



The
FIVB TRIBUNAL
hereby issues the following

DECISION

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

[The Club] ("Claimant")

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

v.

[The Coach] ("Respondent")

represented by **[the Coach's lawyers], both [the Coach'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 [the Club's country] professional volleyball club ("**Claimant**" or "**Club**").
2. [The Coach] is an [the Coach's country] volleyball coach ("**Respondent**" or "**Coach**").

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). All other cases shall be heard by the Chairperson and two (2) other members of the FIVB Tribunal, appointed by the Chairperson. If one or more of the members is unavailable or ineligible due to reasons of conflict (see Article 20.4), the Chairperson shall appoint another member of the FIVB Tribunal. 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. This case is heard by the FIVB Tribunal Vice-Chairperson, Francisco A. Amallo from Argentina, and two other members of the FIVB Tribunal, namely Micael Totaro from Switzerland and José Solá-González from Puerto Rico ("**FIVB Tribunal Panel**"), because the amount in dispute exceeds CHF 200,000.

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 Panel has considered all the facts, this decision will refer only to those deemed necessary to explain its decision.

3.1 Background Facts

6. On [date], the Coach and the Club signed a labour contract ("**Contract**"), under which the Coach committed to be the Club's assistant trainer from [date]to [date]in exchange for EUR 496,980. Despite being denominated in Euros ("**EUR**"), the Coach's salary was to be paid in [the currency of the Club's country, hereafter "**Local Currency**"]in accordance with the exchange rate published by the Central Bank of the [Club's country] on the day of the payment. The parties

also agreed that in case of termination of the Contract by the Club, the Club would pay the Coach a compensation in the amount of [Local Currency] 20,000,000 (“**Termination Indemnity**”).²

7. On [date], the parties signed an amendment to the Contract (“**First Amendment**”). The First Amendment modified the Coach’s salary from EUR 496,980 to EUR 450,000, composed of EUR 150,000 for each of the [year][year], [year]/[year], and [year]/[year] seasons.³
8. On [date], the President of the [Club’s country] issued Decree No. 274 on interim measures regulating the legal status of foreign citizens and stateless persons to prevent the further spread of Covid-19.⁴
9. On [date], the parties signed an additional amendment to the Contract (“**Second Amendment**”). The Second Amendment modified the Coach’s salary for the [year]/[year] season from EUR 150,000 to [Local Currency] 15,172,414 and for the [year][year] season from EUR 150,000 to [Local Currency] 15,057,472.⁵
10. On [date], the Coach and the Club’s head coach signed a work schedule for the Coach.⁶
11. On [date], the Coach reminded the Club that his visa was to expire in [month].⁷
12. On [date], the President of the [Club’s country] issued Decree No. 791 on the extension of the interim measures issued under Decree No. 274.⁸ Decrees No. 274 and 791 will hereinafter be referred to as the “**Decrees**”.
13. On [date], the Club informed the Coach that, according to Decree No. 791, the validity of the Coach’s visa had been extended until [date]. However, the Club stated: *“please note that if you leave the [Club’s country] before [date] with the above documents extended, the Border Guard Service of [the Club’s country] will refuse re-entry and will have to re-issue the necessary documents.”*⁹

² Coach’s Answer, Exhibit 2, clauses 1, 2, 4, and 12.

³ Club’s RFR, Exhibit 5.

⁴ Club’s RFR, Exhibit 8.

⁵ Club’s RFR, Exhibit 6. Coach’s Answer, Exhibit 4.

⁶ Coach’s Answer, Exhibit 5.

⁷ Coach’s Answer, Exhibit 6.

⁸ Club’s RFR, Exhibit 8.

⁹ Coach’s Answer, Exhibit 7.

14. On [date], the Coach sent a letter to the Club, stating that the latter had violated the Contract because it had not provided him with a new visa. The Coach indicated that his visa was to expire on [date] and that, according to the work schedule agreed with the Club's head coach, his work ended on [date], and he was planning to leave [the Club's country] and return on [date]. The Coach warned the Club that he would make it financially liable in case it failed to provide him with a visa.¹⁰
15. On [date], the Coach sent a letter to the Club stating that it owed him wages in the amount of [Local Currency] 191,304.09 for more than 15 days and, therefore, decided to suspend the employment under the Contract in accordance with [the Club's country's] law.¹¹
16. On [date], the Club sent a letter to the Coach stating that he was in breach of the Contract and requested him to explain his absence from the workplace since [date].¹²
17. On [date], the Coach sent a letter to the Club stating that he could not return to [the Club's country] as had been planned because the Club failed to provide him with a new visa. The Coach asked the Club to urgently ensure his entry into the [the Club's country] to perform his duties as soon as possible and stated that, if the Club failed to do so, he would take legal action against the Club.¹³
18. On [date], the Club unilaterally terminated the Contract due to the Coach's unjustified absence from work as from [date].¹⁴
19. On [date], the Coach's legal counsel sent a letter to the Club claiming the Termination Indemnity, EUR 16,014.23 in missing wages and reimbursement of [Local Currency] 197,253 and EUR 473.92 for flight tickets. The letter also stated that in case of being forced to initiate legal actions, the Coach's aggregate claim would likely approximate EUR 250,000.¹⁵
20. On [date], the Coach filed a complaint against the Club before the [continental federation, hereafter the "Continental Federation"]. The Coach requested, *inter alia*, compensation in the amount of EUR 30,441.85 net as overdue payables and EUR 250,000 net as Termination

¹⁰ Coach's Answer, Exhibit 8.

¹¹ Coach's Answer, Exhibit 9.

¹² Coach's Answer, Exhibit 10.

¹³ Coach's Answer, Exhibit 11.

¹⁴ Coach's Answer, Exhibit 12.

¹⁵ Coach's Answer, Exhibit 13.

Indemnity.

21. On [date], the [Continental Federation] issued a decision ordering the Club to pay, *inter alia*, EUR 30,441.85 net as overdue payables and EUR 250,000 net as Termination Indemnity (“Decision”).

3.2 The Proceedings before the FIVB Tribunal

22. On [date], the Club filed a request for review of the Decision (“RFR”). In its RFR, the Club also requested the stay of the execution of the Decision.
23. On [date], the FIVB Tribunal Secretariat invited the Coach to provide his position on the Club’s request for a stay by [date] and file an answer to the RFR by [date]. It also informed the parties that the dispute would be heard, in principle, by the FIVB Tribunal Chairperson, Dr. Karsten Hofmann, and two other members of the FIVB Tribunal.
24. On [date], the Coach opposed the Club’s request for a stay of the Decision’s execution.
25. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Coach’s reply on the Club’s request for a stay of the Decision’s execution and the full file in the case [case number] received from the [Continental Federation]. In addition, the FIVB Tribunal Secretariat noted that pursuant to Article 20.4.1 FIVB Sports Regulations, the FIVB Tribunal Chairman and the FIVB Tribunal judge Ms. Xiaoyan Gong had disclosed the existence of certain professional contacts to the Club’s counsel (unrelated to the present case), which however did not in their assessment impair their independence and impartiality in this case. Finally, the FIVB Tribunal held that, in the absence of any objections raised within the deadline outlined in Article 20.4.2 FIVB Sports Regulations, it would consider that both Parties would be deemed to have accepted the composition of the FIVB Tribunal which would thus satisfy the requirements of independence under Article 20.4 FIVB Sports Regulations.
26. On [date], the Coach challenged the appointment of Ms. Gong as FIVB Tribunal member.
27. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Coach’s submission and noted that the Coach had raised concerns regarding Ms. Gong’s independence and was challenging her appointment. Having said that, the FIVB Tribunal Secretariat invited the Club to provide its position, if any, on the aforementioned challenge by [date].

28. On the same day, the Club informed the FIVB Tribunal Secretariat that it “*deferred to justice*” regarding the challenge of Ms. Gong.
29. Also on [date], the FIVB Tribunal Secretariat acknowledged receipt of the Club’s submission, informed the parties that the procedure would be conducted in accordance with Article 20.4.2 FIVB Sports Regulations, and that the determination on the challenge would be communicated to the Parties in due course.
30. On [date], the Coach requested an extension to submit his answer to the RFR.
31. On [date], the FIVB Tribunal informed the parties that Dr. Hofmann and Ms. Gong had resigned from the case and that, therefore, the dispute would be heard by the FIVB Tribunal Vice-Chairperson, Francisco A. Amallo, and two other members of the FIVB Tribunal, appointed by the Chairperson, in accordance with Article 19.1.5 of the FIVB Sports Regulations, respectively José Solá-Gonzalez and Micael Totaro. It also granted the Coach’s request for an extension until [date].
32. On [date], the Coach filed his answer to the RFR (“**Answer**”).
33. On [date], the Club made an unsolicited submission, replying to the Coach’s Answer.
34. On [date], the FIVB Tribunal acknowledged receipt of the Club’s unsolicited submission and invited the Coach to comment on that submission by [date]. It also asked the parties to refrain from making unsolicited submissions and anticipated, in accordance with Article 20.7.1 of the FIVB Sports Regulations, that it would not take into account any further unsolicited submissions unless exceptional circumstances justify such a submission.
35. On [date], the FIVB Tribunal granted the Club’s request for a stay of the Decision.
36. On the same date, the Coach requested an extension to reply to the Club’s unsolicited submission, and the FIVB Tribunal Secretariat requested the Club to submit its position on the Coach’s request by [date].
37. On [date], the Club adhered to the Coach’s request for an extension.
38. On [date], the FIVB Tribunal granted the Coach an extension until [date].

39. On [date], the Coach replied to the Club's unsolicited submission.
40. On [date], the FIVB Tribunal Panel declared the exchange of submissions completed and anticipated that it would proceed with the resolution of the case. It also requested the parties to provide a detailed account of their respective costs as well as supporting documentation in relation thereto by [date].
41. On [date], the Coach made a submission on costs.
42. On [date], the Club made a submission on costs.

4. The Parties' Submissions

43. 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 Panel 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

44. The Club requests the FIVB Tribunal Panel to rule as follows:

"I. The appeal is upheld.

II. The decision issued on [date] by the [Continental Federation] in the dispute between [the Coach] and [the Club] is annulled

III. [The Club] is granted an award for costs."¹⁶

4.1.2 The Claimant's Position

45. In support of its request for relief, the Club contends, *inter alia*, as follows:
46. The Decision shall be annulled because the [Continental Federation] had no authority to deal with the dispute. The [Continental Federation] failed to see that the Contract foresees a specific forum in case of a dispute. The Coach should have complied with the Contract and filed his claim before the arbitral court of [the Club's city].¹⁷

¹⁶ Club's RFR, p. 9.

¹⁷ Club's RFR, ¶¶ 19, 21-28.

47. The Decision shall be annulled because the Coach's prayers for relief were not in line with the Contract. The Coach was not entitled to request any payment in EUR, as the remuneration under the Contract was in [Local Currency]. Therefore, the [Continental Federation] should have declared dismissed the Coach's claim as inadmissible.¹⁸
48. Alternatively, the termination of the Contract was justified because the Coach deliberately left the Club in the middle of the [year]/[year] season, in a gross violation of the Club's instructions, while he was under contract until the end of the season [year]/[year].¹⁹

4.2 Respondent's Request for Relief and Position

4.2.1 Respondent's Request for Relief

49. The Coach requests the FIVB Tribunal Panel to render a decision per which:

- *the [Continental Federation's] Decision shall be confirmed with respect to the Coach's overdue payables, termination indemnity and payment interests;*
- *the Club's request for stay of the [Continental Federation's] Decision shall be dismissed; and*
- *the Club shall be liable to:*
 - *indemnify the Coach 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 four thousand six hundred twenty-five euro (€ 4.625) exclusive VAT, being five thousand five hundred ninety-six euro and twenty-five cents (€ 5.596,25) inclusive VAT; and*
 - *bear the costs of the current proceedings in its entirety.*"²⁰

4.2.2 Respondent's Position

50. In support of his request for relief, the Coach contends, *inter alia*, as follows:
51. The Club never objected to the [Continental Federation]'s jurisdiction despite having twice the opportunity to do so during the [Continental Federation's] proceedings. On the contrary, it participated in the proceeding, thus waiving its right to challenge the [Continental Federation's] jurisdiction.²¹
52. The Club wrongfully terminated the Contract because the Coach never agreed to the

¹⁸ Club's RFR, ¶¶ 19, 29-40.

¹⁹ Club's RFR, ¶¶ 20, 41-56.

²⁰ Coach's Answer, ¶ 130.

²¹ Coach's Answer, ¶¶ 40-47.

termination and there was no just cause for terminating the Contract. The Club is liable for the Coach's absence. The Coach was entitled to be absent until [date] and did not breach his obligations before that date. The Coach was not able to return to [the Club's country] because the Club failed to provide him with a valid work visa. The true reason behind the Club's wrongful conduct is that the Club wanted to change the working time and the Coach refused to accept such a change.²²

53. The Club only challenges the currency of the compensation but not its amount. The [year]/[year] season overdue payables are due in EUR under the Contract. The claim in EUR reflects the intent of the parties and the principles of justice and fairness. In any case, the Coach cannot suffer from the exchange rate following the Club's wrongful conduct.²³

5. Jurisdiction

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

55. 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."

56. 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"

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

58. The FIVB Tribunal Panel finds that this dispute is a financial dispute of an international dimension under Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations because it involves claims between a volleyball club and a volleyball coach [from different countries] concerning the

²² Coach's Answer, ¶¶ 48-82.

²³ Coach's Answer, ¶¶ 83-124.

payment of compensation due to the early termination of a contract. The dispute also complies with Article 19.2.2.2 of the FIVB Sports Regulations because it was decided previously by the [Continental Federation].

59. The FIVB Tribunal's jurisdiction is also undisputed by the parties. Therefore, the FIVB Tribunal has jurisdiction over the present dispute under the FIVB Sports Regulations.

6. Admissibility

60. 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."

61. The Decision was notified to the parties on [date]. The Claimant filed its RFR on [date], within the fourteen-day deadline. Thus, the RFR is admissible.

7. Applicable Law

62. 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)."

63. The Club has not made an express submission on the applicable law to this proceeding. However, its RFR contains references to [the Club's country's] law,²⁴ Swiss law,²⁵ and justice or general principles of justice and law.²⁶
64. The Coach stated that the dispute must be decided *ex aequo et bono* and that the parties never agreed to the application of Swiss law.²⁷
65. In the absence of an agreement between the parties on the applicable law, the FIVB Tribunal Panel 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).

²⁴ Club's RFR, ¶ 27.

²⁵ Club's RFR, ¶¶ 35-37, 54.

²⁶ Club's RFR, ¶¶ 25, 37-38. Club's submission dated [date], ¶ 14.

²⁷ Coach's Answer, ¶¶ 83, 89, 121, 123.

8. Findings

66. The Club claims that the Decision should be annulled because the [Continental Federation] had no jurisdiction to settle the dispute and the Coach's claim should have been dismissed by the [Continental Federation]. Alternatively, the Club contends that the termination of the Contract was justified. The Club's three arguments are analysed below.

8.1. Did the [Continental Federation] have jurisdiction to settle the dispute?

67. In the previous instance, the [Continental Federation] concluded that it had jurisdiction to settle the dispute because it was a financial dispute of international dimension between a Coach and a Club coming from different national federations which are members of the [Continental Federation], in accordance with Article 18.1(b) of the FIVB Sports Regulations.²⁸

68. The Club claims that the Decision should be annulled because the [Continental Federation] did not have the authority to settle the dispute. The Club argues that the [Continental Federation] failed to see that the parties agreed, in clause 12.4 of the Contract, to settle their disputes before the arbitral court of [the Club's city], and that the Contract contained no reference to [the Continental Federation] or FIVB rules.²⁹

69. The Coach contends that the Club participated in the proceeding and never objected to the [the Continental Federation]'s jurisdiction, thus waiving its right to challenge the [the Continental Federation]'s jurisdiction.³⁰

70. The Club acknowledged that it did not challenge the [the Continental Federation]'s jurisdiction and that jurisdictional objections shall be raised immediately within the context of judicial proceedings. However, the Club argues that the proceedings before the [the Continental Federation] are not judicial, but a private dispute resolution system, so the Decision cannot be construed as a judgement rendered by a court. Furthermore, the Club argues that it is valid to raise jurisdictional objection for the first time before an appeals body because private procedural rules are more flexible, and jurisdictional objections can be brought at any time before the dispute is heard by a civil court.³¹

²⁸ Decision, p. 27.

²⁹ Club's RFR, ¶¶ 19, 21-28.

³⁰ Coach's Answer, ¶¶ 40-47.

³¹ Club's submission dated [date], ¶¶ 2-12.

71. The Coach contends that the Club's position goes against the jurisprudence of the Court of Arbitration for Sports ("CAS") and that jurisdictional objections must always be raised at the earliest stage.³²
72. The FIVB Tribunal Panel does not find the Club's arguments to be compelling. The Club has failed to explain why FIVB procedural rules would allegedly be more flexible than other procedural rules and why jurisdictional objections could allegedly be raised at any time before the dispute is heard by a civil court.
73. The Club's position is not supported by any authority and is not in line with the well-established jurisprudence of the CAS that requires raising jurisdictional objections prior to any defences on the merits.³³ The FIVB Tribunal Panel finds no reason to depart from that jurisprudence. It is contrary to good faith and an abuse of rights for a party to keep a jurisdictional objection in reserve, only to present it later in case of a disadvantageous or unfavourable outcome in the proceedings. When a party participates in a proceeding without challenging the jurisdiction of the [Continental Federation], it consents to its jurisdiction and forfeits the right to raise the objection before the FIVB Tribunal.
74. Besides, according to the FIVB Tribunal jurisprudence, the existence of a choice-of-forum clause in favour of another tribunal does not prevent the parties from initiating a procedure before the FIVB, unless it explicitly grants exclusive jurisdiction to that tribunal or excludes FIVB judicial bodies.³⁴ Therefore, even if the Club had challenged the [Continental Federation's] jurisdiction in the previous instance, its jurisdictional objection would have been rejected because clause 12.4 of the Contract does not grant exclusive jurisdiction to the arbitral court of [the Club's city] nor explicitly excludes FIVB judicial bodies.

8.2. Should the [Continental Federation] have dismissed the Coach's claim as inadmissible?

75. The Club requests the FIVB Tribunal to annul the Decision because the [Continental Federation] should have found that the Coach's claim in EUR was inadmissible and should thus have dismissed it on this basis alone. According to the Club, the Coach was not entitled to request any payment in EUR because his remuneration was agreed in [Local Currency].³⁵

³² Coach's submission dated [date] ¶¶ 5-11.

³³ See, for example, CAS 2011/A/2331, CAS 2012/A/2899, and CAS 2015/A/4083.

³⁴ See, for example, FIVB cases 2015-07, 2018-03, and 2018-04.

³⁵ Club's RFR, ¶¶ 19, 29-40. Club's submission dated 5 April 2022, ¶¶ 13-15.

76. The Coach contends that the Club never contested his claim in EUR. The Coach claims that he was entitled to express his claim in EUR because it was the currency governing the contractual relationship. The Coach argues that the Contract was valued in EUR, that [Local Currency] was only used as a payment currency, and that the former prevailed over the latter. According to the Coach, EUR is the ‘effectively due currency’ because he and his family are from [the Coach’s country; where EUR is the applicable currency], the Contract was valued in EUR, and EUR is a stable currency.³⁶
77. The FIVB Tribunal Panel is not compelled by the Club’s argument. The Club’s argument does not focus on whether the Coach was entitled or not to a compensation, but on whether that compensation should have been claimed in EUR or [Local Currency]. By not objecting to compensation in EUR in the previous instance, the Club implicitly accepted said currency and waived its right to raise admissibility objections on that ground before the FIVB Tribunal.
78. Objections to the admissibility of a claim at the [Continental Federation] level cannot be raised for the first time on request for review before the FIVB Tribunal. The argument raised by the Club in this instance does not aim at settling the dispute on the merits, but at forcing the Coach to restart proceedings either denominating his claims in [Local Currency] or discussing the applicable currency, thus delaying the resolution of the dispute and increasing legal costs. It would be unfair to the Coach to have him undergo the expense of another proceeding at the first instance simply because a newly appointed external counsel raises a new admissibility argument that might or might not have succeeded in the previous instance.
79. In light of the foregoing, the FIVB Tribunal Panel finds that procedural good faith required the Club to object to the Coach’s request for relief in the previous instance and thus that such objection, which was raised for the first time in the present proceedings, must be rejected.

8.3. Was the termination of the Contract justified?

80. The Club terminated the Contract due to the Coach’s alleged unjustified absence from work as from [date].³⁷ Thus, to decide on whether the Contract was legally terminated, the FIVB Tribunal Panel must determine whether the Coach’s absence from work was unjustified.
81. The Club claims the Coach did not have a right to return to [the Coach’s country] at his

³⁶ Coach’s Answer, ¶¶ 85-87, 105-116. Coach’s submission dated [date], ¶¶ 16-18.

³⁷ Coach’s Answer, Exhibit 12.

convenience and that he had a duty to comply with the Club's instructions and [the Club's country's] regulations and thus stay in [the Club's country] until the end of the [year]/[year] season.³⁸

82. The Coach contends that his departure is irrelevant because the only argument used by the Club for terminating the agreement was his absence. The Coach argues that he was not required to work more than two weeks per month and that the Club was obliged to provide him with a work visa because travelling was part of his work. He states that he left [the Club's country] in accordance with the work schedule agreed with the Club's head coach and that the Club failed to indicate the provisions of the Decrees that allegedly obliged him to stay in [the Club's country].³⁹
83. Unlike the Coach, the FIVB Tribunal Panel considers that his departure is relevant because it is the beginning of his absence. However, the FIVB Tribunal Panel agrees with the Coach that he left [the Club's country] in accordance with the Contract.
84. In clause 3.3 of the Contract, the Coach guaranteed the Club a minimum presence of two weeks per month. Clause 3.2 of the Contract states that the Coach's work time was to be set by the Club's head coach. The Coach submitted evidence of a schedule signed by the Club's head coach, according to which he had to be present from [date] to [date] and from [date] to [date].⁴⁰ It is undisputed that the schedule for [month][year] and [month][year] complied with clause 3.3 of the Contract.
85. Therefore, the Coach was entitled under the Contract to be absent from [date] to [date]. The Coach left on [date] and never returned.⁴¹
86. Even though the Coach left [the Club's country] one day before the date agreed on in the schedule, the FIVB Tribunal Panel considers that the key issue is why the Coach never returned. Departing one day before the schedule does not constitute a material violation of the Contract because it was only one day and, according to the schedule, the Coach had already worked more than two weeks in [month] [year]. On the contrary, not returning to work could constitute a material violation of the Contract. This is also consistent with the Club's conduct. In its letter

³⁸ Club's RFR, ¶¶ 45-56.

³⁹ Coach's Answer, ¶¶ 48-82.

⁴⁰ Coach's Answer, Exhibit 5.

⁴¹ Coach's Answer, Exhibit 15.

dated [date], the Club requested information about the Coach's absence from [date] and nothing was said about him leaving on [date].⁴²

87. The Club's arguments that the Coach should have never left [the Club's country] are not compelling. Although clauses 9.1.1 and 8.2.17 of the Contract indeed required the Coach to comply with the legislation and the Club's instructions, the Club has failed to explain and prove how the Coach would have breached those clauses by leaving [the Club's country] on [date].
88. According to the Club, the Decrees extended the validity of the Coach's visa.⁴³ The Club has not explained how those Decrees or any other [Club's country's] legislation would have prevented the Coach from leaving [the Club's country]. Moreover, the Club's argument contradicts its own conduct (the Club acknowledged that the Coach could leave [the Club's country] in its letter dated [date])⁴⁴ and the facts proven in the record (it is undisputed that the Coach left [the Club's country] on [date] and there is no evidence of his departure causing any issue with the [Club's country's] authorities).⁴⁵
89. The Club has also failed to submit evidence of any instructions to the Coach preventing him from leaving [the Club's country]. Besides, as determined above, the Coach was entitled under the Contract to leave [the Club's country], the Club acknowledged that he could leave [the Club's country] in its letter dated [date], and there is no evidence in the record of the Club ever complaining about the Coach's decision to leave on [date]. In its letter dated [date], the Club only requested information about the Coach's absence from [date].⁴⁶
90. The FIVB Tribunal Panel has already determined that the Coach was entitled to be absent until [date]. Therefore, it now needs to determine whether the Coach's absence until [date] (the date on which the Contract was terminated) was justified.
91. The Club claims that the [Continental Federation] wrongly found that the Club failed to provide a work visa to the Coach because the Decrees automatically extended his visa until [date].⁴⁷ The Coach contends that the Club is liable for his absence because he was not able to return to [the

⁴² Coach's Answer, Exhibit 10.

⁴³ Club's RFR, ¶ 44. Coach's Answer, Exhibit 7.

⁴⁴ Coach's Answer, Exhibit 7.

⁴⁵ Coach's Answer, Exhibit 15.

⁴⁶ Coach's Answer, Exhibit 10.

⁴⁷ Club's RFR, ¶¶ 20, 43-44.

Club's country] due to the Club's failure to provide him with a work visa.⁴⁸

92. It is undisputed that the Club had to provide the Coach with a work visa,⁴⁹ and that the Coach had a valid visa until [date].⁵⁰ It is also uncontested that the Decrees suspended the validity periods of visas, first until [date] and then until [date].⁵¹
93. However, despite that suspension, on [date], the Club sent the following warning to the Coach: *"please note that if you leave the [the Club's country] before [date] with the above documents extended, the Border Guard Service of [the Club's country] will refuse re-entry and will have to re-issue the necessary documents."*⁵² In its RFR, the Club contends that "[a]ccording to the applicable of [the Club's country's] rules, the Respondent was not entitled to leave [the Club's country] during this period of time without risking his visa being cancelled."⁵³
94. Although it is unclear to the FIVB Tribunal Panel where the risk of the Coach's visa being cancelled derives from, it is uncontested by the parties that such a risk existed under [the Club's country's] regulations. According to the Club, the consequence of the Coach leaving [the Club's country] was that his visa would expire and a new visa would have to be re-issued. As the Coach had a contractual right to leave [the Club's country] and be provided with a work visa, the FIVB Tribunal Panel concludes that the Club bears that risk and should have applied for a new visa.
95. It appears that the Club did not attempt to obtain a visa for the return of the Coach. There is no evidence that the Club could not obtain a visa for the Coach's re-entry in [the Club's country] and the Club failed to explain why it could not apply for a new visa. Instead of providing the Coach with a new visa, the Club decided to terminate the Contract unilaterally and prematurely. Therefore, the FIVB Tribunal Panel agrees with [the Continental Federation] that the Club terminated the Contract without a just cause.

9. Costs

96. The Club paid the handling fee of this proceeding (CHF 4,000) on [date]. Both parties have requested a decision on costs. On [date], the Coach quantified his legal expenses at EUR 6,930.27 (including VAT), representing 22:55 hours of counsel work. On [date], the Club

⁴⁸ Coach's Answer, ¶¶ 62-69.

⁴⁹ Coach's Answer, Exhibit 2, clause 5.

⁵⁰ Coach's Answer, Exhibit 6.

⁵¹ Club's RFR, Exhibit 8.

⁵² Coach's Answer, Exhibit 7.

⁵³ Club's RFR, ¶ 14.

submitted a time sheet from its counsel for an amount of EUR 9,807.50.

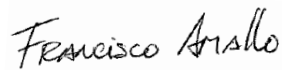
97. Article 20.11.2 of the FIVB Sports Regulations allows the prevailing party to be granted a contribution towards legal fees and expenses, including the applicable handling fee. When deciding on this contribution, the FIVB Tribunal Panel shall consider the outcome of the proceedings, as well as the 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 Panel will decide upon the distribution of the costs according to the outcome of the proceedings.
98. Considering that (i) the Decision has been fully upheld and that the Coach's counsel failed to provide supporting documentation of their costs as well as information on the applicability of VAT, (ii) CHF 2,500 is the maximum contribution under Article 18.1(e) of the FIVB Sports for first instance proceedings, and (iii) this proceeding was more extensive than the first instance proceeding as it required the parties to make multiple submissions (i.e., the Club's RFR, request for a stay, and unsolicited submission, as well as the respective responses from the Coach), the FIVB Tribunal Panel determines, in accordance with article 20.11.2 of the FIVB Sports Regulations, the reasonable contribution to be EUR 3,000. Thus, the Club shall pay the Coach's legal costs in the amount of EUR 3,000 and bear its own legal costs as well as the handling fee.

DECISION

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

1. The Request for Review filed by [the Club] is dismissed.
2. The decision rendered by the [Continental Federation] dated [date] is upheld.
3. [The Club] shall pay [the Coach] EUR 3,000 as a contribution towards legal fees and expenses. [The Club] shall bear its own legal costs and the handling fee.
4. Any other requests for relief are dismissed.

[Date of the decision] Lausanne, Switzerland



Francisco A. Amallo



José Solá-González



Micael Totaro

NOTICE OF APPEALS

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with

- a) Article 20.12 of the FIVB Sports Regulations:

“Decisions of the FIVB Tribunal can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within twenty-one (21) days from the receipt of the decision. The CAS shall decide the appeal ex aequo et bono and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure.”

- b) The CAS Code of Sport-related Arbitration, which is available under www.tas-cas.org.

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

Court of Arbitration for Sport
Avenue de Bergières 10
1004 Lausanne, Switzerland
Tel: +41 21 613 50 00
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