



The

FIVB TRIBUNAL

herewith issues the following

DECISION

2019-04

on the Request for Review of

[case number]¹

filed by

[The Club] (“Claimant”)
represented by [the Club’s lawyer],
attorney at law, [the Club’s lawyer’s place of residence]

vs.

[The Player] (“Respondent”)
represented by [the Player’s lawyers],
attorneys at law, [the Player’s lawyers' place of residence]

¹ 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 Claimant is a professional volleyball club with its legal seat in [city in the Club's country] (hereinafter the "**Claimant**" or "**Club**").
2. The Respondent is a professional male volleyball player from [the Player's country] (hereinafter the "**Respondent**" or "**Player**").

2. The FIVB Tribunal (FIVB Tribunal Judge)

3. Article 19.1.5 of the FIVB Sports Regulations² 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). All other cases shall be heard by the Chairperson and two (2) other members of the FIVB Tribunal, appointed by the Chairperson. [...]"

4. Because the amount in dispute in the present case does not exceed CHF 200,000.00, this Request for Review will be heard by the Chairperson as a single judge. Dr. Karsten Hofmann from Germany is the current Chairperson of the FIVB Tribunal and, thus, was appointed as the single judge in the present case (hereinafter the "**FIVB Tribunal Judge**").

3. Facts and Proceedings

3.1 Background Facts

5. On [date], the Club and the Player signed an agreement (hereinafter the "**Contract**"), under which the Player agreed to provide his services for the remainder of the [year]/[year] season. In return, according to clause 1 of the Contract, the Club agreed to pay a total salary of EUR 7,000.00 "*net from any taxes*" and "*subdivided in 3 instalments from [date]*". Moreover, clause 1 of the Contract states bonus payments of EUR 1,000.00 for "*5/6 regular season*" (hereinafter the "**1st bonus**") and EUR 2,000.00 for "*final play off - next season* [the Club's

² The versions of the FIVB Sports Regulations in force as of 1 June 2018, 22 January 2020 and 13 November 2020 are identical with regard to the provisions relevant for the case at stake, i.e. "Section III – Financial Disputes" (Articles 18 – 21).

country's second league, hereafter "Second League"]" (hereinafter the "2nd bonus").

6. On [date], according to a bank statement of [the Club's bank], the Club paid EUR 2,300.00 to the Player.
7. At the end of the [year]/[year] [Second League]regular season, on [date], the Club ranked fifth and thus qualified for the playoffs of the [Second League] (quarter-finals). The Club's team advanced to the semi-finals by a win on [date].
8. On [date], according to a bank statement of [the Club's bank], the Club paid EUR 2,800.00 (EUR 2,300.00 as salary and EUR 500.00 as first part of the 1st bonus) to the Player.
9. The Club's team advanced to the playoff finals by a win on [date].
10. On [date], according to a bank statement of [the Club's bank], the Club paid EUR 500.00 (as second part of the 1st bonus) to the Player.
11. In the playoff finals, the Club's team won the first match on [date]but lost the two following matches on [date] and [date]. Thus, the Club's team lost the playoff finals by 1:2.
12. On [date], the [continental federation, hereafter "Continental Federation"] informed the Club that the Player had filed a Complaint in which he asked for EUR 2,400.00 for outstanding salaries and EUR 2,000.00 for the 2nd bonus.
13. On [date], according to a bank statement of [the Club's bank] the Club paid EUR 2,400.00 (the last salary instalment) to the Player.
14. On [date], the [Club's country's] Volleyball League, i.e. the governing body in charge of the [Second League], informed that the Club had been registered for the next [year]/[year] [Second League]season.
15. The proceedings before the [Continental Federation] continued and, following several submissions filed by the Parties and further procedural steps, on [date], the [Continental Federation] notified the Parties of its decision dated [date]in the case [case number]ruling that

the Club owes the Player the amount of EUR 2,000.00 net as outstanding 2nd bonus and EUR 400.00 as reimbursement of the handling fee (hereinafter the “[Continental Federation’s]Decision”).

16. In the [year]/[year] season, the Club actually participated in the [Second League].
17. On [date], i.e. during the pending proceedings before the FIVB Tribunal, the Club made two payments to the Player in the amounts of EUR 2,000.00 and EUR 400.00. On [date], the Player confirmed receipt of EUR 2,400.00 paid by the Club.

3.2 The Proceedings before the FIVB Tribunal

18. On [date], the Club filed its Request for Review including a copy of the bank certificate for the payment of the handling fee in the amount of CHF 1,500.00, which was received by the FIVB on [date].
19. By email dated [date], the FIVB Tribunal Secretariat acknowledged receipt of the Request for Review and the applicable handling fee. The FIVB Tribunal Secretariat forwarded the Request for Review to the Player and invited him to file an Answer by no later than [date].
20. By email dated [date], the FIVB Tribunal Secretariat acknowledged receipt of the Player’s Answer received on [date].
21. By email dated [date], the FIVB Tribunal Secretariat invited the Parties to submit a detailed account of costs in accordance with Article 20.7.1 of the FIVB Sports Regulations by no later than [date]. The FIVB Tribunal Secretariat noted that the Parties’ submissions should be limited to the information requested and that any additional information submitted would not be taken into account by the FIVB Tribunal Judge.
22. By email dated [date], the FIVB Tribunal Secretariat acknowledged receipt of the Parties’ statements of costs, which were received on [date] (Claimant’s submissions) and [date] (Respondent’s submissions).
23. Upon receipt of emails from both Parties’ counsels, on [date], the FIVB Tribunal Secretariat

stated that the FIVB Tribunal Judge would issue a decision considering the chronological order of cases.

4. The Parties' Submissions

24. The following section provides a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the FIVB Tribunal Judge has thoroughly considered all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in this section.

4.1 The Claimant's Position and Request for Relief

25. The Club was "*forced to urgently replace*" an injured player on the opposite spiker position and therefore decided to contract the "*internationally renown*" Player during the second half of the [year]/[year] season. The objectives were as follows: "*winning the playoff and remaining in [the Second League] thanks above all to the support of the new purchase*".

26. According to clause 1 of the Contract, two bonuses were agreed: EUR 1,000.00 for the achievement of the 5th/6th place at the end of the regular season and an additional bonus of EUR 2,000.00. The condition for the latter bonus was the victory of the final playoff and the consequent Club's right to remain in [the Second League] at the end of the [year]/[year] season. Clause 1 of the Contract may not be "*construed*" otherwise. Particularly, the [Club's country's language] expression should be considered ("*[wording in the Club's country's language]*" ("*to stay in [the Second League]*"). However, the Club was defeated in the playoffs final and retained only the right to participate in the [the Club's country's third league, hereafter "**Third League**"] in the [year]/[year] season. The opportunity to participate in [the Second League] in the [year]/[year] season arose only through the unexpected and completely independent event of the renunciation of the club "[different club, hereafter "**Refusing Club**"]" and, therefore, not by the sporting success of the Club's team and the Player. Moreover, the Club was able to take the [Second League] spot of the [Refusing Club]" only after the end of the [year]/[year] season and, therefore, after termination of the Contract.

27. It is contrary to the sporting and economic-financial principles that a bonus should be recognized with regard to a negative sporting result as explained in the [Continental Federation's] Decision.

A bonus occurs only as a consequence of a positive event or achievement which is strictly connected to a personal performance.

28. Moreover, the Player was fully aware of the Club's objectives for the [year]/[year] season, as is shown in his statement in the sports newspaper [Club's country's sports newspaper] on [date], in which he assured that he "*will give [his] support to the team in this period in order to reach the goals set by the company*".
29. In summary, the [Continental Federation] failed to consider the literal meaning of the 2nd bonus clause in the most exhaustive [Club's country's] version. That interpretation would have offered a clearer evaluation of the intent of the Parties' common willingness to reach the recognition of the bonus only after the victory in the playoff finals on the field, which would have guaranteed the continued participation in the [Second League].
30. Finally, the Club states, in its Request for Relief, as follows:

"in substance

- *partially reform the Decision issued on [date], notified on [date], by the [Continental Federation] in the FIVB Financial Dispute Procedures [case number] in point of recognition of the athlete [the Player] right to receive the bonus amounting to € 2.000,00.=, as provided for in art. 1 of the contract signed between the Parties on [date];*
- *as a result, having ascertained the failure to verify the condition of art. 1 of the aforementioned contract - victory in the final play-off and consequent permanence of [the Club] in [the Second League]2 - **denying the [Player's] right to receive the bonus amounting to € 2.000,00.= for the reasons better exposed above;***

as a measure of inquiry:

[...] Order the defendant to pay the expenses and fees of the double instance [sic] proceedings as well as the reimbursement of the contribution paid."

4.2 The Respondent's Position and Request for Relief

31. The Player participated in the Club's team activities, in particular its practices and matches without being subject to any critics nor sanctions whatsoever.
32. It is a general principle in contractual law that parties execute an agreement based on its literal meaning. In the present case, there is no interpretation needed since the 2nd bonus clause "*is*

written in a simple and clear way". It states that the Club must have participated in the final of the playoff phase of the [Second League] in the [year]/[year] season and must still be in the [Second League] in the [year]/[year] season. Consequently, following the principle "*pacta sunt servanda*", the Club must pay the 2nd bonus to the Player. It would put the Player at a disadvantage if an unnecessary interpretation of the 2nd bonus clause would add conditions not agreed by the Parties and changing the meaning of the clause. In line with the [Continental Federation's] Decision, the Club did not specify whether it had to win or lose the playoff finals in order for the Club to remain in the [Second League]. Consequently, the Club's irrelevant interpretation of the 2nd bonus clause must be dismissed.

33. Moreover, any interpretation should be based on the mutual intent of the Parties when concluding the Contract. The 2nd bonus clause must be understood that reaching the playoff finals suffices because it is common for sport clubs to grant bonuses for reaching a specific phase of a competition. If the Club had been willing to link the 2nd bonus to a victory in the playoff finals, it would have mentioned it in the Contract. In addition, the [the Club's country's language] version of the 2nd bonus clause does not include any word relating to a victory in the playoff finals. Consequently, a victory in the playoff finals is not necessary to be entitled for the 2nd bonus. In addition, the second condition, i.e. the participation in the [Second League] in the next [year]/[year] season, is not associated to any other modalities. In the absence of any details, the different paths to fulfil this condition of the 2nd bonus clause are irrelevant, only the results matter.
34. The Club's statements in the Request for Review, that the purpose of the signature of the Contract was to win the playoff finals and that the Parties agreed that only a victory would trigger the 2nd bonus cannot be understood as verified fact but rather as unfounded and speculative assumptions which lack probative value. Consequently, the Club failed to discharge its burden of proof.
35. Finally, the Player concluded in his Answer as follows:

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

- *the [Continental Federation's] decision in the case [case number] shall be confirmed with respect to the Club's failure to pay the Bonus to the Player and its effects not be suspended; and*
- *the Club, consequently, shall:*

- *pay the Player an amount of two thousand Euro (€ 2.000) net in principal as bonus;*
- *reimburse the Player all costs of the Complaint, being the amount of four hundred Euro (€ 400) as [the Continental Federation's]handling fee;*
- *indemnify the Player for all incurred legal expenses (including attorney's fees) up to an amount to be determined during the FIVB Tribunal proceedings, and at the moment of the filing of the present Reply amounting to three thousand five hundred Euro (€ 3.500) exclusive VAT, being four thousand two hundred thirty-five Euro (€ 4.235) inclusive VAT; and*
- *bear the costs of the current proceedings in its entirety."*

5. Jurisdiction

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

37. 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."

38. 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"

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

40. Thus, in order for the FIVB Tribunal to have jurisdiction over the dispute, the FIVB Tribunal Judge shall examine whether the conditions of both Articles 19.2.1 and 19.2.2 of the FIVB Sports Regulations are satisfied.

41. The present dispute involves claims submitted by a player from [the Player's country] against a

club from [the Club's country] concerning an outstanding bonus payment. The FIVB Tribunal Judge finds that this dispute clearly qualifies as a financial dispute of an international dimension between a player and a club in accordance with Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations.

42. Furthermore, the Request for Review at hand is made against the [Continental Federation's] Decision. Therefore, the present Request for Review stems from a decision of the [Continental Federation], i.e. a Confederation, and the FIVB Tribunal Judge holds that Article 19.2.2.2 of the FIVB Sports Regulations is also satisfied.
43. Based on the above, the conditions of Articles 19.2.1 and 19.2.2 of the FIVB Sports Regulations are satisfied.
44. Additionally, the Claimant's Request for Review was filed on [date], i.e. within the period described in Article 18.2 of the FIVB Sports Regulations.
45. Therefore, the FIVB Tribunal has jurisdiction over the present Request for Review pursuant to the FIVB Sports Regulations.

6. Procedural Issues

46. In its Request for Review, the Claimant stated that, "*subject to the fixing of the hearing of the interested Parties, declares to appeal*" against the [Continental Federation's] Decision. Moreover, it stated in the context of its Request for Relief:

"as a measure of inquiry:

it is required, upon ritual convocation, on all the circumstances deduced in the text of the present act and, in any case, on the circumstances that the Court deems worthy of appropriate investigation, a free audition of [the Club's sports director], as sports director of [the Club]."

47. In accordance with Article 20.8.1 of the FIVB Sports Regulations, the FIVB Tribunal Judge decides that no hearing shall be held. Such provision states that the FIVB Tribunal shall determine in its sole discretion, taking into account the parties' submissions, whether a hearing is to be held or not. The Parties did not provide any witness statements, in particular the Claimant failed to provide any summary of the specific issues on which its Sports Director, [Name of the Sports

Director], could testify. Moreover, taking into account the low amount in dispute in the present proceedings before the FIVB Tribunal, i.e. EUR 2,400.00, and because the Parties' written submissions (including several exhibits) suffice for the FIVB Tribunal Judge to decide on the case, holding a hearing is not necessary and would be disproportionate.

7. Discussion

7.1 Applicable Law

48. Under the heading "Law Applicable to the Merits", 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)."

49. Neither of the Parties have based their arguments on any national law. The Parties' references to legal principles like *pacta sunt servanda* and *actori incumbit probatio* are not contrary to *ex aequo et bono* considerations. In particular, the principle *pacta sunt servanda* is a main principle of an *ex aequo et bono* analysis. In light of the above, the FIVB Tribunal Judge will decide the issues submitted to him in this proceeding *ex aequo et bono*.

50. In substance, it is generally considered that an arbitrator/judge deciding *ex aequo et bono* receives "a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case" (POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626).

51. In light of the foregoing matters, the FIVB Tribunal Judge decides as follows:

7.2 Findings

52. In essence, the Club requests the FIVB Tribunal to annul the [Continental Federation's] Decision

and to find that the Club is not obliged to pay the 2nd bonus of EUR 2,000.00, while, the Player requests the FIVB Tribunal to uphold the [Continental Federation's] Decision.

53. The FIVB Tribunal Judge has reviewed the [Continental Federation's] Decision by considering the Parties' submissions and the evidence before him and makes the following findings:

7.2.1 Interpretation of the 2nd bonus clause

54. It is under dispute between the Parties whether the two parts of the 2nd bonus clause are to be understood as two separate requirements or whether the Club's participation in the [year]/[year] [Second League]season must be based only on the "final play off" requirement, i.e. according to the Club's submissions, a victory in the playoff finals.

55. In its English version, clause 1 of the Contract reads in respect to the 2nd bonus as follows: "*final play off - next season* [Second League]". In its [Club's country's language]version, clause 1 of the Contract reads in respect to the 2nd bonus as follows: "[wording in the Club's country's language]".

56. In the [Continental Federation's] Decision, the [Continental Federation] made an interpretation of clause 1 of the Contract by stating two requirements which need to be fulfilled, i.e. "*if the Club participates in the final play off*" and "*qualifies in the* [Second League] *Championship as the outcome of the participation in the play-off*" (see section 4.2 lit. n) of the [Continental Federation's] Decision). According to the [Continental Federation's] Decision, both requirements were met, thus, the 2nd bonus was earned by the Player.

57. The FIVB Tribunal Judge only partially agrees with the Player's argument that the 2nd bonus clause "*is written in a simple and clear way*". While it is written in a simple way, it is not, however, written in a clear way. In particular, the pure wording does not state whether the "final play off" shall just be reached or finally be won. Thus, the FIVB Tribunal Judge generally agrees with the [Continental Federation] that clause 1 of the Contract needs interpretation given that the pure wording is not as clear as it should be. Whether the FIVB Tribunal Judge agrees with the result of the [Continental Federation's] interpretation depends on the outcome of the FIVB Tribunal Judge's own interpretation of the 2nd bonus clause.

58. According to standard legal principles to be considered under *ex aequo et bono*, the content of

an agreement must be construed according to the true intentions of the parties. Thus, the parties' subjective wills have priority over the pure text of the agreement which, however, should be the starting point. In case a common subjective will of the parties cannot be ascertained, the contents of the agreement must be determined by application of the principle of mutual trust, i.e. by seeking, in accordance with the rules of good faith, the meaning that the parties could and should have given to their respective declarations. Moreover, the burden of proof for relevant facts lies with the party invoking a claim or right.

59. The Club argues that the [Club's country's language] version of the Contract would offer a clearer evaluation of the intent of the Parties' common will. However, the FIVB Tribunal Judge does not find relevant differences between the English and the [Club's country's language] version of clause 1 of the Contract. The first three words are almost identical ("final play off" versus "[wording in the Club's country's language]"). The second part of the respective wording is actually different but even the English translation of the [Club's country's language] version ("[wording in the Club's country's language]") as used by the Club in its submissions ("to stay in [the Second League]") does not show any relevant substantive difference: to stay in [the Second League] has the same meaning as to "play" the next season in [the Second League]. Moreover, the FIVB Tribunal Judge does not understand the hyphen ("-") between the two parts of the 2nd bonus clause in the English version of the Contract to be a relevant conjunction of the first part as a condition for the second part. The [Club's country's language] version of the Contract contains the almost identical or at least very similar parts of the 2nd bonus clause but separated by a comma (",") instead of a hyphen. The Parties did not provide any explanation for this difference, e.g. language specifications in [the Club's country's language] compared to English, and the FIVB Tribunal Judge considers the punctuation between the two parts of the 2nd bonus clause to be purely accidental.
60. Consequently, it is irrelevant for the interpretation of the bonus clause whether the [Club's country's language] version or the English version is applied.

7.2.1.1 The first condition ("*final play off*")

61. The wording of clause 1 of the Contract does not state whether the condition "*final play off*" means just to reach the final stage of the play offs, i.e. the playoff finals, or additionally to win these finals.

62. The Club submits that its objectives were clear when signing the Contract with the Player: *“winning the playoff [...]”*. This may or may not have been the case in relation to the Club’s subjective will. However, a corresponding common will of the Parties is disputed by the Player and the Club has failed to provide sufficient evidence that this was also the Player’s will at the time of the conclusion of the Contract on [date]. The Player’s statement in the sports newspaper [domain name of the newspaper] on [date] (*“will give support to the team in this period in order to reach the goals set by the company”*) is insufficient evidence because it is general in nature and does not, in any way, refer to a win of the playoff finals.
63. The FIVB Tribunal Judge agrees with the Player’s submission that it is common not only in sports, but also in volleyball, that bonuses are agreed and granted for reaching a specific phase of a competition. Therefore, the wording *“final play off”* without any reference to the condition for winning the playoff finals is a strong indication that only the participation of the Club’s team in the playoff finals was agreed between the Parties.
64. Whether the Club was *“forced to urgently replace”* an injured player or had ample time to look for a further player before signing the Contract with the Player is irrelevant. It is always the parties’ responsibility to take the utmost caution and be as precise as possible when drafting a player contract, otherwise any ambiguities can be unfavourable for one or both of the parties. If the Club wanted the 2nd bonus to be conditional upon the victory in the playoff finals, it could easily have this incorporated into the wording of the 2nd bonus clause. This applies for both, the English and the [Club’s country’s language] version of the Contract, thus, it is no language issue.
65. The FIVB Tribunal Judge holds that the Parties had the common will to reach the final stage of the playoffs as a minimum condition for the 2nd bonus, however, the Club has failed to prove additional conditions commonly agreed by the Parties. In line with the mutual trust principle, the reasonable interpretation of clause 1 of the Contract is that reaching the final stage of the playoffs suffices. As it is undisputed between the Parties and can be read from publicly available sources, the Club’s team participated in the playoff finals and, therefore, the first condition of the 2nd bonus clause (*“final play off”*) has been fulfilled.
66. This was also the result of the interpretation in the [Continental Federation’s] Decision, thus, the FIVB Tribunal Judge agrees with this partial aspect of the [Continental Federation’s] Decision.

7.2.1.2 The second condition (“*next season [Second League]*”)

67. The wording of clause 1 of the Contract does not state in which concrete way the condition “*next season [Second League]*” (or very similar “[*wording in the Club’s country’s language*]” = stay in [*Second League*]) needs to be fulfilled in order to earn the 2nd bonus.
68. The Club submits that its objectives were clear when signing the Contract with the Player: “[...] *and remaining in [the Second League] thanks above all to the support of the new purchase*”. The Club additionally submits that its right to remain in [*the Second League*] needs to be determined “*at the end of the [year]/[year] season*” and needs to be the consequence of the Club’s victory in the playoff finals.
69. As held above, the first condition of the 2nd bonus clause (“*final play off*”) has been fulfilled without the need for winning the playoff finals. Furthermore, the remaining part of the 2nd bonus clause does not provide any indication that a victory of the playoff finals is an additional (non-written) condition for playing in the [*Second League*] in the [*year*]/[*year*] season. The Club failed to provide sufficient evidence that such a (non-written) condition was the Parties’ common will when signing the Contract on [date]. Again, the Player’s statement in the sports newspaper [domain name of the newspaper] on [date] (“*will give support to the team in this period in order to reach the goals set by the company*”) is no sufficient evidence because of its general nature.
70. It is very clear from the case file that it was the Club’s priority objective to play in the [*Second League*] in the [*year*]/[*year*] season. This aim was achieved as the Club actually participated in the [*year*]/[*year*] season in the [*Second League*].
71. As an aside, the FIVB Tribunal Judge disagrees with the Club’s argument that its participation in the [*year*]/[*year*] [*Second League*] season was exclusively based on the withdrawal of another club after the [*year*]/[*year*] season. The Club’s exhibits “doc. 4” and “doc. 6” and the respective statements of the [*Club’s country’s*] Volleyball League do not evidence that the Club’s participation in the [*year*]/[*year*] [*Second League*] season was exclusively due to another club’s withdrawal. The email of Mr. [name of an employee of the] ([*Club’s country’s*] Volleyball League) dated [date] states that the participants of the [*Second League*] and the [*Third League*] in the [*year*]/[*year*] season were not yet finally determined (“[*wording in the Club’s country’s*

language].” = free English translation: Any further changes in the organs of the [Second League]and [Third League]Championships must be verified and ascertained by the Championship Admission Commission, in accordance with current Regulations). Some days later, on [date], the [Club’s country’s] Volleyball League confirmed that the Club had been registered as one of the participants of the [year]/[year] [Second League]season. According to the Player’s exhibit 4 (online article by the [Club’s country’s]Volleyball League dated [date]), already in mid-[month year], the Club stated that it will participate in the next [Second League]season and referred to a meeting on [date]. In that online article, the Club’s President, , made a statement as follows:

“[wording in the Club’s country’s language]”.

(Free English translation: "It was certainly a great satisfaction for us to be able to be among the best 12 teams in [the Club’s country] that will compete in the [Second League] series - comments the President [of the Club] who together with the management will formalize the registration in these days. The fifth place, the ten consecutive successes in the season finale were fundamental for a good placement which, despite the defeat in the playoff final, allowed us to be among the first choices to return to [Second League]. We, the club staff and the fans, deserve this series for the work, dedication and enthusiasm that have distinguished us over the years. We still want to grow and to carry our name high, because [the Club] and the whole district deserve the [Second League] series. Now we need to think about setting up the roster and being competitive, because it will certainly be an exciting season and one that will keep us entertained".)

72. The Club’s President himself based the right to participate in the [year]/[year] [Second League] season on the Club’s performance and achievements in the [year]/[year] season (“The fifth place, the ten consecutive successes in the season finale were fundamental for a good placement which, despite the defeat in the playoff final, allowed us to be among the first choices to return to [the Second League].”).
73. The FIVB Tribunal Judge finds that the Club was regularly determined by the [Club’s country’s] Volleyball League as a participant in the [year]/[year] [the Second League]2 season. The FIVB Tribunal Judge finds it irrelevant that the final decision by the [Club’s country’s] Volleyball League on the Club’s stay in the [Second League]was made only after the last match of the Club’s team in the [year]/[year] season. It is obvious from the email of [employee of the Club’s country’s volleyball league]dated [date]that the registration process managed by the [Club’s country’s] Volleyball League is time-consuming. The FIVB Tribunal Judge also finds, in particular based on the Club President’s statement published on [date], that the decision of the [Club’s country’s]

Volleyball League was based on the Club's sporting results and achievements in the [year]/[year]] season. The [Continental Federation's] Decision comes to the same conclusion (section 4.2 lit. q) by stating that *"the Club qualified to the [Second League]Championship as next in standing teams, according to the internet site [name of the website] from [date], which means that the qualification to the [Second League]Championship was the direct outcome of the participation in the Play-Off"*. In line with his own findings as mentioned above, the FIVB Tribunal Judge agrees with this partial aspect of the [Continental Federation's]Decision.

74. According to the above, also the second condition of the 2nd bonus clause (*"next season [Second League]"*) has been fulfilled.

7.2.1.3 Additional issues

75. The FIVB Tribunal Judge has taken due note of the Club's several statements in its Request for Review that the 2nd bonus was agreed as an *"additional bonus"* on top of the 1st bonus and not as an alternative one. This is not disputed by the Player. Therefore, the FIVB Tribunal Judge understands that the 2nd bonus can accrue in addition to the 1st bonus.
76. Finally, the FIVB Tribunal Judge disagrees with the Club's argument that a bonus occurs only as an achievement which is strictly connected to a personal performance. The aim of a bonus scheme is to motivate someone to achieve the desired results. This may be an individual player (e.g. for points made), however, it is common practice in international and national sports that bonuses are granted for achievements by a team. Advancing to a certain phase of a competition (here: playoff finals) is nothing an individual player can achieve alone. In the present case, there are even no restrictions stipulated regarding the actual participation of the Player in the Club's matches. If the Player had missed several games, e.g. because of an injury, he would still have been entitled to the bonus, even when not playing a single match in the playoffs. Therefore, the conditions for payment of the 2nd bonus are not strictly connected to a personal performance of the Player.

7.2.2 Final conclusions

77. Clause 1 of the Contract needs interpretation concerning the requirements for payment of the 2nd bonus. This interpretation applies according to standard legal principles to be considered

under *ex aequo et bono*.

78. The 2nd bonus was agreed as an “*additional bonus*” on top of the 1st bonus and there are no relevant differences between the English and the [Club’s country’s language] version of clause 1 of the Contract. The Parties’ common will concerning the 2nd bonus was, at least, to reach the playoff finals in the [year]/[year] season. As the Club has failed to prove additional conditions commonly agreed by the Parties, in line with the mutual trust principle, the Club’s participation in the playoff finals was sufficient to fulfil the first condition of the 2nd bonus clause (“*final play off*”). The Club was registered as a participant in the [year]/[year] [Second League] season and actually participated in that capacity. This was sufficient to fulfil the second condition of the 2nd bonus clause (“*next season [Second League]*”).
79. Consequently, the Player was entitled to a bonus in the amount of EUR 2,000.00 according to clause 1 of the Contract. The same was the result of the [Continental Federation’s] Decision, which, therefore, was correct at the time of its announcement. However, taking into account the Club’s payment of EUR 2,000.00 received by the Player on [date], i.e. during the present proceedings before the FIVB Tribunal, the Player is no longer entitled for payment of the 2nd bonus by the Club.
80. The relevant point in time for the facts relevant for the FIVB Tribunal’s decision on the merits is the date of the present decision. If at this point in time the outstanding amount has indisputably been paid, the respective Request for Review should be upheld by the FIVB Tribunal because the Player’s claim for the payment of the agent fee is no longer justified. As the Request for Review first was unfounded (for the reasons mentioned above in paras. 54 – 76), the Club’s payment during the proceedings made the Request for Review valid. Therefore, the present Request for Review is upheld.
81. However, in light of these circumstances, the Club’s payment to the Player only on [date] will be taken into consideration in the decision on costs.

7.3 Costs

82. In the [Continental Federation’s] Decision, the [Continental Federation] ordered as follows: “[*The Club*]shall pay the amount of EUR 400 to [*the Club*]as reimbursement of the handling fee.” This

payment order obviously contains a typo regarding the recipient of the ordered payment, thus, the Club should pay the amount of EUR 400.00 to the Player. It was the Player who paid the first instance handling fee to the [Continental Federation] at the beginning of the procedure and it was the Club who lost the case. By email dated [date], , [the Continental Federation's] Transfer & Legal Coordinator, explained the typo to the Club ("*I would like to note that the Decision contained one prominent mistake. [...] These costs are always borne in view of the outcome of the procedure by the losing party.*").

83. Given that the [Continental Federation's] Decision is considered to be correct at the time of its announcement, the FIVB Tribunal Judge confirms that the [Continental Federation's] handling fee of EUR 400.00 shall be borne by the Club. However, taking into account the Club's payment of EUR 400.00 received by the Player on [date], the Player is no longer entitled for payment of the [Continental Federation's] handling fee by the Club.
84. 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 paid to the FIVB). However, when determining any contribution, the FIVB Tribunal Judge must take into account the outcome of the proceedings as well as the conduct and financial resources of the Parties.
85. As to the Club's costs in the present proceedings: The handling fee of CHF 1,500.00 was paid by the Club. Given that the Club's Request for Review is upheld only because of the Club's payment to the Player on [date] but otherwise had been dismissed, the FIVB Tribunal Judge finds that the Club has to bear the full handling fee and any of its own legal costs.
86. As to the Player's costs in the present proceedings: Although the wording of Article 20.11.2 of the FIVB Sports Regulations mentions a contribution towards the costs of the "*prevailing party*", this is specifically just stated "*[a]s a general rule*". Consequently, the FIVB Tribunal's power to decide the dispute *ex aequo et bono* includes a decision on costs in favour of the Player under the circumstances of the present case. Given that the Club's Request for Review is upheld only because of the Club's payment to the Player on [date] but otherwise had been dismissed, the FIVB Tribunal Judge finds that the Club shall pay to the Player a compensation towards his reasonable legal fees and expenses.

87. The Player submitted an account of costs for legal fees in the amount of EUR 4,000.00 net resulting in the amount of EUR 4,840.00 including VAT. As compared to the amount in dispute of EUR 2,400.00 in the present instance, the Player claims more than twice as much for legal fees, which does not seem reasonable. Moreover, the FIVB Tribunal Judge takes into account that there was only one round of written submissions and that the Parties' submissions were 15 pages (Claimant) and nine pages (Respondent) long/short. The FIVB Tribunal Judge finds that EUR 2,000.00 is a reasonable contribution towards the Player's legal fees and expenses related to the proceeding before the FIVB Tribunal. Consequently, the Club shall pay to the Player the amount of EUR 2,000.00.

DECISION

For the reasons set forth above, the FIVB Tribunal Judge decides as follows:

- 1. The decision rendered by the [Continental Federation] in [case number] dated [date] was correct at the time of its announcement. However, on [date], [the Club] paid the amount awarded to [the Player], thus, [the Club] is no longer obliged to pay the respective amount of EUR 2,400.00 to [the Player].**
- 2. The relevant point in time for the facts relevant for the FIVB Tribunal's decision on the merits is the date of the present decision. As the Request for Review filed by [the Club] first was unfounded (for the reasons mentioned in the present decision), the payment of [the Club] during the present proceedings made the Request for Review valid. Therefore, the Request for Review filed by [the Club] is formally upheld.**
- 3. [The Club] shall bear its own legal fees and expenses including the applicable handling fee. In addition, [the Club] shall pay the amount of EUR 2,000.00 to [the Player] as a compensation towards his reasonable legal fees and expenses.**
- 4. Any other requests for relief are dismissed.**

Lausanne, seat of the proceedings, [date of the decision]

Dr. Karsten Hofmann
FIVB Tribunal Chairperson

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 which provides as follows:

“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 under www.tas-cas.org.

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

Court of Arbitration for Sport
Avenue de Bergières 10
1004 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
email: info@tas-cas.org

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.