

THE FIVB DISCIPLINARY PANEL

composed by

Ms. Sabinah Clement (IVB)	Chairperson
Ms. Margaret Ann Fleming (SCO)	Member
Mr. Mounir Ben Slimane (TUN)	Member

Case DP 2019-03

I. PARTIES

1. [name]¹ (hereafter the “Assistant Coach”) is the Assistant Coach of the women’s national team of [country].

II. FACTUAL BACKGROUND AND PROCEDURE

2. On [date], during [an Olympic Qualifier] (hereafter the “Tournament”), a match took place in between the [Assistant Coach’s team] (hereafter the “Team”) and [the opposing team, which is from the Asian continent] at [time] (hereafter the “Match”).
3. [The Assistant Coach’s team] beat [the opposing team] in five sets and qualified to the 2020 Olympic Games in Tokyo (Japan).
4. Immediately following the Match, the Assistant Coach celebrated [his country’s] victory by making “slant-eye” gestures (hereafter the “Gestures”).
5. He was photographed making the Gestures, and the photo was published in the media online.
6. On [date], the [the opposing team’s National Federation] filed a complaint with the *Fédération Internationale de Volleyball* (hereafter “FIVB”) about the Assistant Coach’s inappropriate behaviour considering it racially discriminative for [opposing team’s country’s] people
7. On [date], the [Assistant Coach’s National Federation] sent a letter to the [opposing team’s National Federation] confirming the opening of disciplinary proceedings against the Assistant Coach.
8. On [date], the Assistant Coach sent a written apology, in [langue of a third country] (his mother tongue), to [his and the opposing team’s National Federations] and the FIVB (hereafter the “Apology”).

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

9. In his Apology, the Assistant Coach stated, in particular, the following:

“In my case, for example, after the qualification to the Rio Olympics, I Danced a samba of happiness with the dancers from the organisation and it seemed so normal to me to express a feeling of such rare intensity with a dance of joy.

One of these moments happened to me the evening of the 4 August, when at the end of an extraordinary competition in between [the Assistant Coach’s] team and the [opposing] team, the enthusiasm of achieving the dream of participating in the Tokyo Olympics was ignited.

The gesture that I am portrayed doing in a photo (moreover, not authorised by me) was not intended to harm or even worse offend the [opposing team] who deserved at least as much as ours to qualify to the Olympics.

Now I realise that, after a few days, someone was offended by my gesture which, I repeat, was solely intended to express the immense Joy of qualifying to the Tokyo Olympics.”

10. On [date], the [Assistant Coach’s National Federation] sent a letter to the [opponent team’s National Federation] confirming that a two-match sanction had been imposed on the Assistant Coach.
11. On [date], the FIVB Disciplinary Panel charged the Assistant Coach with violations of Articles 20.1 and 20.4 of the FIVB Disciplinary Regulations 2019 and opened the present proceedings (hereafter the “**Charge Letter**”).
12. In light of [an upcoming event], the FIVB Disciplinary Panel invited the Assistant Coach to respond to the charges by no later than [five days later].
13. The Assistant Coach failed to file his Answer within the deadline set in the Charge Letter.

III. COMPETENCE

14. The FIVB Disciplinary Panel is competent to hear this case as per Article 26.5 of the FIVB Disciplinary Regulations 2019, 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. The FIVB Disciplinary Panel further notes that the Assistant Coach did not file an Answer and, as such, did not challenge the competence of the FIVB Disciplinary Panel to hear the present case.

IV. APPLICABLE LAW

16. The FIVB Disciplinary Panel notes that the FIVB Constitution and Regulations apply to this case. Additionally, Swiss law is applicable subsidiarily to the FIVB Disciplinary Regulations 2019 in accordance with Article 1.2.
17. 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 and provided to the Assistant Coach with the Charge Letter.
18. The substantive provisions of the FIVB Disciplinary Regulations 2019, 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.

20.2 Violent conduct in connection with a competition or in general a Volleyball activity shall be sanctioned as a major offence. Sanctions shall be imposed on the persons involved and/or the national federation or club accountable for such actions (see Article 14.4 above).

[...]

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-Committee² with suspension for one or more matches or exclusion from the competition depending on the seriousness of the violation.”

“14. GENERAL PRINCIPLES

[...]

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

² 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.

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.”

19. Furthermore, the FIVB Official Volleyball Rules 2017-2020 (approved by the 35th FIVB Congress 2016) (hereafter the “**Official Rules**”) also contain substantive provisions pertaining to participants’ conduct. It should be noted that the term “Participants” includes players, as per the definition in Article 4.1.1 of the Official Rules.
20. The substantive provisions of the Official Rules, 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.”

V. LEGAL CONSIDERATIONS

(a) Violations

(1) Violent Conduct

21. The FIVB Disciplinary Panel notes that the Assistant Coach did not challenge the fact that he made the Gestures and that the Gestures constituted culturally and racially insensitive behaviour, or, as referred to in the FIVB Disciplinary Regulations 2019, an insult.

22. In his Apology, the Assistant Coach simply attempted to justify his Gestures by the overwhelming excitement and happiness following the Team's qualification to the 2020 Olympic Games in Tokyo but recognised that others were offended by the Gestures. It is, thus, apparent that the Assistant Coach became aware that the Gestures were offensive to other people.
23. It is also apparent that the Gestures were insulting, not only to the [opposing team's National Federation] who immediately filed a complaint with the FIVB, but also to the entire Asian community.
24. The FIVB Disciplinary Panel observes that the Assistant Coach does not have any records of previous sanctions for offensive or insulting behaviour and that he acted out of instantaneous emotion.
25. The FIVB Disciplinary Panel also notes that the Assistant Coach acted alone, through his own initiative.
26. However, the FIVB Disciplinary Panel considers that, in an environment such as the Tournament, particularly given the importance of the match, i.e. Olympic qualification on the line, and the full crowd of people of Asian descent, including children, the Assistant Coach, who is an experienced, professional and international sportsman, should have used precaution and demonstrated a higher level of prudence, sensitivity and sportsmanship towards the international community.
27. Moreover, the Assistant Coach's behaviour is not in line with the fundamental principles of fair play, Olympism and of the protection of human rights as reminded namely in Article 20.2.1 of the Official Rules.
28. In light of the above, the Assistant Coach is liable for the violations of Article 20.1 and 20.4 of the FIVB Disciplinary Regulations 2019. Article 20.2 of the FIVB Disciplinary Regulations 2019 is also applicable as the Gestures were made in connection with a competition (the Tournament).

(b) Sanction

29. When determining the applicable sanctions, the FIVB Disciplinary Panel notes that:
 - a. the Assistant Coach sent an official written apology to the [opposing team's National Federation], the [Assistant Coach's National Federation] and to the FIVB; and
 - b. the [Assistant Coach's National Federation] sanctioned the Assistant Coach with a two-match suspension.

Therefore, the FIVB Disciplinary Panel must examine whether an additional sanction is warranted on top of the sanction already imposed by the [Assistant Coach's National Federation].

30. Examining FIVB jurisprudence involving violations of Articles 20.1, 20.2 and 20.4, particularly, FIVB DP 2014-01 and FIVB DP 2019-01, the FIVB Disciplinary Panel finds that a sanction of a suspension of a total of three matches is in line with FIVB jurisprudence, sufficient and proportionate to the severity of the violations. As the [Assistant Coach's National Federation] has already imposed a sanction of a suspension of two matches, the FIVB Disciplinary Panel shall impose one additional match suspension on top of the sanction imposed.
31. It should be noted that, under Article 17.5.1 of the FIVB Disciplinary Regulations 2019, suspensions (disqualifications) are applicable to FIVB and/or other competitions.
32. In this regard, the provisions, which are relevant for the issue of the execution of the sanction, are quoted in the following:

Article 17 of the FIVB Disciplinary Regulations 2019

"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."*

33. In the present case, the aforementioned three-match sanction would be served during the next official matches of the [Assistant Coach's team], i.e. during the [event] starting on [date]. For the sake of clarity, [that event] falls under any of the letters c) to e) of Article 1.3 of the FIVB Event Regulations 2019 defining International Volleyball competitions and can, thus, be considered as "other competitions" under Article 17.5.1 of the FIVB Disciplinary Regulations 2019. Additionally, Article 14.8 of the FIVB Disciplinary Regulations 2019 allows a sanction imposed by the FIVB to be applied at a continental level.

34. Finally, the FIVB Disciplinary Panel reserves the right to re-open the present proceedings in the event of an appeal against the decision of the [Assistant Coach's National Federation] or if the Assistant Coach fails to serve his three-match sanction.

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The Assistant Coach, [name], has committed violations of Articles 20.1, 20.2 and 20.4 of the FIVB Disciplinary Regulations 2019.
2. The Assistant Coach, [name], shall be sanctioned with a total sanction of a suspension for three matches.
3. The Assistant Coach, [name], shall serve the total three-match suspension during the first three matches of the [Assistant Coach's team] at the [event].
4. The FIVB Disciplinary Panel reserves the right to re-open this case in the event of an appeal of the decision of the [Assistant Coach's National Federation] or if the Assistant Coach, [name], fails to serve his sanction.
5. This decision may be appealed in accordance with attached Notice of Appeals.

Lausanne, 23 August 2019

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 (<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.