



The

FIVB TRIBUNAL

hereby issues the following

DECISION

2022-07

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

**[The Club]
(Claimant)**

represented by [the Club's lawyer]

v.

**[The Agent]
(Respondent)**
self-represented

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 Club] is a [the Club's country] volleyball club ("**Claimant**" or "**Club**").
2. [The Agent] is a [the Agent's country] volleyball agent ("**Respondent**" or "**Agent**") licensed by the Fédération Internationale de Volleyball ("**FIVB**").

2. The FIVB Tribunal

3. Article 19.1.5 of the FIVB Sports Regulations ("**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). [...] 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. The request for review is heard by a single judge because the amount in dispute does not exceed CHF 200,000. On [date], the FIVB Tribunal Chairperson, Dr. Karsten Hofmann from Germany, appointed FIVB Tribunal Vice-Chairperson, Francisco A. Amallo from Argentina, to hear this case as a single judge ("**FIVB Tribunal Judge**").

3. Facts

5. Three days before the end of the transfer window in [the Club's country], the Club and the Agent engaged in negotiations through WhatsApp regarding the transfer of the player [player's name] ("**Player**") from her former [the Former Club's country] club ("**Former Club**") to the Club. The Club made the following proposal to the Agent:

"OK my proposal is 25.000 euro to player (7.500 28.2, 7.500 30.3, 10.000 30.04) 2.500 euro agent, 10.000 euro Club, 3.000 euro ITC, apartment, car, full insurance".²

6. On [date], the Club and the Player signed an agreement ("**Agreement**"), under which the Player

² Agent's submission dated [date], Exhibit 3.

agreed to provide her services from [date] until the end of the official matches of the [year/year] season in exchange for EUR 25,000. Clause 3 of the Agreement stated: “Agent’s Commission: The Agency’s fees would be determined in additional agreement”.³

7. On [date], the Club sent the Agent a flight ticket for the Player. They also discussed through WhatsApp the need to amend the term of the Agreement and the Player’s salary because she would start to work on [date]. In that context, the Club made the following statement:

“For the Federation, Club & Your provision as we agreed before 15.500”⁴

8. On [date], the Player flew to [the Club’s country].⁵
9. On [date], the Agent issued an invoice to the Club for EUR 15,500.⁶
10. On [date], the Player played one game for the Club.⁷
11. On an unspecified date at the beginning of [date], the Player went back to [the Former Club’s country] because the [the Club’s country] league had ended due to the Covid-19 pandemic.⁸
12. On [date], the Agent asked the Club to transfer the money.⁹
13. On [date], the Agent insisted that the Club transfer the money.¹⁰
14. On [date], the Agent filed a complaint against the Club before the FIVB for EUR 15,500.¹¹
15. On [date], the FIVB issued a decision (“**Decision**”) ruling, *inter alia*, that the Club had to pay EUR 15,500 to the Agent.

³ Agent’s submission dated [date], Exhibit 1.

⁴ Agent’s submission dated [date], Exhibit 3.

⁵ Club’s submission dated [date], p. 2.

⁶ Agent’s submission dated [date], Exhibit 2.

⁷ Club’s submission dated [date], p. 2.

⁸ Club’s submission dated [date], p. 2.

⁹ Agent’s submission dated [date], Exhibit 3.

¹⁰ Agent’s submission dated [date], Exhibit 3.

¹¹ Player’s submission dated [date], p. 4.

4. The Proceedings before the FIVB Tribunal

16. On [date], the Club filed a request for review (“**RFR**”) of the Decision, including a request for a stay, before the FIVB Tribunal.
17. On [date], the FIVB Tribunal Secretariat acknowledged receipt and invited the Agent to provide his position on the Club’s request for a stay by [date] and to file his answer to the RFR by [date]. It also invited the FIVB to provide a copy of the full file by [date] and informed the parties that the dispute would be heard in principle by the FIVB Tribunal Chairperson, Dr. Karsten Hofmann.
18. On [date], the Agent submitted his position on the Club’s submissions (“**Answer**”).
19. On [date], the FIVB Tribunal Chairperson ordered the stay of the Decision. He also invited the Agent to inform the FIVB Tribunal by [date] whether his submission had to be considered as his answer to the RFR and reminded him that he could file an answer to the RFR until that date.
20. [date], the Agent submitted that his submission dated [date] was his Answer to the RFR.
21. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the Agent’s submission and informed the parties that the FIVB Tribunal Judge would issue further instructions or a decision in due course.
22. On [date], the FIVB Tribunal Secretariat informed the parties that, in accordance with Article 19.1.5 *in fine* of the FIVB Sports Regulations, the FIVB Tribunal Chairperson had appointed the FIVB Tribunal Judge to hear the present case. It also informed the parties that the FIVB Tribunal Judge had reviewed all the submissions and would proceed to issue a decision. Finally, the FIVB Tribunal Secretariat requested the parties to provide a detailed account of their respective costs as well as supporting documentation by [date].
23. On [date], the Club and the Agent made their submissions on costs.

5. The Parties’ Submissions

24. 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 by the parties, even if no specific or detailed reference has been made to those arguments in this section.

5.1. The Claimant's Request for Relief and Position

25. In its RFR, the Club submitted the following request for relief:

"1) Annulment of the FIVB decision dated [date] in so far as it orders the Club to pay to the Agents the sum of EUR 15.500 and in so far as it orders the Club to pay to the Agent the sum of CHF 500 as reimbursement for the costs incurred in connection with the payment of the handling fee. Furthermore, the Club requests that the Agent's claim be dismissed.

2) Order the Agent to reimburse the Club for the costs of the proceedings, including the costs of legal representation in the amount EUR 1.417 on the basis of the VAT invoice submitted to this letter – 1 EUR/4,68 [the Club's country's currency] (attachment no 5), as well as the costs incurred in connection with the payment of the handling fee."¹²

26. In support of its request for relief, the Club argued as follows:

27. The Club disputed that the Agent made any payments of the International Transfer Certificate ("ITC") fee to the [the Former Club's country] Volleyball Association ("[FCCVA]") and transfer fee to the Former Club. The burden of proof in respect of the Club's failure to fulfil its obligations lies with the Agent. For this reason alone, the Agent should have provided the FIVB with the relevant documents in support of his claim. Apart from that, the Club has also not received any payment receipts or the like from the Former Club and the [FCCVA] confirming payments by the Agent.¹³

28. The registration of the Player by the FIVB is irrelevant to the alleged payment of the ITC and transfer fees by the Agent.¹⁴

29. There was no agreement regarding the Agent's remuneration. The Agreement was not signed by the Agent. According to clause 3 of the Agreement, the Agent's fee would be determined in an additional agreement, which was never concluded. The Agent failed to meet his burden of proof,

¹² Club's RFR, ¶ 24.

¹³ Club's RFR, ¶¶ 8-10, 12-17.

¹⁴ Club's RFR, ¶ 12.

as he did not prove an explicit agreement on a 10% fee of the transfer fee.¹⁵

30. There is no common practice in sports that the Agent receives 10% of the player's salary. Additionally, the amount of EUR 2,500 ordered by the FIVB was disproportionate to the Player's salary. The Player played only one match due to the Covid-19 pandemic. Therefore, the Agent's fee should be proportionally reduced.¹⁶

5.2. The Respondent's Request for Relief and Position

31. In his Answer, the Agent stated as follows:

*"AGENCY supports FIVB's decision against the club."*¹⁷

32. Given that the Agent is not a lawyer and is representing himself, the FIVB Tribunal Judge considers his request for relief as a request to uphold the Decision and dismiss the Appeal.

33. In support of his request for relief, the Agent argued that:

34. The Agent negotiated with the Club all the elements of the Agreement, including his fees, the ITC and the transfer fees, before the Club and the Player signed the Agreement.¹⁸

35. The Player was under contract when she signed for the Club. The Former Club signed her ITC after it and the [FCCVA] had received the money. No volleyball club or federation would sign an ITC without having received the payment first.¹⁹

36. The Agent has never heard of an agent fee of less than 10%.²⁰

6. Jurisdiction

¹⁵ Club's RFR, ¶¶ 2-3, 19-20.

¹⁶ Club's RFR, ¶¶ 21-23.

¹⁷ Agent's Answer, ¶ 1.

¹⁸ Agent's Answer, ¶ 2.

¹⁹ Agent's Answer, ¶ 3.

²⁰ Agent's Answer, ¶4.

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

38. 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, Agents, 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.”

39. 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”.

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

41. 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 a claim between a [the Agent’s country] FIVB-licensed agent and a [the Club’s country] club concerning the reimbursement of certain payments and the payment of the Agent’s fees. The dispute also complies with Article 19.2.2.2 of the FIVB Sports Regulations because it was decided previously by the FIVB.

42. 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.

7. Admissibility

43. 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.”

44. The Decision was issued on [date]. The Club submitted its RFR on [date], i.e., within the fourteen-day deadline. Thus, the RFR is admissible.

8. Applicable law

45. 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).”

46. The parties did not make any submissions as to the applicable law, but the Club relied on Swiss law.²¹ In the absence of an agreement 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 national or international law).

9. Findings

47. The Club requested the FIVB Tribunal to review the Decision. In its decision, the FIVB addressed two issues: whether the Agent paid the fees to the Former Club and the [FCCVA] on behalf of the Club and whether the Agent was entitled to a fee. The FIVB tribunal Judge will review each of those issues separately.

9.1. Did the Agent pay fees to the Former Club and the [FCCVA] on behalf of the Club?

48. In the previous instance, the FIVB considered that there was no certainty as to whether the payment of the transfer fee to the Former Club and the ITC fee to the [FCCVA] had been made because neither party was able to tender conclusive evidence in this regard. However, the FIVB concluded that two undisputed facts persuaded it that the Agent had made that payment: (i) the fact that the Agent and the Club were discussing the employment of the Player at the eleventh hour, and (ii) the fact that the Player was able to play in [the Club’s country]. In the FIVB’s view, this meant that the Club obtained an ITC and the Player’s transfer to the Club was successful, and neither of these situations could be contemplated without the Former Club and the [FCCVA]

²¹ Club’s RFR, ¶¶ 14, 21.

having received the fees.²²

49. According to the FIVB, the Club's argument that the Agent did not make the payment acts to the Club's detriment, given that the Club should not be engaging or using the service of players who did not obtain the proper registration by the FIVB. The FIVB also took into consideration that the Club did not submit any evidence to support its allegations and that no other party, including the Club, claimed to have paid the fees to facilitate the transfer of the Player to [the Club's country].²³
50. The dispute between the parties is factual rather than legal. The Club does not deny that the Agent would have a right to a reimbursement of the fees had they been paid by the Agent to the Former Club and the [FCCVA]. The dispute between the parties focuses on whether the Agent made that payment.
51. Article 18.1 (e) of the FIVB Sports Regulations stipulates that the FIVB must decide financial disputes "*on a balance of probabilities*". While the standard of proof to be applied by the FIVB Tribunal in review proceedings is not explicitly stipulated in the FIVB Sports Regulations, the FIVB Tribunal has found in other cases that it should be the same as in the first instance.²⁴
52. The balance of probabilities standard has historically been considered to require that the adjudicator be satisfied that a matter is more likely to have occurred than not to have occurred or, in percentage terms, that there is a 51% chance that the relevant scenario has occurred.²⁵
53. The standard of proof, however, must not be confused with the burden of proof, i.e., with who has the onus to satisfy the standard. It is a well-established rule in international adjudication that the burden of proof lies in principle with the party asserting a fact.²⁶
54. Therefore, the Agent had the burden of proving that he had paid the fees to the Former Club and the [FCCVA], and the FIVB Tribunal Judge, based on the evidence, must decide on a balance of

²² Decision, p. 5.

²³ Decision, p. 6.

²⁴ FIVB Tribunal Decision in Case 2019-03, ¶ 53.

²⁵ CAS 2009/A/1926 & 2009/A/1930, Award, ¶ 31; CAS 2012/A/2972, Award, ¶ 83; CAS 2018/A/5618, Award, ¶ 64; among others.

²⁶ See, for example, FIVB Tribunal Decision in Case 2017-03 and CAS 2019/A/6207. This principle is reflected also in Article 18.1 (d) of the FIVB Sports Regulations.

probabilities if that occurred.

55. In the FIVB Tribunal Judge's view, the Agent failed to discharge his burden of proof. Despite having several opportunities to do so, the Agent has not submitted any evidence of the alleged payment. The Agent simply stated that he paid the Former Club and the [FCCVA] with his [the Former Club's country] partner,²⁷ but has not submitted any proof or receipt of payment, nor provided any specific detail about the alleged payment (e.g., who his [the Former Club's country] partner was, how and when the payment was made, etc.). His mere statement, contested by the Club, does not constitute evidence of the payment.
56. The FIVB Tribunal Judge is not persuaded by the undisputed facts that persuaded the FIVB. The fact that the Agent and the Club were discussing the employment of the Player at the eleventh hour, and the fact that the Player was able to play in [the Club's country], could tell of the existence of a payment, but not of who made the payment nor the amount of the alleged payment that the Agent is claiming. Whether the Club's conduct in engaging or using the services of the Player was or not in accordance with the FIVB Sports Regulations is a matter alien to the scope of this financial dispute.
57. The FIVB also considered the fact that the Club did not submit any evidence to support its allegations. However, it was the Agent, not the Club, who had the burden of proving that he had paid the fees to the Former Club and the [FCCVA]. The Club simply contested that fact, and, despite the Club's position, the Agent decided not to submit any evidence in support of his argument. The Agent is a professional FIVB-licensed agent and should have documented the payment that he allegedly made if he wanted to claim a reimbursement afterwards.
58. In the absence of evidence, the FIVB Tribunal Judge decides, on a balance of probabilities, that the Agent is not entitled to receive EUR 13,000 as a reimbursement of fees, and therefore modifies the Decision on this aspect.

9.2. Was the Agent entitled to fees?

59. In the previous instance, the FIVB considered that there was an agreement between the Agent

²⁷ Agent's submission dated [date], p. 3.

and the Club on the payment of EUR 2,500 as fees because (i) it was undisputed that the Agent procured the Player to the Club, (ii) it is a common practice in volleyball that an agent receives a 10% of the athlete's salary as a fee and EUR 2,500 was the 10% of the Player's salary, and (iii) the Club did not contest the Agent's right to receive a EUR 2,500 fee for the procurement of the Player, but rather contested the Agent's right due to the Player's lack of performance.²⁸

60. The Club contends that there was no explicit agreement regarding the Agent's remuneration. The Club argues that the Agreement was not signed by the Agent and that, according to clause 3 of the Agreement, the Agent's fee would be determined in an additional agreement, which was never concluded. The Club also argues that there is no common practice in sports that the Agent receives 10% of the player's salary and that, in any event, his fees should be reduced because EUR 2,500 is disproportionate to the Player's salary.²⁹
61. The FIVB Tribunal Judge is not persuaded by the Club's arguments. The Agreement was not an agreement between the Club and the Agent, but an agreement between the Club and the Player. The Agent is not a party to the Agreement and, as the Club correctly pointed out, was also not signed by the Agent. Therefore, clause 3 of the Agreement could have bound the Club and the Player, but not the Agent.
62. The FIVB Tribunal Judge considers that there was an agreement between the Agent and the Club on the payment of EUR 2,500 as fees. Absent any express rule to the contrary, an agreement between two parties does not have to follow any specific form and may simply result, for example, from a verbal agreement.
63. In the FIVB Tribunal Judge's view, the WhatsApp conversations between the Club and the Agent probe the existence of such an agreement:
 - a) Three days before the end of the transfer window in [the Club's country], the Club made the following proposal to the Agent: *"OK my proposal is ... 2.500 euro agent, 10.000 euro Club, 3.000 euro ITC"*³⁰

²⁸ Decision, p. 6.

²⁹ Club's RFR, ¶¶ 2-3, 19-23.

³⁰ Agent's submission dated [date], Exhibit 3.

b) On [date], when the Club expressed to the Agent its desire to change the terms of the Agreement due to the Player's late arrival in [the Club's country], the Club made the following statement: *"For the Federation, Club & Your provision as we agreed before 15.500"*; and the Agent replied: *"I agree"*.³¹

64. It is undisputed by the parties that EUR 15,500 included EUR 2,500 as Agent's fee. Therefore, by acknowledging on [date] the existence of an agreement on EUR 15,500 not only for the [FCCVA] and the Former Club but also for the Agent, the Club acknowledged the existence of an agreement on the agency fee, which is also in line with the proposal made by the Club to the Agent before the end of the transfer window in [the Club's country].
65. The Club's position on this point is also inconsistent. In the previous instance, as the FIVB correctly pointed out, the Club did not contest the Agent's right to receive a EUR 2,500 fee for the procurement of the Player but rather contested the Agent's right due to the Player's lack of performance.³² It is in the RFR, after the FIVB had made that point, that the Club argued for the first time the inexistence of an agreement with the Agent on the agency fee.
66. The fact that Article 14.2.2 (a) of the FIVB Sports Regulations provides that an agent may not receive a fee or any other type of remuneration for his services by any party other than his client, except with the express written agreement of his client, does not invalidate the agreement between the Club and the Agent. Under Article 17.1 of the FIVB Sports Regulations, sanctions may be imposed on any agent that violates the FIVB's constitution or regulations, but none of the available sanctions would lead to the invalidation of the agreement. Besides, it is unclear to the FIVB Tribunal Judge if a violation existed, and it is not his role to determine that.
67. The Club's argument regarding the alleged disproportion of the agency fee is also not compelling. As evidenced by the WhatsApp conversations, the parties did not agree on a percentage of the Player's salary, but on a fixed sum of EUR 2,500. The Club has failed to prove why the agency fee would be disproportionate. The report submitted by the Club refers to football, not to volleyball. The Club is a professional club, and it was the Club that proposed that fee to the Agent.
68. The parties did not subject the Agent's fee to the Player completing the full term of the

³¹ Agent's submission dated [date], Exhibit 3.

³² Club's submission dated [date].

Agreement. On the contrary, the conversation that the parties had on [date] shows that, even though the Club wanted to reduce the Player's salary because of her delay in arriving in [the Club's country], the Club stated that that would not impact the Agent's fee.

69. Therefore, the FIVB Tribunal Judge upholds the Decision on this point and concludes that the Club must pay EUR 2,500 to the Agent.

10. Costs

70. In its Decision, the FIVB ordered the Club to pay CHF 500 to the Agent as a reimbursement of the handling fee.³³ The Club requested the FIVB Tribunal Judge to annul the Decision on this point.³⁴ According to Article 18.1 (e) of the FIVB Sports Regulations, when deciding on the reimbursement of the handling fee, the FIVB had to take into account the outcome of the proceedings as well as the conduct and financial resources of the parties. Considering that the parties did not make any submissions concerning their financial resources, behaved appropriately in the previous instance, and the Decision was partially modified in this instance, the FIVB Tribunal Judge concludes that both parties should bear the cost of the handling fee. Therefore, Club must reimburse CHF 250 to the Agent.

71. The Club paid the handling fee corresponding to its RFR (CHF 1,500) on [date]. On [date], the Club quantified its legal expenses at EUR 1,470.20. On the same date, the Agent stated that he did not have any additional costs in this instance because he represented himself.

72. Article 20.11.2 of the FIVB Sports Regulations states that, as a general rule, the decision shall grant the prevailing party a contribution towards its reasonable legal fees and other expenses incurred in connection with the proceedings (including the applicable handling fee and the costs of witnesses and interpreters). When deciding on this contribution, the FIVB Tribunal Judge shall take into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

73. In the case at hand, the parties have not made any submissions concerning their financial resources and have behaved appropriately during the proceedings. Thus, the FIVB Tribunal Judge

³³ Decision, p. 7.

³⁴ Club's RFR, ¶ 24.

will decide upon the distribution of the costs according to the outcome of the proceedings.


74. Considering that the Club's request for relief was partially upheld, the FIVB Tribunal Judge determines, in accordance with article 20.11.2 of the FIVB Sports Regulations, that both parties shall bear the cost of the handling fee equally and each party shall bear its own legal costs. Therefore, the Agent shall reimburse CHF 750 to the Club.

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

1. The Request for Review filed by [the Club] is partially upheld.
2. The decision rendered by FIVB on [date] is amended in its first bullet as follows:
 - [The Club] shall pay [the Agent] the amounts of EUR 2,500 as an agency fee and CHF 250 as a partial reimbursement of the handling fee.
3. The remainder of the decision rendered by the FIVB on [date] is upheld.
4. Each party must bear its own legal fees and other expenses. [The Agent] shall reimburse CHF 750 to the Club as part of the handling fee.
5. Any other requests for relief are dismissed.

[Date of the decision]

Lausanne, Switzerland



Francisco A. Amallo

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 at www.tas-cas.org.

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

Court of Arbitration for Sport
Avenue Bergières 10
1004 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
Email: info@tas-cas.org