



The
FIVB TRIBUNAL
hereby issues the following

DECISION

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

[The Coach] ("Claimant")

represented by [the Coach's lawyers], [the Coach's lawyers' place of residence]

v.

[The Club] ("Respondent")

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

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

1. The Parties

1. [The Coach] is a [the Coach's country] professional volleyball coach ("Claimant" or "**Coach**").
2. [The Club] is a [the Club's country] professional volleyball club ("Respondent" or "**Club**").

2. The FIVB Tribunal

3. Article 19.1.5 of the FIVB Sports Regulations dated 21 March 2022 ("**FIVB Sports Regulations**") provides as follows:

"Cases before the FIVB Tribunal shall be heard by the Chairperson, provided that the amount in dispute does not exceed CHF 200'000 (two hundred thousand Swiss Francs). All other cases shall be heard by the Chairperson and two (2) other members of the FIVB Tribunal, appointed by the Chairperson. If one or more of the members is unavailable or ineligible due to reasons of conflict (see Article 20.4), the Chairperson shall appoint another member of the FIVB Tribunal. If the Chairperson is unavailable or ineligible due to reasons of conflict (see Article 20.4), he/she shall be replaced by the Vice-Chairperson. The Chairperson may appoint another member of the FIVB Tribunal to hear a case instead of the Chairperson."

4. This present case is heard by the FIVB Tribunal Judge, Mr Micael Totaro from Switzerland ("**FIVB Tribunal Judge**"), as appointed by the FIVB Tribunal Chairperson, because the amount in dispute does not exceed CHF 200,000.

3. Facts and Proceedings

5. Below is a summary of the main relevant facts based on the parties' written submissions and evidence, whose authenticity has not been questioned by the parties. Additional facts may be set out where relevant in connection with the legal discussion that follows. Although the FIVB Tribunal Judge has considered all the facts, this decision will refer only to those deemed necessary to explain his decision.

3.1 Background Facts

6. On [date], the Coach and the Club signed an employment agreement ("**Contract**"), which was valid until "*the end of [year/year] sports season*".
7. Under Clause V.2 of the Contract, the Parties agreed that the Contract would be "*renewed for the next sport season [year/year] with the following conditions*":
 - *The Club is obliged to pay for the season [year/year] to the Coach the total salary of 36.000 Euros/Net (10.000 EURO before the start of season and 26.000 in 7 salaries of*

3714 EURO each, payments from [date] until [date].

[...]

- *If the Club wants to terminate the contract before the expiration date, the Club is obliged to pay to the Coach the accruals plus two salaries. (4.500 Euros x2)*

[...]

All the details mentioned above will be valid only if the President will be re-elected in the upcoming elections of the Club, until [date]. Passed this date the coaches contract will be automatically renewed for season [year/year].” (sic)

8. On [date], the Coach was orally informed by a Club’s representative about the decision to terminate the Contract.
9. By email of [date] addressed to the Club and its president, the Coach stated *inter alia* that (i) he had been informed by [the person’s name acting as team manager] acting as team manager that the Club had decided to terminate the Contract “*as of today*”, and (ii) that he objected to this termination and requested the payment of a termination indemnity “*in the amount of full value of the agreement for the [year/year] season*”.
10. On [date], the Club publicly announced on its social media that it had hired a new coach for the [year/year] season.
11. By email of [date], the Coach contacted the Club and notably requested the Club “*to fully compensate for season [year/year] as the contract was wrongfully terminated with no Clause inside our contract allowing this decision*”.
12. By [date], no election for the position of the Club’s president had been held.
13. On [date], the Club paid the Coach the amount of 4,000 euros, corresponding the overdue payables to the Coach in respect to the [year/year] season.
14. On [date], the Coach’s counsels sent a letter to the Club proposing an amicable settlement and announcing that the Coach would file a complaint before the [Continental Federation] (“CF”) if such a settlement was to fail.
15. On [date], the Coach filed a complaint against the Club before the [CF]. The Coach essentially claimed that the Contract had been terminated unilaterally without just cause and that he was entitled to receive the salaries and indemnity according to the Contract, which was allegedly

renewed for the season [year/year]. The Coach requested, *inter alia*, compensation in the amount of 19,000 euros net as termination indemnity.

16. On [date], the [CF] issued the following decision (“**Decision**”):

“The claim filed by [the Coach] is dismissed. [The Coach] shall bear the cost incurred in connection with the proceedings consisting of his legal costs and the handling fee.”

17. In essence, the Decision held that: (a) the Contract was unilaterally terminated by the Club on [date] without just cause, (b) the Coach should be placed in the same financial position as if the Contract had been duly executed until the end of its term, (c) the Coach received what he would have received had the Contract been fully honoured for the season [year/year], (d) the parties agreed to make the renewal of the Agreement for the [year/year] season conditional upon (i) the re-election of the Club’s President by [date], at the latest and, (ii) if past the date of [date] no election was held, the Agreement would be automatically renewed for the season [year/year], and (e) since the Club had already unilaterally terminated the Agreement on [date], it was no longer valid on [date] and could thus not be renewed whatsoever.

3.2 The Proceedings before the FIVB Tribunal

18. On [date], the Coach filed a request for review of the Decision (“**RFR**”).
19. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the RFR and invited the Club to file an Answer by [date]. It also informed the parties that the present dispute would be heard by the FIVB Tribunal Judge.
20. On [date], the Club filed its Answer.
21. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Club’s Answer and noted that the Club had failed to submit a Power of Attorney establishing its counsel’s powers of representation. Consequently, the Club was invited to submit a valid Power of Attorney by no later than [date].
22. On [date], the Club submitted a Power of Attorney.
23. On [date], the FIVB Tribunal Secretariat informed the Parties that (i) the Coach was invited to provide his comments, with supporting evidence, regarding his professional situation during the season [year/year] by no later than [date], and that (ii) the Parties were invited to inform the FIVB Tribunal whether a settlement would be a conceivable outcome in the present dispute

by no later than [date].

24. On [date], the Coach stated that he was “*willing to consider [an] attempt to reach a settlement, provided that such attempt is organised during the month of [month] and does not delay the present proceedings*”.
25. On [date], the Coach submitted a reply regarding his professional situation during the season [year/year] together with the new exhibit no. 12 (i. e. the copy of a new employment agreement in [language]).
26. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Coach’s submissions and noted that no English translation of the Coach’s new exhibit no. 12 had been provided and thus invited the Coach, in accordance with Article 19.4.2 of the FIVB Sports Regulations, to file an English translation of his exhibit no. 12 by no later than [date].
27. On [date], the Coach filed an English translation of his exhibit no. 12.
28. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Coach’s submission dated [date] and invited the Club to comment on the Coach’s submissions dated [date] and [date] by no later than [date].
29. On [date], the Club submitted its position regarding a potential settlement of the dispute together with a settlement offer.
30. On [date], the Club filed its comments on the Claimant’s submissions dated [date] and [date].
31. On [date], the FIVB Tribunal Secretariat informed the parties that (i) the FIVB Tribunal took note of their respective positions in respect to a potential settlement of the dispute and that (ii) they were invited to start a private and confidential discussion about such potential settlement as well as to inform the FIVB Tribunal of the status of such settlement discussion by no later than [date].
32. On [date], the Coach informed the FIVB Tribunal Secretariat that no settlement had been reached between the parties and invited the FIVB Tribunal to issue a decision on the present dispute.
33. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Claimant’s correspondence of [date] and informed the parties that the FIVB Tribunal Judge would issue further instructions or a decision in due course.

34. On [date], the FIVB Tribunal Secretariat informed the parties that no further exchange of submissions was necessary and that they were invited by the FIVB Tribunal Judge to provide a detailed account of their respective costs incurred under these proceedings as well as supporting documentation in relation thereto by no later than [date].
35. On [date], the Coach made a submission on costs.
36. On [date], the Club made a submission on costs.

4. The Parties' Submissions

37. 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 Judge 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

38. The Coach requests the FIVB Tribunal Judge to rule as follows:

“• the [CF] Decision is confirmed with respect to:

- *the acknowledgement of the Club's unilateral and wrongful termination of the Agreement;*
- *the principle that the Coach must receive a compensation as if the Agreement had been duly executed until the end of its term, i.e. the end of the [year/year] season.*
- *the [CF] Decision is reviewed by ordering the Club, consequently, to:*
 - *pay the Coach an aggregate amount of nineteen thousand euro (€ 19.000) net in principal as termination indemnity;*
 - *pay the Coach late payment interests at a rate of five percent (5%) per annum on the amount of nineteen thousand euro (€ 19.000) as from [date], i.e. the day after the Club's termination of the Agreement, until the date of full payment;*
 - *reimburse the Coach all costs of the proceedings before the [CF], being the amounts of:*
 - *four hundred euro (€ 400) as [CF] handling fee; and*
 - *five thousand three hundred seventy-five euro (€ 5.375) exclusive VAT, being six thousand five hundred three euro and seventy-five cents (€ 6.503,75) inclusive VAT as legal expenses incurred before the [CF].*
- *in any case, reimburse the Coach all costs of the present proceedings, being the amounts of:*

- *one thousand five hundred Swiss franc (CHF 1.500) as FIVB Tribunal handling fee; and*
- *legal expenses related to the present proceedings, at the moment of the filing of the present Request for Review, amounting to two thousand nine hundred thirty-seven euro and fifty cents (€ 2.937,50) exclusive VAT, being three thousand five hundred fifty-four euro and thirty-seven cents (€ 3.554,37) inclusive VAT.”*

4.1.2 The Claimant’s Position

39. In support of his request for relief, the Coach contends, *inter alia*, as follows:
40. In reference to the Decision, the Coach considers that the [CF] rightfully found that *“the Club did not have just cause to terminate unilaterally the Agreement”*.
41. Should the Club not have terminated the Contract per article V.2 of the Contract, the Coach argues that he would have received the aggregate amount of 36,000 euros net as salary or, at least, the aggregate amount of 19,000 euros net as termination indemnity.
42. According to the Coach, the certainty of his damages would be indisputable since *(i)* the Contract was automatically renewed for the [year/year] season per article V.2 of the Contract and in line with the intent of the parties, *(ii)* the aforementioned salary and termination indemnity are clearly stipulated under article V.2 of the Contract and *(iii)* another coach was hired by the Club and the Coach did not provide his services to the Club.
43. The Coach thus contends that the [CF] wrongfully dismissed his claim, arguing in essence that the Club interfered in the fulfilment of a condition precedent in breach of the principles of *pacta sunt servanda* and good faith, because the early termination of the Contract without just cause prevented the enforcement of its article V.2, i. e. the renewal of the Contract. In this respect, the Coach further contends that, if the reasoning of the [CF] was to be followed, any conditional obligation *“could be disregarded by simply terminating this agreement prior to the triggering item”* and the breaching party could thus *“unduly prevent the fulfilment of that condition without any consequences”*.

4.2 Respondent's Request for Relief and Position

4.2.1 Respondent's Request for Relief

44. The Club requests from the FIVB Tribunal Judge:

"a) The rejection of the Request for Review (dated on [date]) of the case submitted by the Coach [the Coach].

b) The confirmation of the decision of the [CF] dated on [date].

c) [The Coach] to be convicted to bear the cost for the proceedings."

4.2.2 Respondent's Position

45. In support of its request for relief, the Club relies on its previous submissions made before the [CF] on [date] and [date] and contends, *inter alia*, as follows:

46. The RFR should be rejected because the Decision is *"absolutely legal and well-grounded [and] took into consideration the allegations each side presented [...]"* and because the Coach *"does not invoke or provide any additional element that emerged after the decision of the [CF] was taken, which would prove different facts or would create a basis on which a new Regulation should have been applied or a new decision would have been justified"*.

47. The Club considers that the Contract contains no clause for further compensation in case of termination before the end of the sports season [year/year] and that the renewal clause for the second year ([year/year]) *"would have been valid if the Contract was valid too"*. In particular, the Club argues that since the Contract was definitively terminated on [date], *"the Clauses regarding the season [year/year] cannot apply because the agreement never came into force for the second season"* and because the Contract was already terminated, the Clause regarding the re-election of [the Club's President] *"cannot apply as well"*.

48. Regarding the financial claim made by the Coach, the Club argues that the Coach wrongfully considered the amount of 10,000 euros as *"accruals"* within the meaning of Clause V.2 of the Contract, which amount was supposed to be paid to him in [date]. According to the Club, the Coach initially only requested the payment of an amount of 9,000 euros as termination indemnity and not as accruals because he never offered his services for a second season and that is, for the Club, a recognition by the Coach that the Contract was not valid for the season [year/year].

5. Jurisdiction

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

50. 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.”

51. 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”*

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

53. The FIVB Tribunal Judge finds that this dispute is a financial dispute of an international dimension under Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations because it involves claims between a [the Coach’s country] volleyball coach and a [the Club’s country] volleyball club concerning the payment of compensation due to the early termination of a contract. The dispute also complies with Article 19.2.2.2 of the FIVB Sports Regulations because it has previously been decided by the [CF].

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

6. Admissibility

55. Article 18.2 of the FIVB Sports Regulations reads as follows:

“Within fourteen (14) days from notification of the decision under Article 18.1 above, any affected party may request that the case be reviewed by the FIVB Tribunal.”

56. The Decision is dated [date]. In the absence of evidence regarding the notification of the Decision and taking the date of the Decision as the starting date, the 14 days deadline would fall on [date], a non-business day. Therefore, the time limit shall expire at the end of the first

subsequent business day, i. e. [date].² The Claimant filed its RFR on Monday, [date]. Consequently, the RFR is admissible.

7. Applicable Law

57. 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).”

58. The parties made no specific submission on the law applicable to this proceeding.

59. The Contract is equally silent regarding the applicable law.

60. In the absence of an agreement between the parties on the applicable law, the FIVB Tribunal Judge will decide the dispute *ex aequo et bono*, i. e. applying general considerations of justice and fairness without reference to any particular national or international law.

8. Findings

61. In the present dispute, the [CF] found that the Club prematurely terminated the Contract without just cause on [date] (the “**Termination**”) and fulfilled all its financial obligations towards the Coach for the season [year/year]. These findings remained uncontested by the parties.

62. However, the parties’ respective positions diverge on the extent of the financial consequences of the Termination, in particular regarding the season [year/year]. In essence, the Coach claims that the Decision should be annulled, because the [CF] wrongfully dismissed his claim to be compensated as if the Contract would have been renewed for the season [year/year] in accordance with Clause V.2 of the Contract which would have been fulfilled on [date] if the Contract had not been previously terminated. The Club relies on the [CF]’s Decision and contends, in essence, that Clause V.2 of the Contract does not apply, as the Contract was definitively terminated on [date].

63. The only remaining issues in the present case are thus (1) whether the conditional renewal provided under Clause V.2 of the Contract is relevant in the present case, and if so, (2) what would be the consequences on the Claimant’s damages claim.

² See *ex multis* [CAS 2006/A/1175](#), para. 10-11.

64. The FIVB Tribunal Judge will therefore limit himself to examining such questions in succession.

8.1. The Conditional Renewal of the Contract

65. It is undisputed that the conditional renewal of the Contract for the season [year/year] was foreseen under Clause V.2 of the Contract and was subject to the occurrence of the following conditions (the “**Conditional Renewal**”):

“All the details mentioned above will be valid only if the President will be re-elected in the upcoming elections of the Club, until [date]. Passed this date the coaches contract will be automatically renewed for season [year/year].” (sic)

66. [CF]’s interpretation of Clause V.2 of the Contract remained undisputed by the parties and, to the extent necessary in the present case, can be followed by the FIVB Tribunal Judge.

67. In a nutshell, the [CF] found that Clause V.2 of the Contract was to be considered as a “suspensive condition”. In particular, the “first suspensive Clause” agreed by the parties concerned the re-election of [the Club’s President] as president of the Club “until [date]”. The “second suspensive Clause” agreed by the parties was relevant if no election had taken place by [date], in which case the Contract would have been automatically renewed for the [year/year] season. The [CF] notably underlined that “[b]y employing a textual interpretation, indeed it could be considered that, the parties also agreed that, in the absence of any election held by May [date], at the latest, the Agreement would be automatically renewed for the [year/year] season as of [date]. Prima facie, since the date of [date] had already passed and no election has been held, the Agreement seems to have been renewed for season [year/year] on the [date]”.

68. Furthermore, the [CF] noted that a contract renewal occurs “when an existing contract ends, and the parties agree to enter into a new Agreement. Therefore, by definition, a contract renewal can only apply to existing contracts” and concluded that since the Club had unilaterally terminated the Contract on [date], the Contract “was not valid anymore” on [date] and “therefore, it could not be renewed whatsoever”.

69. In this respect, the FIVB Tribunal Judge agrees to a certain extent that a contract cannot be “renewed” if it has already been terminated and is thus no longer “valid”. However, such reasoning may not be entirely followed in the case of a conditional renewal, where the prior termination is made without just cause and thus in breach of the contract.

70. Indeed, unless agreed otherwise by the parties, conditional contractual clauses imply an obligation for the parties to refrain from acting against the occurrence of the triggering condition and to act in a way that is expected from them in good faith, in order to safeguard the prospect of the fulfilment of such condition. An unjustified breach of such duty to act in good faith and not to hinder the fulfilment of the stipulated condition may give rise to a claim for damages. Furthermore, the condition may be deemed to have been fulfilled when one of the parties prevented its occurrence abusively.
71. In this respect, the unjustified termination of a contract before the fulfilment of a conditional obligation is particularly relevant and may constitute an abusive prevention of the occurrence of the conditional condition.
72. The FIVB Tribunal Judge thus finds that the pertinent question in the present dispute is not whether the Contract could be renewed or not, as determined by the [CF], but rather whether the Termination prevented the occurrence of the Conditional Renewal. This implies a hypothetical retrospective fiction as to the continuation of the employment relationship between the parties, i. e. as if the Termination had not occurred.
73. In the present case, it is undisputed that the Contract was concluded for two seasons. In its submission made before the [CF], the Club indeed stated that the Contract *“was valid for two sport seasons”* and that for the second season ([year/year]) the parties agreed that the Contract *“would be valid only if the president of the Board of Directors would be re-elected and the elections for the Board of Directors of the [the Club] would be held no later than [date]”*.
74. Specifically, regarding the absence of any election by [date], the Club explained in its submissions before the [CF] that *“the elections for the new Board of Directors of [the Club] were supposed to be held on [date] but they were actually held on [date], since [the Club’s President] didn’t want to be re-elected as president. Because there was no interest by anyone for the presidency, [the Club’s President] was re-elected on [date]”*. Therefore, according to the Club, from [date] until [date] the election of the new Board of Directors of the Club *“was pending”*.
75. As already mentioned, the [CF] further determined that in the absence of any election held by [date], at the latest, the Contract would have been automatically renewed for the [year/year] season as of [date]. This interpretation remains uncontested in the present case.
76. The FIVB Tribunal Judge thus observes on the basis of the file at his disposal that:
- (i) the parties agreed that the renewal of the Contract was in essence conditioned upon

the fact that [the Club's President] would remain president of the Club after [date], either because he would have been re-elected by that date or because no election would have taken place before that date; and

- (ii) no election was held on or before [date], [the Club's President] continued to act as president after that date and was re-elected on [date].
- (iii) it is thus undisputed that no election took place on or before [date], that [the Club's President] remained president thereafter and therefore that the conditions set forth under Clause V.2 of the Contract were met, so that the Contract would have been automatically renewed on [date] had the Club not terminated it on [date].

- 77. Therefore, it appears that the Contract would have been renewed had the Termination not occurred.
- 78. The FIVB Tribunal Judge thus finds that the Termination appears to be the only reason why the Contract was not renewed for the [year/year] season and that it effectively and directly prevented the occurrence of the Conditional Renewal.
- 79. In this respect, it is underlined that the [CF] found that the Club did not have just cause to unilaterally terminate the Agreement, because the Coach had never been subject to any criticisms and never breached any of his contractual obligations, had not received any warnings and/or formal notice and the Club did not provide any justification whatsoever when it terminated the Agreement. The Termination was thus unjustified and a breach of the Contract.
- 80. Consequently, the Termination shall be considered as an unjustified breach of the Club's general duty to act in good faith and not to hinder the fulfilment of the Conditional Renewal. It follows that the fiction of the Conditional Renewal is relevant for the determination of the Claimant's damages claim, which will be discussed below.

8.2. The Claimant's damages claim

81. As mentioned above, the non-fulfilment of a conditional obligation due to the behaviour of a party may give rise to a claim for damages by the other party.
82. In this regard, as found by the [CF], it is common ground that under both contractual and *ex aequo et bono* considerations, the aggrieved party must be made whole, i. e. that he or she receives what he/she would have received had the contract been fully honoured. It would therefore be just and fair to place the Coach in the same financial position as if the Contract had been duly executed.
83. In applying this principle for the calculation of the damages in the present case, both the fiction of the Conditional Renewal and the reality of the Termination shall be taken into account.
84. In this regard, the FIVB Tribunal Judge finds that it would be just and fair to place the Coach in the same position as if the Contract had been renewed on [date] but without being performed, *i.e.* as if the Contract had been successively renewed and terminated on [date].
85. In this regard, had the Contract been renewed for the [year/year] season, pursuant to Clause V.2 of the Contract, the Claimant would have been entitled to, *inter alia*, the following amounts:
- “The Club is obliged to pay for the season [year/year] to the Coach the total salary of 36.000 Euros/Net (10.000 EURO before the start of season and 26.000 in 7 salaries of 3714 EURO each, payments from [date] until [date]. [...]*
- If the Club wants to terminate the contract before the expiration date, the Club is obliged to pay to the Coach the accruals plus two salaries. (4.500 Euros x2) [...].”*
86. In the present dispute, on the basis of such Clause V.2 of the Contract and in reference to his complaint filed before the [CF], the Coach claims to be entitled to a “termination indemnity” corresponding to “*the accruals plus two salaries*”, which would be equivalent to (i) an amount of 10,000 euros as accrued salary and to (ii) 9,000 euros as two additional salaries. In addition, the Coach claims (iii) late payment interests at a rate of 5% *per annum* on the amount of 19,000 euros as from [date].
87. The FIVB Tribunal Judge will assess the Coach's claims in turn.

8.2.1. The “accruals” claimed by the Claimant

88. The only “*accrual*” claimed by the Coach is an amount of 10,000 euros pursuant to Clause V.2 of the Contract.
89. The Coach considers that the Club owed him the amount of 10,000 euros “*without any precise date specified*” and claims that “*it is to be considered that the aforementioned amount was due when the Club wrongfully terminated the Agreement*”.
90. The Club argues that since there is no valid agreement, “*accruals don’t exist*” and in particular that the Coach wrongfully considers the amount of 10,000 euros as accruals, an “*amount that was supposed to be paid [to] him in [date]*”.
91. The FIVB Tribunal Judge firstly observes that the word “accruals” is not defined within the Contract.
92. That said, on the basis of the parties’ submissions in the present dispute, one can only understand “accruals” as meaning the cumulated amount of the matured debts owed by the Club to the Coach at the time of the termination of the Contract after its renewal pursuant to Clause V.2 of the Contract.
93. In the present case, it is uncontested that the amount of 10,000 euros was to be paid by the Club “*before the start of [the] season*” pursuant to Clause V.2 of the Contract.
94. The parties have not provided any detail regarding the determination of when “*the start of [the] season*” would be, let alone any reference date in order to determine such “*start*” of the [year/year] season. It is nevertheless common knowledge in the volleyball community that the Club’s [year/year] volleyball season started in [date], which corresponds to the end of the “National Team period” set from [date] to [date] of each year, pursuant to Article 6.1.1 lit. b of the FIVB Sports Regulations.
95. In view of the above, the FIVB Tribunal Judge cannot follow the Coach’s reasoning regarding the alleged accrual of the amount of 10,000 euros, according to which the amount of 10,000 euros were “*due when the Club wrongfully terminated the Agreement*” because no precise date was specified under Clause V.2 of the Contract.
96. Rather, the FIVB Tribunal Judge finds that the “*start of the season*” is more likely to correspond to the start of the Club’s [year/year] volleyball season in [date] and thus that the parties agreed

that the Club could have paid the given amount until such “start” of the season [year/year]. In other words, the obligation to pay the amount of 10,000 euros would only have matured at the “start” of the [year/year] season, presumably in [date].

97. Consequently, the FIVB Tribunal Judge finds that the amount of 10,000 euros was neither due at Termination (i. e. [date]) nor at the date of the Conditional Renewal (i. e. [date]). Such amount thus cannot be considered as an “accrual” within the meaning of Clause V.2 of the Contract and the Coach’s claims shall therefore be dismissed in that respect.

8.2.2. The two additional salaries

98. The “termination indemnity” claimed by the Coach also includes an amount of 9,000 euros, corresponding to “two salaries. (4.500 Euros x2)” pursuant to Clause V.2 of the Contract.
99. As argued by the Coach, the amount corresponds to a “penalty” which is “to be qualified as a liquidated damages Clause as the Club and the Coach stipulated in advance the damages to be paid to the Coach for the Club's termination of the Agreement”. This interpretation is not contested by the Club.
100. In this respect, the FIVB Tribunal Judge observes that contractual Clauses establishing in advance a compensation in case of breach of contract have been the subject of numerous CAS awards, in which the validity of such Clauses has been examined in particular from the perspective of the principle of proportionality (see for instance CAS 2016/A/4605; CAS 2015/A/3999; CAS 2013/A/3374).
101. Furthermore, it should also be noted that where the parties agree on such pre-determined lump-sum compensation, the aggrieved party has in principle no obligation to minimise its damage, the pre-determined compensation being independent from the actual damage (CAS 2019/A/6533). In practical terms, this means that the remuneration received by the employee from a new employer during the period remaining until the ordinary end of the terminated employment contract does not, in principle, have to be deducted from the amount of the lump-sum compensation agreed between the parties (CAS 2010/A/2159, para. 43-44).
102. In the present case, it is not alleged that the lump-sum compensation of “two salaries (4.500 Euros x2)” provided for in Clause V.2 of the Contract would be disproportionate. In addition, the FIVB Tribunal Judge finds that this amount is not excessive considering that the total volume of the second contractual year amounts to EUR 36,000. It is therefore accepted that the

compensation amount of 9,000 euros is proportionate and that the FIVB Tribunal Judge should therefore retain what the parties had agreed.

103. Consequently, the Coach shall be entitled to claim an amount of 9,000 euros in connection with the termination of the Contract pursuant to its Clause V.2, without mitigation to be taken into account in the present case.

8.2.3. Late payment interests

104. The Coach claims that late payment interests shall be applied at a rate of five percent (5%) *per annum* on the amount of 19,000 euros as of [date], *i.e.* the day after the Club's termination of the Agreement, until the date of full payment.
105. The FIVB Tribunal Judge observes that the Coach does not provide any explanation for the 5% rate, except that such rate would be fair and reasonable in comparison with international standards as well as the FIVB Tribunal's practice. The Club has not commented on this issue.
106. In this context, the FIVB Tribunal Judge accepts that late payment interests at the rate of 5% *per annum* may be awarded to the Coach, in particular in view of the FIVB Tribunal's practice and the absence of any reasoned objection by the Club in this regard. It is thus considered that the amounts owed by the Club shall bear interest at the rate of 5% *per annum* from the day after the Termination, *i. e.* [date].

8.3. Conclusion

107. In view of the foregoing, the FIVB Tribunal Judge concludes that the Termination prevented the occurrence of the Conditional Renewal in a manner that is deemed to be contrary to the principle of good faith. As a result, (i) the Conditional Renewal shall be taken into account in the assessment of the Coach's damages and (ii) in the present case, the Coach's damages correspond to the termination indemnity of "two salaries" (*i. e.* 9,000 euros) as agreed between the parties under Clause V.2 of the Contract, which shall bear a 5% interest *per annum* from [date] until payment in full.
108. In reaching this conclusion, the FIVB Tribunal Judge is mindful that the compensation awarded to the Coach is the result – as discussed above – of a fiction regarding the continuation of the employment relationship between the parties after the Termination. In this respect, the determination of the damages that the Coach should be entitled to is also the result of fictional situation where the Contract would have been both automatically renewed and terminated by

the Club. In the FIVB Tribunal Judge's opinion, this solution adequately takes into account both parties' rights, including the Club's right to terminate the Contract and the Coach's right to be compensated following the non-occurrence of the Conditional Renewal due to the Termination. The outcome of the present decision also equitably compensates the Coach in view of the parties' agreement under the Contract.

9. Costs

109. The Coach paid the handling fee of this proceeding (1,500 Swiss francs) and quantified his legal expenses at 5,949.16 euros (including VAT), representing 19:40 hours of counsel work according to the time-sheet that was submitted together with its submission on costs. In addition, the Coach requested the reimbursement of all the costs of the proceedings before the [CF], *i.e.* 400 euros for the [CF] handling fee and 6,503.75 euros (including VAT) as his legal expenses incurred before the [CF].
110. The Club submitted an invoice from its counsel for an amount of 2,480 euros regarding the expenses that it had to pay for its defence in the present case.
111. Article 20.11.2 of the FIVB Sports Regulations allows the prevailing party to be granted a contribution towards legal fees and expenses, including the applicable handling fee. When deciding on this contribution, the FIVB Tribunal Judge shall consider the outcome of the proceedings, as well as the conduct and the financial resources of the parties. In the case at hand, the parties have not made any submissions with respect to their financial resources and have appropriately behaved during the proceedings. Thus, the FIVB Tribunal Judge will decide upon the distribution of the costs exclusively on the basis of the outcome of the proceedings.
112. Considering that *(i)* in the present dispute, the Coach does not entirely prevail and is awarded only approximately 50% of his financial claims, *(ii)* 2,500 Swiss francs is the maximum contribution under Article 18.1(e) of the FIVB Sports Regulations for first instance proceedings, and *(iii)* this proceeding was less extensive than the first instance proceedings as both parties' submissions relied largely on their previous submissions made before the [CF], the FIVB Tribunal Judge determines, in accordance with article 20.11.2 of the FIVB Sports Regulations, the reasonable contribution towards the Coach's legal costs incurred before the [CF] and the FIVB Tribunal to be 3,000 euros. In addition, the Club shall reimburse half of the Coach's handling fees for both the first and second instances, *i.e.* 950 Swiss francs in total.

DECISION

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

1. The Request for Review filed by [the Coach] is partially upheld.
2. The decision rendered by the [Continental Federation] dated [date] is amended in the first paragraph as follows:

[The Club] shall pay to [the Coach] the amount of 9,000 euros net, plus interests at the rate of 5% *per annum* as of [date] until complete payment.

[The Club] shall pay to [the Coach] 1,500 euros as a contribution towards his legal costs and 200 Swiss francs as a partial reimbursement of the handling fee.
3. The remainder of the decision rendered by the [Continental Federation] dated [date] is upheld.
4. [The Club] shall pay to [the Coach] 1,500 euros as a contribution towards his legal costs and 750 Swiss francs as a partial reimbursement of the handling fee.
5. [The Club] shall bear its own legal costs.
6. Any other requests for relief are dismissed.

[Date of the decision]

Lausanne, Switzerland

Micael Totaro

NOTICE OF APPEALS

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

- a) Article 20.12 of the FIVB Sports Regulations:

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

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

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

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