



The
FIVB TRIBUNAL
hereby issues the following

DECISION

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

[The Club] represented by [the Club's lawyer], [the Club's lawyer's place of residence],

v.

[The Player]

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

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

1. The Parties

1. [The Club] is a professional volleyball club with its legal seat in [the Club's city], [the Club's country] ("**Claimant**" or "**Club**").
2. [The Player] is a professional male 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 3 November 2020 ("**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 Club and the Player signed an agreement ("**Agreement**"), under which the Player agreed to play the [year]/[year] season for the Club's team in exchange for EUR 100,000 net to

be paid in ten instalments.²

7. On [date], the [Club's country's] Volleyball League ([hereafter, "the Volleyball League"]) suspended the volleyball championship until [date] by virtue of a State order due to the Covid-19 pandemic.³
8. On [date], the Player travelled to the [Player's country] with the Club's authorization.⁴
9. On [date], the [Club's country's] Ministers of Finance and Labour & Social Affairs issued Decision [number of the decision] ("Joint Ministerial Decision"),⁵ according to which the employees of companies with an employer registration number in [the Club's country's National Social Security Fund] , whose business activity was prohibited by order of the public authority, were released from the obligation to provide services, and their employers were not obligated to pay their salaries, because the prohibition of operation by order of a public authority constituted a force majeure event.
10. On [date] the Club did not pay the ninth instalment to the Player.
11. On [date], the [Volleyball League] resumed the volleyball championship with certain changes.⁶
12. On the same date, the Player travelled back to [the Club's country], as requested by the Club,⁷ and the [Volleyball League] proposed that its members negotiate with the [Club's country] Association of Paid Volleyball Players ([hereafter "the Professional Players' Association"]) a 20% cutback in the salary of those players who continued playing in the championship. It also stated that an agreement with [the Professional Player's Association] would not legally bind the players.⁸
13. On [date], the Club announced the extension of a sponsorship agreement for the men's

² Player's Answer, Exhibit 2.

³ Club's Legal Brief, Exhibit 2.

⁴ Player's Answer, Exhibit 4.

⁵ Club's Legal Brief, Exhibit 1.

⁶ Club's Legal Brief, Exhibit 2.

⁷ Player's Answer, Exhibit 4.

⁸ Club's Legal Brief, Exhibit 7.

volleyball team.⁹

14. On [date], the Club did not pay the tenth instalment to the Player.
15. On [date], the Player filed a complaint against the Club with the [the continental federation, hereafter “**the Continental Federation**”].¹⁰
16. On [date], the [Continental Federation] issued a decision (“**Decision**”). The [Continental Federation] ordered the Club to pay the Player the amounts of EUR 20,000 net as outstanding instalments, and EUR 400 as reimbursement of the handling fee.

3.2 The Proceedings before the FIVB Tribunal

17. On [date], the Club filed a request for review of the Decision (“**RFR**”) with the FIVB Tribunal. The RFR includes a legal brief with exhibits (“**Legal Brief**”).
18. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the RFR. It also drew the Club’s attention to article 20.3.2 of the FIVB Sports Regulations (particularly emphasizing paragraph (a), which refers to the contact details of the parties and their counsel) and invited the Club to resubmit the RFR in accordance with the said article.
19. On [date], the Club refiled its RFR and sent an attachment with the Player’s contact details.
20. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the RFR. It also invited the Club to provide a power of attorney establishing the Clubs’ counsel representation and a new WeTransfer link because the previous link with the files had expired.
21. On [date], the Club submitted the power of attorney granted to its counsel and a new WeTransfer link.
22. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the RFR filed on [date] and completed on [date] and [date], and it invited the Player to file his answer by no later than [date]. It also informed the parties that the dispute would be heard, in principle, by the FIVB Tribunal Chairperson, Dr Karsten Hofmann, in accordance with Article 19.1.5 of the FIVB Sports

⁹ Player’s Answer, Exhibit 10.

¹⁰ [Continental Federation’s] Decision, ¶ 2(b).

Regulations.

23. On [date], the Player requested an extension of the deadline to file his answer.
24. On [date], the FIVB Tribunal Secretariat extended the deadline until [date].
25. On [date], the Player filed his answer to the RFR (“Answer”).
26. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Answer.
27. On [date], the FIVB Tribunal Secretariat informed the parties that, in accordance with Article 19.1.5 *in fine* of the FIVB Sports Regulations, the FIVB Tribunal Chairperson, Dr Karsten Hofmann, appointed the FIVB Tribunal Vice-Chairperson, Francisco A. Amallo, to hear the present case.
28. On [date], the FIVB Tribunal Judge invited the Parties to submit their positions on the law applicable to the merits by [date].
29. On [date], the Club submitted its position on the law applicable to the merits.
30. On [date], the Player submitted his position on the law applicable to the merits.
31. On [date], the FIVB Tribunal Judge declared the exchange of submissions completed and requested the parties to provide a detailed account of their respective costs and supporting documentation by [date].
32. On [date], the Player submitted his position on costs.
33. On [date], the Club submitted its position on costs.

4. 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, 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

35. The Club requests the FIVB Tribunal Judge that:

“Our appeal be accepted.

The decision N° [case number] / [date] by [the Continental Federation] on the complaint of the athlete [the Player] be reviewed, annulled, or else altered to the appropriate extent, given that our sports club guarantees that it shall comply with the decision to be adopted, and

He be ordered to reimburse the handling fee both at first instance and in these proceedings.”¹¹

4.1.2 The Claimant’s Position

36. In support of its request for relief, the Club contends, inter alia, as follows:

37. The [Continental Federation] misinterpreted and misapplied the laws and related provisions of the regulation in force. The Decision breaches legal principles and the law because it is based only on the probability of the evidence brought to [the Continental Federation’s] attention and not on the documentary evidence provided by the Club. The [Club’s country’s] authorities suspended the Club’s activities and, according to the Joint Ministerial Decision, the Club was under no obligation to pay all its athletes their agreed remuneration.¹²

38. The Decision does not apply the concept of force majeure despite it being duly raised by the Club. Covid-19 was an unforeseeable objective fact that could not be resisted, and the Club proved that it was objectively impossible for it to fully pay the Player.¹³

39. The Decision does not consider the fact that the Club’s failure to satisfy the Player’s demands was the result of an unforeseeable event. Furthermore, the sports services provided by the Player in the crucial matches that would determine the championship were deficient and in breach of the terms of the contract because he returned to [the Club’s country] 15 days before the start of the championship and refused to play due to his inadequate preparation and an alleged minor injury.¹⁴

40. The Decision does not consider the fact that the financial losses suffered by the Club were due

¹¹ Club’s RFR, p. 5.

¹² Club’s RFR, pp. 1-2. Club’s Legal Brief, pp. 1-2.

¹³ Club’s RFR, p. 2.

¹⁴ Club’s RFR, p. 3.

to the complete reversal of the entire season in all the sports fostered by the Club and not exclusively from the early end of the [the Club's country's] volleyball championship. With respect to the men's volleyball championship, although it resumed on [date], it was a fast-track procedure with a completely different system and format, fewer matches, no spectators and neutral venues, following a mandate by the organizing authority for cutbacks in the contracts of the athletes, which, in combination with other expected revenues that were not collected, brought huge financial hardships.¹⁵

41. The Club did not have the adequate financial capacity to pay the Player because the measures taken by the authorities in response to the pandemic prevented the Club from collecting its revenues, which derives solely from the following sources: (i) matchday revenues (ticket sales), (ii) a fixed 10% on home games revenues of [the Club's football team] and [the Club's basketball team], (iii) sponsorships, (iv) subscriptions of the Club's members, and (v) the athletic education services provided for the sports the Club fosters.¹⁶
42. The Decision does not consider that the Player's complaint was unfair because he had told the Club that he would accept a cut-off on his salary, but he then demanded the payment of his entire salary. The [Volleyball League] also proposed a 20% cut-off on the player's remuneration.¹⁷

4.2 Respondent's Request for Relief and Position

4.2.1 Respondent's Request for Relief

43. The Player requests the FIVB Tribunal Judge that:

• *the [Continental Federation] Decision shall be confirmed with respect to the Player's overdue payables;*

• *the Club, consequently, shall:*

- *pay the Player an aggregate amount of twenty thousand euro (€ 20.000) net in principal as overdue payables;*

¹⁵ Club's RFR, p. 2. Club's Legal Brief, p. 2.

¹⁶ Club's RFR, p. 4. Club's Legal Brief, pp. 2-3.

¹⁷ Club's RFR, pp. 2-4. Club's Legal Brief, pp. 4-5.

- reimburse the Player all costs of the Complaint, being the amount of four hundred euro (€ 400) as [Continental Federation] handling fee;
- indemnify the Player for all incurred legal expenses (including attorney's fees) up to an amount to be determined during the FIVB Tribunal proceedings, and at the moment of the filing of the present Reply amounting to three thousand three hundred seventy-five euro (€ 3.375) exclusive VAT, being four thousand eighty-three euro and seventy-five cents (€ 4.083,75) inclusive VAT; and
- bear the costs of the current proceedings in its entirety."¹⁸

4.2.2 Respondent's Position

44. In support of its request for relief, the Player contends, inter alia, as follows:
45. Although the [Continental Federation] rightfully concluded that the Club had failed to submit evidence supporting the occurrence of a force majeure event, the [Continental Federation] wrongfully decided that the Club had managed to demonstrate the aforementioned by referring to the concept of *facta notoria* and principle *notoria non egent probatione*. Covid-19 is not a force majeure event because at least one requirement of the force majeure is not satisfied, as the impossibility for the Club to execute its obligations was not definitive.¹⁹
46. The Club's financial difficulties are irrelevant. The Club's argument about the alleged financial difficulties has not been submitted during the proceedings before the [Continental Federation] and does not refer to any wrongful Player's behaviour or action. The Court of Arbitration for Sport ("CAS") has established that the lack of funds does not negate the employee's right to payment. The Club also failed to mention its new sponsorship agreement, which brought new incomes to the Club.²⁰
47. The Player has provided his services. The Club's argument about the Player's alleged breach of contract has not been submitted during the proceedings before the [Continental Federation]. The Player left and returned to [the Club's country] as advised and decided by the Club. The Club has not submitted any evidence concerning the alleged Player's refusal to provide his services. In the absence of any further evidence and on a balance of probabilities, it cannot be

¹⁸ Player's Answer, ¶ 77.

¹⁹ Player's Answer, ¶¶ 27-38.

²⁰ Player's Answer, ¶¶ 39-45.

concluded that the Player's absence in one match was a breach of his contractual obligations.²¹

48. In the absence of a valid reason to withhold the Player's salary, all the overdue payables are due. The period of suspension of the [the Club's country's] championship almost equals the period of resumption of the [the Club's country's] championship and the Club team's activities. As such, considering the Player kept training and that he is not liable for the returning date decided by the Club, the Player's workload and availability to the Club remained the same. Additionally, the Club and the Player never agreed to make the Player's salary conditional upon the completion of a certain number of matches.²²

49. The Club submitted no evidence concerning the Player's waiver of rights.²³

5. Jurisdiction

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

51. 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."

52. 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"

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

54. The FIVB Tribunal Judge finds that this dispute qualifies as a financial dispute of an international

²¹ Player's Answer, ¶¶ 46-53.

²² Player's Answer, ¶¶ 54-59.

²³ Player's Answer, ¶¶ 64-67.

dimension under Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations because it involves claims between a [the Player's country's] volleyball player and a [the Club's country's] volleyball club concerning unpaid salaries. The dispute also complies with Article 19.2.2.2 of the FIVB Sports Regulations because it was decided previously by the [Continental Federation].

55. The FIVB Tribunal's jurisdiction is also undisputed by the parties.

56. Therefore, the FIVB Tribunal has jurisdiction over the present dispute under the FIVB Sports Regulations.

6. Applicable Law

57. 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).”

58. The FIVB Tribunal shall decide the dispute *ex aequo et bono* unless otherwise agreed by the parties. Therefore, the FIVB Tribunal Judge must first determine if there is an agreement between the parties on the law applicable to the merits.

59. When determining if the parties agreed “otherwise”, the FIVB Tribunal has taken into consideration the choice-of-law clauses. A similar approach has been taken by other tribunals that also decide disputes *ex aequo et bono* by default. For example, where the contract contains a dispute resolution clause providing that the arbitrator shall decide the dispute *ex aequo et bono*, alongside a choice-of-law clause stipulating that the contract shall be governed or construed according to State law, the Basketball Arbitral Tribunal has frequently concluded that it must decide the dispute *ex aequo et bono*. However, where the contract contains a choice-of-law clause, but the dispute resolution clause does not expressly require the tribunal to decide *ex aequo et bono*, the Basketball Arbitral Tribunal has applied the State law chosen by the parties.²⁴

60. The FIVB Tribunal has considered not only the choice-of-law clauses contained in the agreements but also if the parties based their arguments on the State law governing the

²⁴ E. Hasler, «The Basketball Arbitral Tribunal – An Overview of Its Process and Decisions», in Antoine Duval and Antonio Rigozzi (eds.), *Yearbook of International Sports Arbitration 2015*, TMC Asser Press, pp. 122-124.

agreement,²⁵ as the parties could also eventually derogate such agreement and implicitly agree on an *ex aequo et bono* determination.

61. In the case at hand, the last two paragraphs of the Agreement state as follows:

“This pre-contract shall be interpreted and enforced in accordance with the Laws of [the Club’s country] and accordance with International and [the Club’s country’s] Volleyball Federation.

Any disputes existing by this agreement shall be finally judged by procedure of Arbitration of the International Volleyball Federation and the Court of Justice.”

62. The Player contends that the dispute must be resolved *ex aequo et bono* because (i) no choice-of-law is directly made under the dispute resolution clause of the Agreement, (ii) the choice-of-law clause does not refer to the dispute between the parties, but the interpretation and enforceability of the Agreement, and (iii) the choice-of-law clause refers not only to [the Club’s country’s] law, but also to FIVB regulations, and article 20.9 of the FIVB Sports Regulations states that the FIVB Tribunal shall resolve the dispute *ex aequo et bono*.²⁶

63. The FIVB Tribunal Judge is not persuaded by the Player’s arguments because of the following reasons:

(a) There is no requirement that the choice-of-law be made under the dispute resolution clause. Besides, the final section of the Agreement is not formally divided into clauses, so it is not possible to know whether they are within the same clause.

(b) Although the choice-of-law clause does not expressly refer to disputes, the FIVB Tribunal must decide a financial dispute related to an alleged breach of contract and the parties agreed that their substantive rights and obligations under the Agreement be governed by the choice-of-law provision. Thus, by indicating the law to be applied when interpreting and enforcing the Agreement, the parties effectively involve their choice-of-law in the resolution of contractual disputes.

(c) The choice-of-law provision refers not only to [the Club’s country’s] law but also to “International and [the Club’s country’s] Volleyball Federation”. The FIVB Tribunal Judge agrees with the Player that the parties intended to refer to volleyball regulations

²⁵ See, for example, FIVB decisions 2019-02, 2015-07, and 2015-4.

²⁶ Player’s submission dated [date], ¶¶ 3-9.

and acknowledges that article 20.9 of the FIVB Sports Regulations states that the FIVB Tribunal shall resolve the dispute *ex aequo et bono* by default. However, the fact that the FIVB Tribunal must consider and apply the volleyball regulations when resolving the contractual dispute, does not mean that the default rule contained in article 20.9 of the FIVB Sports Regulation takes precedence over an explicit choice-of-law precisely because it is a default rule that only applies if the parties did not agree otherwise.

64. According to the FIVB Tribunal jurisprudence, the existence of a choice-of-law clause is not necessarily decisive. The FIVB Tribunal Judge must also determine if the parties referred to or based their arguments on the State law governing the agreement.
65. There is a disagreement between the parties in this regard. On the one hand, the Club stated that it based its position on [the Club's country's] law and international volleyball regulations.²⁷ On the other hand, the Player contends that the Club never alleged that the [Club's country's] law or the volleyball regulations should be applied instead of *ex aequo et bono* considerations.²⁸
66. The FIVB Tribunal Judge agrees with the Club. In the previous instance, the Club based its arguments on [the Club's country's] law. On its submission dated [date], the Club stated:

*"Due to the global pandemic, under a statutory provision of the [Club's country's] Greek State, the contracts with our paid volleyball players have been suspended; therefore, our club was exempt from paying the benefits agreed to be paid to them, for as long as the suspension lasted."*²⁹

67. The reference to [the Club's country's] law was also maintained in the RFR. The Club complained about the fact that [the Club's country's] law was not duly considered in the previous instance:

"Unfairly, illegally, misinterpreting and misapplying the laws and related provisions of the Regulations in force, but also due to an erroneous and poor assessment of our legal objections and claims, the decision under appeal accepted the athlete's pleas in a purely arbitrary way and based on wrong grounds, which led to his complaint being accepted, while if the case was

²⁷ Player's submission dated [date].

²⁸ Player's submission dated [date], ¶¶ 10-11.

²⁹ Club's submission dated [date], p. 1.

judged correctly and legally, his complaint should not have been accepted, as legally and substantially unfounded.”³⁰

68. The Club also submitted a Legal Brief, incorporated into its RFR,³¹ in which it stated that it had no obligation to pay the Player under the Joint Ministerial Decision and attached a copy of it as Exhibit 1:

“It is a known fact that, during the [year]-[year] season, there was a sudden outbreak of Covid-19 pandemic. As a result, by legislative intervention (by virtue of a state order), [the Club’s country] adopted health protection measures in response to the need to limit the spread of the coronavirus COVID-19, resulting in the interruption of all events in all [the Club’s country’s] sports and, consequently, the conduct of all official domestic sports events, wherein the men’s volleyball team of our club participated from [date] to [date].

By the above legislative regulation and as a consequence of a state order, an Act of Legislative Content was issued, in order to implement the health measures, which resulted in suspending the operation of our sports club, which was assessed as an ‘affected industry’ and according to this Act of Legislative Content we were under no obligation to pay all our athletes their agreed remuneration for as long as the imposed suspension was valid, since no sports events were held (1).”³²

69. Based on the above, the FIVB Tribunal Judge will resolve this dispute in accordance with [the Club’s country’s law and volleyball regulations in view of the fact that the parties expressly agreed so in the Agreement and the Club has referred to and based its argument on that choice-of-law. In any case, the FIVB Tribunal Judge anticipates that the resolution of the dispute would not have changed had he resolved the dispute *ex aequo et bono*.

7. Findings

70. It is undisputed that the Club did not pay the last two salaries to the Player. The Club makes essentially three contentions. It argues that (i) it was exempted from paying the Player’s salary under [the Club’s country’s] law, (ii) it was prevented from paying the Player’s salary due to force majeure, and (iii) the Player accepted a cut-off on his salary. Each contention is analyzed below.

7.1 Was the Club exempted from paying the Player’s salary under [the Club’s country’s] Law?

³⁰ Club’s RFR, p. 1.

³¹ Club’s RFR, p. 5.

³² Club’s Legal Brief, pp. 1-2.

71. The Club argues that the Joint Ministerial Decision suspended the Agreement and exempted it from paying the Player's salary for as long as the suspension of sports events lasted.³³
72. The Player contends that the Joint Ministerial Decision is irrelevant because the Club failed to provide a full translation and evidence of how it was relevant to this proceeding or justify the breach of its contractual obligations.³⁴
73. The FIVB Tribunal Judge does not agree with the Player's contentions. As explained in the above section on the applicable law, the Club did explain the reasons why, from its point of view, the Joint Ministerial Decision was relevant to this proceeding and justified the non-payment of the last two salaries.
74. Although the Club did not provide a full translation of the Joint Ministerial Decision, the FIVB Tribunal Judge does not see that as an impediment to its application. It is a standard practice in international adjudication to translate only those sections of the documents deemed relevant. The Club did so, and the Player did not contest the translation submitted by the Club. The Player could have translated other sections of the Joint Ministerial Decision if he considered that they were relevant to this proceeding but decided not to do so. Therefore, the FIVB Tribunal Judge will decide the Club's first contention based on the uncontested translation submitted by the Club.
75. Article 1 of the Joint Ministerial Decision sets forth that employees of companies with an employer registration number in [the Club's country's National Social Security Fund], whose business activity was prohibited by order of the public authority, were released from the obligation to provide services, and their employers were not obligated to pay their salaries, because the prohibition of operation by order of a public authority constituted a force majeure event.
76. It is undisputed by the parties that the Club is a company with an employer registration number in [the Club's country's National Social Security Fund] and that its activity was suspended by order of the public authority. Therefore, in principle, the Player was under no obligation to provide services and the Club was under no obligation to pay the Player's salaries while the

³³ Club's Legal Brief, pp. 1-2; Club's RFR, p. 1; Club's submission dated [date], p. 1.

³⁴ Player's submission dated [date], ¶¶ 18-19.

suspension of the Club's activities lasted.

77. However, the fact that the parties were under no obligation to comply with the Agreement does not mean that they were prevented from complying with it if they so desired. In this case, both parties continued performing the Agreement despite the Joint Ministerial Decision. In fact, it is undisputed that the suspension was in place from [date] until [date], and the evidence in the record shows that the Agreement was not suspended during that period.
78. According to clause 1 of the Agreement, the Player was "*obliged to offer his services as a player in the Club in full readiness and to do analogous athletic way of living, come without excuse (except in case of illness or misfortune, which will be certified by the Club's doctor), in training, in any kind of games, in reunions of theory development and rest events of the Club as part of its volleyball activity and to observe the internal regulation of the Club.*"
79. The FIVB Tribunal Judge is persuaded that the Player provided his services during the suspension of the Club's activities for the following reasons:
- (a) The communications between the Player and the Club's manager show that the Player left [the Club's country] on [date] and returned on [date] as advised and decided by the Club and that the Player kept training and remained at the Club's disposal.³⁵ Therefore, the Player offered his services in full readiness, trained, and maintained an athletic lifestyle, as required by clause 1 of the Agreement.
 - (b) According to clause 3 of the Agreement, the Player's salary was to be paid in ten instalments from [date] to [date].³⁶ It is undisputed that the Club paid all the instalments, except for the last two that were due on [date] and [date]. This means that the instalments corresponding to [month] and [month], when the suspension was already in place, were paid despite the Joint Ministerial Decision. Had the Player not provided his services during the suspension, the Club would not have paid his salary in [month] and [month].
 - (c) It is undisputed that the [Club's country's] volleyball championship was completed from [date] to [date] and the Player participated in four out of five matches of the Club's

³⁵ Player's Answer, Exhibit 4.

³⁶ Player's Answer, Exhibit 2.

team.³⁷ This means that from [date] (date on which the Player returned to [the Club's country] and sports activities were resumed) up to [date] (the last match of the championship) the Player also provided services to the Club. According to clause 3 of the Agreement, the Player's last salary was due on [date]. Therefore, the Player provided services to the Club for a longer period than originally foreseen by the parties due to the delayed termination of the [Club's country's] championship.

- (d) The Club has not submitted any conclusive evidence of the Player not performing his services during the suspension of its activities. The only evidence submitted by the Club is a medical report related to the Player's refusal to play the last match of the championship. The FIVB Tribunal Judge finds this evidence irrelevant and inconclusive because (i) it relates to a fact that occurred after the suspension of the Club's activities, (ii) the report acknowledges that the Player suffered an injury and claimed to be in pain, and (ii) the doctor did not prepare the report after examining the Player, but after reviewing the information that was provided to him ("*I have been referred all the above incidents with details*"), which he did not attach to his report.³⁸ In any case, the Club fails to explain and prove how missing one match would justify the non-payment of two salaries, one of which had to be paid after the suspension of the Club's activities.

80. Having determined that the Player provided services during the suspension of the Club's activities, the FIVB Tribunal Judge must determine whether those services were in breach of the Agreement.
81. The Club argues that the Player's services were in breach of the Agreement because he returned to [the Club's country] in mid-[month], fifteen days before the start of the championship, and refused to offer his services due to his inadequate preparation and an alleged minor injury.³⁹
82. The Player contends that (i) the Club did not submit this argument in the previous instance, (ii) he left and returned to [the Club's country] as advised and decided by the Club, (iii) there is no evidence of his alleged refusal to provide services, and (iv) his absence in one match does not

³⁷ Player's Answer, Exhibit 12.

³⁸ Club's Legal Brief, Exhibit 8.

³⁹ Club's RFR, p. 3.

constitute a breach of the Agreement.⁴⁰

83. The FIVB Tribunal Judge does not find the Club's arguments to be compelling. As determined above, the Player returned on [date] as advised and decided by the Club, and it is undisputed that the [Club's country's] volleyball championship was completed from [date] to [date]. The Club has not submitted any evidence of the Player's inadequate preparation or his alleged refusal to offer his services because of that reason. Regarding the alleged minor injury, the FIVB Tribunal Judge refers to the above determination on the medical report.

84. Based on the above, the FIVB Tribunal Judge concludes that the Club was not exempted from paying the Player's last two salaries under [the Club's country's] Law because the parties continued performing the Agreement despite the issuance of the Joint Ministerial Decision. Besides, the last salary was due after the resumption of the Club's activities, so the Joint Ministerial Decision could have not temporarily impacted the payment of that salary.

7.2 Was the Club prevented from paying the Player's salary due to force majeure?

85. Force majeure is not expressly defined under [the Club's country's] law. However, as per well-established case law, a force majeure event refers to an unforeseeable event, which may not be avoided even if all reasonable measures are taken, and which may not be attributed to the fault of the contracting parties. For a force majeure event to affect the obligations undertaken by the parties under a contract, a party must be prevented from performing these obligations because of the force majeure event, which is a question of fact and must be established by the party relying on force majeure for the non-performance of its obligations.⁴¹

86. The Club contends that the Decision does not apply the concept of force majeure despite it being duly raised by the Club. It claims that Covid-19 was an unforeseeable objective fact that could not be resisted, and that it was therefore objectively impossible for the Club to fully pay the Player.⁴²

87. The Player argues that Covid-19 is not a force majeure event because at least one requirement of the force majeure is not satisfied, as the impossibility for the Club to execute its obligations

⁴⁰ Player's Answer, ¶¶ 46-53.

⁴¹ J. Kyriakides, V. Kriketou and J. Vrachasotakis, «The covid-19 (Sars-Cov-2) pandemic and its effects on the performance of contractual obligations», 19 March 2020, pp. 2-3, available at: <https://kglawfirm.gr/>.

⁴² Club's RFR, p. 2.

was not definitive.⁴³

88. Although the FIVB Tribunal Judge agrees with the Club that Covid-19 was an unforeseeable fact that could not be resisted, the FIVB Tribunal Judge agrees with the Player that the Club did not prove that it was prevented from performing its contractual obligations because of a force majeure event.
89. The Club argues that it was prevented from paying the Player because of the financial losses suffered due to Covid-19.⁴⁴ However, the evidence in the record shows otherwise:
- (a) As already determined, the Club paid the salaries corresponding to [month] and [month][year]. Had the Club been prevented from paying the Player due to force majeure, it would not have paid those two salaries. The Club has not presented any explanation as to why it was able to pay those two salaries, but not the salaries corresponding to [month] and [month] [year], even though (i) throughout that period ([date]to [date]) there was Covid-19 and the suspension of its activities were in place, and (ii) as from [date], sports activities were resumed and the Player had already returned to [the Club's country].
 - (b) The Club acknowledges having collected EUR 3,686,300.⁴⁵ Even if such an amount was less than expected and concerned different sports departments, the Club failed to explain and prove why it was prevented from using that money and paying EUR 20,000 to the Player.
 - (c) On [date], the Club announced the extension of a sponsorship agreement for the men's volleyball team.⁴⁶
 - (d) There is no evidence in the record of the Club invoking force majeure and informing the Player about the consequences. The communications between the Player and the Club's manager show that the Club simply stopped paying the Player's salaries without

⁴³ Player's Answer, ¶¶ 27-38.

⁴⁴ Club's RFR, pp. 2-4. Club's Legal Brief, pp. 2-4.

⁴⁵ Club's Legal Brief, p. 3.

⁴⁶ Player's Answer, Exhibit 10.

further explanations.⁴⁷

90. The FIVB Tribunal Judge also notes that the Club does not maintain that the alleged impediment is permanent, and the parties acknowledge that the Club complied with the Decision,⁴⁸ all of which proves that the Club is now in a financial position that enables it to pay the Player for his services.
91. Although the FIVB Tribunal Judge has not found in the record conclusive elements to conclude that the Club faced a temporary impossibility, he nevertheless notes that when the impediment is only temporary, the force majeure defence has effect for such period. Once the temporary impossibility has ceased, the debtor must perform its obligations.
92. Based on the above, the FIVB Tribunal Judge concludes that the Club was not and is not prevented from paying the Player's last two salaries due to force majeure.

7.3 Did the Player accept a cut-off on his salary?

93. The Club claims that the Player's complaint was unfair because he had told the Club that he would accept a cut-off on his salary, but he later on demanded the payment of his entire salary.⁴⁹ The Club also states that the [Volleyball League] proposed a 20% cutoff on the athletes' salaries.⁵⁰
94. The Player contends the Club did not submit this argument during the proceeding before the [Continental Federation], and that it failed to evidence that the Player irrevocably, explicitly, and definitively waived any entitlement to his salary.⁵¹
95. The FIVB Tribunal Judge agrees with the Player. The Club has not submitted any evidence of the alleged waiver, and the communications between the Player and the Club's manager show that the Player kept claiming the payment of his entire salary.⁵²
96. The Club is also inconsistent as to the amount of the alleged cut-off. In its RFR, the Club states

⁴⁷ Player's Answer, Exhibit 4.

⁴⁸ Player's Answer, ¶ 22. Club's email dated [date].

⁴⁹ Club's RFR, p.4. Club's Legal Brief, pp. 4-5.

⁵⁰ Club's RFR, p.2. Club's Legal Brief, p. 4.

⁵¹ Player's Answer, ¶¶ 64-67.

⁵² Player's Answer, Exhibit 4.

that the Player would be satisfied if he was paid 90% of his salary.⁵³ However, in its Legal Brief, the Club states that the percentage accepted by the player was 80%.⁵⁴

97. The Club's allegations as to the [Volleyball League's] proposal of a 20% cut-off on the athletes' salaries are also not compelling. The [Volleyball League] is not a party to the Agreement. The [Volleyball League's] letter submitted by the Club expressly states that the cut-off is a mere proposal and that must be negotiated with the players.⁵⁵ As already determined, the Club has not submitted any evidence of the Player's alleged waiver.
98. Based on the above, the FIVB Tribunal Judge concludes that the Player did not accept a cut-off on his salary.

7.4 Conclusion

99. Considering the circumstances of this case, the FIVB Tribunal Judge is not persuaded of the existence of any valid legal ground for the Club to not comply with the Agreement and pay the Player's last two salaries. Consequently, the Decision is upheld in full.

7.5 Costs

100. 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.
101. In its Decision, the [Continental Federation] ordered the Club to bear the cost of the handling fee corresponding to first instance proceedings (EUR 400). In its RFR, the Club requested a reimbursement of the handling fee. Given that the Decision is upheld in full, the FIVB Tribunal Judge rejects the Club's request.

⁵³ Club's RFR, p.4.

⁵⁴ Club's Legal Brief, pp. 4-5.

⁵⁵ Club's Legal Brief, Exhibit 7.

102. The Claimant paid the handling fee of this proceeding (CHF 1,500) on [date]. In its RFR, the Club request a reimbursement of the handling fee. Given that the Decision is upheld in full, the FIVB Tribunal Judge rejects the Club's request.
103. The Player requested the FIVB Tribunal to determine an amount as a contribution to his legal fees and other expenses incurred in connection with the proceedings.⁵⁶ In his Answer, the Player quantified his legal expenses at EUR 4,083.75 including VAT, representing 13:30 hours of counsel work at an hourly rate of € 250 exclusive VAT. On [date], the Player complemented his Answer and quantified his legal expenses at EUR 5,747.50 including VAT. In accordance with Article 20.11.2 of the FIVB Sports Regulations, the FIVB Tribunal Judge determines the reasonable contribution to be EUR 2,000.00. On the one hand, the FIVB Tribunal Judge has taken into account that the Player's counsel provided services within the time limits set by the FIVB Tribunal. On the other hand, the Player's counsel failed to provide supporting documentation of their costs as requested by the FIVB Tribunal on [date], as well as information on the applicability of VAT. Consequently, the Club shall pay the Player the additional amount of EUR 2,000.

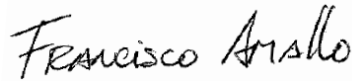
⁵⁶ Player's Answer, ¶ 74.

DECISION

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

1. The Request for Review filed by [the Club] is dismissed.
2. The decision rendered by the [Continental Federation] in [case number] dated [date] is confirmed.
3. [The Club] shall pay EUR 2,000 to [the Player] as compensation for his legal fees and expenses. In addition, [the Club] shall bear its legal fees and expenses, including the applicable handling fee.
4. 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:

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