

THE FIVB DISCIPLINARY PANEL

composed by

Mr. Wanderley Rebello (BRA)	Chair
Mrs. Margaret Ann Fleming (SCO)	Member
Ms. Sabinah Clement (IVB)	Member
Mr. Mounir Ben Slimane (TUN)	Member
Mr. Tomohiro Tohyama (JPN)	Member

I. FACTUAL BACKGROUND

1. From [date]¹ to [date], the [event] was held in [the Host Country].
2. On [date], the [Country 1] team played the [Country 2] team in the Second Round of the competition (hereinafter, the “Match”). In the 3rd set of the Match, while the [Country 2] team led the score 12-10, the [Country 2] player wearing the jersey number [number], [name of the Player] (hereinafter, the “Player”) blocked the spike of a [Country 1] player and thus scored the 13th point of the [Country 2] team. Immediately after having scored, the Player turned to the fans seating in the area behind the 1st referee and imitated with his arms the act of shooting towards them with an automatic gun.

II. COMPETENCE

3. The Panel is competent to hear this case as per Articles 17.5 and 17.6 of the 2014 FIVB Disciplinary Regulations (hereinafter “FIVB DR”). This fact was not challenged by the Player or his National Federation.

III. APPLICABLE LAW

4. The Panel notes that the FIVB Constitution and Regulations apply to this case. Since FIVB has its seat in Switzerland, Swiss law may apply subsidiarily. The rules which are relevant for the resolution of this dispute are quoted in this section.
5. Article 6 of the FIVB DR provides as follows:

“Disciplinary offences are classified as follows:

a) Simple offences: offences entailing a sanction under Article 7.1 below;

b) Major offences: offences entailing a sanction under Article 7.2 below;

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

c) Institutional offences: offences committed by NFs, Confederations, Zonal Associations, and their officers, entailing a sanction under Article 7.3 below;

d) Anti-doping rule violations: offences entailing a sanction under the FIVB Medical Regulations.

In case the FIVB Constitution, Regulations and decisions do not stipulate a specific sanction for the violation of a rule contained therein, such violation shall be treated as a major offence. However, in these cases the Disciplinary Panel is not bound by the minimum sanctions provided for in Article 7.”

6. Article 7.1 of the FIVB DR provides as follows:

“The following sanctions may be imposed for a simple offence,

a) Warning;

b) Reprimand;

c) Monetary fine of up to CHF 10,000;

d) Repeal of a right (for example a suspension, i.e. prohibition from participation, for a given period of time, in any official activity within the sphere of the FIVB) up to six (6) months;

e) A combination of the above sanctions.”

7. Article 7.4 of the FIVB DR provides as follows:

“Sanctions may be limited to a geographical area or to one or more specific categories of matches or Competitions.”

8. Article 8.5 of the FIVB DR provides as follows:

“Disqualification of players and coaches

8.5.1 Disqualification must be applied to the FIVB and/or other competitions (as applicable) immediately following notification.

8.5.2 If a coach or player participates in a match while he is suspended or disqualified, his team shall forfeit the match and the sanction will be doubled or restart, as decided by the body which imposed it.”

9. Article 11.1 of the FIVB DR provides as follows:

“Any action, attitude or public statement displaying an improper use of physical or emotional force in order to injure, intimidate or defame the FIVB, its guests or any of the persons listed in Article 1 herein is considered a violent conduct which shall be sanctioned in accordance with the seriousness of the violation.”

10. Article 11.5 of the FIVB DR provides as follows:

“The NFs and their Organising Committee of a Competition must deal courteously and considerately with the FIVB, its officials and the members of the Control Committee, referees, participating team delegations and guests. Any commentary or remark expressed

publicly through the media, detrimental to the image or the reputation of the FIVB and its institutions or any of its officials is considered violent conduct.”

IV. PROCEDURE

11. Article 19.1 of the FIVB DR provides as follows:

“Except for urgent matters, a sanction may not be imposed before the person concerned has had the opportunity to be heard and to present his/her case. The competent FIVB body is free to decide whether the right to be heard may be exercised solely in writing (ordinary mail, facsimile, email), or also orally. It may authorize the use of telephone or video conference.”

12. Article 19.2 of the FIVB DR provides as follows:

“19.2 Notices shall be accomplished directly to the person concerned. In the event that the contact details of the person concerned are not known to the FIVB, notices may be accomplished by delivery of the notice to the NF to which this person is affiliated or is a member of.”

13. By letter [date] addressed to the FIVB Disciplinary Panel, the President of the Control Committee of the [event] wrote that he considered the reaction of the Player towards the volleyball fans as inappropriate, and suggested that it should be examined.

14. By letter [date], sent by fax and email to the Player through the Volleyball Federation of [Country 2], the FIVB Disciplinary Panel informed the Player as follows:

“The FIVB has opened a disciplinary proceeding in relation to the conduct of the Player, during the Match.

[...] The FIVB Disciplinary Panel will now decide whether and to what extent disciplinary sanctions should be imposed on the Player for the following action:

- Player’s “shooting gesture” during the Match; violation of Article 11 of the FIVB Disciplinary Regulations.

[...] The Player is herewith invited to submit his position in writing, along with any supporting documentation, by no later than [date].”

A weblink to a video, as well as two video files showing the above-mentioned action of the Player were attached to the letter.

15. On [date], the Volleyball Federation of [Country 2] confirmed that the Player

“will receive the attached correspondence and videos concerning the opening of disciplinary proceedings against him. The answer will be forwarded to the FIVB Disciplinary Panel by [date].”

16. No reply was received within the deadline.

17. On [date], the FIVB Disciplinary Panel decided to grant the Player with a last opportunity to provide a reply and invited him, by email sent on the same day to his National Federation, to

submit his position in writing, along with any supporting documentation, by no later than [date].

18. In both communications to the Player, the FIVB Disciplinary Panel advised that:

“In case we do not hear from the Player within the above deadline, the FIVB Disciplinary Panel will consider this a waiver of his right to be heard and will decide the case on the basis of the evidence before it.”

19. On the same day, the Volleyball Federation of [Country 2] submitted a letter signed by its President stating in relevant part as follows:

“The Player explained the episode [during the Match]. He categorically denies any kind of aggression in his gestures. His actions did not mean any offence towards fans or opponent team.

Generally, he often expresses his emotions regarding success actions in matches of [another event]and other competitions this way. He also behaves like that on his domestic matches in attendance of his fans.

The Volleyball Federation of [Country 2] confirms that [the Player] often celebrates success this way and audience always like it and this don’t consider [sic] as offence or aggression gesture. We can provide the video of these episodes if necessary.

At the same time we want to draw your attention to the fact that there are many acts of provocation from volleyball fans in sports halls and hotel towards [the Player]. The fans know about his emotional character and shout him different insults and offenses, often more political and not related to volleyball and sport.

In this connection the Volleyball Federation of [Country 2] consider[s] inappropriate to imposeany sanctions on the [Player].”

20. In view of the above, the Panel finds that the Player was provided with an adequate opportunity to be heard and present the case before this Panel and he decided not to exercise such right, at least not directly. For the Player’s benefit, however, the FIVB Disciplinary Panel will consider the arguments brought forward by his National Federationin its letter of [date], which seems to include the Player’s position as well.

V. LEGAL CONSIDERATIONS

(a) Violation

21. At the outset, the FIVB Disciplinary Panel notes that the Player’s gesture is clearly visible on the video footages included in the file. After landing from a successful block, he made his

- arms into the shape of a firearm and imitated an action of shooting towards the fans for approximately two seconds, rotating his torso as if he was holding a real automatic firearm.
22. Article 11.1 of the FIVB DR prohibits any action displaying an improper use of physical or emotional force in order to injure, intimidate or defame FIVB and its guests. Additionally, Article 11.5 of the FIVB DR states that NFs must deal courteously with FIVB's guests. On the playing field, a player is representing his NF and shall act accordingly both towards the officials and towards all other FIVB's guests, including the fans.
23. The purpose of these provisions lies within the heart of the objectives of the Olympic Movement. The FIVB, as a long-standing member of the Olympic Family develops the sport of volleyball as a tool, among others, of promoting a peaceful society and the preservation of human dignity (Olympic Charter, Fundamental Principles of Olympism, para.2). The [event] serves exactly this objective: it gathers the best national teams around the world and allows them to compete for the title of the champion in a framework of fairness and sportsmanship established by the FIVB Constitution and Regulations.
24. Against that context, the Player's action was without doubt insulting towards FIVB and its guests. His action was nothing short of a "mass murder" imitation, pointing his imaginary automatic firearm towards the fans and pretending with the vibrating motion of his arms that he was firing against them. The argument that there was no kind of aggression in his gestures cannot be sustained. Whether his state of mind and his intention was purely celebratory, as his National Federation seems to suggest, or whether he is used to such kind of reactions in his national league, are irrelevant for the examination of this case. His gesture can have only one interpretation, associated with the act of killing. This is objectively an aggressive and insulting gesture, totally inconsistent with the standard of behavior required by the players participating in an FIVB competition, broadcasted live in dozens of countries around the world. In a nutshell, the Player's gesture tarnished the image and reputation of FIVB and the sport of volleyball.
25. Therefore, the FIVB Disciplinary Panel finds that the Player's action constitutes a violation of Articles 11.1 and 11.5 of the FIVB DR and is considered to be violent conduct towards the FIVB and its most important guests, i.e. the volleyball fans, especially during an event of the scale of the [event].

(b) Sanction

26. When determining the applicable sanction, the FIVB Disciplinary Panel must look at Article 7.1 of the FIVB DR for minor offenses, Article 7.2 of the FIVB DR for major offenses, and Article 11.5 of the FIVB DR for recurrence of previous offenses.
27. In the case at hand, the FIVB Disciplinary Panel notes the argument by the Player's National Federation, namely that he was subject to hostile behavior by fans in [the Host Country].
28. The Panel has seen no evidence indicating, let alone proving, the existence of any hostile or aggressive behavior. The Panel also notes that neither the Player nor any other person of his team delegation filed a complaint regarding the behavior of the fans, which would be the appropriate way of addressing any alleged problematic behavior by the latter. In any event, it is a duty of each Player, particularly a player competing at the highest level and in FIVB's flagship event, the [event], to focus on his game and not respond to the reactions of the fans. The Panel emphasizes that what is subject to sanction in this case is not merely the fact that the Player, as he alleges, reacted, but mainly the manner in which he expressed his feelings through an offensive gesture imitating gunfire.
29. In view of the above factual and legal considerations, taking into account the seriousness of the violation and the absence of any mitigating circumstances, the Panel decides that a suspension of two (2) matches shall be imposed on the Player.

(c) Applicability and enforcement of sanction

30. Article 7.4 of the FIVB DR allows for the FIVB Disciplinary Panel to limit sanctions to certain types of matches. Because these incidents occurred during an FIVB volleyball competition for senior national teams, the FIVB Disciplinary Panel finds that it is appropriate to limit accordingly the scope of the sanction. Thus, the match suspension imposed in this decision applies to FIVB volleyball competitions for senior national teams.
31. Additionally, Article 8.5 of the FIVB DR applies to this sanction as well. Thus, this sanction is applicable immediately upon notification of this decision. If the suspended Player participates in an FIVB volleyball competition for senior national teams before the expiry of his suspension, then the national team shall forfeit the respective match(es) and the suspension will restart.

* * *

Taking all the above into consideration

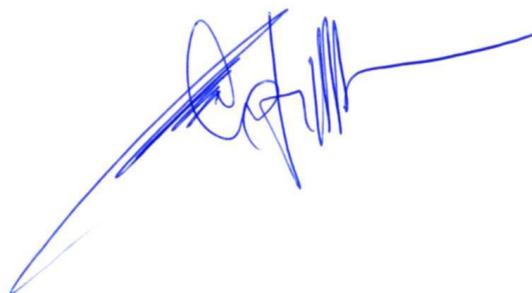
THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. A suspension of two (2) matches is imposed on [the Player].

Lausanne, [date]

For the FIVB DISCIPLINARY PANEL

A handwritten signature in blue ink, appearing to be 'Wanderley Rebello', written in a cursive style with a long horizontal stroke extending to the right.

Mr. Wanderley Rebello
Chair

NOTICE OF APPEALS

1. Parties who are affected by a decision of a FIVB body (e.g. the President, the Board of Administration, the Disciplinary Panel etc.) can file an appeal to the FIVB Appeals Panel unless otherwise provided in the FIVB Constitution and Regulations.
2. Appeals must be made in writing and must be received by the FIVB Secretariat within fourteen (14) days from notification of the decision, failing which the appeal will be considered inadmissible.
3. Appeals shall be accompanied by a copy of the decision appealed against and a bank certificate confirming payment of the administrative fee of CHF 2,000 into the following account:

Bank: UBS AG, CH-1002 Lausanne, Switzerland

Account beneficiary: Federation Internationale de Volleyball

Account number: 0243-146146.60U

Swift: UBSWCHZH80A

IBAN: CH660024324314614660U

4. Failure to pay the administrative fee within the deadline fixed by the FIVB Secretariat will result in considering the appeal withdrawn. The FIVB Appeals Panel may decide that the administrative fee be reimbursed in the event that the appeal is successful.
5. The appeal can be filed by a proxy if he/she presents a written power of attorney.
6. For details of the appeals procedure please refer to Section III of the FIVB Disciplinary Regulations (<http://www.fivb.org/EN/FIVB/Legal.asp>).
7. A further appeal against the decision by the FIVB Appeals Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following receipt of the decision.