be limited to differing amounts. Indeed, he had lines drawn on bottles and told players that when they finished that amount, that was it. This shows that even after all the controversy of the May 31 run, Mr. Nowak still believed his mistaken approach to be correct.

Moving on to another allegation, which is also related to the issue of threats to the safety and health of players, is the Claimant's proved behavior regarding players who exhibited signs of concussions. It is simply unacceptable, given the common knowledge of the dangers of concussions, for a head coach to vilify those who suffered from symptoms, by calling players "pussies" or "weak." Mr. Nowak's testimony that he attempted to resolve this issue by ordering helmets for players is an ineffective band-aid. What is crucial here is that the Claimant never denied saying these things to players and he thereby encouraged them to hide their symptoms, which could result in serious consequences. Claimant had an obligation to understand the protocol in place, or defer to his trainers and medical staff on this issue, something he demonstrated he did not want to do.

Next, the hazing of rookies, by spanking them, sometimes with a sandal, was completely unacceptable. Mr. Nowak brought this practice to the Philadelphia Union. His description of what he did was quite unnerving, especially when he described how he put his hand in a bucket of ice water to ease his pain, obviously because he was hitting the young people so hard. In the [redacted]one of the rookies spanked[redacted]. While I take notice of the fact that Mr. Sakiewicz was made aware of the hazing, and could have done more to stop it, I nevertheless conclude that the Claimant was responsible for, participated in, and encouraged his veteran players to participate in this deplorable practice.

Finally, Mr. Sakiewicz indicated in his testimony that in deciding to fire Mr. Nowak he relied upon other actions by Claimant. First, there was evidence that the Claimant attempted to obtain other work while employed as head coach of the Philadelphia Union, a violation of his Employment Agreement. Also, he made disparaging statements about the Philadelphia Union and its management to Shep Messing, sportscaster and former agent. Mr. Nowak had a red card ejection in April 2012, resulting in a fine and suspension assessed against him and fine assessed against the Club, for his leaving the Technical Area and initiating contact with an opposing player during a match with Chivas USA. This was his second such red card ejection while with the Club. Suspensions for both were enforced in May 2012.

To summarize, the Claimant engaged in numerous acts justifying termination under Section 1.III(A) of the Employment Agreement. The Claimant counters that Philadelphia Union breached the Employment Agreement first, by failing to provide him with reasonable details regarding the reason for his termination, a meaningful opportunity to respond to the accusations, and an opportunity to cure any defects in his performance.

I note, first, that Pennsylvania is an employment at-will state.[2] Claimant is not relying upon any external statute or exception to the at-will doctrine.

[2] *Geary v. U.S. Steel*, 456 Pa. 171,184 (1974).

Therefore, Claimant is limited to those rights he bargained for in his Employment Agreement. The Employment Agreement does not grant the Claimant the right to notice and an opportunity to respond *before* the decision to terminate is made. The Agreement granted Claimant the right to be given the reason he was being terminated in reasonable detail. Mr. Sakiewicz did so in the letter of termination which was given to Mr. Nowak on June 13, 2012. The Employment Agreement further states that Claimant had the right to an opportunity to respond. Mr. Nowak acknowledged that he was granted that right in the termination meeting but did not seize that opportunity, instead he was dismissive of the charges against him and gave no meaningful defense. In light of what Mr. Sakiewicz knew about the Claimant's conduct, and the MLS report, Mr. Sakiewicz drew the reasonable conclusion that the Claimant's behavior could not be cured; accordingly he was not granted 15 days to attempt to do so.

Claimant has also argued here that he was denied a meaningful opportunity to respond to the charges as he was not given a copy of the MLS report until these arbitration proceedings, and he was not told the names of his accusers. As to the latter point, Mr. Nowak acknowledged in his testimony that he knew that it was his players who had been interviewed by the League, and even professed to knowing which ones had been interviewed. As to the issue of the MLS report, I agree it would have been better if Respondent had allowed Claimant the opportunity to review the report when he was terminated, so that he could respond at the time. However, to the extent there was any prejudice, it

was cured in this arbitration proceeding, the right he bargained for in his Employment Agreement. In this forum, Claimant has had the full opportunity to respond to the report, and to cross-examine his accusers. Accordingly, I find that Claimant was granted all rights afforded to him under the Employment Agreement.

I conclude that Respondent did not violate the Employment Agreement in the manner it terminated the Claimant, nor did they act in bad faith. Moreover, on the basis of the arbitral evidence, I find Respondent reasonably exercised its discretion under the Employment Agreement by reaching the conclusion that Claimant could not cure his misconduct .

Based upon all the above, I find that Claimant engaged in egregious conduct, within the language of 1.III (A) of the Employment Agreement. Accordingly, Claimant has not demonstrated that Respondent violated the Employment Agreement by terminating Claimant.

In accordance with the Employment Agreement, Claimant is entitled to only the base salary amount and all bonuses earned but not paid as of date of termination. Claimant here has requested that he receive the contract bonus for being selected as Head Coach of the MLS All-Star game in 2012. I take judicial notice that Claimant was so selected prior to his firing, but due to his breach of the Employment Agreement, he was unable to serve in that position as the game

took place after his termination. It is implicit that the parties agreed that the Claimant would be able to serve as Coach of the All-Star game in order to be entitled to the bonus; therefore Claimant did not "earn" the bonus. Accordingly, I shall deny Mr. Nowak's claim that he receive those bonus monies. There was no argument made by Claimant that he did not receive his base compensation up to his termination.

With respect to Respondent's counterclaims, the parties have stipulated that Mr. Nowak has failed to repay in full the Advance under the Pino Agreement, and the Loan pursuant to the Amended Employment Agreement upon his termination. I therefore shall order that Claimant remit to Respondent the amounts due at the applicable interest rate, as stipulated to by the parties.

I shall further order that Respondent, as prevailing party, shall be entitled to attorneys' fees and recoverable costs in connection with this arbitration proceeding. Respondent also seeks attorneys' fees and costs in response to Claimant's initial lawsuit against Philadelphia Union in U.S. District Court for the Eastern District, and Respondent's successful effort to compel arbitration in accord with the agreement of the parties. I shall order that Respondent is entitled to attorneys' fees and recoverable costs incurred in that lawsuit. Such attorneys' fees and costs shall be the subject of a fee petition, which in the absence of agreement of the parties, shall be submitted to me for determination within 60 days of this Award. I will retain jurisdiction over this issue.

The parties entered into a confidentiality agreement, by my Order, on November 20, 2013, related to the "information, documentation or testimony provided during discovery, hearings and/or at any arbitration in this matter." The parties seek a determination as to whether that confidentiality agreement stays in effect, for how long it is effective, and how it shall apply to the arbitration award in this matter. In the absence of agreement, the parties shall submit to me their respective positions with respect to the confidentiality agreement within 60 days of this Award.

AMERICAN ARBITRATION ASSOCIATION

EMPLOYMENT ARBITRATION TRIBUNAL

In the Matter of Arbitration:

Piotr Nowak
The Claimant/
Counterclaim Respondent

v.

Pennsylvania Professional Soccer LLC
and Keystone Sports and Entertainment
LLC
The Respondent/
Counterclaim Claimant

v. Pino Sports LLC
Counterclaim Respondent

AAA Case No. 14 120 1200 1589

INTERIM AWARD OF THE ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been duly sworn and having duly heard the proofs and allegations of the parties, **HEREBY ORDER** as follows:

1) All claims of Claimant submitted in this forum are DENIED.

2) Respondent's counterclaims are UPHELD.

a) In light of the stipulation of the parties at hearing as to amount and rate of interest, Claimant is ordered to pay Respondent in full the amount unearned at the time Claimant was terminated, or $46,680.33 plus accumulated interest at 8% until paid, for the Advance under the Pino Agreement.

b) In light of the stipulation of the parties at hearing as to amount and rate of interest, Claimant is ordered to pay Respondent in full the amount unpaid at the time Claimant was terminated, or $53,717 plus accumulated interest at 7% until paid, for the Loan pursuant to the 2011 Extension Employment Agreement.

3) Respondent, as prevailing party, shall be entitled to attorneys' fees and recoverable costs in connection with this arbitration proceeding in accordance

with the parties' Employment Agreement. Respondent shall also be entitled to attorneys' fees and recoverable costs in connection with Claimant's initial lawsuit against Philadelphia Union in U.S. District Court for the Eastern District, and Respondent's successful effort to compel arbitration in accord with the Employment Agreement. Such attorneys' fees and costs shall be the subject of a fee petition, which in the absence of agreement of the parties, shall be submitted to me for determination within 60 days of this Interim Award. I will retain jurisdiction over this issue for a reasonable period.

4) The parties shall submit their positions regarding the issues related to the confidentiality agreement within 60 days of the issuance of this Interim Award, in the absence of agreement of the parties. I will retain jurisdiction over the issue for a reasonable period.

5) To date, Claimant is responsible for $12,500, and Respondent is responsible for $4,050 in administrative fees and expenses of the American Arbitration Association. To date, the compensation owed to the Arbitrator is $36,000 and that fee shall be split between the parties.

April 21, 2015
Date

Margaret R. Brogan

I, Margaret R. Brogan, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

April 21, 2015
Date

Margaret R. Brogan

EXHIBIT "L"

AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT ARBITRATION TRIBUNAL

IN THE MATTER OF ARBITRATION BETWEEN:

Piotr Nowak The Claimant/ Counterclaim Respondent	:	**Final**
v.	:	Opinion and
Pennsylvania Professional Soccer LLC and Keystone Sports and Entertainment LLC The Respondent/ Counterclaim Claimant	:	Award
v. Pino Sports LLC Counterclaim Respondent	:	

Re: AAA Case No. 14 120 1200 1589

Before
Margaret R. Brogan, Esquire
Arbitrator

Appearances

For the Claimant/Counterclaim Respondent
Clifford E. Haines, Esquire
Haines & Associates
1835 Market St., Suite 240
Philadelphia, PA 19103

For the Respondent/Counterclaim Claimant
Thomas G. Collins, Esquire
Anthony F. Andrisano, Jr.
Buchanan Ingersoll & Rooney PC
409 N. Second St., Suite 500
Harrisburg, PA 17101

Background

This matter is premised upon the claims of Piotr Nowak (Claimant or Mr. Nowak), former head coach, manager and Executive Vice President of Soccer Operations for the Philadelphia Union (Respondent or Philadelphia Union), a Major League Soccer Club. In short, the Claimant contended that Respondent terminated him on June 13, 2012 without cause, and in bad faith, contrary to the terms of the parties' Employment Agreement, from which my jurisdiction as arbitrator is based.

To the contrary, Respondent contended that it had cause to terminate the Claimant under the Employment Agreement for specific alleged misconduct. Respondent also has made counter-claims in this proceeding: 1) alleging that the Claimant has failed to reimburse Respondent the remaining monies advanced pursuant to an agreement reached between the Respondent and Pino Sports LLC, Claimant's limited liability company. (The Pino Agreement) Under the Pino Agreement, Claimant had granted his marketing rights to Respondent; and 2) Claimant failed to repay the remaining balance of a loan made to Claimant by Respondent.

Initially, Claimant sought to litigate this matter in the United States District Court for the Eastern District by filing a Complaint on July 20, 2012. Counsel for Respondent filed a Motion to Dismiss the Complaint and Compel Arbitration, as the Employment Agreement has an arbitration clause which governs these

disputes. On September 26, 2012, the Court issued an Order compelling Claimant to pursue his claims through arbitration. On December 5, 2012, Claimant filed a Demand for Arbitration with the American Arbitration Association, and the undersigned was selected as arbitrator in line with the Association's procedures.

Arbitration hearings were held in this matter on May 28, 29 and 30, 2014, and August 19 and 20, 2014, at which time all parties were granted the full opportunity to present testimonial and documentary evidence in support of their positions. Both sides filed written briefs and reply briefs which were received by the undersigned by December 24, 2014.

On April 21, 2015, I issued the Interim Award in the above matter. In that Interim Award I denied the claims of Claimant and upheld Respondent's counterclaims submitted in this arbitration. I further ordered Claimant to pay amounts owed under the Pino Agreement and the 2011 Extension Employment Agreement. I concluded that Respondent, as prevailing party, was entitled under the employment agreement to attorneys' fees and recoverable costs in connection with this arbitration proceeding, and in connection with Claimant's initial lawsuit against Philadelphia Union in U.S. District Court for the Eastern District and Respondent's successful effort to compel arbitration.

I further ordered that Respondent submit, within 60 days of its issuance, its fee petition. Respondent did so, through the American Arbitration Association (AAA), requesting a reimbursement of fees and costs totaling **$454,258.89**, providing a redacted copy of its supporting documents to the Claimant and an unredacted copy to the arbitrator for *in camera* inspection. Claimant was advised of this in Respondent's June 19, 2015 fee petition. For months, Claimant did not respond to the fee petition or the issue of the redacted documentation. Through AAA, I set a final deadline of October 2, 2015 for response. On October 6, 2015, Claimant requested an extension of that deadline, which I granted.

On October 6, 2015, Claimant responded to the fee petition, stating that the unredacted copies make it impossible for Claimant to assess the reasonableness of the Respondent's request, and indicating that Respondent has not met its burden of providing evidence in support of the reasonableness of its time entries. Claimant seeks a denial of the fee petition, in essence arguing that Respondent is not entitled to the full remedy it seeks under the employment agreement.

I then ordered the parties to respond to the following by October 23, 2015: 1) Claimant's position regarding whether the arbitration Award in this matter should remains confidential, and its position regarding the arbitrator's viewing of the redacted fee petition documentation *in camera*; 2) Respondent's position regarding Claimant's objection to its fee petition, including explaining in

detail why the items redacted are subject to privilege; and 3) an order that my April 21, 2015 invoice be paid immediately. That invoice reflected work I performed prior to the study and issuance of this Final Award, and I advised the parties, who were asking me to perform work under the employment agreement, that I viewed the failure to pay the $8,100 to be a breach of said employment agreement. As of the date of this Final Award, that amount has not yet been paid. Despite this failure to pay, I view it as my obligation to issue this Final Award. The American Arbitration Association, in line with their rules, has billed the parties, collected monies from the parties and sent reminders to the parties regarding my fees. In accordance with AAA rules, the arbitrator has not been involved in this process.

On October 23, 2015, Respondent responded to my Order on the issue of redaction, outlining argument as to why an *in camera* inspection by the arbitrator was appropriate in order to protect the attorney-client privilege, and further contending that the documents provided Claimant provided enough specificity so that Claimant could adequately evaluate the fee petition.

Claimant did not respond to my Order within the October 23, 2015 deadline. Without requesting an extension, Claimant provided AAA its response on October 26, 2015. Despite its lateness, and over the objection of Respondent, I considered Claimant's October 26, 2015 submission. In that submission, Claimant points out that Respondent has the burden to prove that its

request for attorneys' fees is reasonable. Claimant argues that the fee petition must be specific enough to show that the hours spent were reasonable; according to Claimant, the redacted copies do not provide Mr. Nowak the opportunity to challenge the reasonableness of the prevailing party's bill. Claimant does not address the issue of the ability of the arbitrator to review the fee petition documentation *in camera*, as I requested the parties to address. Claimant indicates that it has no objection to the continued enforcement of he confidentiality agreement, nor does he object to the confidentiality of the Award.

DISCUSSION

First, both parties are in agreement that the November 14, 2013 Protective Order remains in effect. Accordingly, I rule that the confidentiality order remains in effect indefinitely and extends to the Awards issued in this matter, unless the release of said Awards is mandated by law and/or ordered by a Court.

Second, I shall consider the fee petition. The Claimant has no objection to costs requested by Respondent, so the reimbursement of costs requested in the fee petition in connection with these arbitration proceeding as well as Respondent's defense of Claimant's lawsuit before the U.S. Eastern District Court and Respondent's successful efforts to compel arbitration in that proceeding shall be so ordered.

As to attorneys' fees, I agree with the Claimant that Respondent has the burden of establishing that its request is reasonable and that documentation should be provided with specificity. *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990).

In his submissions, the Claimant did not speak directly to the issue of whether the arbitrator could evaluate the reasonableness of the fees requested and the specificity of the underlying documentation *in camera*, nor did Claimant provide any authority that I lack the jurisdiction to do so. Respondent here has provided a compelling explanation as to why it has provided redacted documentation regarding the attorneys' fees sought. First, it argues that the redaction and *in camera* inspection preserves the attorney-client privilege which is necessary given that Claimant has already appealed the Interim Award in this matter, so the parties are involved in ongoing litigation involving the same issues as was presented in this arbitration. Second, Respondent has persuasively argued that it provided the following which provides Claimant with sufficient specificity: 1) the date of the legal work performed; 2) the attorney performing each task; 3) the number of hours expended by each attorney on a task; and, 4) in accordance with the Uniform Task-Based Management System, the Activity and Task Codes associated with each specific billing entry.

Therefore, I found it within my authority to conduct an *in camera* inspection, and I did so. I find, based upon my review of the underlying

documentation, that the attorneys' fees requested by Respondent in connection with the work performed by the law firm of Buchanan Ingersoll & Rooney to be reasonable and I shall order all fees and costs of the Buchanan law firm which are the subject of this fee petition be reimbursed, which is in the amount of $381,317.00 in fees and $20,910.11 in costs.

Respondent also requests fees incurred in connection with Respondent's efforts in compelling arbitration before the U.S. District Court for the Eastern District, in response to the Claimant's lawsuit, said work being performed by the law firm of Duane Morris. The documentation provided the arbitrator includes some redaction, without explanation. I performed a line-by-line review and arithmetic analysis and note that the fees and costs sought by Respondent in its fee petition coincide with those entries which were provided to me in unredacted form, and Respondent made no claims over and above those unredacted entries. Therefore, Respondent did not seek reimbursement for work reflected in the redacted entries. The unredacted entries support the Respondent's burden of demonstrating reasonableness and specificity for the amount sought. Accordingly, I find that the amount sought of $52,031.78 in fees and costs to be appropriate and I shall order reimbursement of that amount.

In line with the above discussion, the following is my final award in this matter.

AMERICAN ARBITRATION ASSOCIATION
EMPLOYMENT ARBITRATION TRIBUNAL

In the Matter of Arbitration:

Piotr Nowak
The Claimant/
Counterclaim Respondent

v.

Pennsylvania Professional Soccer LLC and Keystone Sports and Entertainment LLC
The Respondent/
Counterclaim Claimant

v. Pino Sports LLC
Counterclaim Respondent

AAA Case No. 14 120 1200 1589

FINAL AWARD OF THE ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been duly sworn and having duly heard the proofs and allegations of the parties, **HEREBY ORDERS** as follows:

1) The Protective Order of November 13, 2013 shall remain in effect indefinitely and extends to the Awards issued in this arbitration matter, unless the release of said Awards is mandated by law and/or ordered by a Court.

2) The Claimant is hereby ordered to reimburse Respondent for attorneys' fees and costs incurred in this arbitration proceeding, **in the amount of $381,317.00 in fees and $20,910.11 in costs.**

3) The Claimant is hereby ordered to reimburse Respondent for attorneys' fees and costs incurred in defending the lawsuit filed by the Claimant in the U.S. District Court for the Eastern District and successfully compelling arbitration, in **the amount of $52,031.78 in fees and costs.**

4) To date, Claimant is responsible for **$12,450.00**, and Respondent is responsible for **$4,050.00** in administrative fees and expenses of the American Arbitration Association. The outstanding compensation owed to the Arbitrator is **$11,700** and is due and owing in accordance with the employment agreement.

6) This Award is final and is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are, hereby, denied.

November 5, 2015
Date

Margaret R. Brogan

I, Margaret R. Brogan, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument which is my Award.

November 5, 2015
Date

Margaret R. Brogan