

THE FIVB DISCIPLINARY PANEL

composed by

Ms. María José García Suárez (COL)	Chairperson
Mr. Luis Antonio González Ríos (PUR)	Member
Mr. Ludovic Deléchat (SUI)	Member

Case DP [Case Number]¹

I. PARTIES

1. [The Referee] is an international referee for the FIVB (the “**FIVB Referee**”).

II. FACTUAL BACKGROUND AND PROCEDURE

2. From [date] to [date], the [Event] took place in seven different locations (hereinafter the “[Event]”). The FIVB Referee was assigned for the [Event] in [Host Country] (the “**Event**”).
3. On [date], the FIVB Referee approached [Staff Member] of the Event’s official hotel (hereinafter the “**Hotel**”) and handed over a handwritten note (hereinafter the “**Note**”) which included [The Referee] contact details, as well as a short text in [Host Country Language] (hereinafter the “**Incident**”).
4. The English translation of the Note reads as follows:

“You are lovely and very, very beautiful. I am leaving tomorrow. Tonight after work can we see each other. I am scared. Tell me. Please. Room 6127. Call me”
5. The [Hotel’s Staff Member] felt harassed by the Note and immediately reported the Incident to the Hotel’s General Manager. [Hotel’s Staff Member] handed over the Note to [Hotel’s General Manager]. [Hotel’s General Manager] then informed the [Host Country National Federation] (hereinafter the “**HCNF**”), involving a HCNF official.
6. On [date], after the Incident, FIVB Referee Coach, and [HCNF official] went to the Hotel and confronted the FIVB Referee, who confirmed that the Incident had taken place as described and apologised for his behaviour.
7. The Incident was reported to the FIVB Legal Department on [date], which referred it to the FIVB Disciplinary Panel Sub-Committee (hereinafter also the “**Sub-Committee**”) for the appropriate measures.

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

8. On [date], the Sub Committee sent a notification letter (hereinafter the “**Notification Letter**”) to the FIVB Referee, providing, in particular, as follows:

“ 1. [The Referee] shall be provisionally suspended of official assignments as Referee for the duration of [Event].

2. [The Referee] has the right to provide his position on the provisional suspension by [date].

3. In the event that [The Referee] fails to respond within the set deadline, the FIVB Disciplinary Panel Sub-Committee will deem that he has waived his right to be heard.

4. The FIVB Disciplinary Panel Sub-Committee will refer the file to the FIVB Disciplinary Panel to review the case for any further action beyond the [Event]. At that stage, [The Referee] will be granted a deadline to provide his position in writing.”

9. On [date], the FIVB Referee provided his position on the Notification Letter.

10. On [date], the Sub Committee took the following decision:

“1. The provisional suspension imposed on [date] on [The Referee] shall be maintained for the duration of the [Event].

2. The FIVB Disciplinary Panel Sub-Committee will refer the file to the FIVB Disciplinary Panel so that it can review the case and evaluate whether to take any further action beyond [Event]. At that stage, [The Referee] will be granted a deadline to provide his position in writing.”

11. On [date], referencing the Sub-Committee’s decision dated [date], the FIVB Disciplinary Panel Secretariat addressed the FIVB Referee informing him that he had a deadline until [date] to provide a written position on the Incident and that a failure to answer within the applicable deadline, would be considered as a waiver of his right to be heard. Additionally, the FIVB Disciplinary Panel Secretariat informed the FIVB Referee that in the present case, the FIVB Disciplinary Panel would be composed as follows: Ms. María José García Suárez (COL), Chairperson, and Mr. Luis Antonio González Ríos (PUR) and Mr. Ludovic Deléchat (SUI), Members.

12. On [date], the FIVB Referee filed his answer (hereinafter the “**Answer**”), submitting essentially as follows:

- He acknowledged that he approached the [Hotel’s Staff Member] who had been very kind and helpful to him.
- He gave the [Hotel’s Staff Member] the Note, containing his contact details and “*two words of compliments*”, as a thank you. He provided his contact details to stay in touch.
- He was never impolite, did not use illicit or inappropriate words and neither wrote nor told the [Hotel’s Staff Member] to come to his room. Rather, he invited the [Hotel’s Staff Member] to a get-together after work.

- The Note did not contain anything unusual or inappropriate. The English translation of the Note demonstrates that he did not tell the [Hotel's Staff Member] that he wanted [Hotel's Staff Member] or that [Hotel's Staff Member] should come to his room or contain any other kind of impolite or illicit comments.
 - The [Hotel's Staff Member] accepted the Note. One hour later, an employee of the Hotel asked him to meet the night manager of the Hotel, who was waiting for him outside of the Hotel. The night manager of the Hotel showed a picture of the Note to him and complained about his behaviour. While he tried to explain that it was not his intention to harass or abuse the lady, the night manager refused to listen to and also refused his apology, leaving the impression that he had already judged him before having talked to him.
 - He has been an international referee for 23 years and an FIVB referee for 10 years. During all that time, he has never behaved badly towards anyone.
 - Should the FIVB Disciplinary Panel find his behaviour to be harassment and abuse, he sincerely apologises and would be grateful for a lenient judgment.
 - The Incident affected him very much because the manager of the Hotel misinterpreted it and refused to accept any explanation.
13. On [date], the FIVB Disciplinary Panel acknowledged receipt of the Answer and announced that it would deliberate on the case shortly. Further, the FIVB Disciplinary Panel informed that it would decide based on the written submission filed by the Parties, unless it decided otherwise. Finally, the FIVB Disciplinary Panel announced that a decision or further instructions would be communicated to the Parties in due course.

III. COMPETENCE

14. In accordance with Articles 13.5.2 of the FIVB Event Regulations 2023 and 14.4 of the FIVB Disciplinary Regulations 2023, the Sub-Committee is competent to impose sanctions during an FIVB competition, such as the Event. In addition, pursuant to Article 14.4 of the FIVB Disciplinary Regulations 2023, the Sub-Committee may refer a matter to the Disciplinary Panel depending on the complexity and seriousness of the disciplinary breach and if it is practically possible.
15. By way of its decision dated [date], the Sub-Committee has decided to suspend the FIVB Referee for the duration of the [Event], i.e., imposed a sanction during an FIVB competition. In addition, it referred the case file to the FIVB Disciplinary Panel for review and evaluation as to whether any further action beyond the [Event] should be taken.
16. Hence, the procedure provided for cases of potential harassment in the FIVB Disciplinary Regulations 2023 has been followed and the FIVB Disciplinary Panel is competent to review the matter at hand.
17. In addition, the FIVB Disciplinary Panel notes that the FIVB Referee did not challenge the competence of the FIVB Disciplinary Panel to hear the present case.

IV. APPLICABLE LAW

18. The FIVB Disciplinary Panel notes 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 2023.
19. The Disciplinary Regulations 2022 are applicable as to the merits of the present dispute as the 2023 edition of the Disciplinary Regulations has entered into force on 23 June 2023, i. e. after the Incident occurred. The Disciplinary Regulations 2023 shall therefore apply only with regard to procedural aspects (see already para. 14 above).
20. The substantive provisions of the [Disciplinary Regulations 2022](#) that are relevant for the resolution of this dispute are quoted in the following:

“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.”

“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.*

4.2 The following sanctions may be imposed for a major offence:

- a) Monetary fine;*
- b) 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) of more than six (6) months;*
- c) Disqualification;*
- d) Forfeit of match(es);*
- e) Deduction of point(s);*
- f) 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.

[...]

8.4 Discrimination

Any Party who offends the dignity or integrity of a country, a person or group of people through contemptuous, discriminatory or derogatory words or actions (by any means whatsoever) on account of race, skin colour, ethnicity, national or social origin, gender, disability, sexual orientation, language, religion, political opinion, birth or any other status or any other reason (including any such conduct in violation of the FIVB Policy against Harassment and Abuse) shall be sanctioned in accordance with the severity of the discrimination.

[...]

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.”

21. Furthermore, the [FIVB POLICY AGAINST HARASSMENT AND ABUSE](#)² also contains substantive provisions and is therefore quoted in the following:

“1. OBJECTIVE

This Policy is intended to help safeguard Athletes and other Participants from harassment and abuse in sport during FIVB Volleyball, Beach Volleyball and Snow Volleyball events.

2. SCOPE OF APPLICATION

2.1 This Policy applies:

- i. During the FIVB Volleyball, Beach Volleyball and Snow Volleyball events*
- ii. To all Participants to the FIVB Volleyball, Beach Volleyball and Snow Volleyball events;*
- iii. To alleged incidents of harassment and abuse.*

² See Appendix B of the 2023 FIVB Disciplinary Regulations.

2.2 For the purposes of this Policy:

"Participants" shall mean individual competitors (Athletes) and teams, officials, managers and other members of any delegation, referees and jury members and all other accredited persons.

"Event" shall mean the FIVB Volleyball, Beach Volleyball and Snow Volleyball events

"Harassment" as stated in Articles 8.1 and 8.4 FIVB Disciplinary Regulation or **"harassment and abuse"** includes psychological abuse, physical abuse, sexual harassment and neglect. These forms of harassment and abuse may occur in combination or in isolation.

[...]

"Sexual harassment" means any verbal or physical conduct of a sexual nature, which is unwelcome, or where consent is coerced, manipulated or cannot be given. Sexual harassment can take the form of sexual abuse."

"7. DISCIPLINARY PROCEDURE

Any alleged incident of harassment and abuse during the Event which may constitute a breach of Articles 8.1 and 8.4 FIVB Disciplinary Regulations, may give rise to the FIVB initiating disciplinary proceedings."

V. LEGAL CONSIDERATIONS

1. Violation

22. The FIVB Referee has committed a violation of Articles 8.2 and 8.4 of the FIVB Disciplinary Regulations 2022, as well as Clause 2 of the FIVB Policy against Harassment and Abuse.
23. Articles 8.2 and 8.4 of the FIVB Disciplinary Regulations 2022 provide that any conduct in violation of the FIVB Policy against Harassment and Abuse shall be sanctioned in accordance with its severity. Pursuant to Clause 2.2 of the FIVB Policy against Harassment and Abuse, harassment includes psychological abuse, physical abuse, sexual harassment and neglect. Sexual harassment within the aforementioned sense means any verbal or physical conduct of a sexual nature, which is unwelcome, or where consent is coerced, manipulated or cannot be given.
24. Generally, the FIVB Disciplinary Panel finds that an invitation delivered by a man to a woman is not an act of harassment by itself, even if it may be unsolicited by its recipient. However, turning to the conduct of the FIVB Referee in the present case, the FIVB Disciplinary Panel notes that the Incident was very *"unwelcome"* to the [Hotel's Staff Member], although the FIVB Referee did not directly use salacious words in his Note. In the context of determining what constitutes harassment pursuant to Clause 2 of the FIVB Policy against Harassment and Abuse, the subjective impression of the potential victim must be recognised as a very important factor. It is of outmost importance to the FIVB that everyone, irrespective of his or her origin or background, feels safe in the presence of FIVB officials. Additionally, the text of the Note is, particularly at the end, quite intrusive and soliciting. By using the words *"Tell me. Please. Room 6127. Call me"*,

the FIVB Referee voiced the solicitation to call him or – better still – to come directly to his hotel room. Particularly due to the – at least subjective – impression of an explicit invitation to his hotel room, in connection with the flattering words about the [Hotel’s Staff Member] physical attractiveness, the FIVB Disciplinary Panel finds that the Note has an underlying sexual aspect.

25. Based on the above, the FIVB Disciplinary Panel finds that the Incident constituted a violation of Clause 2 of the FIVB Policy against Harassment and Abuse, and consequently, of Articles 8.2 and 8.4 of the FIVB Disciplinary Regulations 2022.

2. Sanction

26. According to Articles 8.2 and 8.4 of the FIVB Disciplinary Regulations 2022, any conduct in violation of the FIVB Policy against Harassment and Abuse shall be sanctioned based on its severity. Further, according to Article 16.4.1 FIVB Disciplinary Regulations 2022, when determining the appropriate sanctions, 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.
27. The FIVB Disciplinary Panel takes into consideration that the FIVB Referee has been refereeing for the FIVB for ten years and that this is the first time he is subject to disciplinary proceedings. The FIVB Disciplinary Panel further notes that the FIVB Referee had admitted his behaviour, shown remorse and apologised already shortly after the Incident. Finally, the FIVB Disciplinary Panel finds that the FIVB Referee behaved cooperatively throughout the proceedings.
28. Against this background and taking into account the specific circumstances of the case at hand, the FIVB Disciplinary Panel considers a prohibition from participation in any official activity within the sphere of the FIVB of three (3) months to be appropriate.
29. With regard to the period of prohibition, the FIVB Disciplinary Panel finds that it should run from the date the FIVB Referee was provisionally suspended, i.e., [date].

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. The Referee has committed a violation of Articles 8.2 and 8.4 of the FIVB Disciplinary Regulations 2022.
2. The Referee shall be sanctioned with a prohibition from participation in any official activity within the sphere of the FIVB of three (3) months starting from [date].
3. The FIVB Disciplinary Panel reserves the right to re-open this case in the event that the Referee failed to serve his sanction.
4. This decision may be appealed in accordance with the attached Notice of Appeals.

Lausanne, [date of the decision]

For the FIVB DISCIPLINARY PANEL

Ms. María José García Suárez
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.