



The

**FIVB TRIBUNAL**

hereby issues the following

**DECISION**

**2021-05**

on the Request for Review of [case number]<sup>1</sup> filed by

**[The Player]**  
**("Claimant")**

represented by [the Player's lawyers]

vs.

**[The Club] ("Respondent")**

represented by [the Club's representative]

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<sup>1</sup> 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 [the Player's country] professional volleyball player ("**Claimant**" or "**Player**").
2. [The Club] is an [the Club's country] professional volleyball club ("**Respondent**" or "**Club**").

## 2. The FIVB Tribunal

3. Article 19.1.5 of the 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 from Germany, appointed FIVB Tribunal Vice-Chairperson, Francisco A. Amallo from Argentina, to hear this case as a single judge ("**FIVB Tribunal Judge**").

## 3. Facts

5. On [date], the parties signed an agreement ("**Agreement**"), under which the Player agreed to play for the Club's team for the [year]/[year] season in exchange for, *inter alia*, a total salary of EUR 280,000 net to be paid in ten instalments from [a specific month of a year] to [a specific month of the subsequent year].<sup>2</sup>
6. On [date], the Club sent to the Player a workout program from [date] to [date].<sup>3</sup>
7. On [date], the Player arrived at the Club's facilities after the [continental championships for

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<sup>2</sup> Player's RFR, Exhibit 2.

<sup>3</sup> Club's Answer, Exhibit 5.

national teams, hereafter “Continental Championship”) had ended.<sup>4</sup>

8. On [date], the [highest continental competition for clubs, hereafter “Continental League”] started.<sup>5</sup>
9. On [date], the Club paid EUR 28,000 to the Player as compensation for [month year].<sup>6</sup>
10. On [date], the [Club’s country’s] Championship [hereafter “National Championship”] started.<sup>7</sup>
11. On [date], the [Club’s country’s] Supercup [hereafter “National Supercup”] was played.<sup>8</sup>
12. On [date], the Club paid EUR 28,000 to the Player as compensation for [month year].<sup>9</sup>
13. On [date], the Club paid EUR 28,000 to the Player as compensation for [month year].<sup>10</sup>
14. On [date], the Club paid EUR 28,000 to the Player as compensation for [month year].<sup>11</sup>
15. On [date], the [the Club’s country’s Cup, hereafter “National Cup”] started.<sup>12</sup>
16. On [date], the [Club’s country’s] government declared a state of health emergency due to the Covid-19 outbreak.<sup>13</sup>

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<sup>4</sup> Player’s RFR, ¶ 5. Club’s Answer, ¶ 3.

<sup>5</sup> Player’s submission dated [date], p. 2 and Exhibit 31.

<sup>6</sup> Club’s submission dated [date], p. 5 and Exhibit with bank statements.

<sup>7</sup> Player’s submission dated [date], p. 2. Club’s submission dated [date], p. 2.

<sup>8</sup> Player’s submission dated [date], p. 2. Club’s submission dated [date], p. 2.

<sup>9</sup> Club’s submission dated [date], p. 5 and Exhibit with bank statements.

<sup>10</sup> Club’s submission dated [date], p. 5 and Exhibit with bank statements.

<sup>11</sup> Club’s submission dated [date], p. 5 and Exhibit with bank statements.

<sup>12</sup> Player’s submission dated [date], p. 2 and Exhibit 29.

<sup>13</sup> Player’s RFR, Exhibit 3.

17. On [date], the [National] Cup concluded.<sup>14</sup>
18. On [date], the Club paid EUR 28,000 to the Player as compensation for [month year].<sup>15</sup>
19. On [date], the [Club's country's] government required the competent authorities to take all adequate containment measures and proportionate management actions in relation to the evolution of the epidemiological situation. The suspension of sports events was listed among the measures that could be adopted.<sup>16</sup>
20. On the same date, the [Club's country's] government suspended sports events in eleven municipalities of the [region in the Club's country] and [different region in the Club's country] (two regions out of twenty) (the "Red Zone").<sup>17</sup>
21. On [date], the [Club's country's] Volleyball Federation ([ "Club's country's Volleyball Federation", hereafter "National Federation" ]), together with the two [Club's country's] Men's and Women's Leagues, announced that they had decided to suspend the national volleyball activity until [date].<sup>18</sup>
22. On [date], the [Club's country's] government suspended sports events in all the municipalities of [various] regions [of the Club's country] (six regions out of twenty) until [date]. However, it authorized sports events, including training sessions, in those regions provided they were conducted inside sports facilities behind closed doors and in municipalities other than those of the Red Zone.<sup>19</sup>
23. On [date], the [Club's country's] government suspended sports events in three regions and two provinces until [date]. However, it authorized sports events, including training sessions, in those places provided they were conducted inside sports facilities behind closed doors and in

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<sup>14</sup> Player's submission dated [date], p. 2 and Exhibit 29. Club's submission dated [date], p. 2.

<sup>15</sup> Club's submission dated [date], p. 5 and Exhibit with bank statements.

<sup>16</sup> Club's Answer, Exhibit 8.

<sup>17</sup> Player's submission dated [date], p. 3. Decree dated [date], Article 1(c) and Annex I.

<sup>18</sup> Player's RFR, Exhibit 5.

<sup>19</sup> Player's submission dated [date], p. 3. Decree dated [date], Articles 1(a) and 3(2).

municipalities other than the Red Zone. It also prohibited supporters residing in those places to travel to the remaining regions and provinces to attend sports events.<sup>20</sup>

24. On [date], the [National Federation] decided to resume the volleyball activity until [date] under the limitations established by the Italian government on [date] (i.e., total suspension of sporting activities in the Red Zone and resumption of sporting activities with the limitation of the closed-door performance of all championships and training activities in the [suspended] regions and in the [suspended provinces])).<sup>21</sup>
25. On [date], the [Club's country's] government suspended sports events in all the country until [date]. However, it authorized sports events, including training sessions, in any place provided they were conducted inside of sports facilities behind closed doors or outdoors without the presence of the public.<sup>22</sup>
26. On the same date, the [First National] Women's Volleyball League (the "Women's League") announced the suspension of the [First National] Women's Championship.<sup>23</sup>
27. On [date], the [Club's country's] government modified the decree issued on [date], suspending sports events in all the country and authorizing sports events organized by international sports organizations, including training sessions, in any place provided they were conducted inside of sports facilities behind closed doors or outdoors without the presence of the public.<sup>24</sup>
28. On [date], the Club paid EUR 28,000 to the Player as compensation for [month year].<sup>25</sup>
29. On [date], the Club decided to suspend its activities (including face-to-face training)<sup>26</sup> until [date].<sup>27</sup> As of the suspension, the Club requested its players to train at home and sent them a

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<sup>20</sup> Player's submission dated [date], p. 3. Decree dated [date], Articles 2(1)(a) and 6(1).

<sup>21</sup> Player's submission dated [date], p. 3..

<sup>22</sup> Player's submission dated [date], p. 3. Decree dated [date], Articles 1(d), 2(g) and 5(1).

<sup>23</sup> Player's RFR, Exhibit 6.

<sup>24</sup> Player's submission dated [date], p. 3. Decree dated [date], Article 1(3).

<sup>25</sup> Club's submission dated [date], p. 5 and Exhibit with bank statements.

<sup>26</sup> Player's submission dated [date], p. 4. Club's submission dated [date], p. 4.

<sup>27</sup> Club's Answer, Exhibit 7.

workout schedule, including videos and images of exercises.<sup>28</sup>

30. On [date], the Club decided to extend the suspension of its activities until [date]. The Club clarified that the stop *“concerns training and other team activities in the gym, while in the ‘stop’ period, each athlete will continue their work individually, obviously at home according to a schedule prepared daily by the athletic trainer”*.<sup>29</sup>
31. On [date], the [Club’s country’s] government extended the effects of previous measures until [date] and suspended sports events, including training sessions within sports facilities, in all the country.<sup>30</sup>
32. On [date], the [National Federation] extended the suspension of sporting activities, including training sessions, until [date].<sup>31</sup>
33. On [date], the Ordinary Meeting of the Women’s League decided to submit to the [National Federation] the unanimous proposal to declare the [First National League’s] Championship concluded.<sup>32</sup>
34. On [date], the [National Federation] decided to conclude all the championships.<sup>33</sup> After the [National Federation’s] decision, the Club suspended the players’ training at home.<sup>34</sup>
35. On [date], the [Club’s country’s] government suspended sporting events and competitions, as well as training sessions of athletes inside sports facilities, until [date].<sup>35</sup>
36. On [date], the [continental federation, hereafter the “Continental Federation”] decided to end

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<sup>28</sup> Player’s submission dated [date], pp. 4-5 and Exhibit 32. Player’s RFR, Exhibit 8. Club’s submission dated [date], pp. 4-5.

<sup>29</sup> Player’s RFR, Exhibit 7.

<sup>30</sup> Player’s submission dated [date], p. 3. Decree dated [date], Articles 1 and 2.

<sup>31</sup> Player’s submission dated [date], p. 3.

<sup>32</sup> Player’s RFR, Exhibit 12.

<sup>33</sup> Player’s RFR, Exhibit 13.

<sup>34</sup> Player’s submission dated [date], p. 5. Club’s submission dated [date], p. 5.

<sup>35</sup> Club’s Answer, Exhibit 10.

the [Continental League]prematurely.<sup>36</sup>

37. On [date], the Club paid EUR 28,000 to the Player.<sup>37</sup>
38. On [date], the Player signed a declaration where she acknowledged receipt of not less than 70% of the amount due under the Agreement and stated that the declaration would constitute proof in any subsequent dispute between her and the Club.<sup>38</sup>
39. On [date], the Club sent an e-mail to the Player’s agent stating that it was not willing to make additional payments to the Player because she was entitled to 70% of her salary (i.e., EUR 196,000), which had already been paid.<sup>39</sup>
40. On [date], the Player’s counsel claimed EUR 84,000 to the Club as overdue payables.<sup>40</sup>
41. On [date], the Club’s counsel rejected the Player’s claim.<sup>41</sup>
42. On [date], the Player filed a complaint against the Club with [Continental Federation]. The Player claimed, *inter alia*, EUR 84,000 as overdue payables plus a 5% interest per annum.<sup>42</sup>
43. On [date], the [Continental Federation] issued a decision (“**Decision**”) ruling, *inter alia*, that the Club had to pay to the Player EUR 19,419.35 net as overdue payables and EUR 2,356.50 as a contribution to legal expenses.<sup>43</sup>

#### 4. The Proceedings before the FIVB Tribunal

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<sup>36</sup> Player’s submission dated [date], p. 2 and Exhibit 31. Club’s submission dated [date], p. 2.

<sup>37</sup> Club’s submission dated [date], p. 5 and Exhibit with bank statements.

<sup>38</sup> Club’s submission dated [date], Exhibit with Player’s declaration.

<sup>39</sup> Player’s RFR, Exhibit 16.

<sup>40</sup> Player’s RFR, Exhibit 17.

<sup>41</sup> Player’s RFR, Exhibit 18.

<sup>42</sup> Player’s RFR, Exhibit 19.

<sup>43</sup> Player’s RFR, Exhibit 23.

44. On [date], the Player filed a request for review (“**RFR**”) of the Decision before the FIVB Tribunal.
45. On [date], the FIVB Tribunal Secretariat acknowledged receipt and invited the Club to file an answer to the RFR by [date]. It also invited the Club to provide its position on the Player’s request to hold a hearing. Furthermore, the parties were informed that the dispute would be heard by the FIVB Tribunal Chairperson, Dr. Karsten Hofmann.
46. On [date], the FIVB Tribunal Chairperson noted that the Club had not filed an answer and provided it with a final opportunity to do so by [date].
47. On [date], the Club requested a deadline extension and the FIVB Tribunal Secretariat invited the Player to submit her position by [date].
48. On [date], the Player submitted her position and the FIVB Tribunal Judge granted the Club’s request, extending the deadline until [date].
49. On [date], the Club submitted its answer to the RFR (“**Answer**”).
50. 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, had appointed the FIVB Tribunal Vice-Chairperson, Francisco A. Amallo, to hear the present case.
51. On [date], the FIVB Tribunal Judge requested the parties to provide certain information by [date].
52. On [date], the Club filed its submission.
53. On [date], the Player requested an extension of the deadline to make her submission. On the same day, the FIVB Tribunal Secretariat invited the Club to submit its position on the Player’s request, the Club replied by stating that it had no objections, and the FIVB Tribunal Judge granted an extension until [date].
54. On [date], the Club refiled its submission.
55. On [date], the Player filed her submission.



56. On [date], the FIVB Tribunal Judge informed the parties that, in accordance with Article 20.8.1 of the FIVB Sports Regulations, he had decided not to hold a hearing. The FIVB Tribunal Judge also informed the parties that he had reviewed all the submissions and would proceed to issue a decision. Finally, he requested the parties to provide a detailed account of their respective costs as well as supporting documentation by [date].

57. On [date], the Player made her submission on costs.

58. On [date], the Club made its submission on costs.

## 5. The Parties' Submissions

59. 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 by the parties, even if no specific or detailed reference has been made to those arguments in this section.

### 5.1. The Player's Request for Relief and Position

60. In her RFR, the Player submitted the following request for relief:

*"The Player requests a decision to be rendered, per which:*

*[...]*

*• the [Continental Federation's] Decision is confirmed with respect to:*

*• the contribution towards the Player's legal expenses and [the Continental Federation's] handling fee -two thousand three hundred fifty-six euro and fifty cents (€ 2.356,50)- to be paid by the Club to the Player.*

*• the [Continental Federation's] Decision is reviewed by ordering the Club, consequently, to:*

*• in principal: pay the Player an aggregate amount of eighty-four thousand euro (€ 84.000) net in principal as overdue payables; or*

*• in the alternative: pay the Player a minimum aggregate amount of seventy-three thousand eighty euro (€ 73.080) net in principal as overdue payables, according to the performance-based calculation method;*

*• in subsidiary order, pay the Player a minimum aggregate amount of fifty thousand and four hundred euro (€ 50.400) according to the calendar-based calculation method with a maximum reduction rate of thirty percent (30%); or*

- *in more subsidiary order, pay the Player a minimum aggregate amount of twenty-eight thousand euro (€ 28.000), according to the calendar-based calculation method with a maximum reduction rate of fifty percent (50%).*
- *in any event:*
  - *pay the Player late payment interests at a rate of five percent (5%) per annum on the aggregate amount to be granted by the FIVB Tribunal to the Player as overdue payables as from [date], being the day after the end of the presumed term of the Agreement, until the date of full payment;*
  - *reimburse the Player all costs of the present Request for Review, being the amount of two thousand Swiss Franc (CHF 2.000) as FIVB Tribunal handling fee; and*
  - *indemnify the Player for incurred legal expenses related to the present proceedings (including attorney's fees), at the moment of the filing of the present Request for Review amounting to six thousand five hundred euro (€ 6.500) exclusive VAT, being seven thousand eight hundred sixty-five euro (€ 7.865) inclusive VAT.*<sup>44</sup>

61. In support of her request for relief, the Player argued as follows:
62. The Club paid six consecutive instalments from [specific month of a year] to [specific month of the subsequent year] for an aggregate amount of EUR 168,000 without any reference to the Covid-19 pandemic, the measures of the [Club's country's] government or the suspension of the [National] volleyball championship. These payments are irrelevant to the dispute because they were due and paid by the Club without ever being challenged by the Club. The Club also paid a flat lump sum of EUR 28,000 in [month and year]. The Club failed to pay EUR 84,000 with respect to the Player's salary instalments due by [four consecutive months] [year].<sup>45</sup>
63. There is no valid reason to withhold the payment of the Player's salary. According to the general principle of contractual law *pacta sunt servanda*, parties must honour the agreements that they have signed.<sup>46</sup>
64. The [Continental Federation] bluntly came to a conclusion on *force majeure* without proper legal reasoning and wrongfully assumed that the Club had discharged its burden of proof. The [Continental Federation] failed to interpret *force majeure* restrictively. There is no *force majeure*

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<sup>44</sup> Player's RFR, ¶ 120.

<sup>45</sup> Player's RFR, ¶¶ 40-44.

<sup>46</sup> Player's RFR, ¶ 45.

because the decision to prematurely end the [Club's country's] championship was taken by all [Club's country's] clubs, including the Club. The lockdown was only temporary, and the Club would have been allowed to play again. The premature ending of the [National] championship, which the Club voted in favour of, worsened the situation since it prevented the Club to play again. Besides, the Club could have anticipated the premature ending of the [National] championship. The performance of the contractual obligations was not impossible because some national federations were able to run their volleyball championships despite the Covid-19 pandemic and the Club played various matches, continued organizing practice, instructed the Player to train at home, and paid the Player's salary during the pandemic.<sup>47</sup>

65. The [Continental Federation] wrongly applied the *rebus sic stantibus* principle. The [Continental Federation] failed to demonstrate how the Covid-19 outbreak would have rendered significantly more difficult the performance of the Club's obligations under the Agreement. The Club played matches during the pandemic and paid the Player without arguing about any difficulties whatsoever. Besides, the [Continental Federation] simultaneously characterized the Covid-19 outbreak as a *force majeure* event. However, the performance of obligations can only be impossible or significantly more difficult; not both at the same time.<sup>48</sup>
66. If the FIVB Tribunal were to decide that the overdue payables need to be reduced, the compensation amount may be determined according to, at least, one of the following methods: a performance-based method under which the Player is paid on a pro-rata basis, which would result in a payment of EUR 73,080; or a calendar-based method under which the Player is paid according to the payment schedule stipulated under the Agreement, which would result in a payment of EUR 50,400 or EUR 28,000 depending on whether a reduction of 30% or 50% is applied.<sup>49</sup>
67. Late payment interests shall be applied at a rate of 5% per annum on the aggregate amount to be granted by the FIVB Tribunal to the Player as overdue payables as from [date], being the day

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<sup>47</sup> Player's RFR, ¶¶ 47-77.

<sup>48</sup> Player's RFR, ¶¶ 81-86.

<sup>49</sup> Player's RFR, ¶¶ 87-104.

after the end of the presumed term of the Agreement, until the date of full payment.<sup>50</sup>

## 5.2. The Club's Request for Relief and Position

68. In its Answer, the Club submitted the following request for relief:

*"The club requests FIVB Tribunal that the following decision be made:*

*a) [...]*

*Confirmation of the pronouncement of the [Continental Federation] C.C. [case number] of [date]*

*Consequently, the Club asks*

*in principle and in any case*

*- to reject the Athlete's request for payment of € 84,000.00 net as unfounded in fact and in law, for the reasons indicated in this defense reply, in any case deducting the sum of € 19,419.35 net paid on date [date];*

*- to reject, for the same reasons, also the alternative request for € 73,080.00 net, in any case deducting the sum of € 19,419.35 net paid on [date], calculated using the performance method;*

*- to reject, for the same reasons, also the alternative request for € 50,400.00 net, in any case deducting the sum of € 19,419.31 net paid on [date], calculated on the basis of the calendar, with a reduction rate maximum of 30%;*

*- to reject, for the same reasons, also the alternative request for € 28,000.00 net, in any case by deducting the sum of € 19,419.31 paid on [date], calculated on the basis of the calendar, with a maximum reduction rate 50%;*

*and confirm that by virtue of the contract signed on [date], no further sum is due by the Club in favor of the Athlete*

*[...]c) Finally, with regard to interest and legal fees, the Club asks*

*- to reject the request for payment of interest in the amount of 5%;*

*- to reject the costs of the complaint to the [Continental Federation] equal to 2.000,00 Swiss Francs and legal costs, quantified to date at € 7.865,00, including VAT;*

*- to order the Athlete to pay the Club the legal costs of the proceedings to date quantified in the same amount of € 7.865,00 including VAT."<sup>51</sup>*

69. In support of its request for relief, the Club argued as follows:

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<sup>50</sup> Player's RFR, ¶¶ 105-110.

<sup>51</sup> Club's Answer, ¶ 45.

70. The Covid-19 pandemic has affected the world and qualifies as *force majeure* event. The premature end of the championship was beyond the Club's control. The Women's League is a consortium established by clubs participating in the [First and Second National] Women's Volleyball Championships with the power of organizing volleyball events. The Women's League does not have the power to decide on the suspension or interruption of the championships. The [National Federation] is the only body responsible for deciding on the calling and cancellation of the championships. The Women's League only asked the [National Federation] to decide on the possible continuation of the championships. A negative vote of the Club would not have affected the result because decisions are taken by the majority. The [National Federation] decided to interrupt the championship with full autonomy as a result of the [Club's country's] government's measures. Besides, the Covid-19 outbreak was unforeseeable and could not be resisted by the Club. [The Club's country] was the most affected country in Europe by the pandemic and the Club was forced to comply with the emergency legislation.<sup>52</sup>
71. The [Club's country's] emergency legislation made it not more difficult or costly for the parties to perform their obligations but completely impossible. The Player did not properly fulfil her obligations. When signing the Agreement, the Player undertook specific obligations, including being a member of the [National Federation] in favour of the Club to perform the services of a volleyball player exclusively for the Club, to participate in all scheduled official and friendly matches as well as training sessions. In return, the Club undertook the obligation to pay remuneration, the amount of which was determined in accordance with the commitments undertaken by the Player. Since the suspension of the activity as of [date], the Club has not received from the Player any sports performance that could have justified the payment of the requested sum. Furthermore, training sessions took one hour at most and the Player left [the Club's city] to move to [a different city in the Club's country] at the beginning of [month and year] and did not carry out any activity, not even training.<sup>53</sup>
72. The Covid-19 outbreak and the emergency legislation resulted in a change of circumstances so radical that it altered the equilibrium of the Agreement. Therefore, it may be unfair and contrary to the principle of good faith to insist on the performance of the original terms of the Agreement as it was impossible for the Club to use the Player's sports performance for a cause not

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<sup>52</sup> Club's Answer, ¶¶ 27-30.

<sup>53</sup> Club's Answer, ¶ 31.

attributable to it. As long as the contractual synallagma was not modified due to the consequences of the pandemic, the Club regularly paid all the sums due to the Player.<sup>54</sup>

73. In addition to the EUR 196,000.00 paid under the Agreement, the Club paid EUR 19,419.35 due to the Decision. Thus, the Player received a total amount of EUR 215,419.35 net, which represents 77% of the amount stipulated in the Agreement. With all the other players an agreement was reached for a 30% salary reduction. The Women's League allowed registration to the championship with the payment of 70% of the salaries. [A different club from the Club's country] also reached a settlement agreement with an athlete with the balance of 70% of the amounts provided for in the contract.<sup>55</sup>
74. According to the calculation method based on performance, the Club paid the Player more than necessary. The Player's term under the Agreement was 266 days, from [date] to [date]. Considering that the Player provided her full sports performance to the Club for 182 days, the Player was entitled to receive 68.42% of her remuneration ( $182/266 * 100$ ). However, the Club paid 77% of her salary. If the additional 25 days (from [date] to [date]) during which, according to the Player's thesis, she remained available to the Club, were considered, the Player would have also received all the amounts due because she would have reached 207 days of performance out of 266 days (i. e. 77.8% of the period of activity).<sup>56</sup>
75. The [Continental Federation] followed the calculation method based on the calendar. The Club rejects the Player's request for application of a 30% reduction. The Decision was correct in dividing the loss by 50% because the pandemic was no one's fault.<sup>57</sup>
76. The Club rejects the Player's request for interest because the *force majeure* and the delay were not attributable to it. The [Continental Federation] was right in deciding that the amount due after the *force majeure* could not be included in the calculation of the late interest because the parties

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<sup>54</sup> Club's Answer, ¶¶ 33-34.

<sup>55</sup> Club's Answer, ¶¶ 36-37.

<sup>56</sup> Club's Answer, ¶¶ 39-40.

<sup>57</sup> Club's Answer, ¶ 43.

were released from their obligations as soon as this *force majeure* occurred.<sup>58</sup>

## 6. Jurisdiction

77. The FIVB Tribunal must first examine whether it has jurisdiction to hear the present dispute. To do so, it must first look at the relevant provisions of the FIVB Sports Regulations.

78. 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.”*

79. 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”*

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

81. 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 a claim between a player from [the Player’s country] and a club from [the Club’s country] concerning payment of remuneration agreed in a contract. The dispute also complies with Article 19.2.2.2 of the FIVB Sports Regulations because it was decided previously by the [Continental Federation], i.e., a Confederation.

82. The FIVB Tribunal’s jurisdiction is also undisputed by the parties. Therefore, the FIVB Tribunal has

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<sup>58</sup> Club’s Answer, ¶ 44.

jurisdiction over the present dispute under the FIVB Sports Regulations.

## 7. Admissibility

83. 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.”*

84. The Decision was issued on [date]. The Player submitted her RFR on [date], i.e., within the fourteen-day deadline. Thus, the RFR is admissible.

## 8. Applicable law

85. 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).”*

86. The parties did not make any submissions as to the applicable law but relied on principles of *ex aequo et bono*. Thus, based on the above and in the absence of an agreement to the contrary, 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).

## 9. Findings

### 9.1. Overdue Payables

87. Under the Agreement, the Player was entitled to a total salary of EUR 280,000 net. It is undisputed that, prior to the Decision, the Club had paid EUR 196,000 to the Player. The dispute between the parties focuses on whether the Player is entitled to the balance of EUR 84,000.

88. In the Decision, the [Continental Federation] considered that the Covid-19 pandemic constituted (i) a fundamental change of circumstances which led to a distortion of the initial agreement



because the Player was unable to fulfil her obligations due to the health context and, therefore, the Club was discharged under the *rebus sic stantibus* principle from the obligation to pay the full remuneration; and (ii) an event of *force majeure* that freed both parties from liability of obligation since [date]. However, the [Continental Federation] established that, since Covid-19 was no one's fault, it was fair and reasonable for the parties to share equally the losses, thus authorizing a deduction of half of the Player's salary following [date]. Based on the above, the [Continental Federation] concluded the Player was entitled to EUR 19,419.35 out of EUR 84,000.

89. The FIVB Tribunal Judge will start by analysing the term of the Agreement and the periods during which the Player provided her services to the Club. The FIVB Tribunal Judge will then analyse whether the Covid-19 pandemic had an impact on the Agreement and if the Player is entitled to the compensation claimed.
90. The Agreement defines its term as follows: "*Sport season [year]/[year], from the beginning of the preparation (date to be defined) until the end of the [First National] women's championship (play off, if played, included).*"<sup>59</sup>
91. The parties disagree on the start and end dates of the Agreement. The Player argues that the term started on [date], when she arrived at the Club's facilities, and ended on [date] because the [First National] Women's Championship usually ends the first week of [month].<sup>60</sup> The Club contends that the term started on [date], the date on which the players were called, and ended on [date] because the final of the [Continental Federation's] [Continental League] was scheduled for that date.<sup>61</sup>
92. The FIVB Tribunal Judge concludes that:
- a) The term started on [date]. The Agreement refers to the "*beginning of the preparation*" rather than to the Player's convocation or arrival at the Club's facilities. According to the evidence in the record, on [date] the players were expected to be training.<sup>62</sup> The fact that the

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<sup>59</sup> Player's RFR, Exhibit 2.

<sup>60</sup> Player's RFR, ¶¶ 90-93.

<sup>61</sup> Club's Answer, p. 4.

<sup>62</sup> Club's Answer, Exhibit 5.

Player arrived on a later date due to her engagement with her national team does not change the terms agreed upon by the parties.

b) The term was supposed to end on [date]. The Player failed to prove that the [First National] Women's Championship was supposed to end on [date], as she alleged. The Player only provided an estimate. The evidence in the record, however, proves that the final of the [Continental Federation's] [Continental League] was originally scheduled for [date].<sup>63</sup> Although the Agreement defines its term by reference to the [First National] Women's Championship, rather than to the [Continental Federation's] [Continental League], the bonus clause proves that the [Continental Federation's] [Continental League] was part of the sports season. If the [year]/[year] season were to end before the [Continental Federation's] [Continental League], the bonus clause would have no effect with respect to the [Continental Federation's] [Continental League]. Considering that contract terms must be interpreted so as to give effect to all the terms rather than to deprive some of them of effect, the FIVB Tribunal Judge considers that the Agreement should have lasted at least until the end of the [Continental Federation's] [Continental League], scheduled for [date].

93. It is undisputed by the parties that the Player provided her services to the Club until [date]. The dispute between the parties focuses on whether the Player provided her services as of that date and if therefore she is entitled to the outstanding amounts claimed.<sup>64</sup>

94. The Player argues that from [date] to [date] (the date on which the [National Federation] concluded all the championships) she continued providing services because she followed the remote training program imposed by the Club. The Player also argues that from the early termination of the championships until the end of the Agreement she was at the disposal of the Club to provide her services as a professional volleyball player outside the court.<sup>65</sup>

95. The Club contends that from [date] the Player did not perform any service that could have justified the payment of the amounts claimed. The Club also states that although the remote training sessions did not constitute a sporting performance in favour of the Club, the Player did

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<sup>63</sup> Club's Answer, Exhibit 7. Player's submission dated [date], Exhibit 31.

<sup>64</sup> Player's RFR, ¶¶ 93-97. Club's Answer, ¶¶ 33-35.

<sup>65</sup> Player's submission dated [date], ¶¶ 45-49.

not even participate in those training sessions.<sup>66</sup>

96. The FIVB Tribunal Judge concludes that:

- a) From [date] to [date], the Player provided services to the Club. The Club acknowledged that participating in training sessions was part of the Player's obligations.<sup>67</sup> The evidence in the record shows that the Club instructed all its players to train remotely at home,<sup>68</sup> and there is no evidence in the record of the Club ever complaining about the Player's alleged conduct. Had the Player not participated in the training session, the Club would have been expected to complain about the said situation and warn the Player about the breach of her obligations, since the Club had the possibility of controlling the training sessions (e.g., via video camera). The duration or intensity of the training sessions does not change the result, since it was the Club who designed the training sessions and could have designed them differently had it considered it necessary or appropriate.

Although training was not the only Player's obligation, during that period the parties did not know whether the Club would compete again. The mere existence of the training sessions shows that the parties considered that the resumption of competitions was a possibility because, otherwise, the training sessions would have been meaningless. The Club cannot instruct the Player to train and then, *ex post facto*, depending on whether the competitions had resumed, decide unilaterally whether or not to pay her salary. If the Club, due to the pandemic, had wanted the Player to train in exchange for a different salary, it should have warned the Player of this situation and renegotiated the Agreement before instructing her to train. The silence on the part of the Club can be reasonably interpreted by the Player as the continuity of the terms of the Agreement. It would be unfair to unilaterally change the terms of the Agreement only after the early termination of the competitions was known.

- b) From [date] to [date], the Player did not provide any services to the Club. It is undisputed that all the Club's players stopped training after the early termination of the [First National]

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<sup>66</sup> Club's Answer, ¶¶ 6, 31-32.

<sup>67</sup> Club's Answer, ¶ 31.

<sup>68</sup> Player's submission dated [date], pp. 4-5, and Exhibits 7, 8, 32, 34 and 35. Club's submission dated [date], pp. 4-5.

Women's Championship.<sup>69</sup> The Player's argument about her disposal to provide her services as a professional volleyball player outside the court is not compelling because the Agreement contains no clause including out-of-court activities as part of the Player's services,<sup>70</sup> and there is no evidence in the record of the Player ever performing such services under the Agreement.

However, the non-provision of services during this period does not constitute a breach of contract by the Player, since it was the Club that stopped the remote training sessions. At the same time, the Club's decision to stop training sessions was justified due to the early termination of the [First National ] Women's Championship, the main competition under the Agreement.

The Player's argument that the Club influenced the early termination of the championships is also not compelling because it is undisputed that it was the [National Federation] who made that determination, and the Player has failed to prove that such determination was made due to the Club's alleged influence. The [National Federation's] communication contains no reference to the Club or the Women's League and states that the decision was made "*after a careful and in-depth reflection on the ongoing emergency situation linked to the COVID-19 pandemic*" and "*taking into account the recent Prime Ministerial Decree and the Ordinances issued by the Government and the Regions, within which no certain dates emerge regarding the possibility of resuming sporting activity in conditions of complete safety.*"<sup>71</sup> The decree mentioned by the [National Federation] seems to be the one issued on [date], pursuant to which the [Club's country's] government suspended sports events, including training sessions within sports facilities, in all the country.<sup>72</sup>

97. For the reasons stated in paragraph a) above, the FIVB Tribunal Judge concludes that the Player is entitled to receive her full salary for the services provided from [date] to [date]. Regarding the period that goes from [date] to [date], the FIVB Tribunal Judge notes that the extent of the sports season [year] /[year] was affected by supervening circumstances (i. e. the governmental measures adopted due to the Covid-19 pandemic and the [National Federation's] consequent

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<sup>69</sup> Player's submission dated [date], p. 5, and RFR, ¶ 90. Club's submission dated [date], p. 5.

<sup>70</sup> Player's submission dated [date], ¶¶ 45-49.

<sup>71</sup> Player's RFR, Exhibit 13.

<sup>72</sup> Player's submission dated [date], p. 3. Decree dated [date], Articles 1 and 2.

decision to early terminate the championships).

98. The parties disagree as to whether these supervening circumstances fundamentally distorted the Agreement or constitute a *force majeure* event.
99. The FIVB Tribunal Judge is not persuaded by the *force majeure* allegations made by the Club. The Club seems to invoke *force majeure* with the double purpose of justifying its failure to pay and explaining the Player's lack of provision of services. However, the Club has failed to prove that the supervening circumstances prevented it permanently from paying the Player's salary, and the explanation of the Player's conduct through *force majeure* may be illustrative from a factual standpoint but does not technically constitute a *force majeure* defence, as it is for the Player to argue her case. In this case, the Player chose to claim that there were no breaches on her part, rather than justifying a breach of contract based on the *force majeure* defence. Besides, the Club invoked *force majeure* for the first time on [date],<sup>73</sup> almost eight months after the termination of the Agreement and right after the Player's counsel sent a formal claim to the Club.
100. Considering that the Club's argument has the final objective of justifying the non-payment through a reduction of the Player's salary due to supervening circumstances, the FIVB Tribunal Judge considers that this case better qualifies in the first scenario of a fundamental distortion of the Agreement. In the FIVB Tribunal's view, supervening circumstances lead to a fundamental alteration of the equilibrium of the Agreement because the Club's team played fewer games than expected due to the early termination of the competitions. The Club's team did not participate in all the games corresponding to the regular seasons (participated in 20 out of the 26 games<sup>74</sup>) and the play-off of the [First National] Women's Championship. It also did not participate in the [Continental Federation's] [Continental League] quarterfinals.<sup>75</sup> Consequently, the compensation agreed by the parties stopped being correlated to the activity envisaged for the [year] / [year] sports season.
101. The Agreement between the Player and the Club does not regulate what happens with the Player's salary in case of early termination of the championships. Although the parties entered

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<sup>73</sup> Player's RFR, Exhibit 18.

<sup>74</sup> Player's submission dated [date], Exhibit 27.

<sup>75</sup> [Continental Federation's website]]

into negotiations for this reason, they were unable to find an amicable solution.<sup>76</sup> Considering that it would be unfair for the Club to have to pay the Player her full salary as if all the competitions of the [year] / [year] sports season had been completed, and that it would also be unfair for the Player not to receive any of her salaries for a situation that it is not her fault, the FIVB Tribunal Judge decides *ex aequo et bono* that the parties should bear the consequences equally. Therefore, the Player is entitled to receive 50% of her salary from [date] to [date].

102. As the number and periodicity of compensation instalments (ten instalments from [month and year] to [month and year]) do not correlate to the term of the Agreement (almost nine months from [date] to [date]), the FIVB Tribunal Judge considers the performance-based calculation method to be more appropriate for this case. Thus, if the EUR 280,000 compensation was envisaged for a season composed of 265 days (from [date] to [date]), the Player's compensation amounted to EUR 1,056.6037735849 per day.
103. Consequently, the Player was entitled to receive EUR 239,849 from [date] to [date] (227 days \* EUR 1,056.6037735849) and EUR 20,075.50 from [date] to [date] 2020 (38 days \* EUR 1,056.6037735849 / 2), i.e., a total amount of EUR 259,924.50. It is undisputed that, prior to the Decision, the Club had paid EUR 196,000 to the Player. Therefore, the Club must pay EUR 63,924.50 net to the Player.
104. It appears that, on [date], the Club paid EUR 21,775.85 to the Player because of the Decision.<sup>77</sup> However, as this proceeding has the purpose of reviewing the Decision only and that payment was made after the Decision, it is not for the FIVB Tribunal Judge to determine whether or not that payment was made, and include it as part of this decision. Had the payment been made, the Club could eventually deduct it at the time of paying the Decision, as amended hereby.

## 9.2. Interest

105. The Agreement does not provide for any obligation by the Club to pay interest in case of a non-payment. However, it is a generally accepted principle embodied in most legal systems and reflected in the FIVB jurisprudence, that interest can be awarded even if the underlying

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<sup>76</sup> Club's Answer, ¶ 35. Player's RFR, ¶ 26.

<sup>77</sup> Club's submission dated [date], p. 5 and Exhibit with bank statements.

agreement does not explicitly provide for a respective obligation.<sup>78</sup>

106. If a party does not pay a sum of money when it falls due, the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment. The FIVB Tribunal regularly grants a 5% interest per annum.<sup>79</sup> Therefore, the interest rate claimed by the Player is fair and in line with FIVB Tribunal's jurisprudence.
107. For the calculation of interest, the FIVB Tribunal Judge finds no option other than applying the calendar-based method because interest accrues from the day after the due date of a payment, and, in this case, the parties agreed that the compensation would be paid in instalments during specific periods.
108. According to the Agreement, the compensation had to be paid in ten consecutive instalments from [specific month in a year] until [specific month in the subsequent year]. Considering that the Agreement provides no specific dates, the FIVB Tribunal Judge concludes that the Club was entitled to pay each instalment on any date of the corresponding month. This conclusion also seems to be in line with the parties' conduct, as the instalments paid by the Club from [specific month in a year] to [specific month in the subsequent year] were paid on different days each month and there is no evidence in the record of the Player ever complaining about this. Thus, the Club had until the last day of each month to make the payment.
109. Based on the above, the Club must pay late payment interest to the Player as follows:
- a) Instalments from [specific month in a year] to [specific month in the subsequent year]: no interest is due because they were paid within the agreed term.
  - b) Instalment due in [specific month in the subsequent year]: although the Player refers to the payment made by the Club on [date] as flat lump sum payment made by the Club,<sup>80</sup> the evidence in the record shows that that payment was for the instalment due in [specific month

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<sup>78</sup> See, for example, FIVB decisions 2018-05 and 2018-06.

<sup>79</sup> See, for example, FIVB decisions 2018-05 and 2018-06.

<sup>80</sup> Player's RFR, ¶ 42.

in the subsequent year] .<sup>81</sup> Therefore, the Club must pay EUR 183.60 as a 5% interest per annum over EUR 28,000 from [date]to [date] ( $EUR\ 28,000 * 0,05 = EUR\ 1,400 / 366\ days = EUR\ 3.825136612 * 48\ days = EUR\ 183.60$ ).

- c) Instalment due in [specific month of the subsequent year]: the Club must pay a 5% interest per annum over EUR 28,000 from [date]until the date of complete payment.
- d) Instalment due in [two specific month in the subsequent year]: considering that (i) the 38 days affected by supervening circumstances ([date]to [date]) amounted to EUR 40,150.943396226 (38 days \* EUR 1,056.6037735849), (ii) EUR 40,150.943396226 equals more than one instalment under the Agreement (i.e., EUR 28,000 + EUR 12,150.943396226), (iii) although there is no correlation between the number and periodicity of compensation instalments and the term of the Agreement, the supervening circumstances affected the final period of the Agreement, the FIVB Tribunal Judge considers that it is fair to allocate the 50% reduction acknowledged due to the supervening circumstances to the last two instalments. However, since the last two instalments equal to EUR 56,000 (i.e., more than EUR 40,150.943396226), part of the instalment due in [month] (i.e., EUR 15,850, which represents the difference between EUR 56,000 and EUR 40,150.943396226) should not be affected by the 50% reduction. Consequently, the Club must pay a 5% interest per annum over (i) EUR 15,850 (EUR 28,000 - EUR 12,150.943396226) from [date]until the date of complete payment, (ii) EUR 6,075.50 (EUR 12,150.943396226 / 2) from [date]until the date of complete payment, and (iii) EUR 14,000 (EUR 28,000 / 2) from [date]to the date of complete payment.

## 10. Costs

110. The Player paid the handling fee corresponding to its RFR (CHF 2,000) on [date]. Each party requested the FIVB Tribunal that the other pays the costs and expenses of these proceedings.
111. On [date], the Player quantified her legal expenses at EUR 12,326.87 (including VAT), representing 40:45 hours of counsel work at an hourly rate of EUR 250 (excluding VAT). On [date], the Club quantified its legal expenses at EUR 7,865.01 (including VAT).

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<sup>81</sup> The exhibit with the bank statement dated [date]submitted by the Club on its submission dated [date]states as follows: “CAUSALE: *Compenso mese di [month year]*” (free translation: “REASON: *Compensation for the month of [month year]*”).

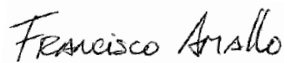


112. Article 20.11.2 of the FIVB Sports Regulations allows the prevailing party to be granted a contribution towards legal fees and expenses, including the applicable handling fee. When deciding on this contribution, the FIVB Tribunal Judge shall consider the outcome of the proceedings, as well as the conduct and the financial resources of the parties. In the case at hand, the parties have not made any submissions concerning their financial resources and have behaved appropriately during the proceedings. Thus, the FIVB Tribunal Judge will decide upon the distribution of the costs according to the outcome of the proceedings.
113. Considering that (i) the Player's request for relief was partially granted, (ii) the Player's counsel provided a timesheet but there is no evidence in the record of the counsel actually charging that amount to the Player, (iii) the Player's counsel failed to provide information on the applicability of VAT, and (iv) the complexity of this proceeding was similar to the one of the first instance and required two submissions (i.e., the Player's RFR and the Club's Answer, as well as the additional information requested by the FIVB Tribunal Judge) as the first instance proceeding, the FIVB Tribunal Judge determines, in accordance with article 20.11.2 of the FIVB Sports Regulations, the reasonable contribution to be CHF 2,500. Thus, the Club shall pay the Player's legal costs in the amount of CHF 2,500 and bear its own legal costs as well as the handling fee.

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 [Continental Federation] dated [date] is amended in its first bullet point as follows:
  - [The Club] (10071 + NF-[the Club's country]) shall pay [the Player] (10071 + NF--[the Club's country]): (i) EUR 63,924.50 net as overdue payables, plus (ii) EUR 183.60 as interest, plus (iii) a 5% interest per annum over EUR 28,000 from [date] until the date of the complete payment, plus (iv) a 5% interest per annum over EUR 15,850 from [date] until the date of the complete payment, plus (v) a 5% interest per annum over EUR 6,075.50 from [date] until the date of the complete payment, plus (vi) a 5% interest per annum over EUR 14,000 from [date] until the date of complete payment.
3. The remainder of the decision rendered by the [Continental Federation] dated [date] is upheld.
4. [The Club] shall pay [the Player] CHF 2,500 as a contribution towards legal fees and expenses. [The Club] shall bear its own legal costs.
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 at [www.tas-cas.org](http://www.tas-cas.org).

The address and contact details of the CAS are the following:

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