

THE FIVB DISCIPLINARY SUB-COMMITTEE

composed by

Mr. Mounir Ben Slimane (TUN)	Member
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Case DP 2019-02

I. PARTIES

1. [Name of a national federation]¹ (hereinafter the “[name of the national federation]” or the “**National Federation**”) is the national volleyball federation of [country]. The “[National Federation] is affiliated with the *Fédération Internationale de Volleyball* (hereafter “**FIVB**”) and the North, Central America and Caribbean Volleyball Confederation (hereafter “**NORCECA**”).

II. FACTUAL BACKGROUND AND PROCEDURE

2. On [date], the [event] started in [place of the event] (hereafter the “**Championship**”).
3. On [date], the first match of the day, match n°36 between [country of the opposing national team and names of its players] and [country of the National Federation and names of its players] was scheduled to start at 10:00 AM on court 3 (hereafter the “**Match**”).
4. At the scheduled Match start time, the [National Federation’s country’s] national team was not present and, despite several attempts, could not be found.
5. The referees and FIVB officials were present on court 3 at the start time and the Match was declared a forfeit in accordance with the FIVB Beach Volleyball Rules of the Game (Articles 6.4.2 and 6.4.1). The forfeit for non-appearance was registered in the e-scoresheet at 10:05 AM.
6. Numerous failed attempts were made to find the [National Federation’s country’s] national team. The [National Federation’s country’s] players were finally found in the hotel lobby at approximately 10:15 AM. When questioned, the players declared that they forgot about the Match and believed that their next match would be on 1 July 2019 against [another opposing team].
7. At 11:30 AM, [National Federation’s national team] informed the FIVB Technical Delegate that they wished to sign scoresheet and that one of the players had suffered a back injury.
8. Prior to the Championship, on [date], the schedule for the Championship matches was published by the FIVB. Furthermore, as of [one day before the start of the Championship], daily bulletins with the relevant match information were sent to each team. Finally, the

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

information relating to the Match was also available at the information desk of the hotel where the [National Federation's country's] national team was staying.

9. On [the next day], the [National Federation's] actions were reported to the FIVB Legal and Transfers Department by the FIVB Beach Volleyball Events Director, the FIVB Technical Delegate and the FIVB Referee Delegate of the Championship.
10. On [two days later] at 12:39 PM (noon), the FIVB charged the National Federation with a violation of Article 24.6 of the FIVB Disciplinary Regulations 2019 (obstruction to the start of a match) and began the present proceedings (hereafter the "**Charge Letter**"). In light of the Championship context, the FIVB Disciplinary Panel Sub-Committee invited the National Federation to submit an Answer in writing by no later than 6:00 PM on 4 July 2019 and warned the National Federation that a failure to do so would constitute a waiver of its right to be heard, forcing the case to be decided on the basis of the evidence before it.
11. The National Federation failed to respond to the Charge Letter within the set deadline.
12. On [three days later], at 7:41 PM, the National Federation sent a letter to the FIVB Disciplinary Panel Sub-Committee clarifying the situation of its national team in which it stated in particular that:

"[...] everything indicates that it was a misunderstanding of our athletes who mistakenly did not consider the schedule of this tournament.

[...] the [country] Federation will analyze the situation upon return of the athletes and their coaches in order adopt the necessary measures, [...]" [sic]

III. COMPETENCE

13. Pursuant to Article 26.6. of the FIVB Disciplinary Regulations 2019, "*[t]he FIVB Disciplinary Panel Sub-Committee (or the FIVB Representative) is competent to impose sanctions for simple and major offences arising on the occasion of the competition for which it was appointed, as specified herein.*"
14. In the present case, the National Federation's actions occurred on the third day of the Championship. Consequently, this charge falls on the occasion of the 2019 World Championships and under the competence of the FIVB Disciplinary Panel Sub-Committee.
15. The FIVB Disciplinary Panel Sub-Committee further notes that the [National Federation] did not challenge the competence of the FIVB Disciplinary Panel Sub-Committee to hear the present case.

IV. APPLICABLE LAW

16. The FIVB Disciplinary Panel Sub-Committee notes that the FIVB Constitution and Regulations apply to this case. Additionally, Swiss law is applicable subsidiarily in

accordance with Article 1.2 of the FIVB Disciplinary Regulations 2019 (hereafter “**DR 2019**”).

17. The DR 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 and provided to the National Federation with the Charge Letter.
18. The substantives provisions which are relevant for the resolution of this dispute are quoted in the following:

“24. OFFENCES RELATED TO THE ORGANISATION OF AND PARTICIPATION IN INTERNATIONAL COMPETITIONS

[...]

24.6 Obstruction to the start of a match

24.6.1 A team declared forfeit because it did not start a match within the first 15 minutes of the scheduled time shall be fined up to CHF 20,000, with the possibility of increasing the amount due to additional damages caused to the organizer and the FIVB.

24.6.2 The team in question shall forfeit the match. If the same team commits another similar offence, the team shall be eliminated from the Competition and shall be deemed to have lost also all its previous matches by forfeit.

[...]”

“14. GENERAL PRINCIPLES

[...]

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

14.4 In addition to personal responsibility, national federations and clubs are accountable, and may be sanctioned accordingly, for the conduct of their players, members, officials, supporters and any persons exercising a function within the federation or the club and/or during the organization of a match on behalf of the federation or club.

[...]”

V. LEGAL CONSIDERATIONS

(a) Violations

i) Obstruction to the start of a match

19. The FIVB Disciplinary Panel Sub-Committee notes that the National Federation failed to respond to the Charge Letter within the set deadline and thus waived its right to be heard.
20. In its Answer filed two days late, the National Federation confirmed that their athletes “*mistakenly did not consider the schedule of this tournament*”. However, due to the National Federation’s failure to observe the deadline (by more than 48 hours), these submissions shall not be taken into account.
21. It is undisputed that the [National Federation] failed to appear at the scheduled start time of the Match. The [National Federation’s] national team was only found at 10:15 AM, i.e. 15 minutes after the scheduled start of the Match, in the hotel lobby.
22. It is also undisputed that the Match was effectively declared forfeit, and the [National Federation’s country’s] national team did play a match scheduled on 1 July 2019 against [another country].
23. When questioned, the [National Federation’s country’s] national team declared that they had forgotten about the Match. Later that day, the [National Federation’s country’s] players also asserted that one of the team members had suffered a back injury.
24. The FIVB Disciplinary Panel Sub-Committee notes that the Match information was not only available on the FIVB’s website since [more than two weeks prior to the start of the Championship] but also in the bulletins sent daily – as of [the day before the start of the Championship] – to each team in the Championship and at the information desk of the hotel where the [National Federation’s country’s] national team was staying. Given the numerous reminders the team was given of the Match information, the FIVB Disciplinary Panel Sub-Committee finds its declarations unconvincing. Furthermore, the formula of the Championship is well known to all participating nations, and one can reasonably expect professional volleyball players and coaches to monitor their daily schedule during the most important beach volleyball competition. It, thus, is clear that the [National Federation] missed a match of a premier competition without a valid reason.
25. The National Federation’s behavior is not only unprofessional but also disrespectful to the organizers of the Championship, the opposing teams, the fans, and the FIVB. Such behavior, which is clearly contrary to the interest and the image of volleyball, but also sport in general, cannot be tolerated. In light of the above, the attitude adopted by the [National Federation] in the context of such an important championship, can only be qualified as grossly negligent, at the very least.
26. As a consequence, the National Federation is liable for the violation of Article 24.6.1 of the DR 2019.

(b) Sanction

27. When determining the applicable sanctions, the FIVB Disciplinary Panel Sub-Committee must look at the sanctions provided in the applicable regulations.

28. In addition to the above, the FIVB Disciplinary Panel Sub-Committee notes that Article 28.4.1 of the DR 2019 provides:

“28.4.1 The competent FIVB body shall evaluate the evidence, take into consideration the specific conditions under which the events occurred, the previous conduct of the person(s)/or institution(s) concerned and generally all the circumstances in order to determine whether and to what extent a sanction is required. The following principles apply:

a) When 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.

b) Substantial assistance provided by a Party that results in the discovery or establishment of an offence by another Party may reduce any sanction applied under these Regulations.”

29. Consequently, the FIVB Disciplinary Panel Sub-Committee will use the sanctions provided in the relevant provisions as the starting point for the sentencing of the National Federation and adapt the final sanction taking into consideration the principle referred to in Article 28.4.1 of the DR 2019.

30. Article 24.6.1 of the DR 2019 provides that an obstruction to the start of a match shall be sanctioned with a fine up to CHF 20'000, in addition to an automatic forfeit of the match.

31. The FIVB Disciplinary Panel Sub-Committee notes that the organizer of the Championship has not submitted any request for damages as per the possibility provided under Article 24.6.1 of the DR 2019.

32. Examining FIVB jurisprudence involving similar violations (withdrawal from international competitions in FIVB DP 2017-02 and FIVB DP 2017-07), the FIVB Disciplinary Panel Sub-Committee finds that a sanction of 40 percent of the highest possible sanction to be proportionate. However, it should also be noted that, in the present case, the violation occurred during the FIVB Beach Volleyball World Championships, i.e. the most important beach volleyball competition and a competition which is substantially more important than the abovementioned cases. As such, the FIVB Disciplinary Panel Sub-Committee finds that a sanction higher than the fine provided in DP 2017-02 and DP 2017-07 is justifiable, especially considering that the violation in this case is not subject to an additional sanction, such as a ban from international competition, as it was in that case. Based on the above, the FIVB Disciplinary Panel Sub-Committee holds that the National Federation shall be subject to a fine of CHF 10'000.

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Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL SUB-COMMITTEE

Concludes and Decides

1. The [National Federation] has committed a violation of Article 24.6.1 of the FIVB Disciplinary Regulations 2019.
2. The [National Federation] shall be sanctioned with a fine in the amount of **CHF 10'000**, in addition to the automatic forfeit of the match already registered in the e-scoresheet.
3. The [National Federation] is ordered to make payment of the abovementioned fine within **30 days** from notification of the decision to the following bank 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. In accordance with Article 26.6.3 of the FIVB Disciplinary Regulations, this sanction is final and not subject to appeal.

Lausanne, 9 July 2019

For the FIVB DISCIPLINARY PANEL SUB-COMMITTEE

Mr. Mounir Ben Slimane