

THE FIVB DISCIPLINARY PANEL

composed by

Mr. Tomohiro Tohyama (JPN)	Chairperson
Ms. Maria José García Suárez (COL)	Member
Mr. Jaime Cambreleng Contreras (ESP)	Member

Case DP [Case Number]¹

I. PARTIES

1. [The Player] is a 34-year-old professional volleyball player (hereafter the “**Player**”) and a member of the men’s national team of [the Player’s Country] (hereafter the “**Team**”).

II. FACTUAL BACKGROUND AND PROCEDURE

2. From [date] to [date], the [Event] took place in [Host Country 1] and [Host Country 2] (hereafter the “[Event]”).
3. On [date], during the final day of the [Event], both the bronze medal and the finals match of the [Event] were scheduled to take place.
4. After the bronze medal match between the national teams of [Country 1] and [Host Country 2] had been finished, there was less than one hour left until the start of the finals match between the Team and the national team of [Other Finalist]. The court had not been cleared yet as the flash interview was still finishing up and players of the national teams of [Country 1] and [Host Country 2] were still leaving the court. Therefore, the event personnel courtside instructed the players of the Team and of the national team of [Finalist 1] to wait before entering the court to warm up.
5. The Player, however, put both his hands on the shoulders of a member of the event staff (hereafter the “**Staff Member**”), who was standing in front of him, physically moved [Staff Member] to the side and entered the court to warm up before it had been cleared (hereafter the “**Incident**”). A few minutes after the Incident had happened, the Player apologised to the Staff Member, agreeing that physically engaging with the staff was not appropriate.
6. The Staff Member informed the designated FIVB Representative on-site (hereafter the “**On-Site Representative**”), about the Incident immediately after it had happened. The Incident was reported to the Fédération Internationale de Volleyball (hereafter the “**FIVB**”) on [date]. By letter of [date] (hereafter the “**Charge Letter**”), the FIVB Disciplinary Panel charged the Player with violations of Articles 8.3 and 8.7 of the FIVB

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

Disciplinary Regulations 2022 (hereafter the “**Disciplinary Regulations**”) as well as Article 21.2.2 of the Official Volleyball Rules 2021-2024 (hereafter the “**Rules of the Game**”) and opened the present proceedings based on the Incident.

7. The file sent with the Charge Letter included the following exhibits (hereafter the “**Exhibits**”):
 - a report from the On-Site Representative;
 - a report from the Staff Member.
8. The FIVB Disciplinary Panel invited the Player to respond to the charges by no later than [date] (hereafter the “**Answer**”).
9. On [date], the Player filed his Answer, submitting essentially as follows:
 - The Incident happened on the day of the finals match of the [Event], meaning that the Player felt stress and was under emotional strain.
 - The Player does not want to shirk responsibility or downplay the Incident, as he realizes that his behaviour was inappropriate.
 - Therefore, the Player immediately apologised to the Staff Member and is ready to do so again, if necessary. The Player hopes that his apology made sure that the Staff Member did not feel insulted in any way.
 - The Player’s behaviour was purely due to the emotions accompanying the finals match of the [Event]. He did not intend to hurt or disrespect the Staff Member in any way.
 - The Player had not been informed about the “*full protocol*”. Therefore, he worried that the preparation of the Team for the finals match could be disturbed.
 - The Player would like to apologise once again to the Staff Member for his behaviour and will do so again personally on the occasion of forthcoming competitions.
10. On [date], the FIVB Disciplinary Panel Secretariat acknowledged receipt of the Answer, noted that the Player had not signed his Answer and kindly invited the Player to do so and resubmit a signed copy of his Answer by no later than [date].
11. On [date], the FIVB Disciplinary Panel Secretariat noted that the Player had not provided a signed copy of his Answer within the deadline and that, therefore, it would consider the submission sent on [date] as the final version of the Answer and would forward it as it was to the FIVB Disciplinary Panel. Further, the FIVB Disciplinary Panel Secretariat informed the Player of the composition of the Disciplinary Panel. In addition, the FIVB Disciplinary Panel Secretariat noted that it would deliberate on the case shortly and decide based on the written submissions filed by the Parties unless it decided otherwise. Finally, the FIVB Disciplinary Panel Secretariat held that a decision or further instructions would be communicated to the Parties in due course.

III. COMPETENCE

12. The FIVB Disciplinary Panel is competent to hear this case as per Article 14.4 of the Disciplinary Regulations, which provides as follows:

“The FIVB Disciplinary Panel is competent to impose sanctions for simple offences, when the matter is referred to it by the FIVB President, for major offences, and as provided by the FIVB Medical and Anti-Doping Regulations.”

13. Notwithstanding the above, the FIVB Disciplinary Panel Sub-Committee has the right to refer a case to the FIVB Disciplinary Panel when the sanction that it would otherwise impose would be served after the relevant competition assuming that the necessary procedural requirements, i.e. the submission of the relevant file to the FIVB Disciplinary Panel within 24 hours, are satisfied. As this incident took place just before the final match of the relevant competition, any disciplinary procedure conducted and decision taken would only have effect outside of the [Event], which would be outside of the competence of the FIVB Disciplinary Panel Sub-Committee and within the competence of the FIVB Disciplinary Panel. Thus, while it could be argued that Article 8.7 of the Disciplinary Regulations limits the sanctioning of conduct under Articles 8.1 to 8.3 of the Disciplinary Regulations to the FIVB Disciplinary Panel Sub-Committee, the reading of Articles 14.4 and 14.5.2 of the Disciplinary Regulations entails that the FIVB Disciplinary Panel has residual jurisdiction to impose sanctions on “simple offences”. This conclusion is in line with the FIVB Disciplinary Panel’s decision 2019-05.
14. Apart from that, the FIVB Disciplinary Panel notes that the Player did not challenge the competence of the FIVB Disciplinary Panel to hear the present case.

IV. APPLICABLE LAW

15. The FIVB Disciplinary Panel indicates that the FIVB Constitution and Regulations apply to this case. Additionally, Swiss law is applicable in accordance with Article 1.2 of the Disciplinary Regulations.
16. The Disciplinary Regulations are applicable as to the merits of the present dispute as they have entered into force on 26 April 2022, i.e. before the Incident occurred.
17. The substantive provisions of the Disciplinary Regulations that are relevant for the resolution of this dispute are quoted in the following:

Relevant Provisions of the [Disciplinary Regulations](#)

“2. GENERAL PRINCIPLES

2.1 Violations of the FIVB Constitution, Regulations and decisions may be sanctioned as provided herein and in the respective provisions of said legal

documents. Violations of ethical standards shall be subject to the FIVB Code of Ethics.

2.2 Violations of the Rules of the Game may be sanctioned as provided in Articles 20 and 21 of the Rules of the Game. A violation of the Rules of the Game may also constitute a disciplinary offence, sanctionable also under these Regulations.”

“4. SANCTIONS

4.1 The following sanctions may be imposed for a simple offence:

- a) Warning;
- b) Reprimand;
- c) Monetary fine up to CHF 10,000;
- d) Repeal of a right (for example a suspension, i.e. prohibition from participation, for a given period of time, in any official activity within the sphere of the FIVB) up to six (6) months;
- e) A combination of the above sanctions.”

“8. OFFENSIVE BEHAVIOUR AND DISCRIMINATION

8.1 Violations of the following provisions may be sanctioned subject to Article 2.2 of these Regulations and sanctions already imposed under the Official Rules for the same conduct.

8.2 Violent physical misconduct

Any violent physical misconduct (including any such conduct in violation of the FIVB Policy against Harassment and Abuse) shall be sanctioned based on the severity of the misconduct.

8.3 Unsportsmanlike conduct

Any unsportsmanlike conduct (including any such conduct in violation of the FIVB Policy against Harassment and Abuse) shall be sanctioned based on the severity of the conduct. Unsportsmanlike conduct is any conduct violating the generally accepted principles of sportsmanship such as respect, fairness, honesty, fair play or similar as well as non-compliance with any other written or unwritten rules of play, including but not limited to:

- 1) insults.
- 2) offensive gestures, signs or language.
- 3) demonstrations of a non-sporting nature.
- 4) behaviour that brings the sport of Volleyball and/or the FIVB into disrepute.

[...]

8.7 Disciplinary offences under Articles 8.1 through 8.3 as well as violations of the FIVB Policy against Harassment and Abuse by a coach, player, team delegation member, official to or against a player or any other team member or

official present, shall be sanctioned by the Disciplinary Panel Sub-Committee with suspension for one or more matches or exclusion from the competition depending on the seriousness of the violation.”

“14. COMPETENCE TO IMPOSE SANCTIONS

[...]

14.4 The FIVB Disciplinary Panel is competent to impose sanctions for simple offences, when the matter is referred to it by the FIVB President, for major offences, and if provided by the FIVB Medical and Anti-Doping Regulations.”

“16. DISCIPLINARY PROCEDURE

[...]

16.4.1 The competent FIVB body shall evaluate the evidence, take into consideration the specific conditions under which the events occurred, the previous conduct of the person(s)/or institution(s) concerned and generally all the circumstances in order to determine whether and to what extent a sanction is required. The following principles apply:

a) When determining the appropriate sanctions applicable, the competent FIVB body shall take into consideration all aggravating and mitigating circumstances and shall detail the effect of such circumstances on the final sanction in the written decision.”

Relevant Provisions of the [Rules of the Game](#)

“20.2 FAIR PLAY

20.2.1 Participants must behave respectfully and courteously in the spirit of FAIR PLAY, not only towards the referees, but also towards other officials, the opponent, team-mates and spectators.

[...]

21.2 MISCONDUCT LEADING TO SANCTIONS

Incorrect conduct by a team member towards officials, opponents, team-mates or spectators is classified in three categories according to the seriousness of the offence.

21.2.1 Rude conduct: action contrary to good manners or moral principles.

21.2.2 Offensive conduct: defamatory or insulting words or gestures or any action expressing contempt.”

V. LEGAL CONSIDERATIONS

1. Violation

18. At the outset, the FIVB Disciplinary Panel notes that the Disciplinary Regulations do not require that an offence is committed intentionally. Instead, Article 2.3 of the FIVB Disciplinary Regulations specifically states that negligent conduct can also constitute a disciplinary offence unless otherwise specified.
19. Having examined the facts and the evidence of the present case, the FIVB Disciplinary Panel finds that the Incident cannot be classified as “violent physical misconduct” within the meaning of Article 8.2 of the Disciplinary Regulations. The Player placed his hands on the shoulders of the Staff Member and moved [Staff Member] to the side in order to get past [Staff Member] onto the court. While undoubtedly inappropriate, such act is not “violent” as stipulated in Article 8.2 of the Disciplinary Regulations.
20. By contrast, the Incident must be regarded as “unsportsmanlike conduct” within the meaning of Article 8.3 of the Disciplinary Regulations, i.e. a conduct violating the generally accepted principles of sportsmanship such as respect, fairness, honesty, fair play or similar as well as non-compliance with any other written or unwritten rules of play.
21. While the Player’s action does not fall under any of the examples explicitly provided under Article 8.3 of the Disciplinary Regulations, it does qualify as “conduct violating the generally accepted principles of sportsmanship”.
22. In this regard, it is to be noted that the Player did not challenge that he behaved as described towards the Staff Member. While it is understandable that the Player felt an emotional strain before the finals match of the [Event], such strain does not excuse the Player’s behaviour in any way. The Player is a professional volleyball player with a lot of experience, he should therefore be used to pressure and can be expected to handle pressure in a better way. In addition, due to his advanced age (from a sporting perspective), the Player assumes a role model function to which he was unable to live up at the Incident.
23. On-site staff are essential for the proper conduct of a major event such as the [Event]. It is therefore imperative to show due respect to the staff and to follow their instructions. Touching and physically moving a member of the event staff is encroaching and disrespectful. Therefore, it clearly is a conduct that violates the generally accepted principle of “respect” as laid out in Article 8.3 of the Disciplinary Regulations.
24. Hence, the Player demonstrated unsportsmanlike conduct and is liable for the violation of Article 8.3 of the Disciplinary Regulations.
25. Regarding Articles 20.2.1, 21.2.1 and 21.2.2 of the Rules of the Game, the FIVB Disciplinary Panel finds that the Rules of the Game inherently govern how the game of volleyball is played on the court. In looking at the application of sanctions found in Article 21.3 of the Rules of the Game, it is clear that it is foreseen that these would apply during a match, with referees being responsible for enforcing the Rules of the Game.

The FIVB Disciplinary Panel finds that Article 14.2 of the Disciplinary Regulations does not create additional sanctioning power to allow the FIVB Disciplinary Panel to sanction conduct occurring “off the court”, i.e. not during a volleyball match, that might have been a violation of the Rules of the Game. Rather, it provides the possibility for the FIVB Disciplinary Panel to examine and sanction particularly egregious behaviour that occurred on the court beyond the limits of a match as found in application of sanctions in the Rules of the Game. This interpretation is supported by the wording of the second sentence of Article 2.2 of the Disciplinary Regulations, which states that “[a] *violation of the Rules of the Game may also constitute a disciplinary offence, sanctionable under these Regulations*” (emphasis added). The “also” in the interpretation implies that it is a provision designed to extend the possibility of sanctioning conduct on the court rather than creating a separate sanctioning power. Consequently, the FIVB Disciplinary Panel finds that the Incident does not constitute a violation of the Rules of the Game as it was not behaviour that occurred on the court, i.e. during a volleyball match.

26. Based on the above, the FIVB Disciplinary Panel holds that the Incident constituted a violation of Article 8.3 of the Disciplinary Regulations but not a violation of Articles 20.2.1, 21.2.1 and 21.2.2 of the Rules of the Game.

2. Sanction

27. Pursuant to Article 16.4.1 a) of the Disciplinary Regulations, “[w]hen determining the appropriate sanctions applicable, the competent FIVB body shall take into consideration all aggravating and mitigating circumstances and shall detail the effect of such circumstances on the final sanction in the written decision.”
28. When determining the applicable sanctions, the FIVB Disciplinary Panel notes that:
- a. Albeit intrusive, the Incident was not physically dangerous to the Staff Member or anyone else;
 - b. The Player admits to his behaviour, shows remorse and has apologised to the Staff Member shortly after the Incident;
 - c. This is the first time the Player is subject to disciplinary proceedings;
 - d. The Player is a 34-year-old professional volleyball player with vast experience in international volleyball competitions;
 - e. The Incident was directed at the Staff Member, i.e. an FIVB official.
29. In examining FIVB jurisprudence involving violations of Article 8.3 of the Disciplinary Regulations, the FIVB Disciplinary Panel notes that there has been no case so far that appears truly comparable to the one at hand. There are, however, certain cases that the FIVB Disciplinary Panel relied on for comparative purposes in rendering its decision even if they do not constitute the exact same circumstances as the present case.
30. In the case at hand, there was never any danger of physical harm – neither to the Staff Member nor to any other third parties. By contrast, there is a significant risk of people getting hurt when, for example, a ball is kicked in the direction of occupied stands (cf. DP 2021-02). However, the Player physically moved the Staff Member, which means there was an intrusive (albeit non-dangerous) physical contact. Therefore, the Player should be sanctioned with more than a reprimand (cf. DP 2021-02). That is because it must be made absolutely clear to everyone in the world of volleyball, that staff members of the FIVB are not to be touched in any way without their prior consent. Then again, the Player’s misconduct does not appear to be as serious as a racial insult, for which the FIVB has imposed a three-match suspension (cf. DP 2019-04) or a grave public insult, for which the FIVB has imposed a six-match suspension (cf. DP 2019-01). Consequently, the Player should be sanctioned with more than a reprimand but less than a three-match suspension.
31. When filling in this margin of sanctioning (“more than a reprimand but less than a three-match suspension”), the FIVB Disciplinary Panel considers that, while the Player's behaviour undoubtedly constitutes an act of considerable, physically conveyed disrespect, the Player apologised on the spot without having been asked to do so. This fact has to be taken into account as a mitigating factor (cf. DP 2019-04). In addition, the

Player admitted to his behaviour and showed remorse during the present proceedings. Also, this was the first time the Player was subject to disciplinary proceedings.

32. However, the Player is a professional volleyball player with a lot of experience and can therefore be expected to behave more appropriately. In addition, due to his advanced age (from a sporting perspective), the Player assumes a role model function that he could not live up to at the Incident. Additionally, the affected individual by the Player's misconduct was the Staff Member, i.e. an FIVB official. In this regard, the FIVB Disciplinary Panel reiterates that FIVB officials are essential for the proper conduct of major events and, therefore, to be met with the utmost respect. The sanction to be imposed on the Player needs to reflect that misconduct towards an FIVB official is, by default, of greater severity than other cases of misconduct, for instance towards other players.
33. In assessing the above factors, the FIVB Disciplinary Panel finds a reprimand and a fine in the amount of CHF 1'000 to be an appropriate sanction in relation to the offence committed by the Player.

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The Player has committed a violation of Article 8.3 of the FIVB Disciplinary Regulations 2022.
2. The Player shall be sanctioned with a reprimand and a monetary fine of CHF 1'000.
3. The Player is ordered to make payment of the abovementioned fine **within 30 days** from notification of the decision to the following bank account:

Banque Cantonale Vaudoise (BCV)

Place Saint-François 14

CH-1001 Lausanne / Switzerland

Account: T 5344.53.25

IBAN: CH33 00767 000T 5344 5325

BIC Code (Swift Address): BCVLCH2LXXX

Bank clearing: 767

4. In the event that the Player fails to pay the monetary fine and to act in a manner consistent with the reprimand, the FIVB Disciplinary Panel and/or the FIVB Disciplinary Panel Sub-Committee may take these sanctions into account when examining future cases involving the Player.
5. This decision may be appealed in accordance with the attached Notice of Appeals.

Lausanne, [date of the decision]

For the FIVB DISCIPLINARY PANEL

Mr. Tomohiro Tohyama

Chairperson

NOTICE OF APPEALS

1. Parties who are affected by a decision of a FIVB body (e.g. the President, the Board of Administration, the Disciplinary Panel etc.) can file an appeal to the FIVB Appeals Panel unless otherwise provided in the FIVB Constitution and Regulations.
2. Appeals must be made in writing and must be received by the FIVB Secretariat within fourteen (14) days from notification of the decision, failing which the appeal will be considered inadmissible.
3. Appeals shall be accompanied by a copy of the decision appealed against and a bank certificate confirming payment of the administrative fee of CHF 2'000 into the following account:

Banque Cantonale Vaudoise (BCV)
Place Saint-François 14
CH-1001 Lausanne / Switzerland
Account: T 5344.53.25
IBAN: CH33 00767 000T 5344 5325
BIC Code (Swift Address): BCVLCH2LXXX
Bank clearing: 767

4. Failure to pay the administrative fee within the deadline fixed by the FIVB Secretariat will result in considering the appeal withdrawn. The FIVB Appeals Panel may decide that the administrative fee be reimbursed in the event that the appeal is successful.
5. The appeal can be filed by a proxy if he/she presents a written power of attorney.
6. For details of the appeals procedure, please refer to Section III of the FIVB Disciplinary Regulations (<https://www.fivb.com/en/thefivb/legal>).
7. A further appeal against the decision by the FIVB Appeals Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following receipt of the decision.