



The
FIVB TRIBUNAL
hereby issues the following

DECISION

on the Request for Review of [case number]¹ filed by

[The Player] ("Claimant")
self-represented

vs.

[The Agent] ("Respondent")
represented by [the Agent's lawyers], [the Agent's lawyers' place of residence]

¹ In the interest of the protection of privacy, this is a redacted version of the decision. Any redactions are marked with [bold brackets]

1. The Parties

1. [The Player] is a professional male volleyball player from [the Player's country] ("**Claimant**" or "**Player**").
2. [The Agent] is an FIVB-licensed agent from [the Agent's country] ("**Respondent**" or "**Agent**").

2. The FIVB Tribunal

3. Article 19.1.5 of the FIVB Sports Regulations dated 3 November 2020 ("**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). [...] If the Chairperson is unavailable or ineligible due to reasons of conflict (see Article 20.4), he/she shall be replaced by the Vice-Chairperson. The Chairperson may appoint another member of the FIVB Tribunal to hear a case instead of the Chairperson."

4. The request for review is heard by a single judge because the amount in dispute does not exceed CHF 200,000. On [date], the FIVB Tribunal Chairperson, Dr. Karsten Hofmann, appointed FIVB Tribunal Vice-Chairperson, Francisco A. Amallo from Argentina, to hear this case as a single judge ("**FIVB Tribunal Judge**").

3. Facts and Proceedings

5. Below is a summary of the main relevant facts based on the parties' written submissions and evidence, whose authenticity has not been questioned by the parties. Additional facts may be set out where relevant in connection with the legal discussion that follows. Although the FIVB Tribunal Judge has considered all the facts, this decision will refer only to those deemed necessary to explain his decision.

3.1 Background Facts

6. On [date], the Agent and the Player signed a representation agreement ("**Agreement**"). Under the Agreement, the Player contracted the Agent to exclusively represent him until [date] in all negotiations regarding an international transfer or contract of the Player in all FIVB championships worldwide. In exchange, the Player agreed to compensate the Agent with 10%

of any transaction negotiated by the Agent on the Player's behalf.²

7. On [date], the Player and the Club [from a specific country] ("Club") signed an employment agreement, under which the Player agreed to play the [year]/[year] season for the Club's team in exchange for EUR 85,000 net ("First Employment Contract"). The Club agreed to pay the Agent and , an agent [from the Club's country] ([hereafter, "the Agent from the Club's country"]), a 10% fee as agents of the Player.³
8. On [date], the Player sent an e-mail to the Agent stating that [the Player] did not need the Agent to negotiate on the Player's behalf for the next season because the Agent had previously failed to sufficiently negotiate in the best interest of the Player and the Player's career. The Player stated that for further information the Agent could contact his[the Player's country]manager, [the agent from the Player's country, hereafter "the Agent from the Player's country"].⁴
9. On [date], the Agent met with the Player. During this meeting, the Agent, with the Player's consent, drafted an e-mail on the Player's behalf to be sent by the Player to the Agent expressing the Player's intention to continue working with the Agent.⁵ The Player never sent such e-mail to the Agent.
10. On [date], the Player sent a message to the Agent stating:

*"ciao my friend
i couldnt say this when we were in the gym
i took my choise for next year
i will work with [the Agent from the Player's country]
i hope we work toghter in next years
thank you for every things"⁶*

11. On [date], when asked about the reasons, the Player stated:

*"sorry for my dealy [the Agent's name]
its difficult for explain my friend
but i m in [the Player's country]
he is in [the Player's country]*

² Agent's Answer, Exhibit 2.

³ Agent's Answer, Exhibit 3.

⁴ Agent's Answer, Exhibit 4.

⁵ Agent's Answer, Exhibit 5.

⁶ Agent's Answer, Exhibits 6 and 7.

*you don't know some things in [the Player's country]"*⁷

12. On [date], the Player and the Club signed a new employment agreement, under which the Player agreed to play the [year]/[year] and [year]/[year] seasons for the Club's team in exchange for EUR 140,000 net for the first season and EUR 170,000 net for the second season ("**Second Employment Contract**").⁸
13. On [date], the Agent sent a formal notice to the Player requesting the payment of compensation in the amount of EUR 26,500 for the Player's wrongful termination of the Agreement and EUR 1,500 in legal expenses.⁹ The Player did not respond to this notice.
14. On [date], the Agent filed a complaint against the Player before the FIVB. The Agent requested, *inter alia*, compensation in the amount of EUR 26,500 plus 5% interest for the Player's wrongful termination of the Agreement and EUR 5,142.50 (including VAT) in legal expenses. The compensation claimed was based on an estimated value of the contracts that the Agent would have negotiated with the Club (i.e., EUR 130,000 net for the [year]/[year] season and EUR 135,000 net for the [year]/[year] season).¹⁰ On [date], the Agent updated the Agent's claim on the legal expenses to EUR 8,167.50 (including VAT).¹¹
15. On [date], the FIVB General Director issued a decision ordering the Player to pay a compensation of EUR 13,000 plus 5% interest starting from [date], as well as CHF 2,500 for legal costs, to the Agent by [date] ("**Decision**").¹²

3.2 The Proceedings before the FIVB Tribunal

16. On [date], the Player filed five times a request for review of the Decision. He also requested a 60-days extension to decide on the appeal, a 90-days extension to gather all the evidence, and an additional extension to pay the handling fee.
17. On [date], the Player refiled his request for review.

⁷ Agent's Answer, Exhibits 6 and 7.

⁸ Agent's Answer, Exhibit 17.

⁹ Agent's Answer, Exhibit 9.

¹⁰ Agent's Answer, Exhibit 10.

¹¹ Agent's Answer, Exhibit 12.

¹² Agent's Answer, Exhibit 14.

18. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the request. It also drew the Player's attention to article 20.3.2 of the FIVB Sports Regulations (particularly emphasizing paragraph a), which refers to the contact details of the parties and their counsel) and invited him to resubmit a signed version of the request in accordance with said article. It further requested the Player to pay the handling fee by [date].
19. On [date], the Player refiled its request for review ("**RFR**"), including a payment confirmation of the handling fee.
20. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the updated RFR. It also invited him to provide evidence of the handling fee payment by [date]
21. On [date], the Player submitted evidence of the payment.
22. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the RFR filed on [date] and the payment of the handling fee, and invited the Agent to file his answer by [date]. It also informed the parties that the dispute would be heard, in principle, by the FIVB Tribunal Chairperson, Dr. Karsten Hofmann, in accordance with Article 19.1.5 of the FIVB Sports Regulations.
23. On [date], the Agent filed his answer to the RFR ("**Answer**").
24. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Answer. Among other things, the Agent requested the FIVB Tribunal to consider the RFR as inadmissible and to decide on the admissibility as a preliminary matter.
25. On [date], the FIVB Tribunal Secretariat informed the parties that, in accordance with Article 19.1.5 *in fine* of the FIVB Sports Regulations, the FIVB Tribunal Chairperson, Dr. Karsten Hofmann, appointed the FIVB Tribunal Vice-Chairperson, Francisco A. Amallo, to hear the present case.
26. On [date], the FIVB Tribunal Judge invited the Player to comment on the Agent's request to consider the RFR as inadmissible and to decide on the admissibility as a preliminary matter by [date].
27. On [date], the Player made a submission on a matter other than the admissibility of his RFR.
28. On [date], the FIVB Tribunal Judge acknowledged receipt of the Player's submission and clarified that it would not take into account unsolicited submissions. He reiterated that the Player still

had until [date] to comment on the Agent's request on inadmissibility.

29. On [date], the Player made a submission on a matter other than the admissibility of his RFR.
30. On [date], the FIVB Tribunal Judge acknowledged receipt of the Player's submission and declared the exchange of submissions completed. As anticipated on [date], he decided he would not consider the Player's unsolicited submissions dated [date] and [date]. He also decided to address the Agent's request on inadmissibility in his final decision. Finally, he requested the Parties to provide a detailed account of their respective costs as well as supporting documentation in relation thereto by [date].
31. On [date], the Agent made a submission on costs.
32. On [date], the Player made a submission on costs.
33. On [date], the FIVB Tribunal Judge informed the parties that, after considering their submissions and in accordance with article 20.8.1 of the FIVB Sports Regulations, he decided not to hold a hearing and examine the witnesses offered by the Player, as the record already contained sufficient elements for making a decision.

4. The Parties' Submissions

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

4.1 The Claimant's Request for Relief and Position

4.1.1 The Claimant's Request for Relief

35. The Player requests the FIVB Tribunal Judge that:

"... on the basis of all these arguments and the signed and certified contracts FIVB tribunal would have to make a decision on the release from the decision."¹³

36. Given that the Player is not a lawyer and is representing himself, the FIVB Tribunal Judge

¹³ Player's RFR, ¶ 4.

considers his request for relief as a request to annul the Decision.

4.1.2 The Claimant's Position

37. In support of his request for relief, the Player contends, *inter alia*, as follows:¹⁴
38. The Agent poorly performed his obligations. The Second Employment Contract is higher than the one allegedly negotiated by the Agent. This shows that the Agent is unfit for his job. The Agent could have damaged the Player by his incompetence. The Player cannot be obliged to obey the bad conditions imposed on him by the Agent. The Agent carried out mobbing to keep him under control, impose his conditions, and prevent him from fighting for his rights.¹⁵
39. The [Agent from the Club's country] had no role under the contract, except for being entitled to a 5% commission.¹⁶
40. There is no evidence of the Agent negotiating a new employment contract with the Club for an amount of EUR 130,000 for the [year]/[year] season and EUR 135,000 for the [year]/[year] season.¹⁷
41. The Agent is only entitled to a 5% commission because there are two agents under the contract.¹⁸
42. The Club was obliged to pay the Agent fees under the Agreement. The Agent should have sued the Club, not him.¹⁹
43. There is no basis for paying a 5% interest rate.²⁰
44. There is no evidence of the Agent paying legal fees and expenses to his lawyers.²¹

¹⁴ A large part of the RFR is formulated through questions. Therefore, the summary of arguments that follows is based on the FIVB Tribunal Judge's understanding of said questions, in light of what the Claimant alleged in the previous instance.

¹⁵ Player's RFR, ¶¶ 5-7, 18-23.

¹⁶ Player's RFR, ¶13.

¹⁷ Player's RFR, ¶¶ 4-5, 8-9, 12, 16, 21.

¹⁸ Player's RFR, ¶¶ 14-15.

¹⁹ Player's RFR, ¶¶ 17, 24.

²⁰ Player's RFR, ¶ 11.

²¹ Player's RFR, ¶ 10.

4.2 Respondent's Request for Relief and Position

4.2.1 Respondent's Request for Relief

45. The Agent requests the FIVB Tribunal Judge to render a decision per which:

“• the Player's [date]Request for Review is considered as non-admissible due to a late submission and dismissed after an immediate review of the FIVB Tribunal;

• the Player's [date]Requests for Review are considered as non-admissible due to a lack of completeness and dismissed after an immediate review of the FIVB Tribunal;

• consequently, the FIVB Decision shall be confirmed and the Player shall:

• pay the Agent an amount of thirteen thousand euro (€ 13.000) net in principal as termination indemnity;

• pay the Agent late payments interests at a rate of five percent (5%) per annum on the principal amount of thirteen thousand euro (€ 13.000) net as from [date]until the date of complete payment;

• pay the Agent an aggregate amount of two thousand five hundred Swiss franc (CHF 2.500) as FIVB contribution towards the Agent's legal fees and other expenses;

• indemnify the Agent for all incurred legal expenses (including attorney's fees) up to an amount to be determined during the FIVB Tribunal proceedings, and at the moment of the filing of the present reply amounting to three thousand seven hundred fifty euro (€ 3.750) exclusive VAT, being four thousand five hundred thirty-seven euro and fifty cents (€ 4.537,50) inclusive VAT; and

• bear the costs of the current proceedings in its entirety.”²²

4.2.2 Respondent's Position

46. In support of his request for relief, the Agent contends, *inter alia*, as follows:

47. The Player's RFR dated [date]is inadmissible because it was submitted 18 days after the deadline. The Player's requests dated [date]are also inadmissible because they do not comply with the requirements of the FIVB Sports Regulations due to their lack of completeness.²³

48. The Player does not dispute anymore the validity of the Agreement but keeps reacting to his wrongful termination of the Agreement and indemnity due to the Agent.²⁴

49. The Agreement could only be terminated before the expiry of its term by mutual agreement or for just cause. The Player wrongfully terminated the Agreement because the Agent never

²² Agent's Answer, ¶ 75.

²³ Agent's Answer, ¶¶ 32-43.

²⁴ Agent's Answer, ¶¶ 45-46.

agreed to its termination, and there is no just cause as the Agent neither seriously breached his duties nor repeatedly violated his obligations.²⁵

50. The Player fails to evidence any Agent's breach of his contractual obligations under the Agreement. The Second Employment Contract refers to a period posterior to the Player's termination notice and demonstrates that Agent was deprived of providing his services to reach the Player's new salary.²⁶
51. During the term of the Agreement, (i) the Agent negotiated, for the first time, the transfer of the Player from [the Player's country] to[a certain continent], the most attractive and famous volleyball region; (ii) the Agent negotiated to the best of his knowledge and according to his experience the possible financial and other kinds of benefits the Player could receive; and (iii) the Player never complained about the Agent's services. In the termination notice, the Player did not refer to the alleged negative performance of the Agent but the influence of another volleyball agent and some sort of geographical argument.²⁷
52. Even if the Player were to have some grounds to criticise the Agent, the Player never granted the Agent an opportunity to remedy his alleged breach of the Agreement.²⁸
53. It would be just and fair to place the Agent in the same financial position as if the Agreement had been duly executed until the end of its term. The Player does not contest the fact that the Agent would have negotiated with the Club on his behalf. Therefore, the certainty of the damage suffered by the Agent is not challenged.²⁹
54. The fact that the Agent is not able to evidence oral negotiations with the Club before the termination of the Agreement only influences the amount of the Agent's damage, not its existence. The Second Employment Contract confirms that the amount of the indemnity claimed by the Agent was fair and reasonable as the agent's fees under the Second Employment Contract are higher.³⁰

²⁵ Agent's Answer, ¶¶ 47-49.

²⁶ Agent's Answer, ¶¶ 50-53.

²⁷ Agent's Answer, ¶ 54.

²⁸ Agent's Answer, ¶ 55.

²⁹ Agent's Answer, ¶¶ 59-61.

³⁰ Agent's Answer, ¶¶ 62-63.

55. The FIVB Tribunal is not subject to the limit under article 18.1 of the FIVB Sports Regulations. Therefore, the Agent requests to be awarded a contribution towards his legal expenses.³¹

5. Jurisdiction

56. The FIVB Tribunal must first examine whether it has jurisdiction to hear the present dispute.

57. 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.”

58. 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”

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

60. The FIVB Tribunal Judge finds that this dispute is a financial dispute of an international dimension under Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations because it involves claims between an FIVB-licensed Agent from [the Agent’s country] and an volleyball player [from the Player’s country] concerning the payment of compensation due to the early termination of a representation agreement. The dispute also complies with Article 19.2.2.2 of the FIVB Sports Regulations because it was decided previously by the FIVB General Director.

61. The FIVB Tribunal’s jurisdiction is also undisputed by the parties.

62. Therefore, the FIVB Tribunal has jurisdiction over the present dispute under the FIVB Sports Regulations.

³¹ Agent’s Answer, ¶¶ 71-74.

6. Admissibility

63. The Agent claims that the Player's RFR is inadmissible because the requests for review dated [date] do not comply with the requirements of the FIVB Sports Regulations due to their lack of completeness and the RFR dated [date] was submitted 18 days after the deadline.³²
64. Despite the FIVB Tribunal Judge's invitations dated [date] and [date] to comment on the Agent's request on inadmissibility, the Player has not made any submissions in this regard.
65. The task of the FIVB Tribunal is not to "rubber-stamp" claims that are presented to it but to make a determination on these claims, especially in a case like this in which the Player is not a lawyer and has represented himself during the entire proceeding. Therefore, the FIVB Tribunal must make this determination on its own.
66. Article 18.2 of the FIVB Sports Regulations reads as follows:
- "Within fourteen (14) days from notification of the decision under Article 18.1 above, any affected party may request that the case be reviewed by the FIVB Tribunal."*
67. According to said article, the Player had until [date] to submit his RFR. On that day, the Player submitted his RFR five times, and requested a 60-days extension to decide on the appeal, a 90-days extension to gather all the evidence, and an additional extension to pay the handling fee.
68. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the RFR and invited the Player to resubmit a signed version of the RFR in accordance with article 20.3.2 of the FIVB Sports Regulations. It further requested the Player to pay the handling fee by [date].
69. In light of the requests for extensions made by the Player, the FIVB Tribunal Judge considers that the FIVB Tribunal Secretariat granted such an extension. Although the FIVB Tribunal Secretariat did not set a specific deadline for the refiling of the RFR, it did so with respect to the payment of the handling fee. As the payment of the handling fee is one of the requirements for the filing of a request for review under article 20.3.2 of the FIVB Sports Regulations, the FIVB Tribunal Judge considers that [date] was the applicable deadline not only for the payment of handling fee but also for the refiling of the RFR.

³² Agent's Answer, ¶¶ 32-43.

70. The Player refiled his RFR on [date], i.e., before the new deadline established by the FIVB Tribunal Secretariat. Consequently, the FIVB Tribunal Judge finds that the RFR dated [date] is admissible. With the RFR dated [date] being admissible, an analysis of the objections raised by the Agent regarding the admissibility of the RFR dated [date] is moot.

7. Applicable Law

71. Article 20.9 of the 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).”

72. The parties have not made any submissions as to the applicable law. The FIVB Tribunal Judge notes that section 5 of the Agreement states that *“The FIVB and (if needed) the FIVB Tribunal and the court of Arbitration for sport shall resolve the dispute ex aequo et bono.”*³³ Thus, the FIVB Tribunal Judge will decide the dispute *ex aequo et bono* (i.e., applying general considerations of justice and fairness without reference to any particular national or international law).

8. Findings

73. The FIVB Tribunal Judge will review the Decision following the same order in which it was written. Therefore, the following issues are examined below: (i) whether the Agent is entitled to compensation given the Player’s renewal of his employment agreement; (ii) whether the Agent is entitled to the payment of interest; and (iii) whether the Agent is entitled to the reimbursement of legal fees and other expenses.

8.1. Agent’s claim for compensation

74. Under section 3.3.1 of the Decision, the FIVB General Director analysed whether (i) the Agreement had been effectively concluded, (ii) the Player breached the Agreement, and (iii) the Agent thereby suffered damage in the amount claimed.

8.1.1. Conclusion of the Agreement

75. None of the three objections raised by the Player in the previous instance as to the legal

³³ Agent’s Answer, Exhibit 2.

effectiveness of the Agreement (i.e., the Agent's alleged lack of proper authorisation, the Player's alleged lack of English skills, and the alleged unprofessional content of the Agreement) has been maintained on the RFR. Therefore, the FIVB Tribunal Judge agrees with the Agent when he asserts that the Player does not dispute the validity of the Agreement anymore.

8.1.2. Breach of the Agreement

76. In the previous instance, the Player contended that he had just cause to terminate the Agreement because (i) the Agent failed to fulfil his obligations according to the Agreement, (ii) the Agent failed to act in good faith, and (iii) the Agent breached article 15.2.1.b of the FIVB Sports Regulations and clause 1.1 of the Agreement. In his RFR, the Player maintained his contentions, except for the second one related to the Agent's alleged bad faith in giving a power of attorney to his lawyers. The other two contentions are analysed below.

(i) Failure to fulfil obligations

77. In the previous instance, the FIVB General Director noted that the Agent agreed to represent the Player but did not guarantee a given result. He also noted that the fact that one agent is more successful than another in the negotiations with the Club does not in and of itself mean that the agent who negotiated a lower amount materially breached the representation agreement. In the absence of evidence of the Player objecting to the salaries negotiated by the Agent, the FIVB General Director concluded that the Player failed to prove that he had just cause to terminate the Agreement due to the Agent's failure to diligently fulfil his obligations.

78. The Player insists on his claim that the Agent failed to diligently fulfil his obligations because he poorly negotiated on his behalf. He asserts that the Second Employment Contract proves the Agent's failure because the compensation contained therein is higher than the those contained in the First Employment Contract and the renewal allegedly negotiated by the Agent. He also argues that the Agent carried out mobbing to keep him under control, impose his conditions, and prevent him from fighting for his rights.³⁴

79. The Agent contends that the Second Employment Agreement refers to a period posterior to the termination notice, and the Player keeps failing to evidence the Agent's breach of his obligations

³⁴ Player's RFR, ¶¶ 5-7, 18-23.

under the Agreement.

80. The FIVB Tribunal Judge is not persuaded by the Player's arguments. It is a well-established rule in international adjudication that the burden of proof lies in principle with the party asserting a fact.³⁵ In this case, the Player asserts that the Agent breached his contractual obligations but fails to prove so.
81. The Player misreads the Agent's obligation under the Agreement. According to clauses 1.1 and 2 of the Agreement, the Agent agreed to represent the Player in accordance with the FIVB Agent Regulations. As rightly pointed out by the FIVB General Director, the Agent did not guarantee a given result.
82. The Player's references to the Second Employment Contract have to do with the result of the negotiations, rather than with the negotiations themselves. Whether the result of the negotiations was that expected by the Player or appropriate according to his criteria is irrelevant to this case.
83. The Player had to prove that the Agent either did not represent him at all or represented him in violation of the FIVB Agent Regulations (e.g., that the Agent did not represent him in good faith or did not demonstrate integrity and transparency in all his dealings); however, the Player failed to do so. The Player even recognized that the Agent represented him, but several months after signing the First Employment Contract states that he is not satisfied with the result. If the Player was not satisfied with the result, he could have abstained from signing the First Employment Contract. The Player's subsequent dislike does not mean that the Agent breached his obligations.
84. Besides, the content and tone of the conversation between the Player and the Agent after the termination of the Agreement do not suggest any failure on the Agent's part, since the Player makes no reproaches to the Agent but instead treats him like a friend, thanking him for everything and stating that he hoped to work again with the Agent in the future:

*"ciao my friend
i couldnt say this when we were in the gym
i took my choise for next year
i will work with [the Agent from the Player's country]
i hope we work togther in next years*

³⁵ See, for example, FIVB 2017-03 and CAS 2019/A/6207. This principle is reflected also in article 18.1(d) of FIVB Sports Regulations

thank you for every things”³⁶

*“sorry for my dealy [the Agent’s name]
its difficult for explain my friend
but i m in [the Player’s country]
he is in [the Player’s country]
you don’t know some things in [the Player’s country]”³⁷*

85. The Player’s arguments as to the Agent’s alleged mobbing are to be dismissed as well. According to the Player, the alleged mobbing took place on [date], after he decided to terminate the Agreement.³⁸ Therefore, even if the alleged mobbing were to be true, it would be irrelevant for the resolution of this dispute because the Agent’s conduct after the termination of the Agreement cannot, from the temporary point of view, constitute a cause for termination of the Agreement.

86. Apart from that, the Player has offered no proof that he formally put the Agent on notice of any breach of his duties before terminating the Agreement. It is a generally accepted contractual principle that before terminating a contract for just cause, the party invoking a breach must put the other party on reasonable notice thereof, to afford that party the possibility to cure the breach.³⁹

(ii) Breach of article 15.2.1.b of the FIVB Sports Regulations and clause 1.1 of the Agreement

87. In the previous instance, the Player alleged that the Agent breached article 15.2.1.b of the FIVB Sports Regulations and clause 1.1 of the Agreement because the [Agent from the Club’s country]appeared, jointly with the Agent, as the Player’s agents in the First Employment Contract. The FIVB General Director was not persuaded by the Player’s argument, *inter alia*, because it was not the Agent but the Player who was subject to these provisions. Therefore, their alleged violation could not constitute a breach of the Agent’s obligations under the Agreement.

88. The Player seems to insist on his argument by stating as follows:

“Who is [the Agent from the Club’s country]why is [the Agent from the Club’s country]in the contract and where is any communication with [the Agent from the

³⁶ Agent’s Answer, Exhibits 6 and 7.

³⁷ Agent’s Answer, Exhibits 6 and 7.

³⁸ Decision, p. 5.

³⁹ See, for example, FIVB cases 2018-06 and CAS 2006/A/1180.

*Club's country] and the club or [the Agent]. Please provide me with evidence of any communication even by text message and why he is in the contract and what is role in my contract except to take 5%."*⁴⁰

89. Yet, the Player fails to explain why the [Agent from the Club's country's] intervention in the First Employment Contract would constitute a violation of the Agent's obligations under the Agreement. As rightly noted by the FIVB General Director, article 15.2.1.b of the FIVB Sports Regulations establishes an obligation for the athletes, rather than for the agents. Likewise, under clause 1.1 of the Agreement, it was the Player who could not use a different agent.
90. If the Player had doubts about the [Agent from the Club's country's] intervention in the First Employment Contract, he could have abstained from signing said contract. The fact that he signed an employment agreement allegedly without knowing who the [the Agent from the Club's country] was does not mean that the Agent breached his obligations under the Agreement.

(iii) Conclusion

91. The Player has failed to prove the existence of a just cause to terminate the Agreement. Therefore, the FIVB Tribunal Judge finds that the Agreement was wrongfully terminated by the Player, and the Player must compensate any damages suffered by the Agent for the early termination of the Agreement.
92. In the FIVB's Tribunal Judge view, the termination of the Agreement did not take place on [date], as decided by the FIVB General Director in the previous instance, but on [date]. The Player's e-mail dated [date] shows his intention to terminate the Agreement. This was confirmed by the Player in the previous instance,⁴¹ and by the Agent's counsel in his letter dated [date],⁴² before filing the complaint with FIVB.

8.1.3. Damage suffered by the Agent

93. The parties have not provided in the Agreement how compensation for breach or unjustified termination shall be calculated. Therefore, when analysing and calculating the compensation due, the FIVB Tribunal will have to establish the damage suffered by the injured party, taking

⁴⁰ Player's RFR, ¶ 13.

⁴¹ Player's submission dated [date], ¶¶ 6-9, 26.

⁴² Agent's Answer, Exhibit 9.

into consideration the circumstances of the case, the arguments raised by the parties, and the evidence produced. It is the injured party that requests compensation who in principle bears the burden of proof.

94. As this case relates to the compensation for the unjustified termination of a valid contract, the FIVB Tribunal shall put the injured party in the position that it would have held if the contract was performed properly, as if no breach had occurred.

95. If the Player had not terminated the Agreement, the Agent would have had the opportunity, for almost 18 months (from the termination notice on [date] to the expiry of the Agreement on [date]), to negotiate the renewal of the First Employment Contract or seek a new contract for the Player with another club and obtain a 10% commission of every transaction negotiated.

96. In the previous instance:

(a) The Agent asserted that he had met with a Club's representative and that they had "mentioned" or "discussed" the raise of the Player's annual remuneration to at least EUR 130,000 for the [year]/[year] season.⁴³ Based on that, the Agent claimed a 10% commission on EUR 130,000 as an "estimated value" of the employment agreement for the [year]-[year] season, and EUR 135,000 as an "estimated value" of the employment agreement for the [year]/[year] season.⁴⁴

(b) The Player contended that the Agent had not negotiated a renewal of the First Employment Contract with the Club,⁴⁵ and that the compensation claimed for the [year]/[year] season was unfounded because he had duly terminated the Agreement, and the compensation claimed for the [year]/[year] season had no basis because the Agreement would have had terminated on [date].⁴⁶

(c) The Agent then stated that the Player had not contested the amount of the termination indemnity. With respect to the [year]/[year] season, the Agent argued that, on a balance of probabilities, it was very likely that the Agent would have negotiated an agreement for that

⁴³ Agent's submission dated [date], ¶¶ 18, 21, 41, 50.

⁴⁴ Agent's submission dated [date], ¶ 52.

⁴⁵ Player's submission dated [date], ¶¶ 39, 55.

⁴⁶ Player's submission dated [date], ¶¶ 44-46.

season because the Second Employment Contract was for two seasons and the Agent would have had the opportunity to negotiate an agreement for the Player before the end of the term of the Agreement. .⁴⁷

- (d) The Player answered that he had contested the termination indemnity and insisted on not including the [year]/[year] season in the calculation of the termination indemnity. He also stated that the Agent had to prove the damage rather than basing his claim on a balance of probabilities without relying on evidence.⁴⁸
- (e) The FIVB General Director decided to grant the Agent a compensation of EUR 13,000 on the grounds that the Agent asserted that he had received an offer from the Club to renew the First Employment Contract and increase the Player's salary to EUR 130,000, and the Player did not contest this allegation. However, the FIVB General Director rejected the claim related to the [year]/[year] seasons because there was no evidence of discussing a two-year renewal with the Club.⁴⁹

- 97. In his RFR, the Player claims that the Decision is groundless because there is no evidence of the Agent negotiating a new employment contract with the Club for an amount of EUR 130,000 for the [year]/[year] season.⁵⁰
- 98. The Agent did not file a request for review, thus consenting to the Decision. Therefore, the FIVB Tribunal Judge will not analyse nor establish any compensation for a season other than the [year]/[year] season.
- 99. With regard to the compensation corresponding to the [year]/[year] season, the Agent asserts that the certainty of the damage suffered by the Agent is uncontested because the Player did not challenge the fact that the Agent would have negotiated with the Club on his behalf. Therefore, he contends that the lack of evidence regarding the oral negotiations with the Club only influences the amount of the Agent's damage, but not its existence.⁵¹

⁴⁷ Agent's submission dated [date], ¶¶ 43-49.

⁴⁸ Player's submission dated [date], pp. 3-4.

⁴⁹ Decision, p. 21.

⁵⁰ Player's RFR, ¶¶ 4-5, 8-9, 12, 16, 21.

⁵¹ Agent's Answer, ¶¶ 61-62.

100. The FIVB Tribunal Judge considers that the Decision is mistaken in two respects. First, as shown in paragraph 96 above, (i) the Agent never alleged the existence of an offer but referred only to discussions or negotiations to renew the First Employment Agreement and raise the Player's annual remuneration to at least EUR 130,000 for the [year]/[year] season with the Club; and (ii) the Player had indeed contested the existence of those negotiations. Second, the Decision is mistaken in setting as compensation the entire commission that would have corresponded to the Agent, as if the renewal of the First Employment Contract allegedly negotiated by the Agent had taken place.
101. The Player is accurate about the inexistence of evidence of the Agent negotiating a new employment contract with the Club. However, the Agent is also accurate in that it is uncontested that the Agent would have had the opportunity to negotiate with the Club had the Agreement not been early terminated by the Player. Therefore, the FIVB Tribunal Judge must determine whether that loss of opportunity translates into certain damage, as argued by the Agent.
102. The loss of opportunity differs from the other components of harm for which compensation can be awarded because it refers to a future profit that is only probable. Loss of opportunity does not refer to certain earnings but rather to earning opportunities that are in themselves real. Since compensation is due only for harm that is established with a reasonable degree of certainty, such earning opportunities cannot be purely hypothetical or speculative. They must be real opportunities that have a substantial chance of being converted into a financial benefit. Thus, compensation may be due for the loss of a chance in proportion to the probability of its occurrence.
103. It follows that there are two steps when approaching damages for loss of opportunity. First, it needs to be established whether there was a real or substantial chance of the Agent securing a contract for the Player with the Club, as opposed to a speculative chance. Second, if there was a real or substantial chance of success, the FIVB Tribunal Judge must establish the quantum of damages suffered by the Agent reflecting that chance of success.
104. Considering that (i) the Agent works worldwide for top-level volleyball players, with many years of experience and a high reputation among players and clubs,⁵² (ii) even after terminating the

⁵² Player's submission dated [date], ¶ 1.

Agreement, the Player thanked the Agent for everything and stated that he wanted to work with the Agent in the future,⁵³ (iii) the Player is a world-class player in international volleyball,⁵⁴ (iv) the Club was interested in renewing the contract with the Player to the extent that they signed the Second Employment Contract,⁵⁵ and (v) the exclusivity right granted to the Agent under clause 1.1. of the Agreement, the FIVB Tribunal Judge concludes that there was a real or substantial chance that the Agent would have successfully negotiated a new contract for the Player had the latter not prematurely terminated the Agreement. Thus, the loss of that opportunity constitutes certain harm for which compensation can be awarded.

105. Having identified the Agent's loss as a real or substantial loss, the next step is to determine the quantum by assessing the percentage chance of the Agent securing a contract for the Player and discounting the Agent's damages by that percentage.
106. Calculating the amount of the compensation may be difficult because of the very nature of the *but for* hypothesis. It might be clear that the conduct in question has caused harm, but there might be a lack of evidence about the extent of that harm. This lack of evidence is attributable to the party that breached the contract, so that party should not be permitted to avoid its liability for compensation because of that difficulty. Otherwise, that party would profit unfairly from its wrongdoing. Thus, where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the tribunal.
107. Considering the circumstances mentioned in paragraph 104 above, the FIVB Tribunal Judge assesses the percentage chance of the Agent securing a contract at 90%, as the Second Employment Contract shows that both the Player and the Club were interested in renewing their contract, and the Agent would not have had to compete with other agents for securing that renewal.
108. The FIVB Tribunal Judge assesses the hypothetical loss at EUR 13,000 (i.e., a 10% commission on EUR 130,000). As already determined, the Player is right when [he asserts that there is no evidence about the alleged discussions between the Agent and the Club, but that does not mean that the Agent's estimation was incorrect.

⁵³ Agent's Answer, Exhibits 6 and 7.

⁵⁴ Player's submission dated [date], ¶ 3.

⁵⁵ Agent's Answer, Exhibit 17.

109. Although the Agent had the opportunity to offer evidence about the alleged discussions with the Club and failed to do so, it cannot be ignored that the Player's decision to early terminate the Agreement caused evidentiary difficulty. By prematurely terminating the Agreement, the Player prevented the Agent from carrying out his activity and obtaining evidence of it. In addition, although the Agent was aware of the renewal of the First Employment Contract in the previous instance, he only became aware of its content after the Decision was issued.
110. Paradoxically, the lack of evidence of the Agent's estimation was cured by the Player. By submitting the Second Employment Contract, the Player presented evidence that his value is greater than that estimated by the Agent. Therefore, the FIVB Tribunal Judge does not need to assess the value of the Player because that value is stated in the Second Employment Contract and is accepted by the Player, as he signed that contract.
111. The FIVB Tribunal Judge shall not assess the damages on a basis higher than the one used by the Agent because he would be ruling *ultra petita*, but the Second Employment Contract serves to demonstrate that the Agent's estimation is fair and reasonable in light of the circumstances.
112. Based on the above, the FIVB Tribunal Judge concludes that the amount of the damages suffered by the Agent due to the Player's breach of contract at EUR 11,700 (i.e., 90% of EUR 13,000).
113. The Player claims that the Agent is only entitled to a 5% commission because there are two agents under the First Employment Contract.⁵⁶ He also states the Club should pay the compensation to the Agent because the Club was obliged to pay his fees under the Agreement.⁵⁷
114. The FIVB Tribunal Judge does not find these arguments to be compelling. Under clause 3.1 of the Agreement, the Player is obliged to pay a 10% commission to the Agent. According to clause 3.2 of the Agreement, the Player is released from that obligation only if the contract between the Player and the Club includes a clause providing that the Agent will be paid by another party. As the compensation granted to the Agent relates to a loss of opportunity caused by the early termination of the Agreement, the Player prevented the Agent from negotiating a contract with the Club including such a clause.

⁵⁶ Player's RFR, ¶¶ 14-15.

⁵⁷ Player's RFR, ¶¶ 17, 24.

115. Besides, neither the Club nor the [Agent from the Club's country] is a party to the Agreement (the Agreement is only between the Player and the Agent) or this proceeding (neither the Player nor the Agent file a claim against them). Therefore, the Agent is entitled to the compensation set above.

8.2. Agent's claim for interest

116. In the previous instance, the Agent claimed a 5% annual interest from [date]. He argued that the rate was fair and reasonable considering international standards as well as [the continental federation, hereafter "**The Continental Federation**"] and FIVB practice.⁵⁸ The Player did not make any submission regarding interest and requested the application of the same interest rate to his counterclaim.⁵⁹

117. The Decision ordered the Player to pay a 5% interest from [date]. The FIVB General Director concluded that the rate requested by the Agent was fair and equitable because the applicable Swiss interest rate was 5% and it was in line with the FIVB's jurisprudence. Regarding the *dies a quo*, the FIVB General Director concluded that the interest should not accrue as from [date], but as from [date] because the damage suffered by the Agent arose upon the renewal of the First Employment Contract.⁶⁰

118. In his RFR, the Player claims that there is no basis for paying a 5% interest rate.⁶¹

119. The Agent did not make a submission regarding the interest awarded. He only requested the FIVB Tribunal to confirm the Decision on interest.⁶²

120. The Player did not complain about the FIVB General Director's decision on the *dies a quo*, but only about the rate. Therefore, the FIVB Tribunal Judge will address this issue only.

121. The Player has not provided any explanation as to why a 5% rate would be unfair or unreasonable. The Player's claim is even contradictory to his counterclaim in the previous instance, where he requested also a 5% interest. Therefore, the FIVB Tribunal Judge finds no

⁵⁸ Agent's submission dated [date], ¶¶ 54-56.

⁵⁹ Player's submission dated [date], ¶¶ 47, 49.

⁶⁰ Decision, p. 21.

⁶¹ Player's RFR, ¶ 11.

⁶² Agent's Answer, ¶ 75.

reason to depart from the Decision and confirms that a 5% interest is fair and in line with FIVB's jurisprudence.⁶³

8.3. Agent's claim for costs

122. In the previous instance, the Agent claimed EUR 8,167.50 (including VAT) as reimbursement of legal expenses, representing 27 hours of counsel work at an hourly rate of EUR 250 (excluding VAT).⁶⁴ The Player did not make any submission as to the Agent's claim on costs and claimed EUR 5,000 as reimbursement of his legal expenses, based on an hourly rate of EUR 200.⁶⁵

123. The Decision ordered the Player to pay CHF 2,500 to the Agent as a contribution to his legal expenses based on the complexity of the case and the outcome of the proceedings. The FIVB General Director did not grant the total amount claimed by the Agent because CHF 2,500 was the maximum contribution authorized under article 18.1.e of the FIVB Sports Regulations and the Agent's counsel had failed to provide a breakdown of his hours, specifying how they were spent.⁶⁶

124. In his RFR, the Player complained that there was no evidence of the Agent paying legal fees and expenses to his lawyers.⁶⁷ The Agent did not make any submission as to the Player's complaint.

125. The professional relationship between the Agent and his lawyers and whether the former paid the latter is not the subject matter of this proceeding. The Player has not provided any explanation as to why the contribution awarded to the Agent would be unfair or unreasonable. Therefore, the FIVB Tribunal Judge finds no reason to depart from the Decision.

9. Costs

126. The Claimant paid the handling fee of this proceeding (CHF 1,500) on [date]. Considering that the Player is representing himself and is not a lawyer, the FIVB Tribunal Judge interprets the Player's submission dated [date] as a request for reimbursement of the handling fee. As the Player opted to represent himself, he did not incur other legal expenses in this instance. The

⁶³ See, for example, FIVB decisions 2018-05 and 2018-06.

⁶⁴ Agent's submission dated [date], ¶ 73.

⁶⁵ Player's submission dated [date], p. 4.

⁶⁶ Decision, pp. 21-22.

⁶⁷ Player's RFR, ¶ 10.

legal expenses incurred in the previous instance were dealt with in section 8.3 above.

127. The Agent requested the FIVB Tribunal to determine an amount as a contribution to his legal fees and other expenses incurred in connection with this proceeding.⁶⁸ In his Answer, the Agent quantified his legal expenses at EUR 4,537.50 (including VAT), representing 15 hours of counsel work at an hourly rate of EUR 250 (excluding VAT). On [date], the Agent complemented his Answer and quantified his legal expenses at EUR 5,445 (including VAT).
128. Article 20.11.2 of the FIVB Sports Regulations allows the prevailing party to be granted a contribution towards legal fees and expenses, including the applicable handling fee. When deciding on this contribution, the FIVB Tribunal Judge shall consider the outcome of the proceedings, as well as the conduct and the financial resources of the parties. In the case at hand, the parties have not made any submissions with respect to their financial resources and have appropriately behaved during the proceedings. Thus, the FIVB Tribunal Judge will decide upon the distribution of the costs according to the outcome of the proceedings.
129. Considering that (i) the Claimant's request for relief was partially dismissed because the Decision was upheld almost in full, and (ii) the Respondent's request for relief was also partially dismissed because the RFR was considered admissible and the Decision was partially modified, and the Respondent's counsel failed to provide supporting documentation of their costs as requested by the FIVB Tribunal on [date], the FIVB Tribunal Judge holds that it is fair that both parties bear some costs related to this proceeding. Thus, the Player will bear the cost of the handling fee, and the Agent will bear the costs of his lawyers.

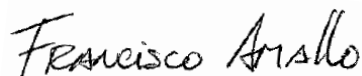
⁶⁸ Agent's Answer, ¶¶ 71-74.

DECISION

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

1. The Request for Review filed by [the Player] is partially upheld.
2. The decision rendered by the FIVB General Director dated [date] is amended in its first bullet point as follows:
 - [The Player] shall pay the amount of EUR 11,700 plus 5 percent interest starting from [date] as well as CHF 2,500 to [the Agent].
3. The remaining of the decision rendered by the FIVB General Director dated [date] is upheld.
4. Each party must bear its own legal fees and other expenses, including the handling fee.
5. Any other requests for relief are dismissed.

[date of the decision] Lausanne, Switzerland



Francisco A. Amallo

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 FIVB Sports Regulations:

“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:

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