The

FIVB TRIBUNAL

herewith issues the following

DECISION

2018-06

in the matter CF 139/2018 filed by

Associação Social e Esportiva SADA
("Claimant" and "Counter-Respondent")
represented by Mr Luiz Fernando Ribeiro and Mr Gustavo Nogueira Mendes, attorneys at law, Nova Lima, Minas Gerais, Brazil

vs.

Mr Robertlandy Simon Aties
("Respondent No. 1" and "Counter-Claimant No. 1")
represented by Mr Achille Reali, attorney at law, Rome, Italy

and

A.S. Volley LUBE S.r.l (Civitanova)
("Respondent No. 2" and "Counter-Claimant No. 2")
represented by Mr Giovanni Fontana, attorney at law, Sezze, Latina, Italy

1. The Parties

1. The Claimant is a professional volleyball club with its legal seat in Betim, Minas Gerais, Brazil ("**Claimant**" or "**SADA**").

2. Respondent No. 1 is a professional male volleyball player from Cuba ("**Respondent No. 1**" or "**Player**").

3. Respondent No. 2 is a professional volleyball club with its legal seat in Treia, Macerata, Italy ("**Respondent No. 2**" or "**LUBE**"; together with SADA and the Player the "**Parties**").

2. The FIVB Tribunal

4. The first sentence of Article 18.1(f) of the FIVB Sports Regulations[1] provides as follows:

> *"The FIVB may, at any stage of the procedure,* […] *decide to submit a financial dispute directly to the FIVB Tribunal."*

5. On 3 December 2018, the Parties were informed that the case CF 139/2018 initiated by the Claimant's complaint dated 1 August 2018 had been referred to the FIVB Tribunal.

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

7. This case is heard by the Chairperson of the FIVB Tribunal, Dr Karsten Hofmann from Germany, and two other members of the FIVB Tribunal, namely Mr Francisco A. Amallo from Argentina and Mr Hussein Mostafa Fathi from Egypt ("**FIVB Tribunal Panel**") because the amount in dispute exceeds CHF 200,000.00.

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

3. Facts and Proceedings

8. 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

9. On 10 August 2015, the Player and SADA entered into a sports performance agreement for three seasons (2016/2017, 2017/2018 and 2018/2019), starting on 1 June 2016 and expiring on 31 May 2019 ("**SADA Agreement**").[2] They agreed on financial compensation of BRL 1,600,000.00 net (free of taxes) per season to be paid by SADA to the Player by 50% "*in Brazilian territory*" and 50% "*in a natural person's bank account abroad, to be indicated by the athlete*".[3]

10. On 20 June 2016, an "*employment contract for a specific period*" ("**Work Contract**") was registered for the Player with the Brazilian authorities for the term of 20 June 2016 to 19 June 2018 providing for a monthly salary of BRL 5,000.00.[4]

11. On 1 August 2017, the Player, SADA and the Brazilian company "S 13 SERVICIOS ESPORTIVOS LTDA-ME" ("**Company S 13**") entered into a contract titled in the English translation "PARTICULAR INSTRUMENT OF ASSIGNMENT FOR THE USE OF NAME, APPEARANCE, IMAGE AND VOICE OF PROFESSIONAL VOLLEYBALL PLAYER", starting on 1 August 2017 and expiring on 31 May 2019 ("**Image Rights Agreement**").[5] According to Clause 2(a), the Company S 13 was the exclusive owner of the Player's image rights and granted SADA the right to use some of such image rights. According to its Clause 4, SADA agreed to pay the gross amounts of BRL 786,333.00 for the 2017/2018 season and BRL 853,644.00 for the 2018/2019 season to the

[2] SADA's Exhibit 1, clause 1 of the SADA Agreement.

[3] SADA's Exhibit 1, clause 2 of the SADA Agreement.

[4] Player's Exhibit 6.

[5] Player's Exhibit 7, clause 5 of the Image Rights Agreement.

Company S 13.

12. It is undisputed that the Player played the full 2016/2017 and 2017/2018 seasons for SADA's team.

13. From 29 May to 1 June 2018, WhatsApp communications between the Player and SADA's Sports Director, Mr Flavio Pereira, took place. The Player said that he wanted to leave SADA and would not return. Mr Pereira referred to the term of the SADA Agreement.[6]

14. On 18 and 19 June 2018, the media reported about rumours that the Player was entering into an agreement with LUBE for the 2018/2019 season.[7]

15. By email dated 26 June 2018, SADA served notice dated 27 June 2018 to the Player and LUBE (carbon copy to the FIVB, the Brazilian Volleyball Federation CBV and the Italian Volleyball Federation FIP) informing that the Player was still engaged for one more season (2018/2019) and asking "*to cease with immediate effect any contacts / negotiations prior to negotiating the terms for a potential transfer with our Club and Confederação Brasileira de Voleibol in order to avoid further legal action before the judicial/disciplinary bodies of FIVB*".[8]

16. On 27 June 2018, the FIVB Legal and Transfer Department informed the Parties about the applicable rules on the international transfer of players, including the Electronic International Transfer Procedure Manual Season 2017 – 2018, and the differences between "transfer disputes" and "financial disputes".[9]

17. On 30 June 2018, the media reported about rumours that LUBE had an agreement in place for the Player and was trying to find a way for him to come to Italy for the 2019/2020 seasons.[10]

18. On 3 July 2018, LUBE replied to SADA's notice dated 26 June 2018, confirming that the Player

[6] SADA's Exhibit 27.

[7] SADA's Exhibit 2.

[8] SADA's Exhibit 3.

[9] SADA's Exhibit 4.

[10] SADA's Exhibit 13.

was a player of SADA until the end of the season 2018/2019, and stating that, in case of any interest in the Player for said season, LUBE would act according to the applicable regulations. Moreover, LUBE rejected any allegations against it.[11]

19. On 4 July 2018, SADA's 2018/2019 pre-season training began, and the Player was absent.[12] On the same date, the Player publicly declared in an interview to Brazilian media that he would leave SADA to return to Italy because of personal circumstances, sporting reasons and contractual problems.[13]

20. On 7 July 2018, the Player's agent, Dr Stefano Bartocci, informed SADA that the Player would not return to Brazil to resume training. He stated that the Player feared the consequences of non-payment of taxes by SADA. He also stated that the SADA Agreement was "*considered already terminated*"; however, he clarified that, if SADA wanted to use the Player's services for the 2018/2019 season, SADA had to pay BRL 3,140,000.00 within five days and provide proof of tax payments to the Brazilian tax authorities within the same time limit.[14]

21. On 12 July 2018, SADA served notice to the Player (carbon copy to the FIVB and CBV) regarding his absence as from 4 July 2018 (pre-season training for 2018/2019 season), reminding the Player that he was still engaged for the 2018/2019 season and requesting his presence in training. SADA also stated that his persistent failure to participate in the training would be understood as a breach of contract.[15]

22. On 14 July 2018, the Player's counsel, Mr Achille Reali, referred to the Player agent's email dated 7 July 2019 and requested SADA to pay all outstanding amounts and provide evidence of the payment of taxes to the Brazilian Tax Authority within three days. He also stated that, in case of non-compliance, the SADA Agreement "*will be immediately resolved*", and the Player would be free to play with any other Club, without prejudice to the right to recover credit from

[11] SADA's Exhibit 5.

[12] SADA's Exhibit 7.

[13] SADA's Exhibit 6.

[14] Player's Exhibit 2.

[15] SADA's Exhibit 7.

SADA.[16]

23. By letter dated 16 July 2018, SADA replied to Mr Reali that, without a power of attorney duly granted by the Player, all of Mr Reali's communications did not have any legal effect towards SADA on behalf of the Player.[17]

24. On 18 July 2018, (i) LUBE officially presented the Player as a new team member for the 2018/2019 season,[18] (ii) the Player's agent, Dr Bartocci, provided a power of attorney for the Player's counsel, Mr Reali, to SADA,[19] and (iii) SADA contested any outstanding salaries towards the Player or any taxes not being paid. SADA stressed that there were no legal grounds for the Player to terminate the SADA Agreement prematurely.[20]

25. By email dated 20 July 2018, the Player's counsel, Mr Reali, maintained the argument that SADA had failed to pay the full (net) amounts agreed under the SADA Agreement. Moreover, Mr Reali stated as follows: "*For all the aforementioned reasons, the contract is terminated due to serious contractual breaches of SADA Cruzeiro and for the repeated missed responses to our previous e-mails.*"[21]

26. On 5 August 2018, the Player and LUBE entered into an employment contract for the seasons 2018/2019 and 2019/2020, starting on 18 July 2018 and expiring on 30 June 2020 ("**LUBE Contract**").[22]

27. On the same date, SADA issued a press release regarding the Player's engagement with LUBE and his prior actions taken. SADA stated its intent to file a complaint with FIVB against the Player and LUBE. According to said press release, LUBE had incited the Player in order to try to

[16] Player's Exhibit 3.

[17] SADA's Exhibit 8.

[18] SADA's Exhibit 9.

[19] SADA's Exhibit 10.

[20] SADA's Exhibit 11.

[21] Player's Exhibit 5.

[22] Player's Counterclaim, p. 7.

avoid any penalty payment for breach of the SADA Agreement. [23]

3.2 The Proceedings before the FIVB Tribunal

28. On 1 August 2018, SADA filed a complaint with the FIVB against the Player and LUBE ("**SADA's Complaint**").

29. By emails dated 8 and 15 August 2018, the FIVB Legal and Transfer Department forwarded SADA's Complaint to both the Player and LUBE and invited them to file a reply by no later than 22 August 2018.

30. On 21 August 2018, the Player answered SADA's Complaint and filed a counterclaim against SADA ("**Player's Counterclaim**").

31. On 22 August 2018, LUBE answered SADA's Complaint and filed a counterclaim against SADA ("**LUBE's Counterclaim**").

32. By email dated 28 August 2018, the FIVB Legal and Transfer Department acknowledged receipt of the Player's Counterclaim and LUBE's Counterclaim and, in accordance with Article 18.1(c) of the FIVB Sports Regulations, the FIVB invited the Player and LUBE to each pay a handling fee of CHF 500.00 to the FIVB by no later than 4 September 2018. Additionally, SADA was invited to file comments on the abovementioned communication by 11 September 2018.

33. On 11 September 2018, SADA filed its comments to the Player's Counterclaim ("**SADA's Comments to Player**") and LUBE's Counterclaim ("**SADA's Comments to LUBE**").

34. By email dated 18 September 2018, the FIVB Legal and Transfer Department acknowledged receipt of the Player's and LUBE's handling fees for their counterclaims and of SADA's comments received on 11 September 2018. The Player and LUBE were invited to file comments on SADA's submission by 2 October 2018.

35. On 2 October 2018, both the Player and LUBE filed its comments to SADA's submission

[23] LUBE's Exhibit A.

("**Player's Comments**" and "**LUBE's Comments**").

36. By email dated 3 October 2018, the FIVB Legal and Transfer Department acknowledged receipt of the Player's and LUBE's submissions received on 2 October 2018. Furthermore, they were informed that the proceedings were closed, and no further submissions would be accepted.

37. On 3 December 2018, the Parties were informed that the dispute had been referred directly to the FIVB Tribunal under Article 18.1(f) of the FIVB Sports Regulations. Moreover, the FIVB Tribunal Secretariat informed the Parties that the dispute would be heard by a panel (Article 19.1.5 of the FIVB Sports Regulations) consisting of the Chairperson of the FIVB Tribunal, Dr Karsten Hofmann from Germany, together with two other members of the FIVB Tribunal, namely Mr Francisco Amallo from Argentina and Mr Hussein Mostafa Fathi from Egypt.

38. By email dated 11 March 2019, the FIVB Tribunal Panel informed the Parties that the dispute should be decided *ex aequo et bono* (Article 20.9 of the FIVB Sports Regulations). Furthermore, SADA was requested to provide *"free English translation"* of the exhibits 14 to 20 to its complaint by 25 March 2019. SADA provided such translations on 25 March 2019.

39. By emails dated 16 April and 29 May 2019, the FIVB Tribunal Secretariat informed the Parties that the submissions received were still under review by the FIVB Tribunal Panel, and next steps in the proceedings would be communicated in due course.

40. On 21 October 2019, and in accordance with Articles 20.7.1 and 20.11.2 of the FIVB Sports Regulations, the Parties were invited to file final submissions and provide a detailed account of their own costs as well as supporting documentation by no later than 31 October 2019.

41. On 31 October 2019, all the Parties filed their final submissions ("**SADA's Final Submission**", "**Player's Submission**", and "**LUBE's Final Submission**").

42. By email dated 8 November 2019, the FIVB Tribunal Secretariat acknowledged receipt of the Parties' accounts of costs, which were forwarded to the FIVB Tribunal Panel for its review.

43. For various reasons not related to the Parties but caused by unexpected temporarily unavailability of some of the FIVB Tribunal Panel members and finally due to the COVID-19

pandemic, the deliberations of the FIVB Tribunal Panel and the drafting of the present decision were delayed until its publication.

4. The Parties' Submissions

44. 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

45. In its complaint, the Claimant requests:

> *"a) an order and award that Respondent 1 shall pay to Claimant the amount of BRL1.600.000,00 provided in Clause 12 of the Agreement plus 5% interest since 18.07.2018;*
>
> *b) an order and award that Respondent 2 shall be jointly and severally (or subsidiarily) liable to pay to Claimant the amount of BRL1.600.000,00 plus 5% interest since 18.07.2018 upon application of art. 41 in combination with art. 50 of SCO;*
>
> *c) an order and award that Respondents 1 and 2 shall pay the legal and other costs of this Financial Dispute; and*
>
> *d) an order and award that Respondents 1 and 2 shall compensate Claimant for attorney's fees and other expenses incurred in connection with this Financial Dispute."*[24]

4.1.2 The Claimant's Position

[24] SADA's Complaint, ¶ 32.

46. In support of its request for relief, SADA contends, *inter alia*, as follows:

47. As the Parties did not agree on the application of any specific national law, Swiss law shall be applied because the seat of FIVB is in Lausanne, Switzerland.[25] Notwithstanding the primary application of the FIVB Sports Regulations, the *lex loci arbitri* attracts the application of the *ex aequo et bono* rule in accordance to the core principles of the substantive law of the place where the arbitration proceedings are to take place. Therefore, in the absence of specific rules from FIVB regulations, Swiss law shall apply.[26]

48. Under Swiss law, the main relevant criterion is whether the breach of obligation is such that it causes the breach of confidence, which one party has in future performance. In the case at hand, the Player decided at the end of the 2017/2018 season to move with his family and to play in Italy.[27]

49. Due to personal family interests (i.e. the pregnancy of his wife and birth of a child) and attracted by an offer from LUBE, the Player was induced to abandon SADA, notwithstanding the fact that he had a valid SADA Agreement. The Player fabricated every possible excuse to breach the SADA Agreement, hoping that SADA would finally agree on his release without any compensation for breach of contract. SADA did not agree on his release, and the Player ended up prematurely terminating the SADA Agreement without just cause.[28]

50. No notice from the Player in order to cure eventual overdue payments was granted to SADA because the SADA Agreement was terminated on the same day LUBE officially presented the Player.[29]

51. According to Clause 12 of the SADA Agreement, SADA is entitled to receive from the Player compensation in the amount of BRL 1,600,000.00 as indemnification for the breach of the SADA Agreement.[30]

---

[25] SADA's Complaint, ¶ 4.

[26] SADA's Comments to Player, ¶¶ 3-5. SADA's Comments to LUBE, ¶¶ 3-5. SADA's Final Submission, ¶¶ 3-7.

[27] SADA's Complaint, ¶¶ 23-24. SADA's Comments to Player, ¶¶ 22-23.

[28] SADA's Complaint, ¶¶ 7-8, 26.

[29] SADA's Comments to Player, ¶ 28. SADA's Final Submission, ¶ 16.

[30] SADA's Complaint, ¶ 9.

52. SADA paid all of the financial obligations that were agreed with the Player. Therefore, the assertion that the Player only received BRL 102,144.00 is completely untrue and unfounded. During seasons 2016/2017 and 2017/2018, the Player never made a contractual complaint.[31]

53. All payments by SADA to the Player were made in relation to an overall obligation under the SADA Agreement. The practice of splitting the payments into different remuneration sets is quite common in volleyball as well as in the sports industry. It is also in line with Brazilian laws. The Player fully agreed that payment of BRL 1,600,000.00 per season would be split into cash payments, the acquisition of a premium car for the Player (different to the car for personal use under Clause 6 of the SADA Agreement), the payment of image rights and the salary under the Work Contract.[32]

54. SADA fulfilled all of its obligations related to its employee, including tax-related matters. Evidence from the Brazilian Revenue Ministry (Debt Clearance Certificate) certifies that there are no pending or overdue taxes with the Brazilian tax authorities. Even if there were any taxes overdue, such obligation would fall on SADA and not on the Player, so those payments should be collected by the Brazilian authorities and not by the Player.[33]

55. No taxes or administrative proceedings against the Player were pending in Brazil, so there was no risk of returning to Brazil on 4 July 2018 at the beginning of the 2018/2019 season. The Player knew that he had to return on that date. It is common practice in the world of volleyball that the clubs provide reimbursement of air tickets. If the Player was willing to keep performing his contractual obligations towards SADA, he would have arrived on 4 July 2018 and would have asked for the reimbursement to which he was entitled. That never happened for one single reason: the Player was ready to move to Italy and join LUBE.[34]

56. LUBE is jointly or subsidiarily liable to pay the compensation under Clause 12 of the SADA Agreement because it induced the Player to breach the said agreement. The fact that LUBE is

[31] SADA's Comments to Player, ¶¶ 8-10.

[32] SADA's Comments to Player, ¶¶ 12-13.

[33] SADA's Comments to Player, ¶¶ 18-21.

[34] SADA's Comments to Player, ¶¶ 29-32.

not a party to the SADA Agreement does not exclude LUBE from joint liability.[35]

57. SADA is not responsible for press articles or social media. There is no evidence of (i) the existence of a false and defamatory statement against LUBE, (ii) the publication of false or privileged information to third parties, (iii) the alleged violation of LUBE's good name and privacy, (iv) the alleged damages, and (v) a link between the claimed amount and the supposed claimed damages.[36]

58. LUBE accepted the risk of engaging a Player under a valid contract in order to circumvent the applicable transfer rules and transfer fees provisions. LUBE was interested in unjust enrichment, by not negotiating with SADA the terms for the transfer of the Player. LUBE expressly recognized that SADA had a valid contract with the Player until the end of the 2018/2019 season, but it did not act accordingly because it never contacted SADA to obtain a clear view of the facts instead of merely relying on the Player's story.[37]

59. The Player and LUBE violated the core principles of mutual understanding and the spirit of friendship, solidarity and fair play. This behaviour requires SADA to protect its interests and rights.[38]

4.2 Respondent No. 1's Request for Relief and Position

4.2.1 Respondent No. 1's Request for Relief

60. Respondent No. 1 concluded in his Answer as follows:

> *"**3.1** For the above reasons, Robertlandy Simon Aties has demonstrated that the claims of the Club are totally unjustified because:*
>
> *1) the Club breached the Contract, Article 2;*
>
> *2) the Contract was terminated because of the exclusive fault of the Club;*
>
> *3) in any case, the Contract was resolved because of a supervening reason of impossibility to continue it, which is due to the Player's risk of being*

[35] SADA's Complaint, ¶¶ 9, 28-30.

[36] SADA's Comments to LUBE, ¶¶ 16, 19-20.

[37] SADA's Comments to LUBE, ¶¶ 17-18.

[38] SADA's Complaint, ¶ 30.

subjected to legal action by the Brazilian tax authority and the need to find a new club out of Brazil for following season.

The Respondent 1, therefore, requests that the FIVB rejects the claims of Associacao Social e Esportiva SADA and declares that the Contract was terminated or, in any case, resolved by the Player for the above reasons and that no amount is due by Mr. Simon to the Club.

***3.2** Moreover, the Respondent 1 asks a counterclaim because of the breach of the contract committed by the Club and respectfully seeks the following relief:*

4) *an order and award that Claimant shall pay to Respondent 1 the amount of BLR* [sic] *3.097.856,00, the balance of the financial compensation of the Contract;*

5) *an order and award that Claimant shall pay to Respondent 1 the amount of BLR* [sic] *1.600.000,00 provided in Article 12;*

6) *an order and award that Claimant shall pay to Respondent 1 all the taxes due over the amount of BLR* [sic] *3.200.000,00, the financial compensation of two seasons, 2016/2017 and 2017/2018;*

7) *an order and award that Claimant shall pay legal cost, incurred in connection with this Financial Dispute that will be produced before the final of this dispute."*[39]

61. In his further submission dated 2 October 2018, Respondent No. 1 amended his counterclaim as follows:

"4)an order and award that Claimant shall pay to Respondent 1 the amount of BLR [sic] *2.492.416,42, the balance of the financial compensation of the Contract;*

5) *an order and award that Claimant shall pay to Respondent 1 the amount of BLR* [sic] *1.600.000,00 provided in Article 12;*

6) *an order and award that Claimant shall pay to Respondent 1 all the taxes due over the amount of BLR* [sic] *3.200.000,00, the financial compensation of two seasons, 2016/2017 and 2017/2018, equal to BLR* [sic] *1.180.793,04;*

7) *an order and award that Claimant shall pay legal cost, incurred in connection with this Financial Dispute that will be produced before the final of this dispute."*[40]

62. In his further submission dated 31 October 2019, Respondent No. 1 amended point 7) of his

[39] Player's Counterclaim, pp. 11-12.

[40] Player's Comments, pp. 15-16.

counterclaim as follows:

> *7) an order and award that Claimant shall pay legal cost, incurred in connection with this Financial Dispute, as the electronic invoice n.19 dated 29/3/2019, issued by the payment received of Euro 12,480,00 (Exhibit 10).”*[41]

4.2.2 Respondent No. 1’s Position

63. In support of its request for relief, the Respondent No. 1 contends, inter alia, as follows:

64. Article 18.1(e) of the FIVB Sports Regulations provides that the *“decision will be taken on a balance of probabilities and by applying general principles of justice and fairness without reference to any particular national or international law (ex aequo et bono).*" Thus, the Swiss Code of Obligations does not apply.[42]

65. Clause 2 of the SADA Agreement provides that the financial compensation (salary) was BRL 1,600,000.00 net (free of taxes) per season. At the end of the second season, i.e. the 2017/2018 season, SADA had paid to the Player only BRL 707,583.58 (BRL 603,144.00 in cash payments and BRL 104,439.58 in payments under the Work Contract, called “CLT Payments”) instead of BRL 3,200,000.00, and there was no certainty that SADA had paid taxes. Thus, the Player began to think about leaving SADA because he needed financial guarantees for the future due to his wife’s pregnancy; he feared potential problems with the Brazilian tax authorities and, finally, he feared that SADA no longer believed in him.[43]

66. SADA breached the SADA Agreement because it neither paid financial compensation nor taxes. Therefore, the Player is entitled to a compensation in the amount of BRL 1,600,000.00 according to Clause 12 of the SADA Agreement.[44]

67. SADA’s Exhibit 14 was not related to the SADA Agreement because all the payments were not made to the Player but instead to the Brazilian image rights companies, specifically, the first

---

[41] Player’s Final Submission, p. 3.

[42] Player’s Counterclaim, pp. 3-4. Player’s Comments, p. 2.

[43] Player’s Counterclaim, pp. 4-5. Player’s Comments, p. 8.

[44] Player’s Counterclaim, p. 10. Player’s Comments, p. 15.

five payments to Maciel Molina Assessoria Esportiva Ltda ("**MMEA**") and the other eleven payments to Company S 13. However, any payments under the SADA Agreement had to be made to the Player directly. There is no evidence of money transfers from MMEA or Company S 13 to the Player. Moreover, the contracting parties and the object of the Image Rights Agreement are different, and that contract was concluded only on 1 August 2017. The right to exploit the image of a professional player is a civil law matter and, therefore, is not to be confused with the employment contract. Thus, the total net amount mentioned in SADA's Exhibit 14, namely BRL 1,138,782.55, cannot be taken into account for payment obligations under the SADA Agreement.[45]

68. Any "CLT Payments" mentioned in SADA's Exhibit 15 in the total amount of BRL 104,439.58 relate to the SADA Agreement.[46]

69. The cash payments mentioned in SADA's Exhibit 16 in the total amount of BRL 603,144.00 relate to the SADA Agreement.[47]

70. Any payments mentioned in SADA's Exhibit 17 are irrelevant to the present dispute because they were made by a company different from SADA, namely by "Brazul Transportes e Veiculos LTDA", for the purpose "Sports Consultancy" which has no relation to the SADA Agreement. Thus, the amount of BRL 635,400.00 cannot be taken into account for payment obligations under the SADA Agreement.[48]

71. The "Premium Car" Range Rover was not registered under the Player's name and was given to him under Clause 6 of the SADA Agreement. Thus, the amount mentioned in SADA's Exhibit 18, namely BRL 422,449.36, cannot be taken into account for payment obligations under the SADA Agreement.[49]

72. Any cash payments mentioned in SADA's Exhibit 19 refer to bonuses for results achieved in

[45] Player's Comments, pp. 2-4.

[46] Player's Comments, p. 5.

[47] Player's Comments, p. 7.

[48] Player's Comments, p. 7.

[49] Player's Comments, pp. 5-6. Player's Final Submission, p. 2.

several tournaments and fall under Clause 9 of the SADA Agreement. Thus, the amount of BRL 88,000.00 cannot be taken into account for payment obligations under the SADA Agreement.[50]

73. The payments mentioned in SADA's Exhibit 20 refer to agent fees as stipulated in Clause 3 of the SADA Agreement. All of these payments were made to MMAE and not to the Player. Thus, the amount of BRL 267,857.14 cannot be taken into account for payment obligations under the SADA Agreement.[51]

74. SADA failed to pay full taxes for the salary as provided in Clause 2 of the SADA Agreement. According to the Player's submissions dated 2 October 2018, SADA paid taxes of BRL 12,135.36 (24 months x BRL 505.64) under the Work Contract, but the taxes for the entire salary agreed under the SADA Agreement are BRL 1,192,928.40 (24 months x BRL 49,705.35).[52]

75. SADA has deliberately put the Player at risk of having issues with the Brazilian tax authorities. The Player could not return to Brazil for the 2018/2019 pre-season without having the risk of legal action by the Brazilian tax authority hanging over him because, instead of registering the SADA Agreement, SADA registered the Work Contract with the Brazilian authorities for the obvious purpose of paying lower taxes. As it is a "universal tributary principle" that the taxes must be paid by the one who earns a sum of money, the obligation to pay taxes would not fall on SADA but the Player. SADA's Exhibits 23 to 26 are irrelevant because the certificates contained therein only state that there are no tax proceedings concerning the information declared by SADA. However, this does not mean that the Brazilian tax authorities cannot open tax proceedings against SADA or the Player for unpaid taxes over his salary in the future. Therefore, the Player had to find another club out of Brazil.[53]

76. The Player was entitled to prematurely terminate the SADA Agreement because of SADA's breach of contract. On 7 July 2018, the Player's agent, Dr Bartocci, sent a notice of termination to SADA by email. On 14 July 2018, the Player's counsel, Mr Reali, reiterated the termination notice and requested that SADA pay the outstanding amounts within three days. Both Dr

[50] Player's Comments, p. 6.

[51] Player's Comments, pp. 6-7.

[52] Player's Comments, pp. 9-10

[53] Player's Counterclaim, p. 8. Player's Comments, pp. 10-11.

Bartocci and Mr Reali were duly empowered to act on behalf of the Player.[54]

77. The Player's agent, Dr Bartocci, asked LUBE to "*anticipate the agreement reached for the season 2019/2020 by one year*" only on 18 July 2018, i.e. after the three-day time limit set by Mr Reali in his email dated 14 July 2018 had expired. Upon its review of the documentation, LUBE decided to continue with the employment of the Player and presented him on 18 July 2018 as a new player for the 2018/2019 season. The LUBE Contract was signed later on 5 August 2018.[55]

78. SADA did not send a formal summons to the Player requesting that he be present for the 2018/2019 season. Moreover, SADA failed to book and pay for the Player's flight to Brazil, as established in Clause 8 of the SADA Agreement. SADA was well aware that it had been in default by the Player because of the outstanding payments.[56]

79. The WhatsApp communication between the Player and SADA's manager, Mr Pereira, on 29 May 2018 merely confirms the information conveyed the media interview given by the Player on 4 July 2018 and his statement that he did not want to stay with SADA because of contractual problems.[57]

80. In all of their communication, the Player and his representatives always demonstrated their willingness to find an amicable solution. Thus, any accusation for "*lack of fair play*" is unjustified and unfounded. To the contrary, it was SADA that "*lacked loyalty, fair play and financial fair play*".[58]

4.3 Respondent No. 2's Request for Relief and Position

4.3.1 Respondent No. 2's Request for Relief

[54] Player's Comments, pp. 11-12.

[55] Player's Comments, pp. 12-13.

[56] Player's Counterclaim, pp. 6-7, 9-10.

[57] Player's Comments, pp. 11-12.

[58] Player's Counterclaim, p. 8.

81. In its Answer, Respondent No. 2 requests as follows:

> *"All this premised the A.S. Volley LUBE S.r.l. asks*
>
> *a) the rejection of the request of the Associacao Social and Esportiva SADA;*
>
> *b) the conviction of the Associação Social and Esportiva SADA to pay compensation for damages, for violation of the good name, privacy and for damages of LUBE. in the sum of € 100,000.00 or in the minor withholding of justice;*
>
> *c) a letter of apology from the club SADA published in the press and in its social media that can reassure the minds of their fans and our sponsors.*
>
> *d) The payment of legal fees (and every expenses) incurred by LUBE for this defence (which will be quantified of the end of the procedure by filing pro forma invoice on the basis of the rates established by Italian Law - D.M. 55 of 2014).*
>
> *e) recovery in case of loss of sponsor due to accusations of non-collection that will be counted later on."*[59]

4.3.2 Respondent No. 2's Position

82. In support of its Request for Relief, the Respondent No. 2 contends, *inter alia*, as follows:

83. Article 18.1(e) of the FIVB Sports Regulations provides that the *"decision will be taken on a balance of probabilities and by applying general principles of justice and fairness without reference to any particular national or international law (ex aequo et bono).*" Thus, SADA's request for a decision based on the Swiss Code of Obligations has to be rejected. As SADA requires LUBE, an Italian entity, to join the present proceedings, Italian rules and principles should be applied subsidiarily.[60]

84. LUBE is neither a party to the SADA Agreement nor any other contract agreed between the Player and SADA. The SADA Agreement was unknown and not signed by LUBE. Thus, LUBE cannot respond on the basis of contractual provisions to which it is not a party. LUBE bears no responsibility for the termination of the SADA Agreement and did not commit any illegal

[59] LUBE's Counterclaim, p. 6.

[60] LUBE's Counterclaim, pp. 1-2. LUBE's Comments, pp. 1-2.

activity.[61]

85. The only actions committed by LUBE were the reply to a defamatory letter from SADA dated end of June 2018 and LUBE's contact with the Player's representatives regarding an agreement for the 2019/2020 season. Upon careful consideration of the information available to LUBE (particularly, SADA's breach of the SADA Agreement), it agreed to employ the Player for the 2018/2019 season because, otherwise, LUBE would have lost the Player, whom any other club in Italy or elsewhere would have wanted to sign. However, LUBE did not incite the Player to leave SADA.[62]

86. The SADA Agreement was terminated due to SADA's non-compliance with it. Accordingly, as SADA did not pay the Player, it cannot claim that it still has the right to receive his services. From May 2018, SADA knew that the Player did not want to play for SADA anymore.[63]

87. In its calculation of payments made, SADA incorrectly included bonuses in the total amount of BRL 88,000.00, costs for a car attributable to SADA in the total amount of BRL 422,449.36 and agent fees of BRL 267,857.14 paid to an agency, not the Player. Furthermore, the sum of BRL 1,138,782.55 paid concerning the Image Rights Agreement is not related to the SADA Agreement.[64]

88. LUBE is entitled to protect its good name against any accusations brought forward by SADA. SADA's actions provoked many insults and threats in social media by Brazilian fans against LUBE and the Player. Moreover, SADA's press release and threatening statements in social media created problems for LUBE with sponsors who did not want to be linked with such a situation. For the above reasons, SADA has to pay to LUBE compensation for "serious, clear and obvious damages" in the amount of EUR 100,000.00 or a lower amount to be considered fair.[65]

---

[61] LUBE's Counterclaim, pp. 3-4.

[62] LUBE's Counterclaim, p. 3.

[63] LUBE's Counterclaim, p. 4. LUBE's Comments, p. 4.

[64] LUBE's Comments, p. 3.

[65] LUBE's Counterclaim, pp. 4-6. LUBE's Comments, pp. 4-5.

5. Jurisdiction

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

90. 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."*

91. 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"*

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

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

94. The present dispute involves claims submitted by a Brazilian volleyball club against a Cuban player and an Italian volleyball club concerning unpaid compensation for alleged breach of contract and tortious interference. The FIVB Tribunal Panel finds that this dispute, including the two counterclaims, qualifies as a financial dispute of an international dimension between a player and two clubs under Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations. The dispute also complies with Article 19.2.2.2 of the FIVB Sports Regulations because, as explained above, it was referred by the FIVB to the FIVB Tribunal on 3 December 2018, in accordance with Article 18.1(f) of the FIVB Sports Regulations.

95. It is undisputed between the Parties that the FIVB Tribunal has jurisdiction.

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

6. Applicable Law

97. In its Complaint, the Claimant submitted that, in the absence of a specific choice of law by the Parties, the dispute should be resolved under Swiss law because the seat of FIVB is in Lausanne, Switzerland. To the contrary, both Respondents objected to the application of Swiss law to this dispute but instead argued that the FIVB Sports Regulations stipulate *ex aequo et bono* to be the applicable law in case of no specific choice of law by the Parties.

98. On 11 March 2019, the FIVB Tribunal Panel informed the Parties of its decision on the applicable law in the present case, namely to apply *ex aequo et bono*.

99. Under the heading "Law Applicable to the Merits", Article 20.9 of the FIVB Sports Regulations reads as follows:

> *"Unless otherwise agreed by the parties, the Tribunal shall apply general considerations of justice and fairness without reference to any particular national or international law (ex aequo et bono)."*

100. The Parties did not agree on any specific law to be applied to this dispute. Therefore, Article 20.9 of the FIVB Sports Regulations unambiguously requires a decision *ex aequo et bono*. Thus, the FIVB Tribunal Panel will decide the dispute *ex aequo et bono*.

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

102. Therefore, the FIVB Tribunal Panel is competent and authorized to apply general considerations of justice and fairness without reference to any particular national or international law.

7. Findings

103. The Claimant requests compensation pursuant to Clause 12 of the SADA Agreement (BRL 1,600,000.00) and reimbursement of legal fees and expenses from both Respondents jointly and severally. Both Respondents request to dismiss the Claimant's claims and have filed counterclaims. The Player claims the Claimant for alleged outstanding salary (BRL 2,492,416.42), for compensation according to Clause 12 of the SADA Agreement (BRL 1,600,000.00), for payment regarding taxes (BRL 1,180,793.04), and reimbursement of legal fees and expenses. LUBE claims compensation for damages (EUR 100,000.00), for a letter of apology, and reimbursement of legal fees and expenses from the Claimant.

104. The FIVB Tribunal Panel will examine the claims mentioned above in turn (see sections 7.1, 7.2 and 7.3 below). The claims concerning legal fees and expenses will be examined together in the section "Costs" (see section 7.4 below).

7.1 The Claimant's claims

7.1.1 Claim against Respondent No. 1 for compensation according to Clause 12 of the SADA Agreement (BRL 1,600,000.00) plus interest

105. Clause 12 of the SADA Agreement reads in its English translation as follows:

> "[…] *This agreement creates a compromise between the parties (Athlete and Club), having the offended party the right to request compensation in the amount of BRL 1,600,000.00 (Hum* [sic] *Million and Six Hundred Thousand Reais), in case of failure to comply with the agreement due to the exclusive fault of the other party.*"[66]

106. SADA contends that the Player breached the SADA Agreement and, therefore, is entitled to

[66] SADA's Exhibit 1.

request compensation under Clause 12 thereof.

107. SADA claims that the Player, due to his personal family interests and induced by an offer from LUBE, fabricated every excuse possible to abandon SADA with the hope that SADA would finally agree on his release without any compensation for breach of contract.[67] Furthermore, SADA argues that the Player did not return on 4 July 2018 for the pre-season training and, as SADA did not agree on his release, he prematurely terminated the SADA Agreement without just cause on 18 July 2018, when LUBE announced the Player's engagement.[68]

108. The Player contends that he was entitled to prematurely terminate the SADA Agreement because of SADA's breach of contract, i.e. SADA´s failure to pay full financial compensation and taxes.[69] SADA claims that the Player never made any complaints regarding SADA's conduct during two entire seasons (2016/2017 and 2017/2018) and never sent a notice allowing SADA to cure alleged overdue payments.[70]

109. The FIVB Tribunal Panel considers that the WhatsApp conversation of 29 May to 1 June 2018 between the Player and the manager of SADA, Mr Pereira, shows that the Player wanted to leave SADA:

> *"[29/05/2018 15:51:08] Volei Simon: I told you that I want to leave and to reach an agreement with me, because I want to leave and it's my decision so I hope you can give me an answer, please*
>
> *[29/05/2018 15:52:01] Flavio Pereira: I'll respond as soon as possible.*
>
> *[29/05/2018 15:53:57] Volei Simon: Waiting for an answer*
>
> *[30/05/2018 16:56:32] Volei Simon: Still nothing ?????*
>
> *[01/06/2018 08:15:03] Flavio Pereira: Good morning Simon. Vittorio asked to tell you that he would like to help you, but unfortunately there is no way to release you by agreement because this would undermine all the planning of the team in the season. With you we will continue strong. He said that he considers you a Sada athlete and here you will stay. Next season you make the decision you want. If you do not want to stay in the club, the penalty provided for in our general agreement is 1.6 million reais. We are waiting for you here in July to start our season. A hug. Flavio*

[67] SADA's Complaint, ¶¶ 7-8.

[68] SADA's Complaint, ¶¶ 16, 26. SADA's Comments to Player, ¶¶ 25-32.

[69] Player's Comments, pp. 11-12.

[70] SADA's Comments to Player, ¶¶ 10, 28. SADA's Final Submission, ¶ 16.

[01/06/2018 09:16:54] Volei Simon: You already know that I do not want to stay

[01/06/2018 09:17:00] Volei Simon: So do not expect me in July that I will not arrive

[01/06/2018 09:58:50] Volei Simon: Remember that you're going to regret having me there against my will

[01/06/2018 09:59:14] Volei Simon: I hope it's clear to you that when a player does not want to be in a team it is better to get him out

[01/06/2018 09:59:22] Volei Simon: Because then they pay the consequences

[01/06/2018 09:59:35] Volei Simon: But I do not say anything else

[01/06/2018 09:59:40] Volei Simon: I do not wanna stay

[01/06/2018 09:59:44] Volei Simon: And I'll do everything to get out

[01/06/2018 10:38:48] Flavio Pereira: Okay. Contracts are made to be respected. We do our part, I hope that you will fulfill yours

[01/06/2018 10:46:36] Flavio Pereira: And it's a shame you treat the club this way. A club that always treated you with such care and respect."[71]

110. The WhatsApp conversation shows that, on 1 June 2018, the Player had already made the decision not to return to Brazil for the pre-season training. It is undisputed between the Parties that the Player actually did not return to Brazil for the pre-season training.

111. The Player claims that his absence for the pre-season training was justified because (i) SADA did not send him a formal summons,[72] (ii) SADA failed to book and pay for the Player's flight,[73] (iii) the Player could not return to Brazil without the risk of legal action taken against him by the Brazilian tax authority,[74] and (iv) SADA knew that it had been in default.[75]

112. The Player's arguments do not persuade the FIVB Tribunal Panel for the following reasons:

    (i) Regardless of whether SADA sent a formal summons to the Player, the WhatsApp conversation shows that the Player was aware of his duty to appear at the pre-season

[71] SADA's Exhibit 27.

[72] Player's Counterclaim, p. 6.

[73] Player's Counterclaim, p. 6.

[74] Player's Counterclaim, p. 8. Player's Comments, pp. 10-11.

[75] Player's Counterclaim, p. 6.

training in July 2018. On 1 June 2018, SADA's manager told the Player: "*We are waiting for you here in July to start our season"*; and the Player responded: *"You already know that I do not want to stay. So do not expect me in July that I will not arrive"*.[76]

(ii) The Player claims that SADA failed to book and pay for the Player's flight.[77] SADA contends that the reimbursement of air tickets is common practice, so if the Player was willing to keep performing his contractual obligations towards SADA, he could have arrived on 4 July 2018 and could have asked for the reimbursement.[78] Clause 8 of the SADA Agreement sets forth: *"The club shall pay 3 round trips per season (CUBA-BRA-CUBA), being 2 (CUBA-BRA-CUBA) and 1 (ITALY-BRA-ITALY)."*[79] Clause 8 of the SADA Agreement expressly states that SADA must pay three round trips, but it does not clarify whether SADA has to buy the tickets for the Player, or the Player has to buy the tickets and then request a reimbursement from SADA. Therefore, the FIVB Tribunal Panel is not convinced that SADA had a duty to buy the tickets for the Player. Furthermore, if the Player wanted SADA to buy the tickets for him, he should have at least made a request to SADA, and there is no evidence of such a request on file. There is also no evidence on file that the Player's decision not to return to Brazil was based on the non-payment of the tickets.

(iii) The Player's argument regarding the risk of legal action being taken against him by the Brazilian tax authority is also not compelling. The Player has limited himself to claiming the existence of an alleged risk but has not proven the existence of a real risk that could have prevented him from returning to Brazil. The FIVB Tribunal Panel has not found any explanation as to why the Player could not have returned to Brazil and paid his taxes or, alternatively, in the event of a legal action, defend himself as he is doing in this proceeding.

(iv) Although the FIVB Tribunal Panel considers that SADA was in default for the reasons explained in section 7.2 below, there is no evidence that the Player had sent a warning

[76] SADA's Exhibit 27.

[77] Player's Counterclaim, p. 6.

[78] SADA's Comments, ¶¶ 30-32.

[79] SADA's Exhibit 1.

to SADA before 7 July 2018 (i.e., after not returning to Brazil). Therefore, it is uncertain whether SADA was aware of its default. In any case, the FIVB Tribunal Panel considers that the mere fact of knowing that a party is in default does not justify a breach by the Player. The WhatsApp conversation shows that the Player had decided to leave SADA but is silent as to the reasons underlying his decision. If the reason underlying the Player's decision was SADA's default, the Player should have communicated that reason in his response. The Player should have drawn SADA's attention to the fact that its conduct was in violation of the SADA Agreement and that a failure to remedy the breach would result in his absence from the pre-season training and, eventually, the termination of the agreement. Had the Player been interested in continuing with the agreement, he should have sent a warning to SADA. Thus, the Player cannot remain silent for two years, without making a single complaint, and then slam the door by terminating without warning. According to jurisprudence of the FIVB Tribunal (e.g., FIVB Tribunal 2017-03, decision of 17 May 2018), the termination of an agreement is *ultima ratio.* This means that terminating an employment contract must represent the last possible means of resolving a dispute concerning an employment relationship. This principle has been derived from the proportionality principle, is part of the analysis under *ex aequo et bono* principles, and need to be considered by the FIVB Tribunal Panel in the present case. The fact that the Player did not give a warning to SADA suggests that the Player's decision was based on different considerations, and that, after making that decision, he used SADA's default as a pretext to justify his conduct. This finding is supported by two consecutive WhatsApp messages sent by the Player on 1 June 2018: "*I do not wanna stay*" [01/06/2018 09:59:40] "*And I'll do everything to get out*" [01/06/2018 09:59:44]. This shows that the Player was looking for a reason to get out of his contractual relationship with SADA after becoming aware that SADA would not agree to release him in 2018.

113. The evidence shows that the Player's first warning occurred on 7 July 2018, three days after the Player had breached his obligation to return to SADA for pre-season training. On that date, the Player's agent stated:

> *"Since the contract has not been paid the same is considered already terminated by right for your total non-fulfilment. However, if you would like to use the services of Mr. Robertlandy also for the 2018/2019 season*

> *you have to pay all sums due to my client until now for a total of 3.140.000,00 reales* […] *and provide proof of payment of taxes to the Brazilian tax authorities over the total amount of the contract no later than over 5 days from today."*[80]

114. On 12 July 2018, SADA sent a letter to the Player, in which it denied the existence of outstanding payments and recommended to the Player that he present himself for regular training because a persistent failure to do so would be understood as a breach of contract. It also mentioned that it had learnt about the Player's preference to play in Italy through the press and stressed that Player did not have legal grounds to terminate the SADA Agreement prematurely.[81]

115. On 14 July 2018, the Player's counsel sent an email to SADA, stating as follows:

> *"*[…] *you have not replied to the attached letter dated 7/7/2018 of the player Simon Robertlandy Aties' agent, sent by e-mail, that now I reiterate in all its contents.*
>
> *Hoping to solve this affair friendly, I give you another three days from today* […]
>
> *Expired the term of three days from today without having satisfied all the aforementioned requests, the contract between Mr. Simon Robertlandy Aties and SADA Cruzeiro will be immediately resolved and Mr. Simon Robertlandy will be free to play with any other club* […]*"*[82]

116. On 16 July 2018, SADA replied to the Player agent/counsel´s notices dated 7 and 14 July 2018 in the following terms:

> *"*[…] *Unfortunately, without a proper Power of Attorney duly granted by Mr. Robertlandy Simon Aties ('Mr. Simon') to yourself and/or your firm, and/or a letter personally signed by Mr. Simon registering the contents of your message, we regret to inform you that all your communications does not have legal effect towards SADA and/or for the representation of Mr. Simon."*
>
> *However, upon submission of the aforementioned Power of Attorney we'll be pleased to discuss and answer your concerns pointed out in your*

[80] Player's Exhibit 2.

[81] SADA's Exhibit 7.

[82] Player's Exhibit 3.

previous communications."[83]

117. On 18 July 2018 (i.e., the day after the three days deadline set in the email dated 14 July 2018 had expired), LUBE officially presented the Player as a new team member for the 2018/2019 season.[84] On the same date, the Player's agent sent a copy of the power of attorney granted by the Player to his counsel dated 6 May 2018 to SADA.[85]

118. SADA contends that the Player had no right to terminate the SADA Agreement unilaterally. It also claims that the Player did not send a warning to SADA, allowing it to cure alleged overdue payments because the Player terminated the SADA Agreement on the same day on which LUBE officially presented the Player.[86]

119. The FIVB Tribunal Panel considers that the SADA Agreement was unilaterally terminated with effect as of 18 July 2018. Although the Player's agent stated on 7 July 2018 that the SADA Agreement was considered already terminated, his letter also suggests that the termination was conditioned to the non-fulfilment of the agent's request for payment of BRL 3,140,000.00 within the deadline set therein. This interpretation is supported by the Player counsel´s email dated 14 July 2018, in which he assumes that the agreement was still in force, as he states that the agreement will be immediately "resolved" if SADA does not comply with his request within the three days deadline set therein ("*Expired the term of three days from today without having satisfied all the aforementioned requests, the contract between Mr. Simon Robertlandy Aties and SADA Cruzeiro will be immediately resolved and Mr. Simon Robertlandy will be free to play with any other club.").*

120. Accordingly, SADA had until 17 July 2018 to fulfil its obligations. Therefore, the SADA Agreement is deemed to be terminated with effect as of 18 July 2018, the same date on which LUBE officially presented the Player.

121. The FIVB Tribunal Panel takes into consideration that the Player had the right to terminate the

[83] SADA's Exhibit 8.

[84] SADA's Exhibit 9.

[85] SADA's Exhibit 10.

[86] SADA's Comments to Player, ¶ 28. SADA's Final Submission, ¶ 16.

SADA Agreement because of the severe breaches mentioned in section 7.2 below. While the SADA Agreement does not specifically regulate this matter, the FIVB Tribunal Panel holds that the severe breach of an essential obligation, such as the payment of the salary, authorizes a player to terminate a contract prematurely.

122. However, the FIVB Tribunal Panel is persuaded by the argument that the Player did not give proper warning to SADA because the cure periods granted by the Player's agent and counsel on 7 and 14 July 2018 were not reasonable and suggest that the Player did not intend for SADA to remedy the breaches.

123. The Player's agent gave the first warning on 7 July 2018. Despite SADA's request on 16 July 2018, neither the Player nor his agent submitted a power of attorney. Therefore, it is uncertain whether the agent was authorized to terminate the agreement on the Player's behalf.

124. The Player's counsel gave the second warning on 14 July 2018, and SADA received the counsel's power of attorney on 18 July 2018 (i.e., the same date on which the SADA Agreement was terminated). The FIVB Tribunal Panel does not question the authority of the Player's counsel to act on behalf of his client because the power of attorney was granted before the notice, and it is undisputed by the Parties that the power of attorney was sufficient. However, the FIVB Tribunal Panel considers that the Player should have sent the power of attorney to SADA before the termination of the agreement because SADA could have legitimately doubted whether the counsel was acting on the Player's behalf.

125. The cure periods granted by the Player's agent and counsel (five and three days) were short for curing the breach. Besides, both notices were sent on a Saturday and indicated that the terms started to run *"from today"*, so, in practice, the cure periods granted were even shorter because they included non-business days. Although there is no rule establishing a minimum cure period, and thus the reasonableness of the term must be assessed on a case-by-case basis, other sports federations provide some guidance for more extended cure periods for cases like this one. For example, Article 12bis (3) of FIFA regulations, which while not applicable to the case at hand but used merely as a reference, sets forth: *"In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s)."*

126. The Player's decision to unilaterally terminate the SADA Agreement had serious and important consequences on the employment relationship, and the notice of termination should have been treated with the same seriousness and importance by the Player. The uncertainties caused by the absence of the power of attorney, as well as the fact that the warnings were sent on a Saturday with a short deadline that started to run from that day, show that the Player did not give SADA a realistic chance to remedy the breach.

127. Consequently, the FIVB Tribunal Panel concludes that the Player failed to comply with the SADA Agreement because he did not return to Brazil for the pre-season training and prematurely terminated the SADA Agreement without adequately warning SADA. The failure to comply with the SADA Agreement was due to his exclusive fault, as it was the Player's decision not to return and not to give proper notice.

128. The FIVB Tribunal Panel has discussed whether it is bound to award the full amount of BRL 1,600,000.00 or entitled under *ex aequo et bono* to determine a lower amount in view of the specific degree of fault and the significance of the specific breach of contract. Although *ex aequo et bono* permits for fair and equitable findings, which includes taking into consideration the specific circumstances of a case, the principle of *pacta sunt servanda* is also a foundational principle when examining a case under *ex aequo et bono* principles. Therefore, it is fundamental that a decision-maker also considers the fact that the parties reached a mutual agreement on the provisions stipulated in the respective contract, which were foreseen to manage the relationship between them. In the present case, the parties of the SADA Agreement included Clause 12 as it is written. Thus, according to the English translation provided to the FIVB Tribunal in the present procedure, the parties agreed to define "compensation" of a specified amount (BRL 1,600,000.00) owed by the breaching party "*in case of failure to comply with the agreement to the exclusive fault of the other party*". The parties neither specified the kind of breach of contract nor any considerations regarding the degree of the breach that needed to be taken into account when applying this clause.

129. The FIVB Tribunal Panel has also discussed whether the "compensation" stipulated in Clause 12 of the SADA Agreement has to be considered as a liquidated damages clause or a penalty clause. While Clause 12 of the SADA Agreement contains elements of both type of clauses, the

Parties treated it as a penalty clause in their submissions[87] and, therefore, the FIVB Tribunal Panel decided to treat it in the same way. The key question is whether the pre-defined amount is fair and proportionate based on the breach in question. Given the punitive nature of penalty clauses, they are subject to reduction if the penalty awarded is deemed excessive. The above has to be balanced with the principle of freedom of contract, specifically as it relates to predefining penalty amounts.

130. The FIVB Tribunal Panel holds that the amount of BRL 1,600,000.00 is not disproportionate when comparing it with the value of the entire contract, i.e., an annual amount of BRL 1,600,000.00 paid per season on a three year term (term of the SADA Agreement was 1 June 2016 to 31 May 2019). In addition, Clause 12 of the SADA Agreement stipulates the right for compensation for both, the Claimant and the Respondent, in the very same amount (BRL 1,600,000.00) and this clause expressly states that "[t]*he agreement creates a compromise between the parties (Athlete and Club)*". Thus, the FIVB Tribunal Panel shall apply the wording of the SADA Agreement for determination of the amount to be awarded in the event of a breach of the SADA Agreement due to the fault of a breaching party.

131. The FIVB Tribunal Panel finds that SADA is entitled to compensation in the amount of BRL 1,600,000.00 according to Clause 12 of the SADA Agreement.

132. SADA also claims interest at a rate of 5% per annum as of 18 July 2018.[88] The FIVB Tribunal regularly grants late payment interest as a general principle of law and finds that a regular payment made after the due date is subject to interest at a rate of 5% per annum under *ex aequo et bono* even if a contract does not specifically provide for the payment of interest (e.g., FIVB Tribunal 2018-05). However, this jurisprudence regularly refers to outstanding salaries, bonuses or similar major obligations agreed under the respective contracts. In the present case, SADA has not explained at all in its submissions why it would be entitled to such interest in the case of a "compensation" (i.e., penalty), but just incorporated this additional claim into its request for relief. Clause 12 of the SADA Agreement does not contain an obligation to pay

[87] SADA's Complaint, ¶ 26 and SADA's Exhibit 27 (WhatsApp message 01/06/2018 08:15:03). The Player has not contested SADA's characterization of the "compensation" as a penalty clause and his request for relief (i.e., he counterclaims both the "compensation" and damages) shows he also treated it in the same way.

[88] SADA's Complaint, ¶ 32.

interest but rather states that a party can *"request compensation".* While the "compensation" is granted, it is the FIVB Tribunal Panel's understanding of the SADA Agreement that granting interest would result in a double-"compensation" (i.e., penalty) neither established in the contract nor in line with *ex aequo et bono*. Therefore, the FIVB Tribunal Panel considers it fair and reasonable that interest should not be granted in this case.

7.1.2 Claim against Respondent No. 2 for joint liability regarding compensation according to Clause 12 of the SADA Agreement (BRL 1,600,000.00) plus interest

133. SADA claims that LUBE shall be jointly liable to pay the compensation under Clause 12 of the SADA Agreement because it induced the Player to breach said provision.[89] It also claims that the fact that LUBE is not a party to the SADA Agreement does not exclude LUBE from joint liability.[90]

134. LUBE contends that it did not commit any illegal activity.[91] It also argues that it cannot held liable for damages under the SADA Agreement because it is not a party to it. [92]

135. In FIVB Tribunal 2016-05, the FIVB Tribunal faced a similar claim for damages against a subsequent employer after a player believed he had validly terminated a contract. In that case, the FIVB Tribunal highlighted the following related to claims of inducement by a subsequent club noting that, unlike the regulations in other sports, the FIVB does not have a clause that imposes automatic liability on a subsequent club that signs a player under contract: *"the liability of a subsequent club is not established purely because it signed a player under contract but, rather, there must be some kind of act by that club to allow the Panel to impose liability on it. As stated in the Decision, without a provision similar to FIFA's in its regulations, which the FIVB currently does not have, Court of Arbitration for Sport jurisprudence dictates that the Second Respondent cannot be held jointly liable without cause. Thus, in line with current sports law jurisprudence, it must have conducted culpable conduct, such as inducement, to be found jointly liable with a player for its breach* (see para. 92 of FIVB Tribunal 2016-05)*."*

---

[89] SADA's Complaint, ¶¶ 9, 28-30.

[90] SADA's Commernts to LUBE, ¶ 14.

[91] LUBE's Counterclaim, pp. 3-4.

[92] LUBE's Counterclaim, pp. 3-4.

136. In line with this jurisprudence, the FIVB Tribunal Panel agrees with LUBE's arguments. There is no adequate evidence on file that LUBE induced the Player to breach the SADA Agreement. The evidence provided as described above shows that the Player had already decided to leave SADA before LUBE came into the picture. In any case, SADA has only presented conjecture without any proof of LUBE's alleged inducement to abandon SADA.

137. Additionally, the FIVB Tribunal Panel has not found a reasonable explanation as to why the compensation provided for in Clause 12 of SADA Agreement should be extended to LUBE, even though it is not a party to such agreement. SADA´s reference to Swiss law is not taken into consideration because the applicable law is *ex aequo et bono*.

138. Likewise, the interest also claimed by SADA is not applicable given the above finding that there is no underlying liability on the part of LUBE.

139. Therefore, SADA's claim against LUBE is fully dismissed.

7.2 Respondent No. 1's counterclaims

7.2.1 Claim against Claimant for alleged outstanding salary (BRL 2,492,416.42)

140. Clause 2 of the SADA Agreement sets forth: *"The club will pay the athlete the amount of BRL 1,600,000.00 net (free of taxes) per season"* ("**Financial Compensation**").[93] It is undisputed between the Parties that the Player was entitled to receive the Financial Compensation corresponding to seasons 2016/2017 and 2017/2018 (i.e. BRL 3,200,000.00 free of taxes).

141. The Player alleges that SADA breached Clause 2 of the SADA Agreement because it paid him BRL 707,583.58, instead of BRL 3,200,000.00. Therefore, he claims the payment of BRL 2,492,416.42.[94]

142. SADA contends that the Player received all of his payments and that, for tax-planning purposes, the Player agreed to split the Financial Compensation into cash payments, the acquisition of a

[93] SADA's Exhibit 1.

[94] Player's Counterclaim, pp. 4-5. Player's Comments, pp. 8, 15-16.

premium car, the payment of image rights, and the salaries under the Work Contract.[95] SADA also alleges that the Player received payments concerning consultancy services, bonuses, and commission fees. Although it does not expressly say so, SADA suggests that these payments were also part of the Financial Compensation.[96]

143. The FIVB Tribunal Panel will analyse each of the payments that would be included in the Financial Compensation according to SADA. The only payments that are excluded from this analysis are the cash payments (amounting to BRL 707,583.58) and the salaries under the Work Contract (amounting to BRL 104,439.58) because the Player acknowledged that those payments were part of the Financial Compensation.[97] The remaining payments, according to the Player, were not part of the Financial Compensation.

7.2.1.1 Premium Car

144. The SADA Agreement does not contain any provision stating that the Financial Compensation would be paid through the acquisition of a premium car. There is only one provision related to a car. Clause 6 of the SADA Agreement sets forth: *"The club shall pay the expenses of a car during the contractual period, except fuel."*[98]

145. SADA alleges that the acquisition of a premium car was part of the Financial Compensation and that the premium car given to the Player (Ranger Rover – plate no. GG08050) was different from the car given to the Player under Clause 6 of the SADA Agreement (FIAT Punto – plate no. PWF2189).[99]

146. The Player denies that the premium car was part of the Financial Compensation. He alleges that the premium car was the car given to him under Clause 6 of the SADA Agreement and was not registered in his name.[100]

---

[95] SADA's Comments to Player, ¶¶ 12-13.

[96] SADA's Comments to Player ¶ 15.

[97] Player's Comments, p. 8.

[98] SADA's Exhibit 1.

[99] SADA's Comments to Player, ¶ 12.

[100] Player's Comments, p. 5.

147. There is no evidence on file showing the existence of a car other than the premium car. Moreover, the documents related to the premium car contained in SADA's Exhibit 18 do not contain any references to the Player being its owner and personally responsible for any expenses.

148. Therefore, the FIVB Tribunal Panel is not persuaded by the argument that the premium car was given to the Player as part of the Financial Compensation but rather was the car given to the Player under Clause 6 of the SADA Agreement. Consequently, any expenses (except fuel) had to be borne by SADA, and, thus, no deduction from the Player´s compensation shall be made.

7.2.1.2 Image Rights

149. SADA alleges that image rights payments were part of the Financial Compensation.[101] In support of its argument, SADA submitted the invoices[102] and a written statement from the agent Geraldo Maciel Neto ("**Mr Maciel**"), in which he testified as follows:

> *"c) due to the fact that the athlete did not have a company in Brazil and while it was being constituted, since the beginning of the negotiations and agreement, the athlete requested and, therefore, was aware that in relation to his payments provided for in the 'Formalização de Acordo', a part would be made through my company Maciel Molina Assessoria Esportiva Ltda. as 'image rights';*
>
> *d) that all amounts related to the image rights of the athlete paid by SADA Cruzeiro to my company through the invoices 2016/9, 2016/10, 2017/8, 2017/10 and 2017/24, in the total net of R$ 352,452.50, were transferred entirely to the athlete;*
>
> *e) that from October 2017 the athlete started to receive the image rights directly in his company, S13 Serviçios Esportivos Ltda."*[103]

150. The Player alleges that the image rights payments were made under the Image Rights Agreement and not under the SADA Agreement. He claims that both contracts are different and autonomous. He asserts that the invoices contained in SADA's Exhibit 14 have no reference to the SADA Agreement and show that those payments were not made to him, but MMAE and

[101] SADA's Comments to Player, ¶ 12.

[102] SADA's Exhibit 14.

[103] SADA's Exhibit 22.

the Company S 13. He also states that Mr Maciel's written statement is of no value because there is no evidence of money transfers from MMAE to him, and there is no evidence of him being a shareholder of the Company S 13.[104]

151. The FIVB Tribunal Panel has doubts about the Player not being a shareholder of the Company S 13 and that Mr Maciel´s statement being incorrect as generally argued by the Player. However, there is no evidence on file in support of SADA´s argument although the Parties, in particular SADA, were given several chances to submit any evidence they want to rely on.

152. Taking into consideration the evidence on file, the FIVB Tribunal Panel follows the Player's position for the following reasons:

153. Firstly, the SADA Agreement does not state that the Financial Compensation will be paid through the payment of image rights. If this were the Parties´ true agreement they should have recorded it somehow. In the absence of evidence to the contrary, the SADA Agreement establishes the basis for any dispute to be decided *ex aequo et bono*.

154. Secondly, there is no evidence on file regarding payments made by MMAE to the Player on behalf of SADA. Neither Mr Maciel nor SADA have submitted any receipt signed by the Player or proof supporting his statement on having forwarded payments to the Player, despite being in a position to do so, as Mr Maciel recognized MMAE was his company.

155. Moreover, the invoices 2016/9, 2016/1, 2017/8, 2017/10, and 2017/24 show that the payments to MMAE were for image rights. The invoices contain express references to a contract for the Player's image rights in the "Service Discrimination" section. However, there is no evidence on the record of a contract for image rights between the Player, SADA, and MMAE. Therefore, due to the lack of evidence, the FIVB Tribunal Panel is not in a position to determine whether that contract contained any reference to those payments being part of the Financial Compensation. Even if it is assumed that the Image Rights Agreement is the contract referred to in the invoices, there is no sufficient evidence to consider that those payments were made under the SADA Agreement. Both contracts have a different purpose, and the Image Rights Agreement does not even mention the SADA Agreement. Therefore, the FIVB

[104] Player's Comments, pp. 3-4.

Tribunal Panel finds no sufficient reason not to treat both contracts as different and autonomous.

156. Thirdly, even if the Player is or was shareholder of the Company S 13, there is no sufficient evidence on file showing that the payments made to the Company S 13 under the Image Rights Agreement were part of the Financial Compensation under the SADA Agreement. The FIVB Tribunal Panel is well aware of jurisprudence of the FIVB Tribunal in which image right payments were considered as part of the structure of a total compensation package (e.g., FIVB Tribunal 2015-07 and FIVB Tribunal 2016-07). However, the FIVB Tribunal Panel finds the present case to be different. In FIVB Tribunal 2015-07, the underlying employment contract contained references to an "image rights contract" in addition to a "sport contract" (see para 7 et seq. of FIVB Tribunal 2015-07: "*All payments in sport contract will be done by Player named bank account. For all payments in imagerights* [sic] *contract part will be discussed the banking situation*.") and the respective Single Judge of the FIVB Tribunal was provided with evidence for prior communication between the parties explicitly referring to image rights payments as part of the player´s total compensation (see, in particular, para 13 of FIVB Tribunal 2015-07). In the present case, there is no such a reference. In FIVB Tribunal 2016-07, it was undisputed by the parties (at least in the appeal phase) that image right payments were part of the salary. In the present case, this issue is disputed and lacks sufficient evidence. Therefore, the FIVB Tribunal Panel finds that neither potential payments of BRL 352,452.50 net from SADA to MMAE nor potential payments of BRL 786,330.05 net to the Company S13 could be taken into account for the present dispute, and, thus, no respective deduction (BRL 1,138,782.55 net in total) from the Player´s compensation shall be made.

7.2.1.3 Sports Consultancy

157. The financial report contained in SADA's Exhibit 21 includes a payment of USD 200,000.00 (equivalent to BRL 635,400.00) from Brazul Transportes e Veiculos Ltda. ("**Brazul**") to the Player's company, Simon Business Inc., for sports consultancy. SADA does not expressly say that this payment was part of the Financial Compensation, but it suggests so by including it in the financial report.[105]

[105] SADA's Comments to Player, ¶ 15. SADA's Exhibit 21.

158. The Player alleges that the payment received by his company, Simon Business Inc., is irrelevant because SADA did not even pay it nor was it part of the SADA Agreement.[106]

159. The invoice contained in SADA's Exhibit 17 was addressed to Brazul as compensation for sports consultancy. Brazul and SADA appear to be different legal entities. There is no evidence on file showing that Brazul is SADA, and if it were, there is no evidence showing that the payment for sports consultancy was part of the Financial Compensation.

160. Therefore, the FIVB Tribunal Panel finds that the payment of USD 200,000.00 (equivalent to BRL 635,400.00) from Brazul to the Player's company, Simon Business Inc., could not be taken into account for the present dispute, and, thus, no respective deduction from the Player´s compensation shall be made.

7.2.1.4 Bonuses

161. The financial report contained in SADA's Exhibit 21 includes the payment of bonuses for BRL 88,000.00 from SADA to the Player. SADA does not expressly say that this payment was part of the Financial Compensation, but it suggests so by including it in the financial report.[107]

162. The Player alleges that the bonuses paid by SADA are extra payments under Clause 9 of the SADA Agreement and, therefore, are not part of the Financial Compensation.[108]

163. Clause 9 of the SADA Agreement sets forth: *"The sporting bonuses will be that standard of the team, to be discussed later."*[109] Neither the SADA Agreement nor the payment receipts contained in SADA's Exhibit 19 state that bonuses are part of the Financial Compensation.

164. Therefore, the FIVB Tribunal Panel finds that bonus payments could not be taken into account for the present dispute, and, thus, no respective deduction from the Player´s compensation

[106] Player's Comments, p. 7.

[107] SADA's Comments to Player, ¶ 15. SADA's Exhibit 21.

[108] Player's Comments, p. 6.

[109] SADA's Exhibit 1.

shall be made.

7.2.1.5 Commissions

165. The financial report contained in SADA's Exhibit 21 includes the payment of commission fees for BRL 267,857.14 from SADA to MMAE. SADA does not expressly say that this payment was part of the Financial Compensation, but it suggests so by including it in the financial report.[110]

166. The Player alleges that the commissions are payments to the agents under Clause 3 of the SADA Agreement and, therefore, are not part of the Financial Compensation.[111]

167. The SADA Agreement does not state that commissions are part of the Financial Compensation. Clause 3 of the SADA Agreement sets forth: *"The club shall pay to the agents REGOR MOLINA REYES and GERALDO MACIEL NETO the amount of BRL 120,000.00 (One Hundred and Twenty Thousand Reais) net, for each season."*[112] The documents contained in SADA's Exhibit 20 show that the commissions were paid to MMEA, and not the Player.

168. Therefore, the FIVB Tribunal Panel finds no reason to conclude that commissions paid to agents should be considered as part of the Financial Compensation, and, thus, no respective deduction from the Player´s compensation shall be made.

7.2.1.6 Interim summary

169. Based on the above, the FIVB Tribunal Panel concludes that the acquisition of a premium car, as well as the payment of image rights, consultancy services, bonuses, and commission fees, were not part of the Financial Compensation. Therefore, SADA breached Clause 2 of the SADA Agreement and must pay BRL 2,492,416.42 to the Player.

7.2.2 Claim against Claimant for payment regarding taxes (BRL 1,180,793.04)

[110] SADA's Comments to Player, ¶ 15. SADA's Exhibit 21.

[111] Player's Comments, pp. 6-7.

[112] SADA's Exhibit 1.

170. The Player claims that SADA breached Clause 2 of the SADA Agreement because it did not pay taxes on the Financial Compensation. The Player states that SADA must pay BRL 1,180,793.04 on taxes omitted in accordance with the Brazilian Tax Regulation RFB 1500.[113]

171. SADA contends that there are no pending taxes and that this is evidenced by SADA's Exhibits 23 to 26. It also states that, even if there were any tax collection overdue, such obligation would fall on SADA, not on the Player, so those payments should be collected by the Brazilian tax authorities and not by the Player.[114]

172. The Player considers that SADA's Exhibits 23 to 26 are irrelevant because the certificates contained therein only state that there are no tax claims pending because of what SADA declared. However, Brazilian tax authorities could eventually file a tax claim against SADA or the Player for unpaid taxes. He also asserts that the obligation to pay taxes falls on him because it is a universal principle that taxes must be paid by the one who earns the income for which taxes are assessed.[115]

173. Clause 2 of the SADA Agreement sets forth that the Financial Compensation is *"net (free of taxes)"*.[116] Therefore, all of the taxes in connection with the payment of the Financial Compensation must be borne by SADA, so that the Player receives the agreed net amount.

174. Clause 2 does not indicate who must pay taxes to the Brazilian tax authorities, i.e. it does not specify if SADA has to pay the taxes to the Brazilian tax authorities, or if the Player has to make that payment after receiving the tax amount from SADA. There is a discrepancy between the Parties in this regard. SADA alleges that such obligation to pay taxes falls on SADA, and the Player contends that such obligation falls on him. However, the Player recognized that SADA was entitled to make those payments,[117] and it is undisputed that SADA paid the taxes corresponding to the payments made under the Work Contract. SADA also recognized that each person is individually responsible for disclosing his financial details and providing his

[113] Player's Comments, pp. 9-11.

[114] SADA's Comments to Player, ¶¶ 16-21.

[115] Player's Comments, pp. 9-10.

[116] SADA's Exhibit 1.

[117] Player's Counterclaim, p. 10. Player's Comments, p. 10.

income tax return to the tax authority according to Brazilian tax law.[118] In any case, it is not up to this FIVB Tribunal Panel to decide what obligations, if any, either Party might have under the relevant tax laws *vis-à-vis* the tax authorities, who are not party to these proceedings.

175. The Player requested the FIVB Tribunal Panel to order SADA to pay him the taxes due over the amount of BRL 3,200,000.00, the Financial Compensation of two seasons, 2016/2017 and 2017/2018, equal to BRL 1,180,793.04. Whether any or all amounts are subject to taxation is to be determined by the relevant tax authorities and not by the FIVB Tribunal Panel in this proceeding. The FIVB Tribunal Panel only has to determine *ex aequo et bono* if, under the SADA Agreement, the Player is entitled to receive BRL 1,180,793.04 for taxes allegedly overdue.

176. Had the Player paid BRL 1,180,793.04 to the tax authorities, he would have been entitled to claim such payments as damages. However, except for the taxes corresponding to the payments made under the Work Contract, there is no evidence on record showing that either party paid the taxes related to the Financial Compensation. There is also no evidence on file of any request from the tax authorities for any additional tax payments related to the SADA Agreement at this time to the Player. SADA's Exhibits 23 to 26 do not prove the payment of taxes, but do demonstrate the non-existence of tax claims.

177. There is also no provision in the SADA Agreement or any other contract between the Parties granting the Player the right to receive tax payments to be made to tax authorities by SADA. Furthermore, there is no evidence that the Player has received payments under this payment scheme in the past. On the contrary, it is undisputed that SADA, not the Player, paid the taxes corresponding to the payments made under the Work Contract.

178. Based on the above, the FIVB Tribunal dismisses the Player's claim to receive the amount of BRL 1,180,793.04 from SADA for alleged outstanding tax payments.

7.2.3 Claim against Claimant for compensation according to Clause 12 of the SADA Agreement (BRL 1,600,000.00)

[118] SADA's Exhibit 11, ¶ 8.

179. The Player alleges that, due to SADA's conduct, he is entitled to receive a compensation in the amount of BRL 1,600,000.00 pursuant to Clause 12 of the SADA Agreement.[119]

180. SADA contends that the Player is not entitled to receive any compensation because it has not breached the SADA Agreement.[120]

181. The FIVB Tribunal Panel has already concluded that SADA breached Clause 2 of the SADA Agreement. The FIVB Tribunal Panel also considers that the breach is due to SADA's exclusive fault because it was the one that decided not to pay the Financial Compensation in full. Again, the FIVB Tribunal Panel has discussed whether it is bound to award the full amount of BRL 1,600,000.00 or entitled under *ex aequo et bono* to determine a lower amount. For the reasons explained above with regard to SADA's claim for compensation to be paid by the Player, the FIVB Tribunal Panel holds that the amount of BRL 1,600,000.00 is not disproportionate and will, therefore, stick to the wording of the SADA Agreement for determination of the amount to be awarded in case of a breach of the SADA Agreement.

182. Therefore, the Player is entitled to the amount of BRL 1,600,000.00 for compensation under Clause 12 of the SADA Agreement.

183. As the Player must pay the same amount to SADA, the amounts are set-off against each other with the consequence that no payment for compensation in the amount of BRL 1,600,000.00 has to be made by SADA nor by the Player.

7.3 Respondent No. 2's counterclaims:

Claim against Claimant for compensation for damages (EUR 100,000.00) and letter of apology

184. LUBE claims compensation in the amount of EUR 100,000.00 for SADA's alleged damage to LUBE's good name and privacy. LUBE argues that SADA sent emails to the Italian Volleyball Federation and the Italian men's volleyball league, and then published a press release, accusing LUBE of behaviour in violation of rules and principles of sports ethics that was later published by an Italian newspaper. LUBE contends that SADA's actions provoked many insults and threats

[119] Player's Counterclaim, p. 10.

[120] SADA's Comments to Player, ¶¶ 33-37.

in social media by Brazilian fans against LUBE and created problems with sponsors who did not want to be linked to such a situation.[121]

185. SADA contends that there is no evidence of (i) the existence of a false and defamatory statement concerning LUBE, (ii) SADA making unprivileged publications to third parties or publishing false or privileged communications, (iii) the alleged violation of LUBE's good name and privacy, (iv) the alleged damages, and (v) a link between the claimed amount and the supposed claimed damages.[122]

186. The FIVB Tribunal Panel agrees with SADA's arguments. There is no evidence on file showing the existence of a breach of privacy or defamatory statements concerning LUBE. SADA's letter contained in SADA's Exhibit 3 does not contain statements harming LUBE's name, reputation or privacy. It merely contains a description of the information received by SADA and a request based on that information. Although SADA's press releases contained in LUBE's Exhibits A do contain references to LUBE's alleged co-responsibility and behaviour in violation of ethics rules, those statements are within the framework of a description of the dispute and SADA's position. However, there is no actual evidence of concrete harm to LUBE's name, reputation or privacy.

187. Moreover, LUBE claims an amount of EUR 100,000.00 but has not even explained how it calculated that amount. In its counterclaim, LUBE stated that one sponsor renounced its partnership with LUBE.[123] Notwithstanding that there is no evidence supporting this statement, LUBE then clarified that it did not lose the sponsor because it asked the sponsor to wait for the outcome of this proceeding.[124] Thus, LUBE acknowledges that there is no current harm. Consequently, no damage needs to be compensated. Likewise, LUBE´s request for "*recovery in case of loss of sponsor*" is dismissed because it is speculating about future potential damages that have not yet manifested.

188. With regard to LUBE´s request for a "letter of apology" published in the press and social media by SADA, it is unclear for the FIVB Tribunal Panel, and LUBE has not explained why such an

---

[121] LUBE's Counterclaim, pp. 4-6. LUBE's Comments, pp. 4-5.

[122] SADA's Comments to LUBE, ¶¶ 16, 19-20.

[123] LUBE's Counterclaim, p. 5.

[124] LUBE's Comments, p. 5.

atypical relief could be sought in the context of a "financial dispute". In any event, this matter becomes moot because LUBE has not demonstrated that it suffered harm to its name, reputation or privacy has been found by the FIVB Tribunal Panel.

189. Therefore, LUBE's counterclaim is dismissed entirely.

7.4 Costs

190. Article 20.11.2 of the FIVB Sports Regulations allows the prevailing party to be granted a contribution towards its reasonable legal fees and other expenses incurred in connection with the proceedings (including the applicable handling fee). When deciding on this contribution, the FIVB Tribunal shall take into account 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 in respect of their financial resources but 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.

191. The Claimant paid a handling fee of CHF 500.00 on 7 August 2018. The Respondents paid their handling fees of CHF 500.00 each for their counterclaims on 3 and 4 September 2018.

192. Upon request by the FIVB Tribunal, all Parties submitted accounts of costs concerning their legal fees and expenses incurred in connection with the present procedure as follows:

- Claimant / Counter-Respondent (BRL 23,100.00 in total): Legal fees in the amount of BRL 21,500.00 plus translation costs in the amount of BRL 1,600.00.

- Respondent No. 1 / Counter-Claimant No. 1 (EUR 12,480.00 in total): Legal fees in the amount of EUR 12,000.00 plus 4% tax.

- Respondent No. 2 / Counter-Claimant No. 2 (EUR 19,238.40 in total): Legal fees in the amount of EUR 18,000.00 plus taxes of 4% and 22% minus tax deduction of 20%.

193. Taking into account that 1) SADA succeeded with its claim against the Player; 2) the Player partially succeeded with his claim against SADA (taking into consideration that the Player reduced the amount initially requested in his counterclaim during the proceedings); 3) SADA

did not succeed with its claim against LUBE; 4) LUBE did not succeed with its claim against SADA and 5) each party paid the same handling fee, the FIVB Tribunal Panel finds that each party must bear its own legal fees and other expenses, including the handling fee.

DECISION

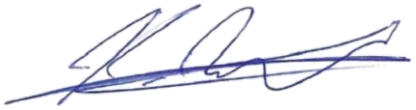
For the reasons set forth above, the FIVB Tribunal decides as follows:

1. **Associação Social e Esportiva SADA shall pay to Mr Robertlandy Simon Aties the amount of BRL 2,492,416.42 net (free of taxes)**.

2. **Each party must bear its own legal fees and other expenses, including the handling fees paid.**

3. **Any other requests for relief are dismissed.**

Lausanne, seat of the proceedings, 18 December 2020



Dr Karsten Hofmann

Francisco Amallo

Mr Francisco A. Amallo

Hussein Moustafa

Mr Hussein Mostafa Fathi

NOTICE OF APPEALS

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

a) Article 20.12 of the FIVB Sports Regulations which provides as follows:

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

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

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

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
Email: info@tas-cas.org

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