

## THE FIVB DISCIPLINARY PANEL

composed by

<b>Ms. Sabinah Clement (IVB)</b>	Chairperson
<b>Ms. Margaret Ann Fleming (SCO)</b>	Member
<b>Mr. Tomohiro Tohyama (JPN)</b>	Member

### Case DP 2019-05

#### I. PARTIES

1. Mr. [name]<sup>1</sup> is a 34-year old volleyball player (hereafter the “**Player**”) of the men’s national team of [country] (hereafter the “**Team**”).

#### II. FACTUAL BACKGROUND AND PROCEDURE

2. From [date] to [date], the [name of important FIVB event] took place in [country] (hereafter the “[**Event**]”).
3. On [date], during the final day of the [Event], at [time], the Team beat the [opposing team] to win the [Event] finishing the round robin tournament undefeated.
4. On the same day, during the awarding ceremony following the abovementioned victory, at [time], the Player appeared to adopt strange behaviour, which included showing his middle finger on the medal podium (hereafter the “**Gesture**”).
5. The awarding ceremony was photographed, recorded, filmed and broadcasted throughout the world.
6. The actions of the Player were reported within the *Fédération Internationale de Volleyball* (hereafter the “**FIVB**”) on the same day.
7. On [date], the FIVB Disciplinary Panel charged the Player with violations of Articles 14.2, 20.1, and 20.4 of the FIVB Disciplinary Regulations 2019 (hereafter the “**Disciplinary Regulations**”) as well as Articles 20.2.1, 21.2.1 and 21.2.2 of the Official Volleyball Rules 2017-2020 (hereafter the “**Rules of the Game**”) and opened the present proceedings (hereafter the “**Charge Letter**”) based on the Gesture and allegations that the Player was drunk during the awarding ceremony.
8. The file sent with the Charge Letter included the following exhibits (hereafter the “**Exhibits**”) related to the Player’s actions during the awarding ceremony:
  - a photo of the Player giving the middle finger;

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

- a link to a video extract of the [Event] awarding ceremony with indications of the timing at which the Gesture and the following other actions could be observed:
    - Appeared visibly drunk alongside his teammates on the podium;
    - Had an aloof reaction to the Team photo;
    - Walked away before the Team photo was finished;
    - Fell off the podium;
    - Appeared drunk while singing the [country] national anthem (hereafter the “**Other Actions**”).
9. The FIVB Disciplinary Panel invited the Player to respond to the charges by no later than [date] (hereafter the “**Answer**”).
10. On [date], the Player filed his Answer which submitted, in essence, the following:
- a) With regards to the facts
- The Player did not deny the Gesture. However, neither the Gesture nor the Other Actions constitute a violation of either the Disciplinary Regulations or the Rules of the Game.
  - The Gesture was aimed at a close friend of the Player, Mr. [name], the Team’s masseur (hereafter the “**Masseur**”) who was in front the Player during the ceremony. The Gesture was not a protest against volleyball bodies nor an offensive act nor of violent conduct. If it had been the case, the Player would have given a statement or said so in an interview. The Masseur asked the Player to approach his teammates for the podium photo to which the Player responded with a thumbs up gesture and then rapidly switched to a middle finger gesture, which was meant as a friendly joke. The Player was celebrating the Team’s [Event] victory and his award as best [position] of the competition. His actions were the result of happiness and joy and cannot be considered as offensive or against the spirit of fair play. Although the time and place for such a joke was inappropriate, this clumsy choice does not constitute a violation of the Disciplinary Regulations or the Rules of the Game.
  - The Other Actions attributed to the Player are not visible in the video and cannot be proven by the evidence provided in the proceedings. The Player denied having any aloof reaction, walking away before the picture and falling off the podium. In light of the wording of the relevant provisions, these actions do not constitute any violations. The Player’s behaviour before, during and after the Gesture proves that he was not drunk (interacting with other players and supporters, receiving his medal, greeting officials, making jokes, singing the national anthem, posing for photos). His behaviour shows a happy player celebrating with his colleagues. The Player’s teammates can also be heard as eyewitnesses.
- b) With regards to the grounds of the defence
- There was no improper use of physical or emotional force. Additionally, the recipient of the Gesture, i.e. the Masseur, did not feel any kind of intimidation, injury or defamation (as confirmed by his statement submitted with the Answer as Exhibit

1). Consequently, the requirements of Article 20.1 of the Disciplinary Regulations are not met.

- Under Article 20.4 of the Disciplinary Regulations, the sanctions can only be applied during “*the*” competition. Additionally, the Gesture and Other Actions cannot be considered as harassment, insult or verbal or physical abuse. Consequently, any charge under Article 20.4 of the Disciplinary Regulations must be set aside.
- Article 20.2.1 of the Rules of the Game is clearly intended to only apply during matches as it uses the term “participants”. Moreover, the Masseur is not covered by this provision in terms of who participants must behave respectfully and courteously towards. Consequently, any charge under Article 20.2.1 Rules of the Game must be set aside.
- Articles 21.2.1 and 21.2.2 of the Rules of the Game cannot constitute a basis for a charge. As mentioned previously, said provisions are intended to sanction participants during volleyball matches. This is namely demonstrated by the diagram 9a “Misconduct warnings and sanctions”, Part 2, Section 3 of the Rules of the Game which is intended to guide referees on how to sanction participants during the matches. These sanctions cannot be extended to punish players’ actions outside of the game.
- Additionally, pursuant to Article 21.3 of the Rules of the Game, the competence to apply any sanctions for violations of the Rules of the Game above lies exclusively with the referee and not the FIVB Disciplinary Panel.
- As per the above, Articles 21.4.1 and 21.5 of the Rules of the Game are also clearly intended to apply only during the period of the match. Any other conclusion would be an improper extensive interpretation of such rules, which are not applicable outside the court.

c) In conclusion

- The Rules of the Game cannot be used as a basis for the charges against the Player.
- The facts and evidence presented in the proceedings do not establish any violation of the Disciplinary Regulations by the Player.
- Should the FIVB Disciplinary Panel nevertheless decide to sanction the Player, mitigating circumstances must be taken into consideration in accordance with Article 28.4 of the Disciplinary Regulations. These include the Player’s history of good behaviour, the Player’s individual award received during the [Event], the fact that this is the Player’s first offence, the circumstances of the moment, i.e. [Event]victory and receiving the award for best [position], the Player’s relationship with his fans as illustrated by evidence submitted as Exhibit 2 and the absence of protest or complaints from anyone involved in volleyball organisation.
- Should the FIVB Disciplinary Panel find that there is a violation of the Disciplinary Regulations or the Rules of the Game, the Gesture should only be sanctioned with a reprimand in accordance with Article 15.1.a and 16.1 of the Disciplinary Regulations. Alternatively, the sanction should be a one-match suspension given that the Player is a first-time offender.

d) Jurisprudence

The Player quoted the following jurisprudence:

- CAS 2015/A/4095 Bernardo Rezende & Mario da Silva Pedreira Junior v. FIVB, award of 6 October 2015: CAS upheld a three-match suspension imposed on a Coach by the FIVB Disciplinary Panel for a middle finger gesture aimed at a radio commentator sitting by the court<sup>2</sup>.
  - o However, according to the Player, the Gesture is different as it was a joke aimed at a friend. Therefore, if any, the Player's suspension should be less than three matches.
- Recently, the FIVB Disciplinary Panel sanctioned members of the Argentine national team with a three-match suspension for "slant-eye gestures" made during the Men's Tokyo Qualification Tournament in Ningbo, China on 11 August 2019<sup>3</sup>.
  - o Pursuant to the Player, the case involving the Argentinian players relates to a protest. Consequently, it cannot be compared to the present case.
- Two recent cases involving football players resulted in the absence of sanction on the one hand<sup>4</sup> and in a one-match suspension on the other hand<sup>5</sup>.

e) Request for Relief

The Player requested:

- That no sanction be imposed;
- The dismissal of the disciplinary proceedings FIVB DP 2019-05;
- In the event of a sanction, the FIVB Disciplinary Panel should take into consideration the mitigating circumstances outlined above and impose a reprimand or, alternatively, a one-match suspension.
- A hearing by videoconference for the oral testimony of the [...].

11. On 21 November 2019, the FIVB Disciplinary Panel Secretariat acknowledged receipt of the Player's Answer.
12. On 11 February 2020, the FIVB Disciplinary Panel Secretariat informed the Player of the composition of the Disciplinary Panel.
13. On 28 February 2020, the FIVB Disciplinary Panel sent a communication to the Player informing him that regarding his request for a hearing in order to have the oral testimony of the Masseur on the record, the FIVB Disciplinary Panel decided that the written declaration submitted with the Player's Answer (Exhibit 1) was sufficient

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<sup>2</sup>

[http://www.fivb.org/en/fivb/Document/Legal/Decisions/Appeals\\_Panel\\_Decision/2014/20151006\\_CAS\\_2015\\_A\\_4095\\_Case\\_2014-01\\_Violent\\_Conduct.pdf](http://www.fivb.org/en/fivb/Document/Legal/Decisions/Appeals_Panel_Decision/2014/20151006_CAS_2015_A_4095_Case_2014-01_Violent_Conduct.pdf).

<sup>3</sup> [...].

<sup>4</sup> <https://www.the42.ie/troy-deeney-avoids-punishment-for-middle-finger-gesture-to-chelsea-fans-3839923-Feb2018/>.

<sup>5</sup> <https://www.independent.co.uk/sport/football/international/dele-alli-england-fifa-ban-gesture-world-cup-a7973611.html>.

testimony for the purpose of addressing the point for which it is designed to provide evidence. Consequently, the FIVB Disciplinary Panel found that the Player's right to be heard shall be exercised solely in writing in accordance with Article 28.2.2.b) of the Disciplinary Regulations.

### III. COMPETENCE

14. The FIVB Disciplinary Panel is competent to hear this case as per Article 26.5 of the Disciplinary Regulations, which provides the following:

*"26.5 The FIVB Disciplinary Panel is competent to impose sanctions for simple offences, when the matter is referred to it by the FIVB President, for major offences, and as provided by the FIVB Medical and Anti-Doping Regulations."*

15. Articles 20.1 and 20.4 both constitute "violent conduct" under the Disciplinary Regulations. In accordance with Article 20.2, "violent conduct" constitutes a major offence and, thus, falls within the competence of the FIVB Disciplinary Panel generally. Moreover, the Player did not contest the competence of the FIVB Disciplinary Panel to decide violations of at least Article 20.1. Consequently, the FIVB Disciplinary Panel has competence related to the violations of Article 20.1 of the Disciplinary Regulations.
16. Regarding the violation of Article 20.4, the Player asserts that this violation applies to sanctions that can only be applied in-competition. Consequently, the FIVB Disciplinary Panel does not have competence to apply these sanctions.
17. Regarding the competence of the FIVB Disciplinary Panel for in-competition matters, the FIVB Disciplinary Panel does not agree with the Player's conclusion that a sanction of Article 20.4 can only be applied in-competition. As opposed to Article 20.1 of the Disciplinary Regulations, Article 20.4 specifically refers to potential in-competition suspensions imposed by the Appeals Sub-Committee. Based on changes made to the Disciplinary Regulations, the Appeals Sub-Committee was replaced by the FIVB Disciplinary Panel Sub-Committee as it relates to in-competition disciplinary matters, and the reference therein is merely an erroneous reference. The Disciplinary Regulations provides that the competent body may impose sanctions extending beyond the relevant competition provided that the file is submitted to the FIVB within twenty-four hours of the end of the Competition (Article 26.6.2 of the Disciplinary Regulations). Thus, the FIVB Disciplinary Panel would be competent to impose a sanction for a violation of Article 20.4 of the Disciplinary Regulations if a violation occurred during the competition but the sanction could not be served until after the competition provided that the referral properly made by the FIVB is made.
18. In the present case, while it is clear that the file reached the FIVB, there is no official correspondence confirming that the file was sent to the FIVB by the FIVB Disciplinary Panel Sub-Committee or the Organizational Sub-Committee or that the file was sent within the relevant deadline. Consequently, for this particular case, the FIVB Disciplinary Panel finds that it is not competent to impose a sanction under Article 20.4 of the Disciplinary Regulations, which explicitly provides for in-competition sanctions imposed by the FIVB Disciplinary Panel Sub-Committee because there is no evidence that the

procedural requirements of Article 26.6.2 of the Disciplinary Regulations, i.e. the transmission of the file to the FIVB by the FIVB Disciplinary Panel Sub-Committee or the Organizational Sub-Committee within twenty-four hours of the end of the Competition. For the avoidance of doubt, the FIVB Disciplinary Panel finds that it is not prevented from imposing a sanction, including a suspension, for different violations of the Disciplinary Regulations but is not competent to impose a sanction under Article 20.4 of the Disciplinary Regulations.

19. The Player challenged the competence of the FIVB Disciplinary Panel as it relates to the alleged violations of the Rules of the Game asserting that sanctions related to violations of the Rules of the Game are strictly within the purview of the referee, not the FIVB Disciplinary Panel.
20. Article 14.2 of the Disciplinary Regulations clearly provides that violations of the Rules of the Game may also constitute a disciplinary offence sanctionable under the Disciplinary Regulations. According to Article 15.1 of the Disciplinary Regulations, any violation in which a sanction is not defined is treated as a major offence. As there is no defined sanction under Article 14.2 and as major offences are within the competence of the FIVB Disciplinary Panel, the FIVB Disciplinary Panel finds that it has competence to decide whether there has been an offence sanctionable under Article 14.2 of the Disciplinary Regulations based on a violation of the Rules of the Game. Whether or not there is a violation of Article 14.2 of the Disciplinary Regulations on the merits is a question that the FIVB Disciplinary Panel will discuss in greater detail below.

#### **IV. APPLICABLE LAW**

21. The FIVB Disciplinary Panel notes that the FIVB Constitution and Regulations apply to this case. Additionally, Swiss law is applicable to the Disciplinary Regulations in accordance with Article 1.2 of the Disciplinary Regulations.
22. The FIVB Disciplinary Regulations 2019 are applicable as to the substantive rules of the present dispute as they were passed by the FIVB Board of Administration on 24 May 2019, i.e. before the Player's relevant behaviour occurred, and provided to the Player with the Charge Letter.
23. The substantive provisions of the Disciplinary Regulations which are relevant for the resolution of this dispute are quoted in the following:

##### ***"20. VIOLENT CONDUCT***

*20.1 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.*

*[...]*

20.4 *Harassment, insult, verbal or physical abuse by a coach, player, team delegation member, official to or against a player or any other team member or official present, shall be sanctioned by the Appeal Sub-Committee<sup>6</sup> with suspension for one or more matches or exclusion from the competition depending on the seriousness of the violation.”*

**“14. GENERAL PRINCIPLES**

[...]

14.2 *Violations of the Rules of the Game may be sanctioned as provided in Articles 20 and 21 of the Rules of the Game. A violation of the Rules of the Game may also constitute a disciplinary offence, sanctionable also under these Regulations.*

14.3 *Unless otherwise specified, offences are sanctionable regardless of whether they have been committed intentionally or negligently.*

[...]

14.8 *All sanctions imposed by the FIVB on leagues, clubs, teams and their administrators, team managers, players, coaches, technical and support personnel, FIVB officials and referees and referees affiliated to a NF shall also apply at a continental and national level, unless otherwise decided by the FIVB.”*

**“17. EXECUTION OF SANCTIONS**

[...]

17.5 *Disqualification of players and coaches*

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

17.5.2 *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.”*

24. Furthermore, the Rules of the Game (approved by the 35th FIVB Congress 2016) also contain substantive provisions pertaining to participants’ conduct. It should be noted that the term “Participants” includes, in particular, players and a team’s medical staff, as per Chapter 2, Article 4.1.1 of the Rules of the Game.

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<sup>6</sup> As the gesture in question happened after the last match of the Tournament and, thus, the sanction imposed would extend beyond the Tournament, the case was referred to the FIVB Disciplinary Panel in accordance with Article 26.6.2 of the FIVB Disciplinary Regulations 2019.

25. The substantive provisions of the Rules of the Game, which are also relevant for the resolution of this case, are quoted in the following:

*“20 REQUIREMENTS OF CONDUCT*

*20.1 SPORTSMANLIKE CONDUCT*

*20.1.1 Participants must know the “Official Volleyball Rules” and abide by them.*

*[...]*

*20.2 FAIR PLAY*

*20.2.1 Participants must behave respectfully and courteously in the spirit of FAIR PLAY, not only towards the referees, but also towards other officials, the opponent, team-mates and spectators.”*

*“21.2 MISCONDUCT LEADING TO SANCTIONS*

*Incorrect conduct by a team member towards officials, opponents, team-mates or spectators is classified in three categories according to the seriousness of the offence.*

*21.2.1 Rude conduct: action contrary to good manners or moral principles.*

*21.2.2 Offensive conduct: defamatory or insulting words or gestures or any action expressing contempt.*

*[...]”*

**V. LEGAL CONSIDERATIONS**

**(a) Violations**

**(1) The Gesture**

26. The FIVB Disciplinary Panel notes that the Player does not deny the Gesture but argues that the Gesture was a clumsy joke that does not constitute a violation of the Disciplinary Regulations. The Gesture followed a thumbs up gesture which was addressed to the Masseur who had instructed the Player to get nearer to his teammates on the podium. The Gesture led the Player and the Masseur to laugh at each other. The Player argues that the Gesture was thus interpreted as a joke by the Masseur.
27. Article 20.1 of the Disciplinary Regulations prohibits any action, attitude or public statement displaying an improper use of emotional force in order to defame the FIVB, its guests or any person listed in Article 1 of the Disciplinary Regulations. Additionally, Article 20.2.1 of the Rules of the Game requires participants (defined in Chapter 2 of the Rules of the Game) to behave respectfully and courteously in the spirit of fair play. Finally, rude or offensive conduct (cf. Articles 21.2.1 and 21.2.2 of the Rules of the Game) is a sanctionable offence. Article 14.2 of the Disciplinary Regulations provides that violations of the Rules of the Game may also be sanctioned as a disciplinary offence.

28. Moreover, the Disciplinary Regulations do not require that an offence is committed intentionally. Article 14.3 of the Disciplinary Regulations specifically states that negligent conduct can also constitute a disciplinary offence unless otherwise specified.
29. The Player does not contend having made the Gesture. Rather, he argues that the Gesture does not constitute a disciplinary offence in the present case.
30. In examining the facts of the present case, the FIVB Disciplinary Panel notes that the Court of Arbitration for Sport in CAS 2015/A/4095 upheld a decision of this Panel to sanction the Brazilian national team, whose coach gave the middle finger to a Polish press officer, with a three match ban. CAS considered *“it self-evident that giving a middle finger gesture to an accredited journalist could fall within the category of conduct that may be sanctioned by the FIVB judicial bodies, as such conduct may clearly bring the FIVB into disrepute”*<sup>7</sup> and, later, *“[n]either the gesture nor the comments are denied; they clearly damage the image of the FIVB and the sport of volleyball more generally”*<sup>8</sup>. Additionally, the FIVB Disciplinary Panel highlights that the Swiss Federal Tribunal found that giving the middle finger is a gesture that is undeniably obscene and provocative<sup>9</sup>. Consequently, the FIVB Disciplinary Panel finds that the conduct of giving the middle finger to someone would constitute a disciplinary offence based on previous FIVB and CAS jurisprudence.
31. While the Player contends that the Gesture was a “joke” that did not have the necessary improper use of physical or emotional force, the FIVB Disciplinary Panel finds that this argument must be dismissed. First, the FIVB Disciplinary Panel finds that a middle finger gesture on stage during an awarding ceremony was, at minimum, grossly negligent. The Player is a 34-year old adult who has approximately 15 years’ experience playing for his national team and in international competitions<sup>10</sup>. Consequently, one could reasonably expect the Player to be aware of the implications of any professional and international player’s actions during the awarding ceremony of a [Event].
32. Moreover, the fact that the Masseur, the alleged target of the Gesture, was not offended still does not eliminate any possible injury, intimidation or defamation in the present case because the Masseur was not the only recipient of the Gesture. As mentioned previously, the Player made the Gesture during the awarding ceremony of the [Event] attended and watched by thousands of spectators in the venue and by millions of spectators on television worldwide, in addition to all other participating teams, staff, members of the organisation and FIVB officials. In line with the aforementioned CAS jurisprudence, the FIVB Disciplinary Panel finds that a middle finger gesture given by a member of the winning team on the podium during an awarding ceremony of the [Event] injures or defames the FIVB as the institution organising the event as well as the local organiser of the event. Consequently, the FIVB Disciplinary Panel finds that the Player violated Article 20.1 of the Disciplinary Regulations.

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<sup>7</sup> CAS 2015/A/4095, para. 79.

<sup>8</sup> CAS 2015/A/4095, para. 85.

<sup>9</sup> Judgment 8C\_932/2012 of 22 March 2013, para. 4; judgment 8C\_702/2017 of 17 September 2018 para. 4.5.

<sup>10</sup> <https://www.volleyball.world/en/vnl/2018/men/teams/bra-brazil/players/lucas-saatkamp?id=64655>.

33. Regarding the applicability of Articles 20.2.1 and 21.2.1 and 21.2.2 of the Rules of the Game, the Player argues that the Gesture cannot constitute the basis for a charge against the Player as these rules are only intended to apply on court, during matches and are to be enforced by the relevant referee. Additionally, the Player claims that the Masseur is not included in the list of people of Article 20.2.1 of the Rules of the Game towards whom the participants must behave respectfully and courteously. The FIVB Disciplinary Panel notes that pursuant to Article 14.2 of the Disciplinary Regulations, violations of the Rule of the Game may be sanctioned as provided in Article 20 and 21 of the Rules of the Game and may also constitute a disciplinary offence under the Disciplinary Regulations. Thus, the question before the FIVB Disciplinary Panel is whether Article 14.2 of the Disciplinary Regulations can be used as a mechanism to punish conduct that occurs off of the field of play that may have constituted a violation of the Rules of the Game had it occurred on the field of play.
34. The FIVB Disciplinary Panel finds that the Rules of the Game inherently govern how the game of volleyball is played on the court. The referees are responsible for enforcing the Rules of the Game during a match. In looking at the application of sanctions found in Article 21.4 of the Rules of the Game, it is clear that it is foreseen that these would apply during a match.
35. The FIVB Disciplinary Panel finds that Article 14.2 of the Disciplinary Regulations does not create a new sanctioning power to allow the FIVB Disciplinary Panel to sanction conduct occurring off the court that might have been a violation of the Rules of the Game. Rather, it provides the possibility for the FIVB Disciplinary Panel to examine and sanction particularly egregious behaviour that occurred on the court beyond the limits of a match as found in application of sanctions in the Rules of the Game. This interpretation is supported by the wording of the second sentence of Article 14.2 of the Disciplinary Regulations, which states that *“A violation of the Rules of the Game may also constitute a disciplinary offence, sanctionable under these Regulations”* (emphasis added). The “also” in the interpretation implies that it is a provision designed to extend the possibility of sanctioning conduct on the court rather than creating a separate sanctioning power. Consequently, the FIVB Disciplinary Panel finds that the Gesture does not constitute a violation of the Rules of the Game as it was not behaviour that occurred on the court.
36. Based on the above, the FIVB Disciplinary Panel holds that the Gesture constituted a violation of Article 20.1 of the Disciplinary Regulations but not a violation of the Rules of the Game sanctionable under Article 14.2 of the Disciplinary Regulations.

**(2) The Other Actions**

37. The FIVB Disciplinary Panel notes that the Player argues that the FIVB failed to meet its burden of proof with regard to the Other Actions.
38. Pursuant to Article 28.3 of the Disciplinary Regulations, *“[t]he FIVB shall have the burden of establishing that a violation has been committed. The standard of proof in all matters under these Regulations shall be the balance of probabilities, a standard that implies*

*that on the preponderance of the evidence it is more likely than not that a breach of these Regulations has occurred.”*

39. The FIVB Disciplinary Panel notes that the Exhibits sent to the Player with the Charge Letter include a picture of the Player giving the middle finger and a link to a video replaying the awarding ceremony during which the Player allegedly appears to be drunk as reflected by the Other Actions mentioned above.
40. The Player denies any aloof reaction to a Team photo, walking away before the Team photo and falling off the podium. The Player claims that he lost his balance and stepped off the podium. Additionally, the Player argues that his behaviour before and after the Gesture proves that he was not drunk (interacting with other players and supporters, receiving his medal, greeting the officials, making jokes, singing the [Player’s country’s]national anthem, taking photos with others and celebrating great achievements of a great season).
41. The FIVB Disciplinary Panel finds that the evidence submitted includes only circumstantial accusations of drunken behaviour but there is no additional proof that the Player was, in fact, inebriated. The FIVB did not submit any alcohol testing of the Player after the awarding ceremony, any witness testimony or reports from FIVB officials demonstrating any proof of inebriation. Consequently, the FIVB Disciplinary Panel finds that the FIVB has not met its burden of proof to establish that the Player was drunk.
42. The FIVB Disciplinary Panel finds that the Other Actions alone do not constitute any behaviour that would be a violation of the Disciplinary Regulations taken independently from any charge related to intoxication.
43. Consequently, the FIVB Disciplinary Panel finds that the FIVB has not met its burden of proof and the Player cannot be held liable for a violation of the Disciplinary Regulations for the Other Actions. Also, the Player cannot be held liable for a violation of the Rules of the Game.

**(b) Sanction**

44. Pursuant to Article 28.4.1 a) of the Disciplinary Regulations, *“[w]hen determining the appropriate sanctions applicable, the competent FIVB body shall take into consideration all aggravating and mitigating circumstances and shall detail the effect of such circumstances on the final sanction in the written decision.”*
45. When determining the applicable sanctions, the FIVB Disciplinary Panel notes that:
  - a. The Player has no record of previous disciplinary sanctions imposed by the FIVB;
  - b. The Player did not issue a public apology for having made the Gesture;
  - c. The Player is a 34-year old professional volleyball player with approximately 15 years’ experience in international competitions; and

- d. The Player argues that the Gesture should be sanctioned with a reprimand or a one-match suspension.
46. As a preliminary remark, it should be noted that in light of the circumstances at hand and the severe negligence of the Player, a decision imposing no sanction or a simple warning or reprimand is not acceptable in the present case.
47. Examining FIVB jurisprudence involving violations of Article 20.1 of the Disciplinary Regulations, particularly, FIVB DP 2014-01, FIVB DP 2019-03 and FIVB DP 2019-04, the FIVB Disciplinary Panel finds that a three-match suspension is in line with FIVB jurisprudence, sufficient and proportionate to the severity of the violation given the gross negligence of the Player, especially as the Player was or should have been aware that the Gesture would be captured on the broadcast of the awarding ceremony.
48. In this regard, the provisions, which are relevant for the execution of the sanction, are quoted in the following:

Article 17 of the Disciplinary Regulations

*“17. EXECUTION OF SANCTIONS*

*[...]*

*17.5 Disqualification of players and coaches*

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

*17.5.2 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.”*

Article 1.3 of the FIVB Event Regulations 2019

*“1.3 CATEGORIES OF INTERNATIONAL VOLLEYBALL COMPETITIONS*

*The categories of international Volleyball competitions are:*

- a. FIVB competitions;*
- b. World competitions;*
- c. Official competitions;*
- d. Recognized competitions; and*
- e. Registered competitions.”*

49. As the Gesture occurred during an FIVB Competition, the [Event], according to Article 2.2.2 of the FIVB Event Regulations 2019, the FIVB Disciplinary Panel finds that this sanction shall be served at the next FIVB Competition. Therefore, the aforementioned match suspension is to be served during the next official matches of the [Player’s

national team]during the next men’s FIVB Competition, currently scheduled to be [another FIVB Competition], but subject to any changes that might occur in the calendar for FIVB Competitions.

50. Finally, the FIVB Disciplinary Panel reserves the right to re-open the present proceedings in the event that the Player fails to serve the match suspension.

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**Taking all the above into consideration**

**THE FIVB DISCIPLINARY PANEL**

**Concludes and Decides**

1. The Player, Mr. [name], has committed a violation of Article 20.1 of the FIVB Disciplinary Regulations 2019.
2. The Player, Mr. [name], shall be sanctioned with a suspension for three matches.
3. The Player, Mr. [name], shall serve his match suspension during the next official matches of the [Player's national team] during a FIVB Competition as defined in Article 2.2.2 of the FIVB Event Regulations 2019.
4. The FIVB Disciplinary Panel reserves the right to re-open this case in the event that the Player, Mr. [name], fails to serve his sanction.
5. This decision may be appealed in accordance with the attached Notice of Appeals.

Lausanne, 3 April 2020

**For the FIVB DISCIPLINARY PANEL**

Ms. Sabinah Clement

Chairperson

## 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:

Banque Cantonale Vaudoise (BCV)

Place Saint-François 14

CH-1001 Lausanne / Switzerland

Account: T 5344.53.25

IBAN: CH33 00767 000T 5344 5325

BIC Code (Swift Address): BCVLCH2LXXX

Bank clearing: 767

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 IV of the FIVB Disciplinary Regulations (<https://www.fivb.com/en/thefivb/legal>).
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.