



The

FIVB TRIBUNAL

hereby issues the following

DECISION

2020-03

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

[The Player] (Claimant)

represented by [the Player's counsel] , [the Player's counsel's place of residence],

v.

[The Club] (Respondent)

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

2. The FIVB Tribunal

3. Article 19.1.5 of the FIVB Sports Regulations dated 24 May 2019 (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 Player and the Club signed an agreement for the [year]/[year]and [year]/[year] seasons ("**Contract**").²
6. On [date], the Player informed the Club about the possibility of having to play in the World Championship for the [Player's country's] national team. In its response, the Club showed its disappointment about the Player's "*decision to change already agreed plans to join our team in the camp in [the country of the training camp]*".³ The Player finally played with the [Player's country's] national team at the World Championship.

² Player's RFR, Exhibit 3.

³ Player's RFR, Exhibit 7. Club's Answer, Exhibit 2.

7. On [date], the Player joined the Club's team.⁴ As of [date], she played several games for the Club in the [year] Cup [of the Club's country], the [year] [Club's country's] Championship, and the [year] Champions League.⁵
8. On [date], the Player went to [the Player's country] for New Year's holidays. According to the plane tickets, her return flight was scheduled for the evening of [date].⁶
9. After medical examinations on [date]and [date]at [a hospital in the capital of the Player's country, hereafter the "Hospital"], the Player was diagnosed with a [medical condition].⁷
10. On [date], the Player's agent informed the Club about her medical situation via e-mail, attaching medical documentation.⁸
11. On [date], the Player personally provided, through WhatsApp, further information to the Club on a surgery scheduled to take place on the following day.⁹
12. On [date], the Player underwent surgery in [the capital of the Player's country]. She was discharged from the hospital on [date].¹⁰
13. On [date], the Player returned to [the Club's city] and joined the Club's team.¹¹ As of [date], the Player participated in all the Club's remaining games of the [year]/[year]season.¹²
14. On [date], the parties agreed to increase the Player's remuneration for the [year]/[year] season to EUR 400,000 net (the "[year]-[year] Amendment").¹³
15. On [date], the Player's agent informed the Club of the Player's intention not to play and live another season in [the Club's country], denoting that the Player's reasons were only personal since there were no problems with the Club. On [date], the Player's agent confirmed the Player's

⁴ Club's Answer, p. 2

⁵ Club's Answer, Exhibit 3.

⁶ Club's Answer, Exhibit 4.

⁷ Player's RFR, Exhibits 8A and 8B.

⁸ Player's RFR, Exhibit 9.

⁹ Player's RFR, Exhibit 10.

¹⁰ Player's RFR, Exhibit 8C.

¹¹ Club's Answer, p. 2

¹² Club's Answer, Exhibit 3.

¹³ Player's submission dated [date], Exhibit 2.

intention to leave and reiterated that her reasons were personal since there were no issues with the Club nor any agreement with another club. On both occasions, the Club replied expressing its disappointment.¹⁴

16. Thereafter the parties discussed a settlement as follows:

- a) On [date], the Player sent a draft cancellation agreement to the Club, according to which the latter had to pay EUR 82,000 to the former *“as full and final settlement of the amount dues in contract for sport seasons [year]/[year] and [year]/[year] within [a specific date]”*, thus, cancelling the Contract for the [year]/[year] season and releasing the Player.¹⁵
- b) On [date], the Club sent a new draft cancellation agreement (**“Cancellation Agreement”**) to the Player’s agent, according to which the remuneration corresponding to the [year]/[year] season would be EUR 287,000 *“due to incomplete participation of the player in the season and subsequent decision to break the contract, signed on [date], according to the sport results of the past season”*. After the payment of such amount, *“all mutual duties of the parties would be considered as fulfilled and settled and the contracts between the parties also would be considered as fulfilled and cancelled.”* The agreement also stated that the Club would release the Player for the [year]/[year] season *“without nothing to pretend.”* The Player returned a signed version of the document to the Club.¹⁶
- c) At some undefined moment, the Club learned that the Player was negotiating an agreement with [a new club from a different country, hereafter *“the New Club”*].
- d) On [date], the Club sent an e-mail to the Player’s agent stating that *“the only way to find the way out from the situation is to convince [the New Club] to pay buy out If [the New Club] wouldn’t like to pay, I am sure that you’ll find another option and we would rereight cancellation agreement directly under new option.”* The Player’s agent insisted on the conclusion of the agreement: *“Now I ask you to confirm [the Club’s] request of last Friday just sign from our part to close this page and not loose other [Club’s] option.”*¹⁷

¹⁴ Club’s Answer, Exhibit 5 and 6.

¹⁵ Player’s submission dated [date], p. 1 and Exhibit 5.

¹⁶ Player’s submission dated [date], p. 2 and Exhibit 6.

¹⁷ Player’s submission dated [date], Exhibit 13.

17. On [date], the Player's legal counsel requested the Club to pay the net amount of EUR 165,000 (EUR 150,000 as remuneration plus EUR 15,000 as a bonus) to the Player as outstanding amounts of payments agreed under the Contract. In addition, she stated that the Cancellation Agreement dated [date] was considered invalid because it had not been signed by the Club, and the agreement for the [year]/[year] season was cancelled due to the payment delays.¹⁸
18. Also on [date], the Player's engagement with [the New Club] was announced by websites [from the New Club's country].¹⁹ She played for [the New Club] in the [year]/[year] and the [year]/[year] seasons.
19. On [date], the Club made two payments to the Player: EUR 16,000 as remuneration for the [year]/[year] season and EUR 15,000 as a bonus for the [year]/[year] Championship [in the Club's country].²⁰
20. In the following, the Club and [the New Club] agreed on a payment of EUR 85,000 for the Player to be free from any obligations with the Club for the [year]/[year] season.²¹ This amount was transferred by [the New Club] to the Club on an undefined date.
21. On [date], the Player filed a complaint with the [continental federation, hereafter "**Continental Federation**"].
22. On [date], the [Continental Federation] issued its decision in the case "FIVB Financial Dispute Procedure [case number]" ("**Decision**"). The [Continental Federation] ordered (i) the Club to pay the Player the amount of EUR 14,000 net as outstanding salaries and the amount of EUR 356.50 net as reimbursement of legal costs, and (ii) the Player to pay the Club the amount of EUR 2,000 as reimbursement of legal costs. Furthermore, the [Continental Federation] ordered the Club to issue a payment confirmation and a tax certification to the Player.
23. On [date], the Club informed the Player's counsel of the payment of EUR 14,000 to the Player in accordance with the Decision. Moreover, the Club provided to the Player a "*declaration of*

¹⁸ Player's submission dated [date], Exhibit 3.

¹⁹ Club's Answer, Exhibit 7.

²⁰ Club's Answer, Exhibit 8.

²¹ Player's RFR, p. 13. Club's Answer, p. 6.

payment of taxes on the sums paid to [the Player]" and an invoice for legal fees to be paid by the Player to the Club.²²

4. The Proceedings before the FIVB Tribunal

24. On [date], the Player filed a request for review of the Decision with the FIVB Tribunal ("**RFR**").
25. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the RFR and the payment of the handling fee received on [date] and [date]. Subsequently, the FIVB Tribunal invited the Club to file its answer by [date].
26. On [date], the Player requested the FIVB Tribunal to suspend the Decision until her RFR had been resolved ("**Request for Stay**").
27. On [date], the Respondent submitted its answer to the RFR ("**Answer**").
28. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Answer and informed the parties of the FIVB Tribunal Chairperson's decision to reject the Request for Stay.
29. On [date], the FIVB Tribunal Chairperson declared the exchange of submissions completed and requested the parties to submit a detailed account of their respective costs as well as supporting documentation in relation thereto by [date].
30. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the parties' statements of costs received on [date] and [date].
31. On [date], the FIVB Tribunal Chairperson requested the full case file of the first instance proceedings ([case number]) from the [Continental Federation], which was provided on [date].
32. 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

²² Club's Answer, Exhibits 14 and 14 bis.

Hofmann, appointed the FIVB Tribunal Vice-Chairperson, Francisco A. Amallo, to hear the present case.

33. On [date], the FIVB Tribunal Judge informed the parties that he had reviewed all the submissions and would proceed to issue a decision.

5. The Parties' Submissions

34. 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 Claimant's Position and Request for Relief

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

"I REQUEST

to this Esteemed FIVB Tribunal,

Primarily:

- *to review totally [the Continental Federation's] decision [date] and to confirm the right of my client to be paid for her regularly job for sport season [year]-[year] by [the Club] Club;*
- *To order the club the payment of the due the residual amount due to [the Player]for sport season [year]-[year]of €.**131.646,78** net from taxes;*
- *To order the club the certification of payments, by the club, of fees concerning the player's amount agreed on contract for years [year] and [year];*
- *To order the club the payment of the default interest due from [month] [year] to the effective payment.*
- *To order the club the payment of the legal expenses due to [the Player's counsel]in the equal amount this Tribunal it feels appropriate*
- *To order the club the payment of the reimbursement of handling fee of Complaint and handling fee of this procedure R.f.R. for a total amount of €. 3.240,63 to iban code: [IBAN code]; swift code: [SWIFT code]*
- *To order the club the payment of reimbursement of translation costs for €.**183,00** to iban code: [IBAN code]; swift code: [SWIFT code]as requested in previous instance;*
- *To apply the club all the sanction provided from art.21 FIVB Sport Regulations;*

In second and denied hypothesis:

- *This defense ask to review the amounts calculated by [the Continental Federation] for player's absence ([month] [year]) and ([month][year]) and reduce it on the lower amount it feel appropriate; the same also for penalties due to her participation in national team (10% of contract → 35.000,00 euro) and for penalty due to insufficient information about the disease (€ 7.000,00)²³*

36. In support of her request for relief, the Player argued as follows:

5.1.1 The Player's salary and the commencement of the Contract

37. The Contract stipulated a "fixed salary" for the ([year]/[year])season: "€ 350.000,00 (three hundred fifty thousand/00) net from any taxes, subdivided in nr.10 (ten) monthly consecutive installments of the same amount from the month of [month][year]". This amount was not contingent upon specific sporting achievements or the beginning of the Contract but rather to be paid for the agreed services of the Player. The agreement on bonuses for specific aims shows that the parties were aware of the difference between "fixed" basic salaries on the one hand and financial incentives to be paid only under specific conditions on the other hand.²⁴

38. The commencement of the Contract was not based on a "mutual agreement" to participate in a camp in [country of the training camp] in [month][year]. The participation in this camp was never considered compulsory for the Player nor was it mentioned in the Contract; hence, there was no obligation for the Player to participate. Had the Club intended the Player's fixed remuneration to cover such period, it would have clearly stated so in the Contract.²⁵

5.1.2 The Player's absence while competing with her national team

39. The parties did not agree that the Player was not going to play for her national team, as there could have been no such agreement without the Player suffering severe consequences (penalties or disqualifications according to domestic regulations in [the Player's country]). Under the relevant FIVB Sports Regulations, the Club could not reject the Player's participation in her national team. Through WhatsApp communications exchanged between the parties, the Club

²³ Player's RFR, p. 15.

²⁴ Player's RFR, p. 3.

²⁵ Player's RFR, pp 3 and 5.

even acknowledged that it was the Player's right to play for the national team. The Club did not contest the Player's absence until the Player complained about the payments due.²⁶

40. At the time of conclusion of the Contract, neither party anticipated that the Player would be called upon. However, given the quality of the Player and her record, it was reasonably foreseeable that she may be called to play in the national team in the fall of [year], despite her expectations or desires, as stated in [month] [year].²⁷
41. It would have been for the Club to insist on including a provision in the Contract, allowing for a reduction of the agreed fixed remuneration if it had not wanted to pay the Player for the time she was away with the national team, or to insist on the inclusion of a warranty by the Player that she would not accept an invitation to play for the national team if invited.²⁸
42. Since such clauses are missing in the Contract, it would be unfair and unjust to interpret the Contract as allowing for such reduction. Thus, the fixed amount stipulated in the Contract should include the time the Player spent with the national team.²⁹
43. The Decision not only deprived the Player of her income while participating in the World Championship with the national team (by a EUR 50,000 reduction) but also penalized her participation "despite a different agreement" (by a EUR 35,000 reduction).³⁰ Allowing the Club to reduce the fixed salary amount by both EUR 35,000 and EUR 50,000 for the same event as done in the Decision, represents a double punishment to the Player.³¹
44. Although the [Continental Federation] understands and admits that in [month] [year] the Player had no intention to join the national team, it still decided to penalize her (by a EUR 85,000 reduction) for her participation in the national team.³²

5.1.3 The Player's absence due to medical reasons

²⁶ Player's RFR, pp. 4 and 7.

²⁷ Player's RFR, pp. 4 and 5.

²⁸ Player's RFR, p. 4.

²⁹ Player's RFR, p. 4.

³⁰ Player's RFR, p. 5.

³¹ Player's RFR, pp. 5 and 8.

³² Player's RFR, p. 6.

45. On [date], the Player was diagnosed with a [medical condition] and had to undergo surgery on [date]. After surgery, the Player needed four weeks of total physical inactivity. The Club never complained about the Player's absence and both parties were mutually satisfied with her prompt recovery and subsequent performance.³³
46. The Contract is silent about remuneration in case of urgent surgery. However, absence from the Club due to surgical intervention is well accepted as a legitimate reason and remuneration is still owed despite the Player's absence unless agreed otherwise.³⁴
47. The [Continental Federation] concluded that the Player's decision to immediately have surgery cannot be objected and that it is very likely that there was a medical emergency for the operation to be conducted immediately after the diagnosis. Thus, it is unfounded and unjust to deprive the Player of the EUR 25,000 remuneration for the month of [month] [year], i.e. during the time of her surgery and recovery.³⁵

5.1.4 Lack of information

48. The Player's agent promptly informed the Club about her medical situation on [date] and the Player herself informed the Club about her surgery in advance. Additionally, both the Player and her agent provided the Club with updates. Therefore, the Club never suffered any lack of information.³⁶
49. During the season, the Club never complained about the lack of information regarding the Player's medical situation, but still, the [Continental Federation] granted a EUR 7,000 compensation to the Club for lack of information.³⁷
50. For a better consideration of the delicate situation and the importance of the amount in dispute, the [Continental Federation] should have asked the Player for more documents, such as medical

³³ Player's RFR, pp. 8, 9, and 10.

³⁴ Player's RFR, pp. 10 and 11.

³⁵ Player's RFR, p. 11.

³⁶ Player's RFR, p. 9.

³⁷ Player's RFR, p. 9.

reports, etc., to clarify any doubt concerning proof or information or specifications about the surgery.³⁸

5.1.5 Renegotiation of contract for the [year]/[year] season

51. In [month] [year], i.e., after the Player's absence due to her obligations with the national team as well as her absence for medical reasons, the Club proposed to increase the remuneration for the next season through the [year]/[year]Amendment. This proves the Player's great performance and perfect health even after her surgery. As to the Club's argument that there was a mutual verbal agreement between the parties to reduce the remuneration for the [year]/[year]season while increasing the remuneration for the [year]/[year]season: the Club has failed to prove its assertion.³⁹
52. At the beginning of [month] [year], the Player decided to cancel the [year]/[year]Amendment for personal reasons.⁴⁰ The Club has accused the Player of economic enrichment saying that the actual reason for her cutting the [year]/[year]Amendment was that she *"had found an economically more advantageous agreement with another company"* ([the New Club]). However, the Player signed with [the New Club] for EUR 315,000, i.e., less money than she would have received under the [year]- [year]Amendment (EUR 400,000). Even if the "penalty" paid by [the New Club] in the amount of EUR 85,000 is added to the remuneration, the new contract with [the New Club] would only be worth the same amount as the [year]/[year]Amendment. Nonetheless, the Player received EUR 315,000 for the [year]/[year]season.⁴¹

5.1.6 Further issues

53. Instead of protecting a player with cancer and engaged with her national team in the World Championship, the [Continental Federation] punished her with improbable reasons for contractual violations.⁴²

³⁸ Player's RFR, p. 11.

³⁹ Player's RFR, p. 12.

⁴⁰ Player's RFR, p. 12.

⁴¹ Player's RFR, p. 13.

⁴² Player's RFR, p. 14.

54. The Club's statement dated [date] via WhatsApp that "[the Club's country's] influence in [the Continental Federation] (despite nationality of the president) and FIVB would somehow help me" to win the case, is intimidating and worrying.⁴³
55. The Player complied with rules, privacy and fairness even after the Decision while the Club immediately issued a statement regarding the "victory of the procedure", revealing details of the sentence and the amount due.⁴⁴

5.2 The Respondent's Position and Request for Relief

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

"[The Club]

asks

- *What in the alteration of the contested decision, the FIVB determines that nothing was due from [the Club] to [the Player] and condemn [the Player] to refund the sum of € 14,000.00 paid by the Club pursuant to Decision [of the Continental Federation]. With condemnation of [the Player] to all documented costs of the double level of judgment*
- *In the alternative, FIVB Court wants confirm the decision of the [Continental Federation] and consequently wants order [the Player] to pay the legal costs of the proceedings*
- *In the further alternative, in the unlikely and not believed hypothesis that the application of [the Player] is partially upheld, we ask the Fivb Court reduce the sums requests by the claimant. Again with condemnation of the appellant to reimburse the costs of litigation."*⁴⁵

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

5.2.1 Payments to the Player

58. The Player received a total of EUR 290,353.22 as follows: remuneration in the amount of EUR 218,353.22; bonuses in the amount of EUR 20,000; fees of EUR 30,000 for her agent;

⁴³ Player's RFR, p. 14.

⁴⁴ Player's RFR, p. 14.

⁴⁵ Club's Answer, p. 19.

EUR 21,000 for taxes; and EUR 1,000 for business class flight.⁴⁶ In addition, the Club paid the amount of EUR 14,000 according to the Decision.⁴⁷

59. The Player received a salary equal to the percentage of games played and all bonuses in the full amount. The Player was absent from [the Club's city] for five months of the [year]/[year] season. She missed all the athletic training (the summer camp in [the country of the training camp]) and the whole month of [month] [year]. The Player's prolonged absence has resulted in her not being able to perform at her best level.⁴⁸
60. The Player participated in only 62.3% of the Club's matches for strictly personal and arbitrary reasons not connected with the Club's activities.⁴⁹

5.2.2 The Cancellation Agreement

61. The Contract and the [year]-[year]Amendment were replaced by the Cancellation Agreement. The Cancellation Agreement is valid even though not carrying the Club's signature because the Player signed it, so the proposal and acceptance concurred. By signing the Cancellation Agreement, the Player admitted that she had been absent for most of the season and therefore admitted that she is not entitled to receive the sum previously agreed for the [year]/[year]season.⁵⁰
62. The withdrawal of the Cancellation Agreement by the Player's legal counsel is invalid because the counsel neither had nor showed any power of attorney. The Club honoured the Cancellation Agreement with a payment of EUR 15,000 and EUR 16,000 on [date]. Moreover, the timing of the withdrawal is strange because on the same day the Player's engagement with her new club [the New Club] was publicly announced. At that moment, the Player's real intentions became evident, which were not personal but of an economic nature.⁵¹

⁴⁶ Club's Answer p. 7.

⁴⁷ Club's Answer, p. 18.

⁴⁸ Club's Answer, p. 7.

⁴⁹ Club's Answer, p. 2.

⁵⁰ Club's Answer, pp. 8 and 9.

⁵¹ Club's Answer, p. 5.

63. The agreement between the Club and [the New Club] on the payment of a penalty of EUR 85,000 finally concluded the relationship between the Club and the Player.⁵²

5.2.3 The Player's absence while being away with her national team

64. Before signing the Contract, the Player's agent assured the Club that the Player would no longer play with her national team and would be available to the Club throughout the season. She, therefore, obtained a higher salary under the Contract because she was going to be available for ten months, which include the summer camp in [the country of the training camp] and a series of promotional and marketing activities.⁵³
65. Later, the Player communicated to the Club that she was going to return to the national team and the Club immediately showed its disappointment. The Player was available for the Club one month after the start of the [year]/[year] season and two months delayed with respect to the Contract, missing eleven matches of the [Club's country's] Cup and showing up in seriously bad shape.⁵⁴ The Volleyball Federation [of the Player's country] had previously not imposed any sanctions when the player declared to have retired from the national team; therefore, the Player was not forced to accept the call.⁵⁵
66. Under international rules, the Club had to accept the Player's decision to join her national team, but it was not up to the Club to pay for the periods that the Player was not available due to participation in the national team when her presence was granted.⁵⁶
67. The Club did not receive any advantages from the Player's participation in the national team for numerous reasons. Instead, the Player missed preseason training, when the Player needed to get good physical preparation, training together with the other teammates, make a group and create a good connection with the other players. Additionally, the Club missed public relations possibilities since it was deprived of having a World Champion like the Player herself during this preseason period, which would have been a good opportunity to do an important marketing job,

⁵² Club's Answer, p. 6.

⁵³ Club's Answer, pp. 1 and 11.

⁵⁴ Club's Answer, p. 2.

⁵⁵ Club's Answer, p. 12.

⁵⁶ Club's Answer, p. 12.

which the Club had thought of during the negotiation phase. It is in favour of the Player that the Club did not claim any damages from her because of this situation.⁵⁷

5.2.4 The Player's absence due to medical reasons

68. When the Player returned home for New Year's holidays on [date], she remained in [the Player's country] for one month instead of returning to [the Club's city] on [date], as [the Player] was supposed to. On [date], the Player returned to [the Club's city] and had her first game on [date], showing a very low physical performance because she had not trained for a while.⁵⁸
69. The Player's surgery was not urgent and necessary, and it could have occurred at the end of the season, as repeatedly explained to the Player by the Club's doctors, who did not endorse this intervention.⁵⁹ It is strange that the Player visited a doctor because she had never reported any problems, especially to the Club's team doctor. Instead of waiting to go back to [the Club's country] and consult with the Club's doctor, she underwent surgery in [the Player's country].⁶⁰ Moreover, the kind of surgery, that the Player underwent, allows her to recover in a few days. Instead, the Player stayed home for more than a month.⁶¹
70. The Player is a professional athlete who must be paid when she gets injured while playing or training. But if the Player decides to undergo surgery for health problems unrelated to the Club, she has no right to be paid by the Club. This kind of illness does not fall into the risk scope of a club when hiring a player, because they do not fall under the initial check-up. Allowing for such things to happen would create a dangerous precedent.⁶²
71. Even if the Club had the obligation to pay the Player (although she did not play due to her illness), the Player would have had the obligation to be examined by the Club's doctor.⁶³

5.2.5 Lack of information

⁵⁷ Club's Answer, pp. 12 and 13.

⁵⁸ Club's Answer, p. 2.

⁵⁹ Club's Answer, p. 2.

⁶⁰ Club's Answer, p. 14.

⁶¹ Club's Answer, p. 14.

⁶² Club's Answer, pp. 14 and 15.

⁶³ Club's Answer, p. 15.

72. It was not the judge's obligation in the [Continental Federation's] proceedings to ask for more information, but the Club's obligation, to bring forward any information needed to rule on the case.⁶⁴

5.2.6 Further issues

73. The parties concluded a "gentleman's agreement" under which (i) they proportioned the payment of the Player's services to the actual work period and (ii) as partial compensation of what the Player would have lost for the [year]/[year] season, the fee for the [year]/[year] season was increased to EUR 400,000. The Club had no reason to increase the compensation, if not, in fact, to ensure that the Player was happy and to compensate her for what she had renounced during the season.⁶⁵ Such "gentleman's agreement" is not mentioned in any of the written contracts because for such an agreement to be valid there is no need for a written version.⁶⁶

74. As to legal fees in the first instance, the Player did not attach any invoice or proof of payment to her counsel because her counsel is employed by [the Player's agency, hereafter "the Player's Agency"], the company which is also the Player's agency. As a consequence, no payments in form of legal fees were made by the Player but she had already paid for this type of service as part of her contract with the agency.⁶⁷

6. Jurisdiction

75. 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.

76. 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."

⁶⁴ Club's Answer, p. 15 and 16.

⁶⁵ Club's Answer, pp. 3 and 4.

⁶⁶ Club's Answer, p. 16.

⁶⁷ Club's Answer, p. 19.

77. 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”

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

79. 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 the payment of the 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]. The FIVB Tribunal’s jurisdiction is also undisputed by the parties.

80. The only issue falling outside the FIVB Tribunal’s jurisdiction is the Player’s relief related to sanctions under article 21 of the FIVB Sports Regulations because it is the FIVB, not the FIVB Tribunal, who may impose those sanctions.

81. Therefore, the FIVB Tribunal has jurisdiction over the present dispute under the FIVB Sports Regulations, except for the Player’s relief related to sanctions under Article 21 of the FIVB Sports Regulations.

7. Admissibility

82. 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.”

83. The Decision was notified to the parties on [date]. The Player submitted her RFR on [date], within the fourteen-day deadline. Thus, the RFR is admissible.

84. The Club did not file a request for review of the Decision. However, the FIVB Tribunal Judge notes that the Club's Answer includes a counterclaim because, in the first point of the request for relief, the Club requested the FIVB Tribunal to modify the Decision as follows: *"What in the alteration of the contested decision, the FIVB determines that nothing was due from [the Club] to [the Player] and condemn [the Player] to refund the sum of € 14,000.00 paid by the Club pursuant to Decision [of the Continental Federation]. With condemnation of [the Player] to all documented costs of the double level of judgment"*.
85. According to Article 20.6.2 of the FIVB Sports Regulations, any counterclaim must comply with the deadline set forth in Article 18.2 and comport with the requirements of Article 20.3, including the payment of the applicable handling fee, to be admissible.
86. The Club's counterclaim was filed on [date], i.e., more than two months after being served of the Decision. Thus, the time limit under Article 18.2 of the FIVB Sports Regulations has not been met as required by Article 20.6.2 of the FIVB Sports Regulations. Furthermore, no applicable handling fee has been received by the FIVB Tribunal in accordance with Article 20.3.2 of the FIVB Sports Regulations. Therefore, the FIVB Tribunal Judge has found the first point of the Club's request for relief to be inadmissible.

8. Applicable Law

87. 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)."

88. The parties have not made any submissions as to the applicable law. Thus, 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

89. The dispute between the parties focuses on the Player's salary corresponding to the [year]/[year] season. According to the Contract, the Player was entitled to a remuneration of EUR 350,000 net from taxes for the [year]/[year] season.⁶⁸
90. After determining that the Player had received EUR 219,000, the [Continental Federation] concluded that the Player was entitled only to EUR 14,000 out of the EUR 131,000 balance because the Player violated certain contractual obligations. The [Continental Federation] authorized a EUR 117,000 deduction composed of (i) EUR 35,000 for her participation in the national team despite a different agreement, (ii) EUR 50,000 for her absence in [month]and [month] [year], (iii) EUR 25,000 for her absence in [month] [year], and (iv) EUR 7,000 for providing insufficient information about her health problems.⁶⁹
91. The Player has requested the FIVB Tribunal to review the [Continental Federation's]Decision and order the Club to pay EUR 131,646.78 net to her.⁷⁰
92. Considering there are inconsistencies regarding the balance under the Contract, the FIVB Tribunal Judge will start by determining the maximum potential balance to which the Player could be entitled. After that, the FIVB Tribunal Judge will analyse each of the deductions authorized by the [Continental Federation].

9.1. Maximum Potential Balance

93. It is undisputed that the Club made the following payments to the Player: EUR 2,000 on [date]and [date], EUR 1,000 on [date], and EUR 16,000 on [date].⁷¹
94. There is a slight difference between the parties regarding the payments made on [date]and [date]. While the Club argues that it paid approximately EUR 100,176 on each date,⁷² the Player claims to have received EUR 100,000 on each date.⁷³ The FIVB Tribunal Judge considers that the

⁶⁸ Player's RFR, Exhibit 3.

⁶⁹ Decision, p. 26.

⁷⁰ Player's RFR, p. 15.

⁷¹ Club's Answer, p. 6. Player's submission dated [date], p. 7.

⁷² Club's Answer, p. 6.

⁷³ Player's submission dated [date], p. 7.

Player is right in this regard. According to the bank statements submitted by the Club, the Club transferred EUR 100,000 to the Player. The difference of approximately EUR 176 is because of the commission and expenses debited by the Club's bank.⁷⁴

95. The Club also claims to have paid EUR 16,000 on [date] (agent's commission), EUR 5,000 on [date] (bonus), EUR 14,000 on [date] (agent's commission), and EUR 15,000 on [date] (bonus), as well as EUR 21,000 in taxes.⁷⁵ The Player did not acknowledge having received these payments as part of her remuneration.⁷⁶ The FIVB Tribunal Judge considers that these payments do not integrate the Player's remuneration under the Contract because (i) the Club agreed to pay the agents' commissions regardless of the Player's salary, (ii) the bonuses are in addition to the Player's salary, based on the Player's performance, and (iii) the Player's remuneration was net from any taxes.⁷⁷
96. Based on the above, the FIVB Tribunal Judge concludes that the Club paid the aggregate amount of EUR 219,000 to the Player, the balance being EUR 131,000.
97. The Player claims EUR 131,646.78 net from taxes.⁷⁸ However, the Player has failed to explain why she would be entitled to a difference of EUR 646.78. The claim is also inconsistent with the payments that she acknowledged to have received. Therefore, the maximum to which the Player could be entitled under the Contract is EUR 131,000 net of taxes.
98. The Club argues that it owes nothing to the Player because the Contract was replaced by the Cancellation Agreement. According to the Club, the fact that the Cancellation Agreement was not signed by it is irrelevant because contracts are deemed concluded when the acceptance reaches the offeror, and the Player accepted the Club's offer by signing the Cancellation Agreement. Based on the Cancellation Agreement, the Club claims that it owed a total of EUR 287,000 to the Player for the [year]/[year] season, including commissions and taxes, and that it complied with its obligations because it paid more than that to the Player.⁷⁹

⁷⁴ Club's Answer, Exhibit 8, pp. 4-5.

⁷⁵ Club's Answer, p. 6.

⁷⁶ Player's submission dated [date], p. 7.

⁷⁷ Player's RFR, Exhibit 3.

⁷⁸ Player's RFR, p. 15.

⁷⁹ Club's Answer, pp. 8-9.

99. The same argument was used by the Club in the previous instance and was rejected by the [Continental Federation]. The [Continental Federation] concluded that the Cancellation Agreement never entered into force because it had not been signed by the Club and the Player had withdrawn her consent before the Club decided to make some payments on [date] purportedly under the Cancellation Agreement.⁸⁰
100. The FIVB Tribunal Judge does not find the Club's argument to be compelling because, in addition to the Player's withdrawal, the evidence in the record shows that the Player insisted on the conclusion of the Cancellation Agreement after [date] and the Club refused to sign it because it wanted [the New Club] to pay a buyout, in contradiction with its own proposal.⁸¹ Therefore, the FIVB Tribunal Judge will proceed to analyse the deductions authorized by [the Continental Federation] and determine whether the Player is entitled to the total or a portion of the EUR 131,000 balance.

9.2. Deductions

9.2.1. EUR 35,000 Deduction

101. The [Continental Federation] authorized a EUR 35,000 deduction because the Player had decided to participate in her national team despite a different agreement with the Club. The [Continental Federation] considered that it was *"uncontested by the Player that during the Contract negotiations in [month] [year] the Player did not belong to her National Team, had no intention of returning to it, concluded the Contract with effect from the camp in [the country of the training camp] and therefore obtained a higher salary and an extension to [year]-[year]."*⁸²
102. The Player claims that she never committed not to play for her national team. The Player states that the Contract has no provision assuring her non-participation in the national team and that there cannot be such a commitment without her suffering severe consequences if called upon by the national team. The Player also argues that it is unclear how the [Continental Federation] evaluated the loss allegedly suffered by the Club at EUR 35,000.⁸³

⁸⁰ Decision, pp. 24-25.

⁸¹ Player's submission dated [date], Exhibits 13 and 16.

⁸² Decision, p. 20.

⁸³ Player's RFR, pp. 4-5, 8.

103. The Club contends that it is undisputed that the Player had told the newspapers and the Club that she would no longer play in the national team. The Club argues that, based on this fact, she got a higher salary under the Contract, and that is why the [Continental Federation] decided to deduct 10% of the Contract.⁸⁴
104. The FIVB Tribunal Judge agrees with the Player. Unlike **the** [Continental Federation], the FIVB Tribunal Judge considers that the Player contested the Club's allegation that she had committed not to play **for** her national team and obtained a higher salary because of that. In the previous instance, the Player stated that *"No one can assure that one player will play or not for the national"*. In the FIVB Tribunal Judge's view, *no one* included the Player.⁸⁵
105. The Club argues that the Player had told the newspapers that she would no longer play in the national team. However, the Club has failed to provide evidence of it. None of the press articles contained in the record says so, and the Club has not referred to any press article when making such a statement. Besides, even if that were true, the FIVB Tribunal Judge considers that it would be irrelevant because this dispute refers to the agreement between the parties, rather than to what the Player allegedly told the newspapers.
106. Regarding the agreement between the parties, the Club argues that it is uncontested that the Player had told the Club that she would no longer play in the national team. According to the Club, this was admitted by the Player on page four of her RFR. However, that is not what the Player stated on that page. Rather, the Player acknowledged that neither of the parties anticipated at the time of the conclusion of the Contract that the Player would be called to play for her national team, and stated that, despite her participation in the World Championship being foreseeable, the parties never agreed on her non-participation.
107. Had the Player's non-participation been so relevant as to impact her salary, it would have been expected that professional parties, such as the Club and the Player, would have regulated that in the Contract. However, the Contract contains no commitment in such regard, nor conditions the payment of the salary to the Player's non-participation in the World Championship.

⁸⁴ Club's Answer, p. 11.

⁸⁵ Player's submission dated [date], p. 1.

108. Finally, the Player is right when she asserts that the [Continental Federation's] evaluation of the alleged loss is incomprehensible. The [Continental Federation] did not explain why the alleged breach would result in a deduction equivalent to 10% of the Contract, not even requested by the Club in the previous instance.

9.2.2. EUR 50,000 Deduction

109. The [Continental Federation] authorized a EUR 50,000 deduction because the Player was absent for approximately 35 days between [month] and [month] [year] due to her participation in the World Championship. The [Continental Federation] considered that the Club's obligation to release the Player for her national team did not imply an obligation to pay for the respective time, as she was not providing services to the Club but to her national team.⁸⁶

110. Regarding the amount of the deduction, the [Continental Federation] stated as follows:

"The contract started with 'End of [month]'. After the agreement in [month] 2018, the Player should initially participate in a camp in [the country of the training camp]. The intended period was never named. The [Continental Federation] assumes in the following that about the camp in [the country of the training camp] nothing is known and that at least the games for the [Club's country's] Cup are to be included so that the start of the contract should be at the latest on the day before [date]. It lasted until End of [month], that is around 7,2 months. Spread over the 7,2 months of sport activities there is a monthly remuneration of 43,750 €. For the other violations this results in:

ii) Absence in [month]/[month]r [year] (around 35 days) - 50,000,00 €"⁸⁷

111. The Player claims that the parties "agreed on a fixed amount, subdivided in 10 monthly consecutive instalments of the same amount from the month [month] [year]. It is very clear that this amount shall not be contingent upon specific sporting achievements or beginning of the Contract but rather to be paid for the agreed services of the Player."⁸⁸ The Player argues that she had no obligation under the Contract to participate in the training camp in [the country of the training camp]. The Player also states that her salary included the time she spent playing for her national team because her participation in the World Championship contributes to the Club, as

⁸⁶ Decision, p. 21.

⁸⁷ Decision, p. 26.

⁸⁸ Player's RFR, p. 3.

it increases her reputation and value, and because she was not paid for playing for her national team.⁸⁹

112. With respect to the amount of the deduction, the Player claims that her salary was subdivided into ten monthly instalments of EUR 35,000, so that amount should be used when determining an eventual deduction, instead of the EUR 50,000.⁹⁰ The Player also argues that the [Continental Federation] erroneously interpreted the wording of the Contract “*from the end of [month]*” as including at least a week before because, had the Club intended the Player’s remuneration to cover such period, it could have clearly stated so in the Contract.⁹¹
113. The Club contends that the employment relationship started in [month] and that the Player was available only on [date], with a two-month delay. Therefore, the Club considers that the reasoning of the [Continental Federation] is favourable to the Player because if the [Continental Federation] had considered the beginning of the activity in the training camp, the deduction would have been higher. The Club states that it did not receive any advantages from the Player’s participation in her national team, and it has the right not to pay for periods in which the Player was absent.⁹²
114. The FIVB Tribunal Judge is not entirely persuaded by the Player’s arguments. The Player acknowledged that she had “*to be paid for the agreed services*”.⁹³ According to the Contract, the Player had to provide services to the Club, and that included playing for the Club’s team in the Championship [of the Club’s country], the [Club’s country’s] Cup, and the Champions League. Playing the World Championship for the [Player’s country] national team does not constitute an “*agreed service*” under the Contract.
115. Had the Player wanted to be paid by the Club for her participation in the World Championship, she should have negotiated and agreed so with the Club. However, the Contract contains no commitment in such regard.

⁸⁹ Player’s RFR, pp. 4-5.

⁹⁰ Player’s RFR, p. 8.

⁹¹ Player’s RFR, p. 5.

⁹² Club’s Answer, pp. 2, 7-8, 11-12.

⁹³ Player’s RFR, p. 3.

116. The Player's arguments that she was entitled to the salary because her participation in the World Championships contributed to the Club and she was not paid for playing for her national team are not compelling. The Player has failed to prove how the Club would have benefited from her not playing for the Club's team. The Player has also failed to prove that she did not receive any payments from her national federation, despite proving to be able to request and submit letters from her national federation. In any case, whether or not the Player was obliged to play for her national team, subject or not to potential sanctions, and paid or not by her national federation, is irrelevant to this dispute, and it is something that she would eventually have to resolve with her national federation.
117. Therefore, the FIVB Tribunal Judge agrees with the [Continental Federation] that the Club was entitled to a deduction because the Player failed to be available for the Club until [date]. The amount of the deduction must correlate with the Player's absence and salary.
118. Regarding the Player's absence, it is undisputed that the Player was available to the Club only on [date]. However, it is disputed when the Player should have been available to the Club. The FIVB Tribunal Judge agrees with the Club that the employment relationship started in [month].
119. The Contract states as follows: "*Contract for two sport seasons, [year]/[year] and , [year]/[year], from the end of [month] until the end of the [Club's country's] championship for both sports seasons.*" In the FIVB Tribunal Judge's view, the wording "*from the end of [month]*" does not refer to the beginning of the employment relationship, but to the beginning of the sports season.
120. This coincides with the fact that the [year]/[year] season started at the end of [the same month]. The bonuses agreed by the parties show that the sports season included the [Club's country's] Championship, the [Club's country's] Cup, and the Champions League. It is undisputed that the Club's calendar for these competitions was as follows: [Club's country's] Championship from [date] to [date], [Club's country's] Cup from [date] to [date], and Champions League from [date] to [date].⁹⁴

⁹⁴ Club's Answer, Exhibit 3.

121. Although the Contract does not explicitly indicate the beginning of the employment relationship, the FIVB Tribunal Judge considers that there are different elements in the record that prove that the beginning ought to be [month]:

- a) The Contract states that the remuneration for the [year]/[year] season was EUR 350,000, subdivided into ten monthly consecutive instalments of EUR 35,000 *“from the month of [month] [year]”*. It is an established labour practice that, unless the parties agree otherwise, the salary is paid at the end of each month, when the payable services have already been rendered. Therefore, if the parties agreed that the first instalment had to be paid in [month] [year], it is reasonable to assume that the Player had to provide services during the whole month.
- b) As already determined, the first game of the [year] / [year] season was on [date]. The FIVB Tribunal Judge does not consider it reasonable to assume that the Player had to be available for the Club only on that date, without having participated in any prior training. Even the Player has acknowledged that *“[i]t is a common fact that the clubs undertake preparation periods before the season.”*⁹⁵
- c) The conduct of the parties also confirms the above. First, the conversation between the Player’s agent and the Club on [date] shows that the Player initially refused to participate in the World Championship and *“agree[d] to arrive in [the country of the training camp] camp”*.⁹⁶ Second, the conversation between the Player and the Club on [date] shows that the Club was disappointed when it learned about the Player’s decision *“to change already agreed plans to join [the Club’s] team in the camp in [the country of the training camp]”*.⁹⁷ Third, the Player signed the Cancellation Agreement dated [date], thus acknowledging that she had incomplete participation in the [year] / [year] season. The fact that said agreement never entered into force does not take away the fact that she accepted this statement.

122. Based on the above, the FIVB Tribunal Judge concludes that the Players’ absence was almost two months, from [date] to [date].

⁹⁵ Player’s RFR, p. 5.

⁹⁶ Player’s RFR, Exhibit 6.

⁹⁷ Club’s Answer, Exhibit 2.

123. Regarding the Player's salary, the [Continental Federation] has not explained how it valued the deduction at EUR 50,000. Although the [Continental Federation] explained its decision to divide the Player's salary by almost seven months based on its calculation of the employment relationship's length, it failed to explain why it departed from the amount of the instalments agreed by the parties, and how it reached the total amount of EUR 50,000.
124. The FIVB Tribunal Judge finds no reasonable explanation to depart from the amount of the instalments agreed by the parties. Therefore, in general, the Club could be entitled to a deduction of EUR 35,000 for [month] [year] and almost EUR 35,000 for [month] [year]. Although some tribunals have acknowledged that rearranging the amounts without exceeding the total cannot be called *ultra petita*,⁹⁸ the FIVB Tribunal Judge, after considering that the Club did not file a request for review of the Decision (as already determined, the first paragraph of its request for relief is inadmissible) but rather requested the FIVB Tribunal to confirm the Decision, finds it fair and equitable under the circumstances of the case not to award a discount higher than the one granted in the previous instance. Therefore, the Club is entitled to a deduction of EUR 50,000.

9.2.3. EUR 25,000 Deduction

125. The [Continental Federation] authorized a EUR 25,000 deduction because the Player was absent in [month] [year] due to surgery. The [Continental Federation] determined that the Player's absence was justified because it was very likely that there was a medical emergency and the Player's decision to have surgery could not be objected. However, after considering that the Contract was silent on how to proceed in these cases and that the Club was affected by the Player's absence, the [Continental Federation] concluded that both parties should participate in the consequences because of their financial situation, quantifying the Player's portion at EUR 25,000 and the Club's portion at EUR 10,000.⁹⁹
126. The Player states that she was obliged to undergo surgery immediately and stop her sportive activity for about one month. The Player claims that the Decision is unacceptable and discriminatory as it puts her in a stronger position than the Club, despite being an employee.

⁹⁸ See, for example, Swiss Federal Tribunal case 4A_864/2014.

⁹⁹ Decision, pp. 21-23, 26.

The Player contends that absences for medical reasons are well accepted as justified absences, and compensation must be paid in those cases.¹⁰⁰

127. The Club argues that the surgery was not urgent, that the recovery should have taken only a few days, and that it was not able to examine the Player. The Club claims that the Player has no right to be paid because she did not provide services to the Club in [month] [year] and her health problem was not caused because of her playing or training for the Club.¹⁰¹
128. The FIVB Tribunal Judge agrees with the [Continental Federation] that there was a medical emergency and the Player's decision to have surgery and the length of the recovery could not be objected.
129. The Player has submitted three medical reports from [the Hospital] . The first report dated [date] states that the specialist found [indication of a severe medical condition].¹⁰² The second report dated [date] states that, considering the complaints reported by the patient and the pain in [a certain body part] , urgent surgery was required to preserve the [organ] and prevent its permanent damage.¹⁰³ The third report dated [date] reiterates that the surgery was urgent and states that the Player had to be spared from physical activities for four weeks after the operation.¹⁰⁴
130. The Club submitted an undated medical report in which the team's doctor concluded that, according to the Club's specialists, the Player underwent an elective surgery because the Player's first medical report had not indicated that the patient had to undergo emergency surgery.¹⁰⁵ The FIVB Tribunal Judge does not find this report to be compelling. The report does not identify the specialists who reached that conclusion. These specialists did not sign the report either. In any event, such a conclusion seems to be partial, as it only contemplates the Player's first medical report, but not the second or the third one.

¹⁰⁰ Player's RFR, pp. 8, 10-11.

¹⁰¹ Club's Answer, pp. 14-15.

¹⁰² Player's RFR, Exhibit 8A.

¹⁰³ Player's RFR, Exhibit 8B.

¹⁰⁴ Player's RFR, Exhibit 8C.

¹⁰⁵ Club's Answer, Exhibit 10.

131. The Club has not submitted any medical report contradicting or disproving the Player's second and third reports. Therefore, the FIVB Tribunal Judge has no reason to believe that those reports are incorrect.
132. The FIVB Tribunal Judge is also not persuaded by the Club's complaint about the impossibility of examining the Player. Had the Club wanted to examine the Player, it could have asked the Player to be available for such examination. Had the Club had any doubts about the Player's health condition, it could have sent the Club's doctor or hired a doctor in [the capital of the Player's country] to examine the Player. However, there is no evidence in the record of the Club's alleged interest in conducting such examination or the Player's refusal to be subject to such examination.
133. Nevertheless, the fact that Player's conduct cannot be objected does not necessarily mean that she is automatically entitled to her salary during her absence. Unlike other agreements between clubs and athletes, the Contract between the Player and the Club does not regulate what happens with the Player's salary in case she is unable to provide services because of illness or health problems. This is not a case in which an athlete got injured or sick because of the services provided to the Club or because of personal and unrelated activities. In this case, the Player had to undergo urgent surgery for a reason that was alien to the parties.
134. There is no universal practice regarding sick leave. Some countries recognize it and others do not. Among the countries that recognize it, there is also no common practice regarding the percentage of salary and the temporary extension recognized to the employee.¹⁰⁶
135. The Court of Arbitration for Sports has considered "*what is custom and practice in the world of football – clubs do not look to penalise their players, nor should they, each time they catch a cold or have a short term illness; the custom and practice is to pay them their salary regardless.*"¹⁰⁷ However, there seems to be no jurisprudence acknowledging, nor have the parties proved, a specific custom and practice in the world of volleyball. Besides, in this case, the Player's absence exceeded a short-term illness, as [the Player] was absent an entire month during which the Club's

¹⁰⁶ https://en.wikipedia.org/wiki/Sick_leave

¹⁰⁷ CAS 2012/A/2792, ¶ 9.13.

team had to play five games in the [Club's country's] Championship and one game in the Champions League.¹⁰⁸ At the same time, the Player's absence was not unreasonably long.

136. Based on the foregoing, the FIVB Tribunal Judge considers it reasonable that the parties may have had different expectations as to how to deal with this situation at the time of entering the Contract. Therefore, the FIVB Tribunal Judge concludes that it is fair for both parties to bear the consequences of not having regulated this issue in the Contract. Unlike the [Continental Federation], the FIVB Tribunal Judge does not consider that there are reasons to create an inequality between the parties as both contributed to this uncertainty equally, so both must bear the consequences equally.
137. According to the Contract, the Club should have paid EUR 35,000 in [month] [year]. Therefore, the FIVB Tribunal Judge finds that the Club is entitled to a deduction of EUR 17,500.

9.2.4. EUR 7,000 Deduction

138. The [Continental Federation] authorized a EUR 7,000 deduction because the Player failed to provide adequate information about her health problem to the Club.¹⁰⁹
139. The Player claims that she adequately informed the Club about her health situation because her agent sent e-mails to the Club on [date] and [date] including medical reports, and she sent WhatsApp messages to the Club during [] [month] [year]. The Player also states that the Club never complained about lack of information during the [year]/[year]season.¹¹⁰
140. The Club argues that judges decide on what the parties brought to their attention. According to the Club, the Player failed to prove that she had provided sufficient information to the Club.¹¹¹
141. The FIVB Tribunal Judge agrees with the Player. According to the evidence in the record:
- a) On [date], the Player's agent sent two e-mails to the Club informing them about the Player's health problem and attaching the first medical report from [the Hospital].¹¹²

¹⁰⁸ Club's Answer, Exhibit 3.

¹⁰⁹ Decision, p. 23.

¹¹⁰ Player's RFR, p.9.

¹¹¹ Club's Answer, pp. 15-16.

¹¹² Player's RFR, Exhibit 9.

- b) On [date], the Player sent a WhatsApp message to the Club reporting that (i) she had arrived at the hospital, (ii) the surgery had been scheduled for the next day, and (iii) she had to stay in hospital for two or three days and then go home and wait for the control.¹¹³
- c) On [date], the Club sent a WhatsApp message to the Player in which it acknowledged that it had been informed about the surgery's positive result.¹¹⁴

142. There is no evidence in the record of the Club requesting further information from the Player or her agent, and of them refusing to provide such information, which suggests that the Club had sufficient information and was aware of the Player's medical condition.

143. Therefore, the Club is not entitled to any reduction in this regard. Besides, the [Continental Federation] did not explain why the alleged breach would result in a deduction equivalent to EUR 7,000, not even requested by the Club in the previous instance.

9.2.5. Conclusion

144. Based on the above, the Club was entitled to a deduction of EUR 67,500 composed of a EUR 50,000 deduction because of the Player's absence due to the World Championship and a EUR 17,500 deduction because of the Player's absence due to the surgery. Thus, from the EUR 131,000 balance under the Contract, the Player is entitled to EUR 63,500 net of taxes.

9.3. Interest

145. In the previous instance, the Player requested the [Continental Federation] to order the Club the payment of the default interest due from [month] [year] to the effective payment.¹¹⁵ However, the [Continental Federation] did not address this request in its Decision.

¹¹³ Player's RFR, Exhibit 10.

¹¹⁴ Player's RFR, Exhibit 10.

¹¹⁵ Decision, pp. 4, 11.

146. In her RFR, the Player reiterated her request on interest.¹¹⁶ The Club did not make any submission on interests.
147. The FIVB Tribunal Judge notes that it is a generally accepted principle that default interest can be awarded even if the underlying agreement does not explicitly provide for it. In the absence of a request for a specific rate, the FIVB Tribunal Judge finds that a 5% interest is fair and in line with FIVB's jurisprudence.¹¹⁷
148. The Player seeks interest from [month] [year], without specifying a specific date nor providing any explanation. In general, the earliest date that interest can start accruing is the day after the obligation became due, i.e., once the defaulting party is in breach of the obligation. In this case, the instalments were due every month, but the Player requested interest only from the month corresponding to the last instalment of the [year]/[year] season. Since the Contract does not specify a date on which each instalment had to be paid, the FIVB Tribunal Judge considers that the Club had until the last day of [month] [year] to make such payment. Therefore, the FIVB Tribunal Judge awards a 5% interest per annum to the Player from [date].

9.4. Certificates

149. In the previous instance, the [Continental Federation] ordered the Club to issue and deliver a payment confirmation and a tax certificate to the Player.¹¹⁸
150. In her RFR, the Player requests the FIVB Tribunal to order the Club to certify the payment of her salaries under the Contract.¹¹⁹ The Club did not make any submission on certificates.
151. As this request has already been granted by the [Continental Federation] to the Player in the previous instance, and the Club did not file a request for review against the Decision, this request becomes moot.

¹¹⁶ Player's RFR, p. 15.

¹¹⁷ See, for example, FIVB decisions 2018-05 and 2018-06.

¹¹⁸ Decision, pp. 27-28.

¹¹⁹ Player's RFR, p. 15.

9.4. Legal fees and expenses

152. In the previous instance, the Player requested reimbursement of legal fees, handling fee, and translations. The [Continental Federation] noted that, according to article 18.1(e) of the FIVB Sports Regulations, it was only possible to award a contribution of up to CHF 2,500 or EUR 2,356.50 to the prevailing party. Considering that the Player had largely lost because she was only awarded EUR 14,000 on outstanding salaries, the [Continental Federation] decided (i) that the Player had to bear the cost of the handling fee and the translations and (ii) to allocate the contribution as follows: EUR 2,000 for the Club and EUR 356.50 for the Player.¹²⁰
153. In her RFR, the Player requested the FIVB Tribunal to order the Club to reimburse the cost of the handling fee and the translations. The Player did not request the FIVB Tribunal to review the Decision regarding the EUR 2,000 awarded to the Club. The Player only requested the FIVB Tribunal to *“order the club the payment of the legal expenses due to [the Player’s counsel] in the equal amount this Tribunal it feels appropriate”*.¹²¹ The Club did not make any submission on these matters.
154. Although the changes introduced in this instance to the Decision would warrant a review of the [Continental Federation’s] decision on legal fees and expenses, the FIVB Tribunal Judge notes that the Player did not request a review of the contribution awarded to the Club. Therefore, given that (i) article 18.1(e) of the FIVB Sports Regulations imposes a cap on the contribution, (ii) the contribution includes the applicable handling fee and costs of interpreters, and (ii) the EUR 2,000 assigned to the Club was consented by the Player, the FIVB Tribunal Judge cannot exceed in this instance the amount of EUR 365.50 awarded to the Player. Thus, the Decision is confirmed in this regard.

10. Costs

155. The Player paid the handling fee of this proceeding (CHF 3,000) on [date] and [date]. The Player requested from the FIVB Tribunal a reimbursement of the handling fee and *“the legal expenses due to [the Player’s counsel] in the equal amount this Tribunal it feels appropriate”* corresponding

¹²⁰ Decision, p. 27.

¹²¹ Player’s RFR, p. 15.

to this instance.¹²²

156. The Club contended that the Player submitted no evidence of legal fee payments and that the Player's legal counsel worked for the Player's agent. The Club also requested from the FIVB Tribunal a reimbursement of the legal costs corresponding to this instance.¹²³
157. On [date], the FIVB Tribunal Chairperson requested the parties to submit a detailed account of their respective costs as well as supporting documentation in relation thereto by [date].
158. On [date], the Player submitted a pro forma note dated [date] from her counsel for an amount of EUR 10,920. The note states that the counsel's activity was "*study, counselling, drafting settlement agreement, settlement 'Complaint' and request for Review procedure, legal assistance for procedure through [the Continental Federation] and FIVB*", and that the amount is based on an Ministerial Decree [from the Player's counsel's country].
159. The FIVB Tribunal Judge notes that this note is very similar to the note dated [date] that the Player submitted in the previous instance, the only relevant difference being the references to the counsel's activity in this instance. As the amount of both notes is the same and the note dated [date] is for all the work performed by the Player's counsel not only in this instance but also in the previous instance and even before it during settlement negotiations, it is unclear which part of those fees would correspond to this instance.
160. On [date], the Club submitted invoices from its counsel for an amount of EUR 6,000. The FIVB Tribunal Judge notes that the invoices contain no detailed information about the work performed for the Club.
161. 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 appropriately behaved during the proceedings. Thus, the FIVB Tribunal Judge will decide upon

¹²² Player's RFR, p. 15.

¹²³ Club's Answer, pp. 19-20.

the distribution of the costs according to the outcome of the proceedings.

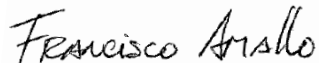
162. Considering that the parties' requests for relief were partially dismissed, the Decision was partially modified, and the parties' counsel failed to provide sufficient detail of their work and fees, the FIVB Tribunal Judge holds that it is fair that both parties bear the costs of the proceeding equally. Therefore, each party will bear the costs of its counsel and the Club must reimburse the Player half of the amount of the handling fee, i.e., CHF 1,500.

DECISION

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] shall pay the amount of EUR 63,500 net to [the Player] as missing salaries, plus a 5% interest per annum from [date].**
3. **The remainder of the decision rendered by the [Continental Federation] dated [date] is upheld.**
4. **[The Club] shall pay the amount of CHF 1,500 to [the Player] as a partial reimbursement of the handling fee. Each party must bear its own legal fees.**
5. **Any other requests for relief are dismissed.**

[Date of the decision] Lausanne, Switzerland



Francisco A. Amallo

FIVB Tribunal Judge

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:

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