FÉDÉRATION INTERNATIONALE
DE VOLLEYBALL

**The**

# FIVB TRIBUNAL

herewith issues the following

# DECISION

**FIVB 2018-04**

on the Request for Review of CF 116/2017 filed by

**Qatar Sports Club ("Claimant")**
represented by Mr. A. Hamid Al -Mulla
General Manager, Doha, Qatar

vs.

**Mr. Sergio Luiz Felix ("Respondent No.1")**
represented by Mr. Rogério Teruo Hangai
FIVB Licensed Agent, Brazil

and

**Mr. Rogério Teruo Hangai ("Respondent No. 2")**

## 1. The Parties

1. The Claimant is a professional volleyball club with its legal seat in Doha, Qatar (hereinafter the "Claimant" or "Club").

2. The Respondent No. 1 is a professional male volleyball player from Brazil (hereinafter the "Respondent No. 1" or "Player").

3. The Respondent No. 2 is a FIVB-licensed agent from Brazil and Director of the agency "Hansports Management" representing, *inter alia*, Respondent No. 1 (hereinafter the "Respondent No. 2" or "Agent").

## 2. The FIVB Tribunal (FIVB Tribunal Judge)

4. Article 19.1.5 of the FIVB Sports Regulations provides as follows:

> *"Cases before the FIVB Tribunal shall be heard by the Chairperson, provided that the amount in dispute does not exceed CHF 200'000 (two hundred thousand Swiss Francs). All other cases shall be heard by the Chairperson and two (2) other members of the FIVB Tribunal, appointed by the Chairperson.* […]*"*

5. Because the amount in dispute in the present case does not exceed CHF 200,000.00, this Request for Review will be heard by the Chairperson as a single judge. Dr. Karsten Hofmann from Germany is the current Chairperson of the FIVB Tribunal and, thus, was appointed as the single judge in the present case (hereinafter the "FIVB Tribunal Judge").

## 3. Facts and Proceedings

### 3.1 Background Facts

6. On or before 26 May 2017, the Club and the Player entered into an employment agreement for the 2017/2018 season (hereinafter the "Contract"). Pursuant to clauses 1 and 2 of the Contract, the Parties agreed to a total salary of USD 109,998.00 (nine consecutive instalments of USD 12,222.00 running from September 2017 to May 2018). Pursuant to clause 5 of the Contract, the Club should pay the amount of USD 10,000.00 "*as agent fees to the player´s agent when player will sign the contract and become in the register of Qatar volley ball federation*[sic]*"*.

7. According to the Club´s submissions, the Club and the Player entered into another employment contract with the same provisions as the Contract but the salary agreed upon was USD 4,000.00 net per month over ten consecutive instalments running from 1 October 2017 to 30 June 2018 (hereinafter the "Amendment"). The Respondents object to the Amendment, which they claim is "*totally false*" and "manipulated" by the Club.

8. On or before 24 September 2017, the Player arrived in Qatar. Thereafter, the Club asked the "Qatar Orthopedic and Sports Medical Hospital (aspetar)" (supposedly the only hospital accredited by the State of Qatar to conduct medical examinations for athletes) to conduct the medical examination of the Player but an examination never took place.

9. The Club made an advance payment of QAR 10,000.00 (equal to USD 2,740.00) to the Player but the Club failed to pay any further amounts to the Player nor any amount to the Agent. The Player participated in one friendly match on 8 October 2017 and in several training sessions.

10. On 14 October 2017, the Club forwarded a technical report issued by the Club´s head coach, Mr. Ghazy Koubaa, in relation to practises and friendly matches. This report states, *inter alia*, as follows: "*The player´s level was very poor compared to team players*."

11. By email dated 17 October 2017, the Agent rejected any poor performance by the Player. Moreover, he drew the Club´s attention, *inter alia*, to the outstanding payments owed to the Player and asked for a response.

12. On the same date, the Agent informed the Brazilian consulate in Qatar of the Player´s situation.

13. According to the Club´s submissions, on 19 October 2017, the Player got into an altercation with a youth player of the Club (allegation of beating a teammate during an official training session). The Player was then suspended and notified thereof through the Club´s head coach. The Player and the Agent contest this incident.

14. By letter dated 23 October 2017, the Player terminated the Contract based on several reasons, including the non-payment of salaries.

15. By letter dated 24 October 2017, the Club terminated the Contract because of alleged breaches of contract by the Player, *inter alia*, the alleged incident of 19 October 2017.

16. On 24 October 2017, the Player entered into a new employment contract with Omonia Athletic Club Nicosia from Cyprus for the 2017/2018 season (hereinafter the "Cyprus Contract"). Under the Cyprus Contract, the Player was entitled to total salaries of EUR 40,000.00 net (five consecutive instalments of EUR 6,650.00 from November 2017 to March 2018 and one additional payment of EUR 6,750.00 by 20 April 2018).

17. Shortly thereafter, the Player left Qatar.

18. On 7 November 2017, the Player and the Agent filed a complaint with the FIVB and paid the respective handling fee of CHF 500.00. The Player requested the "total value" of the Contract and the Agent requested payment of USD 10,000.00 for outstanding agent fees. During the first instance proceeding, the Parties filed several submissions, including the Club´s objection to the FIVB´s jurisdiction.

19. On 24 April 2018, the FIVB General Director issued a decision in the present manner ruling that the FIVB was competent to decide the case and that the Club should pay the amount of USD 58,501.01 net to the Player, the amount of USD 10,000.00 net to the Agent and the amount of CHF 300.00 jointly to the Player and the Agent (hereinafter the "Decision").

**3.2 The Proceedings before the FIVB Tribunal**

20. On 6 May 2018, the Club filed its Request for Review including a copy of the bank certificate for the payment of the handling fee in the amount of CHF 3,000.00.

21. By email dated 9 May 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Request for Review and the applicable handling fee. The FIVB Tribunal Secretariat forwarded the Request for Review to the Player and the Agent and invited them to file an answer by no later than 29 May 2018 (hereinafter the "Answer").

22. By email dated 29 May 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Answer dated 28 May 2018 and signed by the Agent. Moreover, the Parties were informed that their

submissions had been forwarded to the FIVB Tribunal Judge for his review.

23. By email dated 3 July 2018, the FIVB Tribunal Secretariat informed the Parties that the FIVB Tribunal Judge had decided that no further submissions were required in accordance with Article 20.6.1 of the 2017 FIVB Sports Regulations (identical wording as Article 20.7.1 of the 2018 FIVB Sports Regulations). In accordance with Article 20.10.2 of the 2017 FIVB Sports Regulations (identical wording as Article 20.11.2 of the 2018 FIVB Sports Regulations), the FIVB Tribunal Judge requested that the Parties provide a detailed account of their respective costs as well as supporting documentation in relation thereto by no later than 18 July 2018.

24. By email of 19 July 2018, the FIVB Tribunal Secretariat acknowledged receipt of an email dated 17 July 2018 from the agency "Hansports Management" (Ms. Jacqueline Almeida) submitting the Respondent´s statement on costs. Moreover, the Parties were informed that the Club had failed to file any account of costs.

## 4. The Parties' Submissions

25. The following section provides a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the FIVB Tribunal Judge has thoroughly considered all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in this section.

### 4.1 The Claimant's Position

26. The Club objects to the FIVB´s competence to hear and decide the case. Clause 17 of both, the Contract and the Amendment provides for the full jurisdiction of the "*competent courts of the State of Qatar*".

27. The bureaucratic procedures in regard to the visa, the work permit and the medical examination took a lot of time and caused some delay, for which the Club cannot be held liable. By making an advance payment to the Player (USD 2,740.00), the Club showed its good faith.

28. The amount of the salary agreed under the Contract was amended and set to USD 4,000.00 per month. The Club is "*surprised and shocked by the fact that the player did not submit a copy of the modified contract in the complaint documents against the club*".

29. The Player´s performance was considerably less than what was expected by the Club, which acted according to the Contract by notifying the Player of his poor performance and asking him to improve his performance in accordance with clause 10, para. F of the Contract. After the Player´s incident with his teammate on 19 October 2017, the Club was entitled to terminate the Contract.

30. The Decision issued by the FIVB is biased in favour of the Player because the Decision is entirely for the benefit of the Player and the Agent, and, therefore, the FIVB does not fulfil its own objectives as set forth in Article 1.4 of the FIVB Constitution. Furthermore, the Decision is not fair as it did neither consider the Club's expenses in the amount of USD 15,000.00 relating to the Player (airline tickets, accommodation and international transport expenses) and the Club´s loss of up to 50% of the value of the Contract. Moreover, the Decision did not consider the "*flagrant violations committed by the player*", in particular, the deduction of USD 2,000.00 for the Player´s disgraceful behaviour against his teammate and the corresponding damage for the Club´s reputation.

31. Finally, the Club states in its Request for Relief as follows:

> *"**First: In principle***
>
> *Acceptance of the reconsideration request in form and in the subject the cancellation of the financial penalty imposed against the Club and set forth in the decision issued on 24/4/2018 AD due to the incorrectness and inconsistency of the financial statements in the contracts signed between the club and the player.*
>
> ***Second: As a precaution:***
>
> *Reduce the financial penalty imposed against the Club, taking into account the time spent by the player in Qatar and the modified contract signed with the player in addition to the expenses incurred by the club against the player and the financial penalties that should have been imposed against the player due to his misconduct."*

### 4.2 The Respondents' Position

32. The FIVB is competent to both hear the case and impose sanctions. Furthermore, no stay of execution shall be granted.

33. In its Request for Review, the Club presented the same allegations that had already been decided in this case. The Club has still not proven those allegations.

34. In the first instance proceeding, the Club did not challenged "*the veracity of the contract*" in relation to the value of USD 110,000.00. Only now, in the appeal proceeding, the Club presents the Amendment with a lower salary. The Amendment is false and has been manipulated by the Club (both contracts bear the same date of signature, namely "2/02/2017"). The Player has never accepted any reduction regarding the salary and has never signed the Amendment. For its false submission, the Club should be sanctioned with a fine imposed by the FIVB Tribunal.

35. The Decision shows that all allegations by the Club have not been substantiated and the Respondents´ duty to mitigate losses has been taken into consideration. Additionally, the Player´s termination dated 23 October 2017 was considered valid because of non-payment of the agreed salaries. Thus, the Club´s termination dated 24 October 2017 has no effect whatsoever.

36. Finally, the Respondents concluded in their Answer as follows:

> *"Due to the bad faith of Qatar Sports Club in joining the false document process (Annex B2) should be the same punished with the application of a fine arbitrated by this Court.*
>
> *For all the foregoing, the Appeal presented by the Qatar Sports Club must be received WITHOUT SUSPENSIVE EFFECT, and in the end, it shall be deemed to be IMPROCESSENT, and the conviction shall be maintained in all its terms."*

## 5. Jurisdiction

### 5.1 The FIVB Tribunal´s competence

37. The FIVB Tribunal must first examine whether it has jurisdiction to hear the present dispute. In order to do so, it must first look at the relevant provisions of the FIVB Sports Regulations.

38. Article 19.2.1 of the FIVB Sports Regulations reads as follows:

> *"The FIVB Tribunal is competent to decide financial disputes of an international dimension between clubs, players, FIVB-licensed agents and coaches from within the world of volleyball. The FIVB Tribunal´s jurisdiction extends also to financial disputes of an international dimension between a coach and a National Federation."*

39. Article 19.2.2 of the FIVB Sports Regulations stipulates that the FIVB Tribunal can only resolve disputes:

> *"19.2.2.1 arising between the natural and legal persons/entities mentioned in Article 19.2.1; and*
>
> *19.2.2.2 decided previously by the FIVB / a Confederation or referred by the FIVB/a Confederation to the FIVB Tribunal"*

40. Article 19.2.3 of the FIVB Sports Regulations grants the FIVB Tribunal the power to rule on its own jurisdiction.

41. Thus, in order for the FIVB Tribunal to have jurisdiction over the dispute, the FIVB Tribunal Judge shall examine whether the conditions of both Articles 19.2.1 and 19.2.2 of the FIVB Sports Regulations are satisfied.

42. The present dispute involves claims submitted by a player and a FIVB-licensed agent both from Brazil against a club from Qatar concerning outstanding salaries and agent fees. The FIVB Tribunal Judge finds that this dispute clearly qualifies as a financial dispute of an international dimension between a player and a club and a FIVB-licensed agent against a club respectively in accordance with Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations.

43. Furthermore, the Request for Review at hand is made against the Decision, which was rendered by the FIVB General Director. Therefore, the present Request for Review stems from a decision of the FIVB and the FIVB Tribunal Judge holds that Article 19.2.2.2 of the FIVB Sports Regulations is also satisfied.

44. Based on the above, the conditions of Articles 19.2.1 and 19.2.2 of the FIVB Sports Regulations are satisfied.

45. Additionally, the Club's Request for Review was filed on 6 May 2018, i.e. within the 14-day period described in Article 18.2 of the FIVB Sports Regulations.

46. Therefore, the FIVB Tribunal has jurisdiction over the present Request for Review pursuant to the Regulations.

### 5.2 The FIVB´s competence in the first instance

47. In its Request for Review, the Club objected to the FIVB's competence to hear and decide the present dispute because it contended that the case should be referred to the courts of the State of Qatar as required by clause 17 of the Contract.

48. Clause 17 of the Contract states as follows:

> *"This Contract is governed by the provisions of Qatar law and the competent courts of the State of Qatar shall have full jurisdiction in settling and resolving any dispute or difference which may arise between the parties under this contract."*

49. The FIVB Tribunal Judge notes that this language clearly grants a party to the Contract the option to file a claim with the competent courts of the State of Qatar.

50. However, the present dispute involves parties falling under the jurisdiction of the FIVB. As such, the Player, the Agent and the Club, are subject to the regulatory framework enacted and implemented by the FIVB, including the FIVB Sports Regulations. The Confederations, the National Federations and their members acknowledge and agree to abide by the FIVB Sports Regulations. None of the Parties has submitted any arguments to the contrary; therefore, the FIVB Tribunal Judge finds that all Parties agreed to comply with the FIVB Sports Regulations by competing in official competitions (the Club and the Player) organised by the FIVB's member federations or registering as a FIVB-licensed agent (the Agent).

51. If an issue arises where there are two forums that may be competent to address the same financial dispute, the FIVB needs to look at the specific language of the dispute resolution provision to see if that contract establishes an exclusive choice of forum. If the contract establishes an exclusive choice of forum, the FIVB will have to adhere to that and respect the will of the parties. Otherwise, the FIVB will determine competence based on the forum in which the dispute was first filed. If the dispute was filed with the FIVB first, the FIVB will continue the process.

52. The requirement of exclusiveness is a main element of arbitration in order to exclude the jurisdiction of state courts. The same standard should be applied with regard to the exclusion of the jurisdiction of sports federations and their respective legal bodies. Given that exclusivity

impacts the rights of parties, i.e. it excludes the parties from selecting a different forum that may otherwise be available to it, such exclusion should be explicitly provided for in the contract.

53. Concerning the present case, the FIVB Tribunal Judge holds that clause 17 of the Contract does not contain an exclusive choice in favour of the competent courts in the State of Qatar. Clause 17 of the Contract does neither mention any exclusiveness regarding the Qatari state courts ("*full jurisdiction*" does not mean exclusively) nor an explicit exclusion of FIVB jurisdiction. The fact that this provision only mentions the competent courts in the State of Qatar is considered not sufficient to exclude the FIVB jurisdiction stipulated in the FIVB Sports Regulations, which generally govern financial disputes of an international nature. The parties in the present case did, through their acceptance of the FIVB Sports Regulations, specifically agree to the competence of the FIVB (and, upon appeal, the FIVB Tribunal) in financial disputes.

54. Thus, two potential paths are provided to resolve financial disputes between the parties: 1) through the competent courts in the State of Qatar pursuant to clause 17 of the Contract and 2) through the FIVB in the first instance and the FIVB Tribunal in the second instance – and potentially before the Court of Arbitration for Sport (CAS) – pursuant to the FIVB Sports Regulations. The Player and the Agent, i.e. the Claimants in CF 116/2017, had the option to choose either path and chose the latter. As clause 17 of the Contract does not explicitly exclude FIVB jurisdiction, and as there is no other indication on the file that such exclusion is what the parties sought to achieve, the FIVB Tribunal Judge is satisfied that the FIVB did have jurisdiction despite clause 17 of the Contract.

55. This is in line with jurisprudence of the FIVB Tribunal, particularly FIVB 2018-03 (decision of 20 September 2018) and FIVB 2015-07 (decision of 12 April 2016). Moreover, the jurisprudence of the Swiss Supreme Court, namely the decision BG 4A_244/2012 of 17 January 2013, supports the FIVB Tribunal Judge´s finding that there is a need to have an explicit exclusion of further applicable forums.

56. Therefore, the FIVB Tribunal Judge holds that the Club´s objection to the FIVB´s jurisdiction must be dismissed.

## 6. Discussion

### 6.1 Applicable Law

57. Under the heading "Law Applicable to the Merits", Article 20.9 of the 2018 FIVB Sports Regulations (identical wording as Article 20.8 of the 2017 FIVB Sports Regulations) reads as follows:

> *"Unless otherwise agreed by the parties, the Tribunal shall apply general considerations of justice and fairness without reference to any particular national or international law (ex aequo et bono)."*

58. In substance, it is generally considered that an arbitrator/judge deciding *ex aequo et bono* receives "*a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case*" (POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626).

59. The FIVB Tribunal Judge has taken note of the first part of clause 17 of the Contract which reads as follows: "*This contract is governed by the provisions of Qatar law* […]". However, none of the parties has contested the applicability of *ex aequo et bono* to the present dispute nor based their arguments on any national law. To the contrary, in its Request for Review, the Club argued the application of the principle *pacta sunt servanda*, which is a main principle of an *ex aequo et bono* analysis. In light of the above, the FIVB Tribunal Judge will decide the issues submitted to him in this proceeding *ex aequo et bono*.

60. In light of the foregoing matters, the FIVB Tribunal Judge decides as follows:

### 6.2 Findings

61. The Club primarily requests the "*cancellation of the financial penalty imposed against the Club*" by the FIVB in the Decision. In the alternative, the "*financial penalty imposed against the Club*" shall be reduced.

62. First of all, the FIVB Tribunal Judge would like to clarify that the Decision did not impose any penalty or sanction but awarded compensation for outstanding salaries to the Player and

outstanding agent fee to the Agent as well as a partial reimbursement of the first instance handling fee.

63. Moreover, the FIVB Tribunal is competent to decide financial disputes of an international dimension between different persons from within the world of volleyball. The FIVB Tribunal is not competent to impose any sanctions as requested in the Respondents´ Answer with regard to the alleged manipulation of the Amendment.

64. Within the scope of the present proceeding, the FIVB Tribunal Judge reviews the Decision by considering the Parties´ submissions and the evidence before him.

**6.2.1 The Player´s entitlement to the amount of USD 58,501.01 net**

65. According to the Decision, the Club shall pay the amount of USD 58,501.01 net for outstanding salaries to the Player. In the Decision, the FIVB found that the Player terminated the Contract for just cause on 23 October 2017 due to the Club's non-payment of outstanding salaries.

66. As described in detail in Section 3.3.1 of the Decision, the burden of proof rests with the party invoking a right. Consequently, a party claiming a termination for just cause bears the respective burden of proof while the same applies to a party contesting the applicability of an agreement presented by the opposite party. Thus, the Player needs to proof that he was entitled to terminate the Contract for just cause, and the Club needs to proof that the applicable agreement is the Amendment instead of the Contract.

67. The Player has presented the Contract, which stipulates a monthly salary of USD 12,222.00 net and that the first instalment was for the period of 1 to 30 September 2017 (clause 2 of the Contract). Because the Contract does not contain a specific provision for the payment dates of the monthly salary instalments, the FIVB Tribunal Judge finds – in line with the Decision – that the salary instalment for September 2017 was due on the last day of the month, i.e. on 30 September 2017. The Player participated in training sessions and at least one match and, therefore, earned his first salary instalment. It is undisputed that the Club did not pay the amount of USD 12,222.00 but rather paid only the amount of QAR 10,000.00 (equal to USD 2,740.00) to the Player. Thus, at the time of the Player´s termination on 23 October 2017, the Club was 23 days late in payment of USD 9,482.00 net.

68. The Club contests that the Contract is the applicable agreement but the Amendment should be the one to be considered in the present case. In this context, the Club submitted that it is "*surprised and shocked by the fact that the player did not submit a copy of the modified contract in the complaint documents against the club*". However, the FIVB Tribunal Judge is surprised that the Club submitted the Amendment for the first time during the present proceedings but failed to do so in the first instance proceeding when confronted with the Player´s claim based on the Contract. Even under the conditions stated in the Agreement (first monthly salary of USD 4,000.00 net due on 1 October 2017), the Club was late with salary payments on 23 October 2017, i.e. the date of the Player´s termination.

69. Moreover, the Club has failed to proof that the Amendment is a valid agreement superseding the Contract. Providing this document only in the proceeding before the FIVB Tribunal and taking into consideration the Respondents' reaction ("*totally false*" and "*manipulated*") creates some suspicion as to whether the Amendment was actually signed by the Player. This suspicion is supported by the fact that an agreement on a salary decrease from USD 12,222.00 to USD 4,000.00 (reduction to one third) is extraordinary, especially without any explanation for the reasons of such a reduction. In the end, the Club has failed to prove that the Amendment was signed and agreed after the conclusion of the Contract. Both documents bear the same date and the Club has not offered any further evidence for its assertion. Thus, it remains unclear whether the Amendment was actually agreed after the agreement on the Contract in order to supersede the Contract. This lack of clarity falls back on the party which contests the applicability of the Contract and which bears the burden of proof for its assertion, namely the Club.

70. The further arguments presented by the Club, i.e. the alleged poor performance of the Player and the alleged incident with the Player´s teammate on 19 October 2017, do not justify the Club´s non-payment of salary. The Contract actually provides for payment deductions in particular situations (*see* clause 10 of the Contract); however, none of those has been proven by the Club:

    a) First, the situations stipulated under clause 10, lit. A, B, D and E do not fit in the present case at all.

    b) Second, according to clause 10, lit. C, no. 1 ("*Reckless and negligent behaviour inside and outside the playing field*") and no. 2 ("*Intentional bad conduct inside and outside the playing field*"), the amount of USD 2,000.00 could be deducted. However, the Club has failed to

provide evidence for its allegation of the Player beating a young teammate during an official training session on 19 October 2017 despite the Respondents' contestation of the Club´s submission. In any event, the alleged altercation would have taken place 19 days after the Player´s first salary became due and payable and, therefore, cannot justify the non-payment at the end of September 2017.

c) Finally, clause 10, lit. F of the Contract provides for the situation of poor performance: the Club should be entitled to give a written notice to the Player "*in case the decrease in his technical performance according to technical report from the head coach*"[sic]. Such a written notice was forwarded by the Club to the Player on 14 October 2017. At that time, the September salary was 14 days past due, and, therefore, such a written notice cannot justify the non-payment at the end of September 2017. In addition, clause 10, lit. F of the Contract does not stipulate a specific amount for payment deduction like lit. A to E but rather provides for the Club's right to unilaterally terminate the Contract under specific conditions. Consequently, any poor performance by the Player could not trigger any payment deduction.

71. In line with the Decision, the FIVB Tribunal Judge finds that the Club's material obligation under the Contract was to pay salaries to the Player as agreed under the Contract. Non-compliance with the agreed salary payments is a material breach of the Contract. The outstanding amount of USD 9,482.00 net is a sizeable percentage of the Player´s first salary instalment (77.6 %), which justifies a right to unilaterally terminate the Contract under the circumstances, specifically, the Player's professional situation as communicated by the Agent to the Brazil consulate in Qatar on 17 October 2017 (including not providing the Player´s work visa and not initiating the ITC procedure) and the fact that the Contract only provides for termination rights for the Club without reciprocal rights for the Player.

72. As a consequence of the above, the FIVB Tribunal Judge confirms the finding in the Decision that the Player terminated the Contract for just cause on 23 October 2017 because of the Club's non-payment of outstanding salaries. The Player provided the necessary notice in his termination letter to the Club dated 23 October 2017. Because of his termination with just cause, the Player is entitled to compensation. As already stated in the Decision, there is no need to examine whether the Club had just cause to terminate the Contract on 24 October 2017 because, on that date, the Contract was already terminated.

73. With regard to the quantum of the Player´s compensation, the FIVB Tribunal Judge has taken note of the following: 1) according to Section 3.3.2, lit. a) of the Decision, the FIVB found that the Player was under a duty to mitigate his damages, i.e. he had to be active in trying to find a new job and attempt to obtain an offer as close to the salary that he would have made as possible after the Contract was terminated. In the Decision, the FIVB referred to jurisprudence of the FIVB Tribunal (FIVB 2015-04, FIVB 2015-07 and FIVB 2014-02) and explained that a contract of approximately half of the value of the Contract would have been sufficient to discharge the Player's duty to mitigate damages ("*the season had just started but was already under way, the Player's skill level and experience as well as the value of the Contract*"). Thereafter, the FIVB concluded that the Player's new Cyprus Contract (total salary of EUR 40,000.00 net) was equal to USD 48,756.99 net. Finally, the FIVB awarded the amount of USD 58,501.01 net to the Player (outstanding amount of USD 107,258.00 net minus the value of the Cyprus Contract of USD 48,756.99 net).

74. While the FIVB Tribunal Judge follows the FIVB's findings in the first instance that approximately half of the value of the Contract would have been sufficient to discharge the Player's duty to mitigate damages and also follows the exchange calculation of the value of the Cyprus Contract, the FIVB Tribunal Judge disagrees with the final amount awarded to the Player.

75. The Contract was for a total value of USD 109,998.00 net (nine consecutive instalments of USD 12,222.00 net running from September 2017 to May 2018). Half of this value would mean USD 54,999.00 net and approximately this amount would have been sufficient to discharge the Player´s duty to mitigate damages. However, the Player signed the Cyprus Contract for USD 48,756.99 net only, which is a difference of USD 6,242.01 net. The FIVB Tribunal Judge interprets the amount of USD 6,242.01 net (more than 11% of the amount deemed sufficient to mitigate the damage) to be significant and, thus, interprets the amount of USD 48,756.99 net to be far from "approximately half of the value of the Contract". Deciding *ex aequo et bono*, the FIVB Tribunal Judge finds that the amount of USD 54,999.00 (exactly half of the value of the Contract) should be taken into consideration as the value of the Player's duty to mitigate.

76. The Club submitted that the Decision is not fair because it did not consider the Club's expenses in the amount of USD 15,000.00 relating to the Player (airline tickets, accommodation and international transport expenses). However, the Club has failed to provide any evidence for specific costs incurred, which would amount to the alleged USD 15,000.00. Furthermore, it

remains unclear what "international transport expenses" should mean. In addition, according to clause 6 of the Contract, specific "*air travel expenses*" for the Player shall be borne by the Club. The same applies to accommodation costs according to clause 3 of the Contract ("*full furnished accommodation provided with water, electricity and free local telephone*"). Therefore, the FIVB Tribunal Judge will not take into consideration any of these amounts for deduction.

77. Consequently, the Player is entitled to compensation in the amount of USD 52,259.00 net (outstanding amount of USD 107,258.00 net minus half of the value of the Contract of USD 54,999.00 net).

**6.2.2 The Agent´s entitlement to the amount of USD 10,000.00 net**

78. According to the Decision, the Club shall pay the amount of USD 10,000.00 net for outstanding agent fees to the Agent.

79. Clause 5 of the Contract provides for the amount of USD 10.000,00 "*as agent fee to the player´s agent when player will sign the contract and become in the register of Qatar volley ball federation* [sic]*"*. As described in detail in Section 3.3.2, lit. b) of the Decision, the Agent had no duty to mitigate damages because he earned the agent fee based purely on negotiation and conclusion of the Contract ("*when player will sign the contract and become in the register of Qatar volley ball federation* [sic]*"*). The FIVB Tribunal Judge fully agrees with that finding and that the Club´s failure to register the Player with the Qatar Volleyball Association cannot be held against the Agent.

80. However, the FIVB Tribunal Judge disagrees with the Decision as far as the amount of USD 10,000.00 was awarded "net". Clause 5 of the Contract does not stipulate whether the agreed amount for agent fee shall be net or gross. Clause 2 of the Contract does also not stipulate whether the agreed salary shall be net or gross but clause 14 of the Contract provides for net payments ("*All cash payments granted to the second party shall not be subject to any taxes or fees*".). Because "second party" to the Contract is only the Player but not the Agent, clause 14 of the Contract does not apply to agent fee agreed under the Contract. Therefore, the Player´s salary can be awarded "net" while the Agent´s agent fee cannot.

81. Consequently, the FIVB Tribunal Judge finds that the Agent is entitled to agent fee in the amount of USD 10,000.00 but without awarding this amount to be "net".

6.2.3 Summary

82. Based on the above, the FIVB Tribunal Judge holds, that the Player is entitled to compensation in the amount of USD 52,259.00 net and the Agent to agent fee in the amount of USD 10,000.00.

83. Consequently, the Club's Request for Review is partially upheld and the Decision dated 24 April 2018 shall be amended accordingly.

**6.3 Costs**

84. In the Decision, the FIVB ordered the Club to reimburse the amount of CHF 300.00 of the first instance handling fee of CHF 500.00. Given that the Decision is amended only to minor aspects but upheld for the large part, the FIVB Tribunal Judge fully confirms the first instance finding regarding the partial reimbursement of legal costs.

85. With regard to the present proceedings, Article 20.11.2 of the 2018 FIVB Sports Regulations (identical wording as Article 20.10.2 of the 2017 FIVB Sports Regulations) allows the prevailing party to be granted a contribution towards legal fees and expenses (including the applicable handling fee). The Club paid a handling fee of CHF 3,000.00 but failed to submit any account of costs for legal fees and expenses. The Respondents (the Player and the Agent) did not request for reimbursement of any costs related to the proceeding before the FIVB Tribunal ("*Please note that the only amount we have incurred in the proceedings was the FIBV*[sic] *charges*.").

86. In accordance with Article 20.11.2 of the 2018 FIVB Sports Regulations (identical wording as Article 20.10.2 of the 2017 FIVB Sports Regulations), the FIVB Tribunal Judge finds that each of the Parties has to bear its own legal fees and expenses while the Club has to bear the full handling fee. However, given that the amount in dispute in the present case was USD 68,501.01, i.e. the Club was seeking to overturn an award of that amount, the handling fee for this case is CHF 2,000.00, not CHF 3,000.00 that was paid by the Club. Consequently, the FIVB shall reimburse the amount of CHF 1,000.00 to the Club as it overpaid the handling fee for the present dispute.

## DECISION

For the reasons set forth above, the FIVB Tribunal Judge decides as follows:

1. The Request for Review filed by Qatar Sports Club is partially upheld.

2. The first bullet point of the decision rendered by the FIVB in CF 116/2017 dated 24 April 2018 is amended as follows while the remaining parts of that decision are fully confirmed:

    - Qatar Sports Club shall pay the amounts of USD 52,259.00 net to Mr. Sergio Luiz Felix Junior, USD 10,000.00 to Mr. Rogério Teruo Hangai and CHF 300.00 jointly to Mr. Sergio Luiz Felix Junior and Mr. Rogério Teruo Hangai.

3. Each party shall bear its own legal fees and expenses. Qatar Sports Club shall bear the applicable handling fee of CHF 2,000.00. The overpayment of the handling fee in the amount of CHF 1,000.00 will be reimbursed to Qatar Sports Club by the FIVB.

4. Any other requests for relief are dismissed.

Lausanne, seat of the proceedings, 30 October 2018

C

Dr. Karsten Hofmann

FIVB Tribunal Chairperson

## NOTICE OF APPEALS

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with

a) Article 20.12 of the 2018 FIVB Sports Regulations (identical wording as Article 20.11 of the 2017 FIVB Sports Regulations) which provides as follows:

> *"Decisions of the FIVB Tribunal can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within twenty-one (21) days from the receipt of the decision. The CAS shall decide the appeal ex aequo et bono and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure."*

b) The CAS Code of Sport-related Arbitration, which is available under www.tas-cas.org.

The address and contact details of the CAS are the following:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
Email: info@tas-cas.org

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.