



The
FIVB TRIBUNAL
hereby issues the following

DECISION

on the Request for Review of **[case number]**¹ filed by

[The Club] (“Claimant”)
represented by **[the Club’s representative]**

v.

[The Player]
 (“Respondent”)
self-represented

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 Club] is a professional volleyball club from [the Club's country] ("**Claimant**" or "**Club**").
2. [The Player] is a professional volleyball player from [the Player's country] ("**Respondent**" or "**Player**").

2. The FIVB Tribunal

3. Article 19.1.5 of the FIVB Sports Regulations dated 24 May 2019 ("**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, appointed FIVB Tribunal Vice-Chairperson, Francisco A. Amallo from Argentina, to hear this case as a single judge ("**FIVB Tribunal Judge**").

3. Facts and Proceedings

5. Below is a summary of the main relevant facts based on the parties' written submissions and evidence, whose authenticity has not been questioned by the parties. Additional facts may be set out where relevant in connection with the legal discussion that follows. Although the FIVB Tribunal Judge has considered all the facts, this decision will refer only to those deemed necessary to explain his decision.

3.1 Background Facts

6. On [date], the Player and the Club signed a contract ("**Contract**"), under which the Player agreed to play the [year]/[year] season for the Club in exchange for, *inter alia*, EUR 210,000. The Contract's duration was from [date] to [date].²

² Club's RFR, Contract.

7. On [date], the Player played for the last time in the [year]/[year] Championship [which takes place in the Club's country, hereinafter the "Championship"]. During that game, he suffered a shoulder inflammation, and, on [date], he broke the fifth finger of his right hand.³
8. Despite his injury, the Player kept training with the Club's team until [date].⁴
9. On [date], the Player left [the Club's country] and returned to [the Player's country].⁵
10. On [date], the [year]/[year] Championship ended. The Club reached the fifth place.⁶
11. On [date], the Club sent a contract termination letter to the Player. The letter was delivered to the Player on [date].⁷
12. On [date], the Player filed a complaint against the Club before the [continental federation, hereafter "Continental Federation"]. The Player requested a total compensation of EUR 112,018 plus interest for unpaid salaries, bonus, apartment rent, and management fees.⁸
13. On [date], the [Continental Federation] issued a decision ordering the Club to pay, *inter alia*, a compensation of EUR 74,500 plus interest to the Player ("**Decision**").⁹

3.2 The Proceedings before the FIVB Tribunal

14. On [date], the Club filed a notice of request for review ("**RFR**") of the Decision and requested an extension of time to file the RFR. It also requested the suspension of the effects and enforcement of the Decision until the proceeding before the FIVB Tribunal has been completed.
15. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the notice of the request. It also acknowledged receipt of a partial payment of the handling fee and invited the Club to pay the balance by [date].
16. On [date], the Club sent a payment confirmation of the handling fee's balance to the FIVB Tribunal Secretariat.

³ Player's submission dated [date], pp. 1-2. Club's statement dated [date].

⁴ Player's submission dated [date], Exhibits.

⁵ Player's Answer, pp. 1-2. Club's RFR, ¶ 57.

⁶ <https> [the leagues' website]

⁷ Club's RFR, Termination letter and FedEx's proof of shipment.

⁸ Player's submission dated [date], p. 3.

⁹ Decision, p. 13.

17. On [date], the FIVB Tribunal Secretariat invited the Club to file its statement of facts and legal arguments for its RFR by [date] and invited the Player to respond to the Club's request to suspend the effects of the Decision by [date]. It also informed the parties that the dispute would be heard by the FIVB Tribunal Chairperson, Dr. Karsten Hofmann, in accordance with Article 19.1.5 of the FIVB Sports Regulations.
18. On [date], the Player made a submission.
19. On the same day, the FIVB Tribunal Chairperson rejected the Club's request to suspend the effects of the Decision.
20. On [date], the FIVB Tribunal Secretariat confirmed receipt of the handling fee's balance.
21. On [date], the Club filed its RFR.
22. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the RFR. It also invited the Club to submit an English translation of certain exhibits by [date].
23. On [date], the Club submitted the English translations.
24. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the English translations. It also invited the Player to answer the RFR by [date].
25. On [date], the Player filed its answer to the RFR ("**Answer**").
26. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Answer and informed the parties about the FIVB Tribunal Chairperson's decision to declare the Player's counterclaim inadmissible because it had been filed after the deadline set forth in the FIVB Sports Regulation and he had not paid the handling fee. It also invited the Player to submit a signed version of the Answer and an English translation of certain pages of an exhibit by [date].
27. On [date], the Player submitted a signed version of the Answer and the English translations.
28. On [date], the FIVB Tribunal Chairperson requested the Club to provide certain information and evidence about the Player by [date].
29. On [date], the Club filed a submission in response to the FIVB Tribunal Chairperson's request.
30. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Club's submission and

invited the Player to provide his position by [date].

31. On [date], the Player submitted his position.
32. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Player's submission and invited him to resubmit a signed copy by [date].
33. On [date], the Player filed a signed copy of his submission.
34. On [date], in an attempt to settle the dispute, the FIVB Tribunal Chairperson proposed a settlement agreement to the parties and invited them to indicate their agreement or disagreement by [date].
35. On [date], the Club indicated its agreement with the settlement proposal. The Player did not submit his position.
36. On [date], the FIVB Tribunal Chairperson noted the Club's consent to settle the dispute in the proposed terms, and the Player's lack of response. Consequently, he provided the Player with a final opportunity to express his position by [date]. He also invited the Club to confirm if it wished to proceed with a hearing in case of disagreement by the same date.
37. On [date], the Club confirmed its agreement with the settlement proposal and its decision to withdraw the request for a hearing.
38. On [date], the Player informed his disagreement with the settlement proposal and suggested an alternative proposal.
39. On [date], in an attempt to settle the dispute, the FIVB Tribunal Chairperson proposed a new settlement agreement to the parties and invited them to indicate their agreement or disagreement by [date].
40. On [date], the Player indicated his agreement with the new settlement proposal.
41. On [date], the Club indicated its agreement with the first settlement proposal only.
42. On [date], in view of the parties' disagreement to settle the dispute, the FIVB Tribunal Chairperson decided to continue with the proceedings. He decided not to hold a hearing and to resolve the dispute based on the written submissions. He also requested the Club to provide

evidence of the payments to the Player and to inform whether they were net or gross by [date].

43. On [date], the Club filed its submission.
44. 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 appointed the FIVB Tribunal Vice-Chairperson, Francisco A. Amallo, to hear the present case.
45. On [date], the FIVB Tribunal Secretariat invited the Player to comment on the Club's submission by [date].
46. On [date], the Player submitted his comments to the Club's submission.
47. On [date], the FIVB Tribunal Judge informed the parties that, after considering their submissions and in accordance with Article 20.8.1 of the FIVB Sports Regulations, he would proceed to decide the dispute. He also requested the parties to provide a detailed account of their respective costs as well as supporting documentation in relation thereto by [date].
48. On [date], the parties made their submissions on costs.

4. The Parties' Submissions

49. 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, even if no specific or detailed reference has been made to those arguments in this section.

4.1 The Claimant's Request for Relief and Position

4.1.1 The Claimant's Request for Relief

50. The Club requests the FIVB Tribunal Judge to:

"1. Set aside and annul the Decision issued by the [Continental Federation] on [date].

2. Determine that the Claimant is not obliged to pay the amount of EUR 74,500 net to Respondent as outstanding instalments, bonus and apartment rent plus late payment interest in the amount of EUR 2,483 net and that the Claimant is not obliged to pay to Respondent amount of EUR 400 and EUR 2,318 as reimbursement of handling fee and legal expenses.

4. Order the Respondent to bear all costs incurred with the present procedure.

5. Order the Respondent to pay the Claimant a contribution towards its legal and other costs including the applicable handling fee and the costs of witnesses and interpreters in an amount to be determined at the discretion of FIVB Tribunal.”¹⁰

4.1.2 The Claimant’s Position

51. The Club contends, *inter alia*, as follows:

52. The [Continental Federation] lacked jurisdiction to settle the dispute.¹¹

53. The Club fulfilled its wage obligations towards the Player. It terminated the Contract on [date] because of the Player’s indisposition for more than 90 days. The Player was not entitled to any remuneration between [date] and [date] because clause 8.6 of the Contract sets forth that the Player only has a right to wages until the termination date.¹²

54. It would be unjust and unfair to grant the Player a bonus equivalent to 20% of his annual salary because clause 4.4 of the Contract refers to “payments” and, therefore, also applies to bonuses; and the Player only partially contributed to the results achieved by the Club’s team as he was absent since [date].¹³

55. It would also be unjust and unfair to grant the Player EUR 400 for the rental corresponding to [month] [year] because the Player admitted to leaving [the Club’s city] on [date] and knew about the termination of the Contract on [date].¹⁴

4.2 Respondent’s Request for Relief and Position

4.2.1 Respondent’s Request for Relief

56. The Player has not included an explicit request for relief in his submissions. Considering that the Player is not a lawyer and has been self-represented in this case, as well as the content of his submissions in this proceeding, the FIVB Tribunal Judge interprets the Player’s submissions as a

¹⁰ Club’s RFR, ¶ 58.

¹¹ Club’s RFR, ¶¶ 14-25.

¹² Club’s RFR, ¶¶ 27-45.

¹³ Club’s RFR, ¶¶ 50-56.

¹⁴ Club’s RFR, ¶ 57.

request to dismiss the RFR and uphold the Decision.

4.2.2 Respondent's Position

57. The Player referred to his submissions in the previous instance,¹⁵ where he claimed that (i) the [Continental Federation] had jurisdiction to settle the dispute; (ii) he was never out for 90 days; and (iii) despite his injury, he participated in every single practice with the Club's team as from [date] and that the Club's doctor did not authorize him to practice full because he was the highest paid player and the Club wanted to save the money corresponding to his salary.¹⁶

58. The Player also contended that the 90 days period for terminating the Contract was due on [date] because his last game was on [date].¹⁷

5. Jurisdiction

5.1. FIVB Tribunal's jurisdiction

59. The FIVB Tribunal must first examine whether it has jurisdiction to hear the present dispute.

60. 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."

61. 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"

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

¹⁵ Player's Answer, p. 1.

¹⁶ Player's submission dated [date], pp. 1-3, 23.

¹⁷ Player's Answer, p. 1.

63. 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 claims between a volleyball club [from the Club's country] and a volleyball player [from the Player's country] concerning the payment of compensation due to the early termination of 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] .
64. The FIVB Tribunal's jurisdiction is also undisputed by the parties. Therefore, the FIVB Tribunal has jurisdiction over the present dispute under the FIVB Sports Regulations.

5.2. [The Continental Federation]'s jurisdiction

65. In the previous instance:
- a) The Club claimed that the [Continental Federation] lacked jurisdiction to settle the dispute because the parties had agreed to settle their disputes before the Arbitration Court of the [Club's country's] Professional Volleyball League.¹⁸
 - b) The Player relied on similar cases from [the Club's country] in which the [Continental Federation]'s jurisdiction was recognized and asked to be treated in the same way.¹⁹
 - c) The [Continental Federation] dismissed the Club's jurisdictional objection. The [Continental Federation] concluded that it had jurisdiction under the FIVB Sports Regulations and, since the arbitration clause of the Contract did not grant exclusive jurisdiction to the Arbitration Court of the [Club's country's] Professional Volleyball League, the Player was entitled to file his claim in any of the two available forums.²⁰
66. In its RFR, the Club insists on its jurisdictional objection. According to the Club, the Contract contains an effective arbitration clause in favour of the Arbitration Court of the [Club's country's] Professional Volleyball League and the dispute should have been resolved by that arbitral tribunal. The Club contends that, according to the terms of the Contract and the real intent of the parties, the dispute had to be submitted to the exclusive jurisdiction of that arbitral tribunal. The Club argues that, otherwise, the arbitration clause would be in practice an empty commitment

¹⁸ Club's submission dated [date], p. 3.

¹⁹ Player's submission dated [date], p. 1.

²⁰ Decision, pp. 9-10.

devoid of content and legal force.²¹

67. The Player referred to his submissions in the previous instance.²²

68. Clause 9 of the Contract states as follows:

“The Parties state that solving the civil disputes arisen between because of the Contract is to be managed by the Arbitration Court of [the Club’s country’s Professional Volleyball League] according to the regulations of this Court.”

69. According to the FIVB Tribunal’s jurisprudence, the existence of a choice-of-forum clause in favour of another tribunal does not prevent the parties from initiating a procedure before FIVB, unless it explicitly grants exclusive jurisdiction to that tribunal or excludes FIVB judicial bodies. This is because confederations, national federations and their members acknowledge and agree to abide by FIVB regulations, including the FIVB Sports Regulations.²³

70. Clause 9 of the Contract does not explicitly grant exclusive jurisdiction to the Arbitration Court of the [Club’s country’s] Professional Volleyball League nor explicitly excludes FIVB judicial bodies. The Club has submitted no evidence as to the alleged real intent of the parties to grant exclusive jurisdiction to that arbitral tribunal. Therefore, according to the FIVB Tribunal’s jurisprudence,²⁴ the Player was entitled to submit his claim before the [Continental Federation] and the latter had jurisdiction to hear the case. Consequently, the Club’s objection to the [Continental Federation]’s jurisdiction is dismissed.

6. Admissibility

71. 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.”

72. The Decision was notified to the parties on [date]. The Claimant filed a notice of RFR on [date] (i.e., within the fourteen-day deadline) and requested an extension of time to file the RFR. On [date], the FIVB Tribunal Secretariat invited the Club to file its statement of facts and legal

²¹ Club’s RFR, ¶¶ 14-25.

²² Player’s Answer, pp. 1-2.

²³ See, for example, FIVB Tribunal cases 2015-07, 2018-03, and 2018-04.

²⁴ Ibid.

arguments for its RFR by [date]. The Club filed its RFR on that date. Thus, the RFR is admissible.

73. In his Answer, the Player asked the FIVB Tribunal to review the Decision with regard to the reduction of the salaries corresponding to [month] and [month] and his agent's fees.²⁵ As decided by the FIVB Tribunal Chairperson on [date], the Player's counterclaim is inadmissible because it had been filed after the deadline set forth in Article 20.6.2 of the FIVB Sports Regulations and the Player had not paid the handling fee.

7. Applicable Law

74. 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)."

75. The parties have not made any submissions as to the applicable law. Therefore, in the absence of an agreement between the parties 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).

8. Findings

76. The FIVB Tribunal Judge will analyse the parties' arguments regarding the Player's salary, bonus, and rental separately.

8.1. Salary

77. In 4.1 of the Contract, the parties agreed that the Club would pay the Player an annual salary equivalent to EUR 210,000 net. Clause 4.4 of the Contract authorized a salary reduction in the following terms:

"During the period of the Player's incapacity for taking part in tournaments or trainings confirmed by the doctor indicated by the Club, the Player retains the right to receive the payment for the period of factual incapacity described above in the amount of:

- a) 100 % of the payment for 30 days since the date of appearance of the incapacity if it was caused by the injury/contusion due to or in connection with taking part in sport tournaments or trainings which

²⁵ Player's Answer, p. 2.

was the duty enclosed in the contract

- b) 80 % of the payment after 30 days in the situation described in point a, but no longer than the next 30 days*
- c) 50% of the payment in the situation described in point a, after the end of term described in point b*
- d) 50% of the payment if incapacity is the result of an action different the action described in point a, but the payment is entitled for 60 days in one season”*

78. Clause 8.3 of the Contract also authorized the Club to terminate the Contract *“In case that the Player’s indisposition stated in art 4, in point 4 lasts longer than 90 days during one season”*. According to clause 8.6 of the Contract, *“In case of the dissolution of the Contract the Player has the right to wages only to the day of the termination.”*
79. In the previous instance, the Club argued that it had paid the whole contract fee to the Player because his salary had been reduced (clause 4.4) and the Contract had been terminated (clause 8.3) due to the Player’s inability for more than 90 days, and he was only entitled to his salary until the termination date (clause 8.6).²⁶
80. The [Continental Federation] concluded that the Contract was never terminated by the Club because it had failed to prove the termination letter.²⁷ After considering that the Club was entitled to reduce the Player’s salary under clause 4.4 of the Contract, the [Continental Federation] ordered the Club to pay EUR 31,300 as outstanding wages.²⁸
81. In its RFR, the Club maintains its position that the Contract was successfully terminated and that the Club fulfilled its financial obligations towards the Player. The Club states that the existence and delivery of the termination letter were uncontested by the Player. According to the Club, the Contract was terminated on [date] because of the Player’s indisposition for more than 90 days, in accordance with clause 8.3 of the Contract. Therefore, the Club claims that the Player was not entitled to any remuneration between [date] and [date] because clause 8.6 of the Contract sets forth that the Player only has a right to wages until the termination date.²⁹

²⁶ Club’s submission dated [date].

²⁷ Decision, p .12.

²⁸ Decision, pp .11-12.

²⁹ Club’s RFR, ¶¶ 27-45.

82. The Player referred to his submissions in the previous instance,³⁰ where he claimed that, despite his injury, he participated in every single practice with the Club's team from [date] and that the Club's doctor did not authorise him to practice full because he was the highest paid player and the Club wanted to save the money corresponding to his salary.³¹ The Player also contended that the 90 days period for terminating the Contract was due on [date] because his last game was on [date].³²
83. The FIVB Tribunal Judge agrees with the Club that the existence and delivery of the termination letter were uncontested by the Player, and that the [Continental Federation] should have therefore deemed that fact as proven.³³ However, the Club has failed to explain why, at the time of sending the termination letter ([date]), the 90 days of absence that it invoked as just cause for termination had been completed.
84. Clauses 4.4 and 8.3 of the Contract refer to continuous or ongoing absences, rather than to the possibility of accumulating isolated absences. Clause 4.4 refers to periods of absence that begin to run "since the date of appearance of the incapacity". Clause 8.3 authorizes the termination of the Contract in case the Player's indisposition under clause 4.4 "lasts longer than 90 days during one season". The need for the absence to be continuous is confirmed by the Club's termination letter, where the Club states that the termination is justified "by inability of Player describe under § (paragraph) 4 point 4 of contract ongoing 90 days during the season."
85. As clauses 4.4 and 8.3 of the Contract refer to continuous or ongoing absences in tournaments or training since the injury or contusion, and as it is undisputed that the Player's last game in the [year]/[year] Championship was on [date] (game in which he suffered a shoulder inflammation),³⁴ the 90 days provided for in clause 8.3 should be calculated from the day after the Player's last game. Thus, the Player is right when he asserts that the 90 days period for terminating the Contract was due on [date].
86. When the Club sent and the Player received the termination letter, the Club was not yet entitled to terminate the Contract. Since the Club prematurely terminated the Contract in breach of clause 8.3 thereof, the Club cannot make use of clause 8.6 to pay the Player's salary only until the

³⁰ Player's Answer, p. 1.

³¹ Player's submission dated [date], pp. 2-3.

³² Player's Answer, p. 1.

³³ Club's submission dated [date]. Player's submission [date].

³⁴ Player's submissions dated [date] and [date]. Club's submission dated [date].

termination date because clause 8.6 presupposes a legitimate termination of the Contract. Otherwise, the procedure provided for in clause 8 for the termination of the Contract would be meaningless.

87. Having established that the Player was entitled to receive his salary until the end of the Contract ([date]), the next step is to determine the quantum by assessing whether the Club was entitled to any salary reduction under clause 4.4 of the Contract.
88. The [Continental Federation] concluded that, according to clause 4.4 of the Contract, the Player had to receive 80% of his salary for [month][year] (EUR 16,800), 50% of his salary for [month][year] (EUR 10,500), and 50% of his salary for [month][year] (EUR 10,500). After considering that the Player was entitled to an annual remuneration equivalent to EUR 184,800 (instead of EUR 210,000) due to the above reductions and that the Player had already received EUR 153,500, the [Continental Federation] ordered the Club to pay EUR 31,300.³⁵
89. The Club did not contest the [Continental Federation]'s calculation when filing the RFR. However, on [date], after the FIVB Tribunal Chairperson requested from the Club more information about the payments made to the Player, the Club stated that it had paid salaries in an amount of EUR 162,715.06, instead of EUR 153,500. It is unclear to the FIVB Tribunal Judge what the difference of EUR 9,215.06 is due to. In any case, since the Club has failed to submit evidence of the alleged payments to the Player, the FIVB Tribunal Judge has no reason to depart from the [Continental Federation]'s conclusion, uncontested in the RFR, that the Club had paid EUR 153,500 to the Player.
90. The Player did not contest the [Continental Federation]'s calculation either. The Player did request the FIVB Tribunal to review the [Continental Federation]'s decision regarding the salaries corresponding to [month]and [month] because *"if there was any continuation of the championship and if the coach and the president of the club did not let me and all the foreigners go home, then I would be completely ready to take part in training or games by that time."*³⁶ However, as already determined, the Player's request for review is inadmissible.
91. With the [Continental Federation]'s calculation being uncontested, the FIVB Tribunal Judge finds no reason to depart from it and upholds the Decision that the Club must pay EUR 31,300 to the

³⁵ Decision, pp .11-12.

³⁶ Player's Answer, p. 2.

Player as outstanding wages.

8.2. Bonus

92. Clause 4.2 of the Contract reads as follows:

“Bonus: 5-6th place at the end of season= 20% of yearly salary ; 4th place at the end of season = 30% of yearly salary, 3rd place at the end of the season = 40% of yearly salary, 2nd place = 50% of yearly salary; 1st place= 60% of yearly salary.”

93. It is undisputed by the parties that the Club’s team reached the fifth place in the [year]/[year] Championship.

94. In the previous instance, the Player claimed EUR 42,000 net as a bonus,³⁷ and the Club contended that it had paid the Player all the benefits under the Contract.³⁸ The [Continental Federation] concluded that the Club had not refuted the Player’s claim and, after considering that clause 4.4 of the Contract applies only to the regular payment and not to other benefits, the [Continental Federation] ordered the Club to pay EUR 42,000 net to the Player as a bonus.³⁹

95. In its RFR, the Club argues that it would be unjust and unfair to grant the Player a bonus equivalent to 20% of his annual salary because clause 4.4 of the Contract refers to “payments” and, therefore, also applies to bonuses; and the Player only contributed partially to the results achieved by the Club’s team as he was absent since [date].⁴⁰

96. The FIVB Tribunal Judge is not persuaded by the Club’s argument. Clause 4.4 of the Contract regulates the payment of salaries *“During the period of the Player’s incapacity for taking part in tournaments or trainings”*, stating that the Player retains the right to receive the payment *“for the period of factual incapacity”*. The bonus is neither a payment made *during* nor *for* the period of the Player’s incapacity, but a payment made *after* the tournament once it is possible to determine the Club’s position *“at the end of the season”*. Therefore, the FIVB Tribunal Judge agrees with the [Continental Federation] that clause 4.4 does not apply to bonuses.

97. Clause 4.4 of the Contract does not condition the payment of the bonus on the Player’s performance or contribution to the team’s achievements. The FIVB Tribunal Judge finds no reason

³⁷ Player’s submission dated [date], p. 3.

³⁸ Club’s submission dated [date], p. 1.

³⁹ Decision, pp. 11-12.

⁴⁰ Club’s RFR, ¶¶ 50-56.

to depart from a Contract concluded by professional parties. Thus, the Player was entitled to a bonus equivalent to 20% (EUR 42,000).

8.3. Flat rental

98. Clause 3.1(b) of the Contract sets forth: *“The Club is obliged to provide the Player with: ... Additional money in amount of 400 Euro monthly for a rent of flat for residence in [the Club’s city] during the contract.”*

99. In the previous instance, the Player claimed EUR 1,200 net as missing flat rent,⁴¹ and the Club contended that it had paid the Player all the benefits under the Contract.⁴² The [Continental Federation] concluded that the Club had not refuted the Player’s claim and ordered the Club to pay EUR 1,200 net to the Player.⁴³

100. In its RFR, the Club states that it would be unjust and unfair to grant the Player EUR 400 for the rental corresponding to [month] [year] because the Player admitted to having left [the Club’s city] on [date] and knew about the termination of the Contract on [date].⁴⁴

101. It is undisputed that the Player left [the Club’s country] on [date]. Clause 3.1(b) of the Contract states that the EUR 400 were *“for a rent of flat for residence in Random”*. Despite the Club’s allegation, the Player has failed to submit evidence of him renting a flat in [the Club’s city] for [month][year]. Therefore, in the absence of evidence, the FIVB Tribunal Judge upholds the Club’s request and partially modifies the Decision in this regard, ordering the Club to pay EUR 800, instead of EUR 1,200, to the Player as compensation for flat rent.

8.4. First instance’s costs

102. The [Continental Federation] ordered the Club to pay EUR 2,318 and EUR 400 to the Player as a contribution to legal costs and handling fee, respectively.⁴⁵ The Club claims that the Decision is unfair and groundless because, despite being represented by a counsel, the Player had to complete his complaint upon [the Continental Federation]’s request.⁴⁶

⁴¹ Player’s submission dated [date], p. 3.

⁴² Club’s submission dated [date], p. 1.

⁴³ Decision, p. 12.

⁴⁴ Club’s RFR, ¶ 57.

⁴⁵ Decision, p. 13.

⁴⁶ Club’s RFR, ¶¶ 46-49.

103. Article 18.1(e) of the FIVB Sports Regulations sets forth:

“The FIVB may award a contribution towards the applicable handling fee to the prevailing party. It shall state brief reasons. The FIVB may award a contribution of up to CHF 2,500 towards the prevailing party’s reasonable legal fees and other expenses incurred in connection with the proceedings (including the applicable handling fee and the costs of witnesses and interpreters). When deciding on this contribution, the FIVB shall take into account the outcome of the proceedings as well as the conduct and financial resources of the parties.”

104. The FIVB Tribunal Judge does not find the Club’s argument to be compelling. Filing an incomplete complaint and completing it does not constitute a valid defence under Article 18.1(e) of the FIVB Sports Regulations. According to that Article, the [the Continental Federation] had to decide on the contribution considering the outcome of the proceedings as well as the conduct and financial resources of the parties. The [Continental Federation] made a decision considering the conduct of the parties (particularly, the fact that the Club refused to settle the dispute in a friendly way with the Player) and the outcome of the proceeding. Thus, its Decision is in accordance with the applicable regulations and is fair considering those circumstances.

105. Therefore, the FIVB Tribunal Judge finds no reason to depart from the Decision, except with regard to the quantum. Although the FIVB Tribunal Judge shares the [the Continental Federation]’s view that the Club has to bear the costs of the first instance proceedings, Article 18.1(e) of the FIVB Sports Regulations states that the handling fee is included in the contribution towards legal fees and expenses. Therefore, the [the Continental Federation] could not award a contribution exceeding CHF 2,500 or its equivalent in EUR. Consequently, the FIVB Tribunal Judge upholds the Club’s request and partially modifies the Decision in this regard, ordering the Club to pay CHF 2,500 or its equivalent in EUR as a contribution to the Player’s legal fees and expenses.

8.5. Conclusion

106. The [Continental Federation] ordered the Club to pay the Player (i) EUR 74,500 net as outstanding wages, bonus, and apartment rent, plus late payment interest in the amount of EUR 2,483 net, and (ii) EUR 400 and EUR 2,318 as reimbursement of the handling fee and legal expenses.

107. The FIVB Tribunal Judge has upheld the Decision, except for the EUR 400 deduction in connection to the flat rent corresponding to [month] [year] and the quantum of the contribution towards

legal fees and expenses. The Club did not request a review of the Decision on interest, thus consenting to it.

108. Therefore, the Club shall pay the Player (i) EUR 74,100 net as outstanding wages, bonus, and apartment rent, plus late payment interest in the amount of EUR 2,483 net, and (ii) CHF 2,500 or its equivalent in EUR as a contribution to the Player's legal fees and expenses.

9. Costs

109. The Club requested the FIVB Tribunal to order the Player to bear all the costs incurred and to pay a contribution towards its legal expenses. The Club paid the handling fee of this proceeding (CHF 2,000) on [date]. On [date], the Club quantified its legal expenses at EUR 2,391, representing counsel work. As the Player opted to represent himself, he did not incur other legal expenses in this instance. The legal expenses incurred in the previous instance were dealt with in section 8.4 above.
110. 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 with respect to their financial resources and have appropriately behaved during the proceedings. Thus, the FIVB Tribunal Judge will decide upon the distribution of the costs according to the outcome of the proceedings.
111. Considering that the Club's request for relief was dismissed almost in full and that its counsel failed to provide a detailed account and supporting documentation of his costs as requested by the FIVB Tribunal on [date], the FIVB Tribunal Judge holds that it is fair that the Club bears the costs of this proceeding. Thus, the Club's request on costs is dismissed.

DECISION

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


1. The Request for Review filed by [the Club] is partially upheld.
2. The decision rendered by the [Continental Federation] dated [date] is amended in the first and second paragraphs as follows:

[The Club] (663 + NF-[the Club's country]) shall pay the amount of EUR 74,100 net to [the Player] (663 + NF--[the Club's country]) as outstanding instalments, bonus and apartment rent, plus late payment interest in the amount of EUR 2,483 net.

[The Club] shall pay the amount of CHF 2,500 or its equivalent in EUR to [the Player] as a contribution to his legal fees and expenses.

3. The remainder of the decision rendered by the [Continental Federation] dated [date] is upheld.
4. [The Club] must bear its own legal fees and expenses, including the handling fee.
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 under www.tas-cas.org.

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

Court of Arbitration for Sport
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1004 Lausanne, Switzerland
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