FÉDÉRATION INTERNATIONALE
DE VOLLEYBALL

The

FIVB TRIBUNAL

herewith issues the following

DECISION

FIVB 2018-03

on the Request for Review of CC143/2017 filed by

Pilskie Towarzystwo Pilki Siatkowej S.A. ("Claimant")
represented by Mr. Maciej Broniecki
Attorney at law, Wroclaw, Poland

vs.

Ms. Beta Dumančić ("Respondent")
represented by Mr. Massimo della Rossa
Attorney at law, Cantu, Italy

1. The Parties

1. The Claimant is a professional volleyball club with its legal seat in Pila, Poland (hereinafter the "Claimant" or "Club").

2. The Respondent is a professional female volleyball player from Croatia (hereinafter the "Respondent" or "Player").

2. The FIVB Tribunal (FIVB Tribunal Judge)

3. 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.* […]"

4. Because the amount in dispute in the present case does not exceed CHF 200,000.00, this Request for Review will be heard by the Chairperson as a single judge. Dr. Karsten Hofmann from Germany is the current Chairperson of the FIVB Tribunal and, thus, was appointed as the single judge in the present case (hereinafter "FIVB Tribunal Judge").

3. Facts and Proceedings

3.1 Background Facts

5. On 20 July 2016, the Club and the Player concluded an employment agreement (hereinafter the "Contract") for the term of 1 August 2016 to 31 May 2017. According to Article 5 of the Contract, the Parties agreed on a total salary of EUR 20,000.00 to be paid in ten monthly instalments of EUR 2,000.00 from September 2016 to June 2017. In Article 11 of the Contract, the Parties agreed a dispute resolution clause containing references to the "*Arbitration Court at PLPS SA in Warsaw*" and to CEV and FIVB.

6. From 16 to 25 September 2016, the Player participated in six games of the Croatian national team at the CEV Volleyball European Championship.

7. In late September 2016, the Player arrived at the Club´s facilities. Thereafter, she played in several games for the Club´s team and participated in its practices while the Club made several salary payments to the Player.

8. By email dated 29 March 2017, the Club (Mr. Piotr Sobolewsky) informed the Player´s agent (Mr. Ivan Botev) of the Club´s intention to "*cooperate*" with the Player for the next season.

9. After completing the league season on 7 April 2017, the Player left Poland; however, she did not return but joined the Croatian national team on 24 April 2017 following an invitation letter dated 22 April 2017.

10. Until mid-April 2017, the Club had paid salary instalments to the Player by cash and by bank transfers amounting to PNL 47,900.00 and a further amount of EUR 2,000.00.

11. While playing for the Croatian national team at the end of April 2017, medical tests were conducted on the Player showing that the meniscus of her left knee was injured. Therefore, the Player underwent a surgery on 14 June 2017 and was hospitalised until 15 June 2017.

12. By email dated 8 May 2017, the Club (Mr. Piotr Sobolewsky) contacted the Player´s agent (Mr. Ivan Botev) and asked him to explain how the Player had left the Club´s team ("*how the procedure of passing the apartment took place, or how she completed formalities connected with the end of the season (the key of housing, sports equipment)?*"). By email on the same date, the Player´s agent (Mr. Ivan Botev) provided answers to the questions and concluded that he would inform the Club of the Player's surgery once it had been completed ("*I will let you know how was Beta's surgery as soon as she pass it.*"). By email dated 11 May 2017, the Club (Mr. Piotr Sobolewsky) replied to the Player´s agent (Mr. Ivan Botev), *inter alia*, as follows: "*thank you very much for respond, everything is clear and fine*".

13. On 7 June 2017, the Player´s agent (Mr. Ivan Botev) asked the Club for payment of outstanding salaries in the amount of EUR 7,200.00.

14. On 20 June 2017, the Player filed a complaint with the CEV and paid the respective handling fee of EUR 400.00. The Player requested the payment of EUR 7,200.00 in outstanding salaries and EUR 1,000.00 for legal costs. During the proceedings, both Parties filed several submissions, including the Club´s objection to the CEV´s jurisdiction.

15. On 8 March 2018, the CEV Legal Chamber issued a decision in the present manner ruling that the CEV was competent to decide the case and that the Club owed the Player the amounts of EUR 7,200.00 in outstanding salaries and EUR 400.00 as reimbursement of the handling fee while the Player´s claim for reimbursement of legal costs was dismissed for lack of evidence (hereinafter the "Decision").

16. The CEV notified the Parties of the Decision by email on 9 March 2018.

3.2 The Proceedings before the FIVB Tribunal

17. On 23 March 2018, the Club filed its Request for Review including a copy of the bank certificate for the payment of the handling fee in the amount of CHF 1,500.00.

18. By email dated 4 April 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Request for Review and the applicable handling fee. The FIVB Tribunal Secretariat forwarded the Request for Review to the Player and invited her to file an Answer by no later than 25 April 2018.

19. By email dated 26 April 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Player´s Answer dated 24 April 2018 and received by the FIVB Tribunal on 25 April 2018. Moreover, the Parties were informed that their submissions had been forwarded to the FIVB Tribunal Judge for his review.

20. By email dated 31 May 2018, the FIVB Tribunal Judge invited the Parties to comment on specified issues by no later than 14 June 2018.

21. By email dated 15 June 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Parties´ additional submissions, which were received on 12 and 14 June 2018.

22. By email dated 5 July 2018, the FIVB Tribunal Secretariat informed the Parties that the FIVB Tribunal Judge had decided that no further submissions were required in accordance with Article 20.6.1 of the 2017 FIVB Sports Regulations (identical wording as Article 20.7.1 of the 2018 FIVB Sports Regulations). Consequently, the present proceedings were closed. In accordance with Article 20.10.2 of the 2017 FIVB Sports Regulations (identical wording as Article 20.11.2 of the 2018 FIVB Sports Regulations), the FIVB Tribunal Judge requested that the Parties provide a detailed account of their respective costs as well as supporting documentation in relation

thereto by no later than 19 July 2018.

23. By email of 20 July 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Player´s submission on costs with the supporting documentation, which were received on 17 July 2018. Moreover, the Parties were informed that the Club had failed to file any account of costs.

4. The Parties' Submissions

24. The following section provides a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the FIVB Tribunal Judge has thoroughly considered all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in this section.

4.1 The Claimant's Position

25. The Club objects to the CEV´s competence to hear and decide the case. The Contract contains a valid and legally binding arbitration clause, by which the Parties agreed on the PLPS Arbitration Court in Warsaw to hear financial disputes arising from the performance of the Contract. The Parties did not intend to have financial disputes decided by the CEV under *ex aequo et bono* and, therefore, chose a different court to hear the case. The PLPS Arbitration Court is an existing and operational arbitration institution established in the year 2000 as an independent organizational unit of the Polish Professional Volleyball League (PLPS).

26. The CEV ruled that the arbitration clause in the Contract was invalid as the Player was forced into it. However, during the CEV proceedings, the Player acknowledged the general competence of the PLPS Arbitration Court in Warsaw and contested only its exclusiveness. Thus, the Player itself stated that she was never forced.

27. The FIVB Tribunal should set aside the Decision for lack of competence and take into consideration the jurisprudence of the Swiss Supreme Court, namely the decision BG 4A_244/2012 of 17 January 2013.

28. Moreover, the FIVB should set aside the Decision because the CEV only selectively and incoherently applied the principle of *pacta sunt servanda*, and the Player did not honour the Contract but rather breached it. The CEV applied the principle of *pacta sunt servanda* only to argue that the Club should honour the Contract and pay the outstanding salaries. However, it

was the Player who did not attend practices or events in connection with sponsors, and, therefore, prematurely terminated the Contract without following the proper procedures defined in the termination clause in the Contract.

29. The difference between the amount claimed by the Player (EUR 7,200.00) and the amount alleged to not have been paid by the Club (EUR 7,026.00 EUR) is most probably the result of converting payments made in PLN into EUR and using different exchange rates. The Club´s management used the middle exchange rate published by the National Bank of Poland on the particular days of payment of the instalments provided in the Contract, which is a regular practice in Poland. As a result, the Club effectively paid EUR 12,974.00 to the Player.

30. Finally, the Club states in its Request for Relief as follows:

> *"As a result of the above the Respondent*[sic] *hereby requests:*
>
> ***a) set aside the CEV's Decision of 8 March 2018 due to lack of CEV's jurisdiction,***
>
> ***b) to order the Respondent to pay the entire costs of the proceedings at hand;***
>
> ***c) to order the Respondent to pay a significant contribution towards the Claimant's legal fees incurred in connection with the proceedings at hand;"***

4.2 The Respondent's Position

31. The CEV correctly applied Article 18.1 lit. b of the FIVB Sports Regulations because any other interpretation would invalidate this provision. The present dispute meets the criteria indicated in Article 18.1 lit. b, and, therefore, the CEV was competent to render a decision.

32. Moreover, any interpretation of the arbitration clause in the Contract cannot lead to the conclusion that the PLPS Arbitration Court in Warsaw has exclusive jurisdiction. The Parties did not agree on an exclusion of the jurisdiction of FIVB and CEV.

33. Concerning the merits of the case, the Club did not appeal the Decision for reasons other than the alleged lack of jurisdiction of the CEV. Thus, the Player does not need to submit any new arguments regarding the non-payment and the facts discussed in front of the CEV.

34. Finally, the Respondent concluded in her Answer as follows:

> *"As the result of the above Ms Beta Dumancic hereby request*[sic]*:*
>
> - ***confirm the decision of the CEV of 8 March 2018 rejecting the objection***

concerning the lack of jurisdiction presented by PTPS S.A.

- ***order at PSPS S.A. to pay Beta Dumancic the sum of € 1,620.00, or the different on regarded as fair and right, as reimbursement of legal fees related to this proceeding****."*

5. Jurisdiction

5.1 The FIVB Tribunal´s competence

35. 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.

36. 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."*

37. 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"*

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

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

40. The present dispute involves claims submitted by a player from Croatia against a club from Poland concerning outstanding salaries and reimbursement of legal costs (handling fee in the first instance). The FIVB Tribunal Judge finds that this dispute clearly qualifies as a financial dispute of an international dimension between a player and a club in accordance with Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations.

41. Furthermore, the Request for Review at hand is made against the Decision, which was rendered by the CEV. Therefore, the present Request for Review stems from a decision of a Confederation, and the FIVB Tribunal Judge holds that Article 19.2.2.2 of the FIVB Sports Regulations is also satisfied.

42. Based on the above, the conditions of Articles 19.2.1 and 19.2.2 of the FIVB Sports Regulations are satisfied.

43. Additionally, the Claimant's Request for Review was filed on 23 March 2018 and the payment of the handling fee was made on 22 March 2018, i.e. both within the 14-day period described in Article 18.2 of the FIVB Sports Regulations.

44. Therefore, the FIVB Tribunal has jurisdiction over the present Request for Review pursuant to the FIVB Sports Regulations.

5.2 The CEV´s competence in the first instance

45. In its Request for Review, the Club objected to the CEV's competence to hear and decide the present dispute because this case should be referred to the Arbitration Court of the Polish Professional Volleyball League (PLPS) as required by Article 11 para. 1 of the Contract.

46. Article 11 of the Contract states as follows:

> *"1. Any financial disputes that may arise out of the performance of this contract will be considered by the Arbitration Court at PLPS SA in Warsaw.*
>
> *2. Any other disputes that may arise out of the performance of this contract will be considered by constant Arbitration Court at Polish Federation and after based on the provisions of the Civil Code Procedure and Court´s regulations, CEV and FIVB.*
>
> *3. In the event of any divergence between this contract and any other contract entered or to be entered into by the parties hereto, this contract will prevail and will be the only authorative*[sic] *one."*

47. The FIVB Tribunal Judge notes that this language clearly grants a party to the Contract the option to file a claim with the PLPS Arbitration Court.

48. However, the present dispute involves parties falling under the jurisdiction of the FIVB. As such, both, the Player and the Club, are subject to the regulatory framework enacted and implemented by the FIVB, including the FIVB Sports Regulations. As stated in the Decision, the

CEV, the National Federations and their members acknowledge and agree to abide by the FIVB Sports Regulations. The Decision also states that the Player as well as the Club held a license with the Polish Volleyball Federation during the 2016-2017 season (see section 4.1 lit. d of the Decision). Neither of the Parties has contested such findings, therefore, the FIVB Tribunal Judge follows the Decision on this issue and finds that both Parties agreed to comply with the FIVB Sports Regulations by registering to the competitions of the Polish Volleyball Federation, which is one of the stakeholders of the PLPS.

49. According to Article 18.1 lit. h of the FIVB Sports Regulations, the FIVB has the power to delegate to a Confederation (here: to the CEV) the competence to decide financial disputes between players and clubs in the first instance. Likewise, as stated above, the FIVB Sports Regulations grant the FIVB Tribunal jurisdiction over the Club´s Request for Review regarding the Decision.

50. If an issue arises where there are two forums that may be competent to address the same financial dispute, the FIVB or its Confederations need to look at the specific contract to see if that contract establishes an exclusive choice of forum. If the contract establishes an exclusive choice of forum, the FIVB or its Confederations will have to adhere to that and respect the will of the parties. Otherwise, the FIVB or its Confederations will determine competence based on the forum in which the dispute was first filed. If the dispute was filed with the FIVB or its Confederations first, the FIVB will continue the process.

51. The requirement of exclusiveness is a main element of arbitration in order to exclude the jurisdiction of state courts. The same standard should be applied with regard to the exclusion of the jurisdiction of sports federations and their respective legal bodies. Given that exclusivity impacts the rights of Parties, i.e. it excludes the Parties from selecting a different forum that may otherwise be available to it, such exclusion should be explicitly provided for in the contract.

52. Concerning the present case, the FIVB Tribunal Judge holds that Article 11 of the Contract does not contain an exclusive choice in favour of the PLPS Arbitration Court. Article 11 para. 1 of the Contract does neither mention any exclusiveness regarding the PLPS Arbitration Court nor an explicit exclusion of FIVB or CEV jurisdiction. The fact that this provision only mentions the PLPS Arbitration Court is considered not sufficient to exclude the FIVB and CEV jurisdiction stipulated in the FIVB Sports Regulations, which generally govern financial disputes of an international nature and with which both Parties agreed to comply.

53. Thus, two potential paths are provided to resolve disputes between the Parties: 1) through the PLPS Arbitration Court pursuant to Article 11 para. 1 of the Contract and 2) through the CEV on first instance and the FIVB Tribunal on second instance – and potentially before the Court of Arbitration for Sport (CAS) – pursuant to the FIVB Sports Regulations. The Player, i.e. the Claimant in CC143/2017, had the option to choose either path and chose the latter.

54. Therefore, the FIVB Tribunal Judge holds that the Club´s objection to the CEV´s jurisdiction must be dismissed.

55. This is also in line with jurisprudence of the FIVB Tribunal, particularly FIVB 2015-07 (decision of 12 April 2016). The parties in that case, namely a professional volleyball club with its legal seat in Poland and a professional female volleyball player from Germany, had signed an employment contract containing a dispute resolution clause that also referred to the PLPS Arbitration Court. The FIVB Tribunal decided that two potential paths were provided to resolve the dispute and that the player as the respective claimant in the first instance chose the jurisdiction of the FIVB.

56. The jurisprudence of the Swiss Supreme Court, namely the decision BG 4A_244/2012 of 17 January 2013 as cited by the Club, does not change the situation. In that case, the Swiss Supreme Court held that an award rendered by the CAS was annulled for lack of jurisdiction. The Swiss Supreme Court held that the dispute resolution clause in that case failed to meet the requirements to exclude the jurisdiction of the relevant state courts. In the end, the decision of the Swiss Supreme Court rather supports the FIVB Tribunal Judge´s finding that there is a need to have an explicit exclusion of further applicable forums.

57. In addition, there is a decisive difference between the case at hand and cases in which an arbitration clause excludes the jurisdiction of state courts. While in the latter type of cases, the parties normally do not (in addition to the arbitration clause) agree specifically to the jurisdiction of state courts, the Parties in the present case did, through their acceptance of the FIVB Sports Regulations, specifically agree to the competence of the CEV (and, upon appeal, the FIVB Tribunal) in financial disputes. Hence, the parties in the present case specifically agreed on two different forums. As Article 11, para. 1 of the Contract does not explicitly exclude the CEV's jurisdiction, and as there is no other indication that such exclusion is what the parties sought to achieve, the FIVB Tribunal Judge is satisfied that the CEV did have jurisdiction despite Article 11 para. 1 of the Contract.

58. Given the above, the FIVB Tribunal Judge does not need to decide on the validity of the arbitration clause to submit financial disputes to the PLPS Arbitration Court, particularly on whether the Player was forced into such agreement. However, the FIVB Tribunal Judge tends to have a different view than the CEV Legal Chamber on the forced arbitration argument.

6. Discussion

6.1 Applicable Law

59. Under the heading "Law Applicable to the Merits", Article 20.9 of the 2018 FIVB Sports Regulations (identical wording as Article 20.8 of the 2017 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)."*

60. Neither of the Parties has based their arguments on any national law. The Club´s objection to the jurisdiction of CEV and FIVB (including the Parties´ will to apply the principle *ex aequo et bono* to the present dispute) has already been dismissed by the FIVB Tribunal Judge. In addition, in its Request for Review, the Club argued the application of the principle *pacta sunt servanda*, which is a main principle of an *ex aequo et bono* analysis. In light of the above, the FIVB Tribunal Judge will decide the issues submitted to him in this proceeding *ex aequo et bono*.

61. In substance, it is generally considered that an arbitrator 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).

62. In light of the foregoing matters, the FIVB Tribunal Judge decides as follows:

6.2 Findings

63. In the Decision, the Player has been awarded the amount of EUR 7,200.00 net in outstanding salary owed by the Club. The Player maintained her arguments that she fully complied with her duties under the Contract and that the Club had paid only EUR 12,800.00 out of the EUR

20,000.00 agreed under the Contract. The Club argued that it has paid salary in the amount of EUR 12,974.00 to the Player and is not obliged to pay any additional amounts because of the Player´s breach of the Contract, specifically her non-attendance in practices or events in connection with sponsors and her early termination of the Contract not in compliance with the termination clause of the Contract. The FIVB Tribunal Judge will first examine the Club's arguments related to the Player's breach of Contract.

6.2.1 The Club´s allegation of a breach of the Contract by the Player

64. Having reviewed the evidence before him, including the three witness statements provided by the Club, the FIVB Tribunal Judge finds that the Club has failed to prove its allegation of the Player´s breach of the Contract.

65. In line with the Decision, the FIVB Tribunal Judge holds that the Player´s arrival at the Club´s facilities in late September 2016 cannot be considered a breach of the Contract. According to Article 1 of the Contract, the term of the Contract started on 1 August 2016 and concluded on 31 May 2017. The Player´s absence from 6 to 25 September 2016, i.e. just prior to her arrival at the Club, was justified by her participation in six games for the Croatian national team at the CEV Volleyball European Championship (see Articles 7.3.5 and 7.3.6 of the FIVB Sports Regulations). Indeed, Article 6.5.1.1 of the FIVB Sports Regulations provides that the National Team period is from 16 May to 15 October while the National League season from 16 October to 15 May. Moreover, Article 6.5.4 of the FIVB Sports Regulations provides that the Player's sporting rights automatically revert back to his Federation of Origin after the conclusion National League season, i.e. 16 May to 15 October (during the National Team period). Given this regulatory framework, the FIVB Tribunal Judge finds that one cannot interpret Article 1 of the Contract to mean that any absence of the Player due to national team duty during the National Team period can be regarded as a breach of contract.

66. In addition, for the time period of 1 August to 5 September 2016, the Club has also failed to provide any evidence of any formal notice or communication addressed to the Player by which her presence was requested. Moreover, after the Player´s arrival in late September 2016, the Club did not address the Player's absence with her in any way. Furthermore, the Club made several salary payments to the Player, and, by email of 29 March 2017, the Club (Mr. Piotr Sobolewsky) informed the Player´s agent (Mr. Ivan Botev) that the Club intended to "*cooperate*" with the Player during the next season. Thus, the Club had accepted the Player´s absence in

August and the first days of September 2016 without any consequences.

67. In line with the Decision, the FIVB Tribunal Judge further holds that the Player´s departure after completing the league season on 7 April 2017 and, subsequently, not returning to the Club cannot be considered a breach of the Contract. According to Article 1 of the Contract, the Contract automatically terminated on 31 May 2017. It is undisputed between the Parties that the Player did not return to the Club after her departure in early April 2017 but sent the keys to her apartment by postal service after 24 April 2017, i.e. when she joined the Croatian national team for preparation for the European Qualification for the FIVB World Championship 2018. The FIVB Tribunal Judge holds that the Player´s absence from the Club after her departure in early April until 31 May 2017 is justified by her participation with the Croatian national team (at least, as of 22 April 2017, i.e. the date of the invitation letter of the Croatian national team), her knee injury as well as the Club´s consent to be absent.

68. The FIVB Tribunal Judge considers the fact that the Player underwent a surgery on 14 June 2017 and was hospitalised until 15 June 2017, which is supported by the discharge summary dated 15 June 2017 submitted by the Player, to be sufficient proof by the Player that she had actually suffered an injury. The Club was informed of this injury on 8 May 2017 at the latest but likely even earlier based on the email communication between the Player´s agent (Mr. Ivan Botev) and the Club (Mr. Piotr Sobolewsky) dated 8 May 2017 (Mr. Botev: "*I will let you know how was Beta's surgery as soon as she pass it.*").

69. Furthermore, the Club failed to provide evidence of any events in which the Player´s presence was required after her departure in early April 2017, specifically, for sponsor events as alleged by the Club. In this context, the FIVB Tribunal Judge has taken note of several provisions in the Contract, which limit the Player´s duty under the Contract to be the participation in practices and games only (Preamble: "*to provide the provision of sports services* […] *which means playing volleyball*"; § 1: "*obligation to play volleyball in the Club*"; § 2: "*1) Play in the Club* […] *2) Systematic, disciplined and active participation in the process of trainings* […] *4) Participate in league, cup* […] *matches*" […] *6) Behave excellent and sporting during competition and trainings*"). Furthermore, the Club did not complain to the Player for being absent from the Club after her departure in early April 2017. To the contrary, in the email dated 11 May 2017, the Club (Mr. Piotr Sobolewsky) consented to the Player's departure ("*thank you very much for respond, everything is clear and fine*"). In addition, the Club first complained about the Player's breach of contract by early termination for the first time during the CEV proceedings, which

were initiated by the Player on 20 June 2017, i.e. more than two months later.

70. Finally, sending the apartment keys by postal service in late April 2017 is not evidence of an unannounced departure in early April 2017. The Player submitted that Ms. Anita Kwiatkowski (the Club team´s captain) and Mr. Adam Majewski (the Club team´s manager) were informed of the Player´s intention to not return to the Club and that they advised her to send the keys by postal service. In their witness statements, Ms. Kwiatkowski and Mr. Majewski did not testify to the contrary. Moreover, the email dated 11 May 2017, the Club (Mr. Piotr Sobolewsky) shows that the Club was fine with the explanations provided by the Player´s agent regarding the way the Player had left the Club´s team (Mr. Sobolewsky: "*thank you very much for respond, everything is clear and fine*").

71. Therefore, the FIVB Tribunal Judge finds that the Player did not breach the Contract.

6.2.2 The Club´s failure to pay the full salary to the Player

72. According to the findings above, the Player is entitled to the full salary agreed to under Article 5 of the Contract, namely the amount of EUR 20,000.00.

73. The Club submits that it has made payments both in EUR and PLN equalling to the total amount of EUR 12,974.00. According to the Club´s submission, the payments made in PLN have been converted into EUR by using the middle exchange rate published by the National Bank of Poland. The Player submits that she converted the payments made by the Club in PLN into EUR by using a different exchange rate but stated that "*in order to avoid complicated calculations, the Respondent accepts the exchange rate that the FIVB will deem most appropriate*". Therefore, the FIVB Tribunal Judge follows the exchange rate and dated applied by the Club´s accountant and finds that the Club paid the amount of EUR 12,974.00 to the Player.

74. Consequently, the remaining salary owed under the Contract is EUR 7,026.00. The FIVB Tribunal Judge finds that no deduction has to be considered, neither for the period of the Player´s injury nor for the alleged damage by any flooding of the Player´s apartment.

75. According to Article 5, para. 3 of the Contract, the Player "*is entitled to receive the salary specified in point 1 also during the inability to take part in trainings and games because of the injury sustained on practice or matches in terms described in Club´s regulations*". As already

mentioned in para. 68 above, the Player has provided sufficient evidence that she had actually suffered an injury. The question is whether this injury was "sustained on practice or matches in terms described in Club´s regulations". The Club failed to submit its "regulations"; thus, the FIVB Tribunal Judge is not in a position to actually verify what the exact prerequisites for Article 5, para. 3 of the Contract are.

76. However, having reviewed the evidence before him, the FIVB Tribunal Judge finds that the Player´s knee injury was suffered during her time with the Club's team. In his witness statement dated 23 October 2017, Mr. Jacek Pasinski (the Club team´s coach) testifies that "*during her stay in Pila to the best of my knowledge Beta Dumancic has not suffered any injury*" and that, if an injury occurred during her time with the Club, the Player "*would certainly be provided with the best medical assistance*". However, the circumstances show that the injury was probably suffered during the Player´s time with the Club. The Club was informed of the Player´s injury on 8 May 2017 at the latest (see also para. 68 above); therefore, the injury was suffered on or before this date. The Player submitted the discharge summary dated 15 June 2017, which states under the section "Anamnesis morbi", *inter alia*, as follows: "*3 months ago injured again the same knee at the volleyball*." Three months prior the surgery was mid-March 2017 when the Player was playing only for the Club´s team. In addition, according to Section 3 lit. d of the Decision, the Player submitted during the CEV proceedings that the injury was detected on 24 April 2017, i.e. the date on which the Player joined the Croatian national team. This part of the Decision is not contested by the Club but is rather supported by the invitation letter of 22 April 2017, which reads in its second sentence as follows: "*Given her medical situation she is due to check in with the Croatian National Federation by April 24th to do all the medical examinations before she started the practice sessions*." Finally, the Club did not provide any alternative explanation as to when the Player suffered her knee injury outside the Club´s practices or games; whether the injury was suffered during the Club´s practices or a game of the Club´s team is irrelevant for the outcome of the case.

77. Thus, deciding *ex aequo et bono*, the FIVB Tribunal Judge finds that Article 5, para. 3 of the Contract does not prevent the Player to be entitled to salary from the Club during the period of injury.

78. Moreover, the Club failed to prove its submission regarding damage caused by flooding of an apartment based on a leak from the Player's apartment. Only Mr. Adam Majewski (the Club´s manager) testified that another apartment was flooded due to the leak of the fridge in the

Player´s apartment. In his witness statement, Mr. Majewski concludes as follows: "*The Club incurred the costs of repairing the fridge and removing the effects of flooding in the total amount about 1000 PLN*." However, the Club did not submit any evidence concerning the exact amounts of payments made to third persons for their services concerning the broken fridge or the flooding of the apartment. The language of Mr. Majewski´s witness statement is even very vague ("*about 1000 PLN*"; emphasis added). In this regard, the FIVB Tribunal Judge agrees with the CEV in Section 4.3 lit. o of the Decision that the position of Mr. Majewski within the Club has to be taken into consideration and that the Club could have submitted any reports, pictures, invoices, etc. Finally, the Club failed to show some conduct by the Player that contributed to the damage in order for her to be liable, e.g. if she was provided with a broken fridge or the fridge leaked after returning the keys to the Club then there is no conduct making her liable.

79. Thus, the FIVB Tribunal Judge finds that the Club has failed to prove the damage caused to the Club by the hypothetical flooding due to a broken fridge in the Player´s apartment. Consequently, no damages shall be awarded to the Club nor any offset granted against the outstanding salaries to be paid by the Club to the Player.

6.2.3 Summary

80. The Player did not breach the Contract.

81. The Player is entitled to outstanding salary in the amount of EUR 7,026.00.

82. Consequently, the Club's Request for Review is partially upheld and the Decision to be amended accordingly.

6.3 Costs

83. In the Decision, the CEV ordered the Club to reimburse the full amount of the first instance handling fee of EUR 400.00 to the Player. Given that the Decision is upheld almost in full on the merits, the FIVB Tribunal Judge fully confirms the decision on costs under section 4.3 lit. r and lit. s of the Decision, whereby the CEV handling fee of EUR 400.00 shall be borne by the Club.

84. Article 20.11.2 of the 2018 FIVB Sports Regulations (identical wording as Article 20.10.2 of the 2017 FIVB Sports Regulations) allows the prevailing party to be granted a contribution towards

legal fees and expenses (including the applicable handling fee). However, legal fees must be reasonable and are limited to fees related to the proceedings before the FIVB Tribunal. When determining the contribution, the FIVB Tribunal Judge must take into account the outcome of the proceedings as well as the conduct and financial resources of the Parties.

85. The Club paid a handling fee of CHF 1,500.00 but failed to submit any account of costs for legal fees and expenses. Given that the Decision is upheld almost in full, the FIVB Tribunal Judge finds that the Club has to bear the full handling fee and any of its own legal costs. The Player submitted an account of costs and supporting evidence for an overall fee established by the Italian Ministerial Decree no. 55/2014 tab. 26 in the amount of EUR 1,620.00 net resulting in a total invoice amount of EUR 2,363.77 gross. In addition, the Player´s account of costs provides for the amount of EUR 437.74 in relation to the first instance proceedings before the CEV. On the one hand, the Player´s Request for Relief explicitly states the amount of EUR 1,620.00 for reimbursement of legal fees, but, on the other hand, it requests a higher amount if deemed fair by the FIVB Tribunal Judge ("*or the different one regarding as fair and right*"). Therefore, the Player´s Request for Relief is not limited to the net amount of EUR 1,620.00 but, taking into account also the Player´s account of costs, contains the request for reimbursement of the gross amount of EUR 2,363.77.

86. In accordance with Article 20.11.2 of the 2018 FIVB Sports Regulations (identical wording as Article 20.10.2 of the 2017 FIVB Sports Regulations), the FIVB Tribunal Judge finds that the Club´s contribution towards the Player´s reasonable legal fees and expenses related to the proceedings before the FIVB Tribunal shall be EUR 2,300.00 while the legal fees and costs related to the CEV proceedings have already been covered by the decision on costs rendered by the CEV Legal Chamber under section 4.3 lit. r and lit. s of the Decision. Consequently, the Club shall pay to the Player the additional amount of EUR 2,300.00.

DECISION

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

1. The Request for Review filed by Pilskie Towarzystwo Pilki Siatkowej **S.A.** is partially upheld.

2. The first bullet point of the decision rendered by the CEV in CC143/2076 dated 8 March 2018 is amended as follows while the remaining parts of that decision are fully confirmed:

    - Ptps Pila (576 - Poland) shall pay the amount of EUR 7,026 net to Beta DUMANClé as outstanding instalments.

3. Pilskie Towarzystwo Pilki Siatkowej S.A. shall bear its own legal fees and expenses including the applicable handling fee. In addition, Pilskie Towarzystwo Pilki Siatkowej S.A. shall pay the amount of EUR 2,300.00 to Ms. Beta Dumancié as a compensation towards her reasonable legal tees and expenses.

4. Any other requests for relief are dismissed.

Lausanne, seat of the proceedings, 20 September 2018

Dr. Karsten Hofmann

FIVB Tribunal Chairperson

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 2018 FIVB Sports Regulations (identical wording as Article 20.11 of the 2017 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.