



The

FIVB TRIBUNAL

hereby issues the following

DECISION

2023-02

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

[The Club] (“Claimant”)
represented by [the Club’s lawyer]

v.

[The Agent] (“Respondent”)
represented by [the Agent’s lawyers]

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] professional volleyball club ("**Claimant**" or "**Club**").
2. [The Agent] is an [the Agent's country] professional 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 the FIVB Tribunal Vice-Chairperson, Francisco A. Amallo from Argentina, to hear this case as a single judge ("**FIVB Tribunal Judge**").

3. Facts

5. On [date], the Club sent an e-mail to the Agent with the contract conditions offered to the [the Player's country] volleyball player [the Player] ("**Player**") for the [year/year] and [year/year] seasons.²
6. On [date], the Agent sent an e-mail to the Club stating that they needed time to review the contracts offered to the Player.³
7. On [date], the Club sent an e-mail to the Agent stating as follows: *"Please find attached the signed pre-contract and specimen target contracts. Please send comments or acceptance to the target*

² Answer, Exhibit 2.

³ Answer, Exhibit 9.

contracts. They should be signed by [date]”.⁴

8. On [date], the Player and the Club signed an agreement (“**Agreement**”) for the provision of services for the [year/year] season and – if mutually agreed by no later than [date] – for the [year/year] season in exchange for, *inter alia*, a EUR 170,000 net for the first season. Clause 8 of the Agreement states: “Agency Fees: The amount equal to 10% (net) of the Player’s contractual amount+ VAT to be paid after presentation of an invoice to [the Agent] once the Player’s transfer is complete (upon issued ITC).”⁵
9. On [date], the Player and the Club signed a “Sport Services Agreement” (“**Sports Contract**”) for the provision of services for the [year/year] season in exchange for, *inter alia*, EUR 5,000 net.⁶
10. On [date], [Organization’s name] (“**[ON]**”) and the Club signed an “Image Rights Lease Agreement” (“**Image Contract**”) for the temporary transfer of the Player’s image rights from [date] until [date] in exchange for, *inter alia*, EUR 165,000 net plus EUR 16,500 net as “service (agency) fee and wire costs”.⁷
11. On [date], the Agent sent an invoice issued by [Sports agency] (“**Agency**”) to the Club for EUR 20,910 (EUR 17,000 as an agency fee plus VAT), after the Club’s manager requested the Agent to issue a final invoice.⁸
12. On [date], the Agent asked the Club to pay the invoice.⁹
13. On [date], the Club apologized to the Agent for the delay and stated that it would pay the invoice by the end of [month].¹⁰
14. On [date], the Agent stated to the Club that he would wait until the end of [month].¹¹

⁴ Answer, Exhibit 9.

⁵ Answer, Exhibit 3.

⁶ Answer, Exhibit 4.

⁷ Answer, Exhibit 4.

⁸ Answer, Exhibits 6 and 8. Agent’s submission dated [date].

⁹ Answer, Exhibit 6. Agent’s submission dated [date].

¹⁰ Answer, Exhibits 6 and 7. Agent’s submission dated [date].

¹¹ Agent’s submission dated [date].

15. On [date], the Agent again sent the invoice to the Club and reiterated that he would wait until the end of [month].¹²
16. On [date], the Agent sent an email to the Club stating that the invoice had not been paid and that he would start FIVB proceedings against it.¹³
17. On [date], the Club sent a letter to the Agent stating *inter alia* that the Agreement was replaced by the Sports Contract and the Image Contract and “[n]o payments should be made to the entity mentioned there ([Entity’s name]) or entity not mentioned anywhere ([Entity’s name]). This is not the fault of the club that the Player and his agents juggle with different companies. The Club (as a company) must comply with legal documents and make payments only to parties to respective agreement and not to other entities.”¹⁴
18. On [date], the Club filed a complaint against the Player before the [Continental Federation] (“[CF]”). The Club requested, *inter alia*, a reduction of the amounts due to the Player under the Sports Contract and the Image Contract due to the Covid-19 pandemic.¹⁵
19. On [date], the Agent filed a complaint against the Club before the FIVB.¹⁶
20. On [date], the Player filed a counterclaim against the Club before the [Continental Federation] claiming overdue payables under the Agreement.¹⁷
21. On [date], the [Continental Federation] issued a decision ruling, *inter alia*, that the Club had to pay the Player overdue payables for an amount less than the amount claimed by the Player because both had to bear equally the losses caused by the pandemic.¹⁸
22. On [date], FIVB issued a decision (“**Decision**”) ruling, *inter alia*, that the Club had to pay the Agent EUR 20,910 as an unpaid agency fee and EUR 500 as reimbursement of the handling fee.

¹² Answer, Exhibit 6. Agent’s submission dated [date].

¹³ Answer, Exhibit 6. Agent’s submission dated [date].

¹⁴ Answer, Exhibit 9.

¹⁵ RFR, [CF] Decision [number].

¹⁶ Answer, Exhibit 8.

¹⁷ RFR, [CF] Decision [number].

¹⁸ RFR, [CF] Decision [number].

4. The Proceedings before the FIVB Tribunal

23. On [date], the Club filed a request for review of the Decision before the FIVB Tribunal.
24. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the request. It also drew the Club's attention to Article 20.3.2 of the FIVB Sports Regulations, particularly emphasizing paragraphs a) to e), and invited the Club to resubmit the request in accordance with said article. It further requested the Club to pay the handling fee by [date].
25. On [date], the Club submitted a new version of the request for review and paid the handling fee.
26. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the amended request for review and the payment of the handling fee. It also invited the Club to resubmit the request for review by [date], clarifying who the Claimant and Respondent were and including all the written evidence on which it intended to rely.
27. On [date], the Club clarified that the Claimant was the Agent and the Respondent was the Club, as that was the role of the parties in the previous instance before the FIVB. It also sent a copy of the Agreement, the Sports Contract, and the Image Contract, clarifying that it thought it was unnecessary to submit them with the request for review because they were already in possession of the FIVB considering the previous instance proceedings.
28. On [date], the FIVB Tribunal Secretariat explained to the Club that the FIVB financial dispute system and the FIVB Tribunal were two separate adjudicatory bodies, noting that the Club should be considered the Claimant before the FIVB Tribunal as it was the one requesting the review of the Decision. Therefore, it invited the Club to resubmit the request for review as per the above and include a copy of the Decision by [date].
29. On [date], the Club filed a new version of the request for review ("**RFR**"), including a copy of the Decision.
30. On [date], the FIVB Tribunal Secretariat acknowledged receipt and invited the Agent to file his answer to the RFR by [date]. It also informed the parties that the dispute would be heard in principle by the FIVB Tribunal Chairperson, Dr. Karsten Hofmann.

31. On [date], the Agent submitted his answer to the RFR (“**Answer**”). The Answer included a motion to declare the RFR inadmissible as a preliminary matter.
32. On [date], the FIVB Tribunal Secretariat acknowledged receipt and informed the parties that, in accordance with Article 19.1.5 *in fine* of the FIVB Sports Regulations, the FIVB Tribunal Chairperson, Dr. Karsten Hofmann, appointed the FIVB Tribunal Judge to hear the present case.
33. On [date], the FIVB Tribunal Judge invited the Club to comment on the Agent’s request to consider the RFR as inadmissible and to decide on the admissibility as a preliminary matter by [date].
34. On [date], the Club filed its submission on the admissibility of its RFR.
35. On [date], the FIVB Tribunal Judge requested FIVB, in accordance with Article 20.7.2 of the FIVB Sports Regulations, a copy of the first instance case file. On the same date, FIVB sent a copy of the file to the FIVB Tribunal Judge.
36. On [date], the FIVB Tribunal Secretariat informed the parties that the FIVB Tribunal Judge had been provided with a copy of the first instance case file. It also informed the parties that the FIVB Tribunal Judge had decided to address the Agent’s request on inadmissibility in his final decision and that, in the exercise of the discretion granted by Articles 20.7.1 and 20.7.2 of the FIVB Sports Regulation, had invited the parties to elaborate on the Image Contract and Sports Contract by [date], including the submission of new evidence.
37. On [date], the parties submitted their position on the Image Contract and the Sports Contract, including new evidence.
38. On [date], the FIVB Tribunal Secretariat acknowledged receipt of the parties’ submissions and informed the parties that the FIVB Tribunal Judge, in the exercise of the discretion granted by Articles 20.7.1 and 20.7.2 of the FIVB Sports Regulation, had invited them to comment on the other party’s submission and to produce any additional evidence by [date].
39. On [date], the Agent submitted his position on the Club’s submission and produced additional evidence.

40. On [date], the Club submitted its position on the Agent's submission and produced additional evidence.
41. On [date], the FIVB Tribunal Secretariat informed the parties that the FIVB Tribunal Judge, in the exercise of the discretion granted by Articles 20.7.1 and 20.7.2 of the FIVB Sports Regulation, had invited them to submit certain e-mails by [date].
42. On [date], the Agent and the Club filed their submission regarding the e-mails requested.
43. On [date], the FIVB Tribunal Judge informed the parties that he had reviewed all the submissions and would proceed to issue a decision. He also requested the parties to provide a detailed account of their respective costs as well as supporting documentation by [date].
44. On [date], the Agent made his submission on costs.
45. On [date], the Club made its submission on costs.

5. The Parties' Submissions

46. 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 Club's Request for Relief and Position

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

"1) The decision of the first instance is to be cancelled and the proceeding in the first instance to be carried out again (to assure a proper identification of the Agent/Agency and amount of the claim to be recalculated)

or

2) The decision of the first instance is to be altered and the claim to be either:

- fully dismissed or

- to be deducted by 23% (VAT tax), that is from EUR 20.910 to EUR 17.000 and

subsequently by 20% (share of the net commission to be attributed to the Agent (the Respondent) by way of leveraging of business risk due to the economic impact of the pandemic) – from EUR 17.000 to EUR 13.600 (by EUR 3.400).”¹⁹

48. In support of its request for relief, the Club stated that it upholds its position as presented in the previous instance and raises the following three objections towards the reasoning of the Decision:²⁰

- a) First, the FIVB misjudged the basis of the contractual relationship between the parties. The Agreement was substituted by the Sports Contract and the Image Contract. Therefore, no conclusion should be derived from the Agreement.²¹
- b) Second, the FIVB misidentified the Agent with the Agency. In this regard, the Club argued that:
 - i) The Decision indicates the Agent as the creditor of the agency fee, but the invoice was issued by the Agency. The Agent was not free to invoice the Club with any company which he was involved with, and if that is accepted, then the Agency, as the issuer of the invoice, should seek its claim in any legal proceedings.²²
 - ii) The fact that the Club’s CEO communicated to the Agent does not mean that he treated the Agent as a creditor of the Club.²³
 - iii) The Club cannot pay a 23% VAT to a person other than the person that issued the VAT invoice, as such a situation may lead to serious tax and criminal consequences.²⁴
 - iv) The Decision does not indicate which entity is authorized to receive the commission from the Club.²⁵

¹⁹ RFR, p. 4.

²⁰ RFR, p. 3.

²¹ RFR, p. 3.

²² RFR, p. 3.

²³ RFR, p. 3.

²⁴ RFR, p. 3.

²⁵ RFR, p. 3.

c) Third, the FIVB failed to consider the impact of the pandemic and the [Continental Federation] decision [number]. The agency commission is expressed as a percentage of the Player's remuneration. The commission should be "pro rata" decreased because the [Continental Federation] decision acknowledges that pandemic-related losses should be equally attributed to both parties. According to the Club, 20% of the risk should be attributed to the Agent.²⁶

5.2. The Agent's Request for Relief and Position

49. In his Answer, the Agent submitted the following request for relief:

- *the FIVB Decision shall be upheld; and*
- *the Club shall be liable to:*
 - *indemnify the Agent for incurred legal expenses (including attorney's fees), up to an amount to be determined during the FIVB Tribunal proceedings; and*
 - *bear the cost of the proceedings in its entirety.*²⁷

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

51. The Agreement is valid and its validity is confirmed by the fact that the Player and the Club fully started executing the Agreement. Under the Agreement, the Player and the Club explicitly agreed that some aspects of the deal would be further developed in additional agreements. The Sports Contract and the Image Contract were signed after the Agreement. They do not terminate or cease the effect of the Agreement but rather precise and complement the Agreement. They also have a combined aggregate financial value equal to the one of the Agreement. The existence of a governing framework agreement as the Agreement is usual in [the Club's country] for tax purposes and is acknowledged as valid and binding by the [Continental Federation], the FIVB and the FIVB Tribunal.²⁸

52. The Club must pay the Agent as per the issued invoice. The Club is estopped from changing its course of action to the detriment of the Agent and escaping from its contractual obligation to pay

²⁶ RFR, p. 4.

²⁷ Answer, ¶ 53.

²⁸ Answer, ¶¶ 28-35.

the Agent's fee. The Club acknowledged its intention to pay the Agent's fee, without any objection to the Agent's invoice. The Club only raised its argument regarding the legitimacy of the invoice in front of the FIVB. The Agent was identified as the creditor of the obligation to pay an agency fee since, as per Article 11.6 of the FIVB Sports Regulations, an FIVB agent's license is personal and non-transferable, and the Agent operated through a company, a possibility acknowledged under Article 14.2.1(g) the FIVB Sports Regulations.²⁹

53. The Club must pay the Agent's fee in full. It is a general principle of law that a party cannot invoke later events to avoid contractual obligations that were fully due before that event took place. It is indisputable that both conditions for the payment of the agency fees were duly fulfilled on [date], leaving no doubt that the Club was from that date onwards obliged to pay the Agent's fee.³⁰

6. Jurisdiction

54. The FIVB Tribunal must first examine whether it has jurisdiction to hear the present dispute. To do so, it must look at the relevant provisions of the FIVB Sports Regulations.
55. 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."

56. 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".

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

²⁹ Answer, ¶¶ 36-41.

³⁰ Answer, ¶¶ 42-48.

jurisdiction.

58. 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 an [the Agent's country] FIVB licensed agent and a [the Club's country] club concerning the payment of an agency fee. The dispute also complies with Article 19.2.2.2 of the FIVB Sports Regulations because it was decided previously by the FIVB.
59. 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

60. The Agent claims that the Club's RFR is inadmissible because it contains vague references to previous distinct proceedings and fails to set out the facts of the case and to include any exhibits on which the Club relies under the present procedure. According to the Agent, if the RFR were to be considered admissible, the main reason for governing and judicial bodies to set minimum requirements would be undermined or voided.³¹
61. The Club contends that its RFR is admissible. It argues that the RFR was submitted in due time and that the Club complied with all the instructions and timelines established by the FIVB to sort out the composition of the RFR.³²
62. 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."

63. The Decision was notified to the parties on [date]. The Club submitted its request for review on [date], within the fourteen-day deadline. As described above, the request was later amended to comply with the FIVB's requirements. It is undisputed between the parties that the request for review was submitted on time. The dispute between the parties focuses on whether the request

³¹ Answer, ¶¶ 19-27.

³² Club's submission dated [date].

for review is complete.

64. Article 20.3.2 of the FIVB Sports Regulations sets forth:

“The RfR shall contain the following:

a. The names, nationality, postal addresses, telephone, facsimile numbers and e-mail addresses of the Claimant and the Respondent and their respective counsel;

b. A copy of the decision or the referral by FIVB/the Confederation.

c. A statement of all the facts and legal arguments;

d. The Claimant's request for relief.

e. All available written evidence on which the Claimant intends to rely, including the relevant contract.

f. Any request for a hearing and for the examination of (a) witness(es).

g. A bank certificate confirming payment of the applicable handling fee (see Article 20.10).”

65. The objection raised by the Agent relates to paragraphs c) and e) of Article 20.3.2. It is undisputed by the parties that the RFR complies with the requirements outlined in paragraphs a), b), d), f), and g) therein.

66. The FIVB Tribunal Judge is not persuaded by the Agent’s argument and considers that the RFR is admissible.

67. Article 20.3.2.c) requires a statement of all the facts and legal arguments. It does not indicate the form or the extension that the statement should have. In the FIVB Tribunal Judge’s view, this requirement should not be interpreted strictly because, unlike a first-instance proceeding in which the adjudicator must understand the facts and legal arguments to resolve the dispute, this is a review process, in which the FIVB Tribunal Judge has access to the decision under review and is even empowered under Article 20.7.2 of the FIVB Sports Regulations to request a copy of the case file. The FIVB Tribunal Judge requested a copy of the first instance case file, although the Agent had submitted the parties’ main first instance submissions as evidence.

68. In its RFR, the Club not only referred to its position in the previous instance but also raised three specific objections towards the reasoning of the Decision. In addition, it submitted a copy of the Decision, which contains a complete description of the facts and the parties’ positions. The fact that the Agent has not argued nor proved the existence of any difficulty in understanding the

Club's position and answer the RFR, and the FIVB Tribunal Judge has been able to understand the Club's position and issue this decision, also evidences that the RFR contained sufficient elements to understand the facts and the legal position of the parties. Therefore, in the FIVB Tribunal Judge's opinion, the RFR complies with the requirement under Article 20.3.2.c).

69. Article 20.3.2.e) establishes that the request for review shall contain all available written evidence on which the claimant intends to rely, including the relevant contract. In the FIVB Tribunal Judge's view, there is no breach of that article because the submission of evidence is voluntary, as the article refers to written evidence on which the claimant "intends" to rely. This is in line with the well-established rule in international adjudication that the burden of proof lies in principle with the party asserting a fact.³³ Therefore, it was up to the Club to decide what written evidence it wanted to submit, if any. The Club submitted a copy of the Agreement, the Sports Contract, the Image Contract, and the [Continental Federation] decision [number].

8. Applicable law

70. 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)."

71. The FIVB decided the dispute *ex aequo et bono*. The parties did not make any submissions as to the applicable law nor object to the FIVB's application of general considerations of justice and fairness. Based on the above and in the absence of an agreement to the contrary, the FIVB Tribunal Judge will also 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).

9. Findings

72. The Club requested the FIVB Tribunal to review the FIVB's Decision. The FIVB Tribunal Judge will analyse below the three objections raised by the Club towards the Decision.

³³ See, for example, FIVB 2017-03 and CAS 2019/A/6207. This principle is reflected also in article 18.1(d) of FIVB Sports Regulations

9.1. Was the Agreement replaced by the Sports Contract and the Image Contract?

73. The FIVB concluded that the Agreement was not replaced by the Sports Contract and the Image Contract because (i) the Club acknowledged its debt towards the Agent by e-mail dated [date], (ii) clauses 1, 3 and 9 of the Agreement corroborate the parties' intention that the Agreement remains valid in addition to the other contracts, (iii) the Agreement does not provide for its termination upon the signing of the other contracts, and (iv) the president of the Club confirmed the understanding that the three agreements would remain valid on his e-mail dated [date].³⁴
74. The Club contends that the Agreement was substituted by the Sports Contract and the Image Contract. According to the Club, the Agreement became useless after the last two contracts were concluded, as not a single issue remained regulated or covered by the Agreement.³⁵
75. The FIVB Tribunal Judge is not persuaded by the Club's argument. The Club has failed to prove the alleged parties' intention to substitute the Agreement with the Sports Contract and the Image Contract. The evidence in the record proves the opposite:
- a) Clause 1 of the Agreement states that its duration was from the beginning to the end of the [year/year] sports season. The Agreement does not state that it would terminate with the execution of the Sports Contract and the Image Contract.
 - b) Clauses 3 and 9 of the Agreement state that certain obligations, like bonuses and image rights, were to be determined in *additional* agreements. These additional agreements are the Sports Contract and the Image Contract as they regulate, among other things, those issues. Therefore, according to clauses 3 and 9 of the Agreement, the Sports Contract and the Image Contract are *in addition* to the Agreement, rather than a replacement.
 - c) The above is confirmed by three other elements:
 - i) On [date], the Club sent the Agent an e-mail with a signed version of the Agreement, the Sports Contract, and the Image Contract, stating that the three contracts had to be signed

³⁴ Decision, p. 9.

³⁵ RFR, p. 3.

by [date].³⁶ The Agreement was signed on [date]. The Sports Contract and the Image Contracts were signed on [date]. In the FIVB Tribunal Judge's view, it would not make sense to assume that the parties signed the Agreement only to replace it the next day. Had that been the intention of the parties, the Club would have sent the signed version of the Sports Contract and the Image Contracts only and asked for those contracts to be signed. The fact that the Club sent a signed version of the Agreement and asked for it to be signed by the Player shows that the parties wanted to have that contract in force despite the existence of the other two contracts.

- ii) Neither the Sports Contract nor the Image Contract provides for the termination of the Agreement. The FIVB Tribunal Judge notes that Article 7(6) of the Sports Contract states: *"Any arrangement between the parties made prior to the execution hereof shall be deemed non-binding. This particularly concerns the provisions of the preliminary agreement, offers, etc. (if made)."* However, this article does not refer to the Agreement. The Agreement was already signed and in force when the Sports Contract was signed. Therefore, had the parties wanted to refer to the Agreement, they would have identified the Agreement in that clause, rather than generally referring to *"preliminary agreement, offers, etc. (if made)"*.
- iii) On [date], the Agent sent an invoice issued by the Agency to the Club for EUR 20,910 (EUR 17,000 as an agency fee plus VAT), i.e., the exact amount of the agency fee agreed by the Club and the Player in clause 8 of the Agreement. On [date], the Club apologized to the Agent for the delay and stated that it would pay the invoice by the end of [month], thus acknowledging its debt towards the Agent under the Agreement.³⁷
- d) After the Club filed a complaint against the Player before the [Continental Federation] based on the Sports Contract and the Image Contract, the Player filed a counterclaim against the Club based on the Agreement. In its decision, the [Continental Federation] considered the parties did not mutually agree to abandon the Agreement when they signed the Sports Contract and the Image Contract, and that the three agreements completed each other.³⁸ Although the [Continental Federation]'s decision is not binding to the Agent and the FIVB

³⁶ Answer, Exhibit 9.

³⁷ Answer, Exhibits 6 and 7. Agent's submission dated [date].

³⁸ RFR, [Continental Federation] Decision [number].

Tribunal Judge, it shows that not only the FIVB but the [Continental Federation] has interpreted the Agreement as not being replaced by the Sports Contract and the Image Contract.

9.2. Did the FIVB misidentify the Agent with the Agency?

76. The FIVB concluded that the fact that the Agency issued the invoice instead of the Agent did not invalidate the invoice for purposes of clause 8 of the Agreement. According to the FIVB, the Club is estopped from making this argument because it acknowledged that the invoice was from the Agency and stated that it would pay that invoice in its e-mail dated [date].
77. The Club contends that the FIVB misidentified the Agent with the Agency because the Decision indicates the Agent as the creditor of the agency fee, but the invoice was issued by the Agency. The Club argues that the Agent was not free to invoice the Club with any company which he was involved with, and if that is accepted, then the Agency, as the issuer of the invoice, should seek its claim in any legal proceedings.³⁹
78. The FIVB Tribunal Judge agrees with the FIVB that the Club is estopped from making this argument. A party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment. This is a general application of the principle of good faith.
79. In the case at hand, the Club caused the Agent to believe that it could issue the invoice through his Agency and the Agent acted accordingly. On [date], the Agent sent to the Club an invoice issued by the Agency, after the Club's manager asked him to prepare a final invoice.⁴⁰ On [date], the Agent asked the Club to pay the invoice.⁴¹ On [date], the Club apologized to the Agent for the delay and stated that it would pay the invoice by the end of [month].⁴²
80. The Club argues that the fact that the Club communicated to the Agent does not mean that it treated the Agent as a creditor of the Club.⁴³ However, that is what the Club did. It treated the

³⁹ RFR, p. 3.

⁴⁰ Answer, Exhibits 6 and 8. Agent's submission dated [date].

⁴¹ Answer, Exhibit 6. Agent's submission dated [date].

⁴² Answer, Exhibits 6 and 7. Agent's submission dated [date].

⁴³ RFR, p. 3.

Agent as a creditor of the Club by apologizing for the delay and indicating that it would pay the invoice issued by his Agency. Had the Club considered that the Agent was not a creditor or that the invoice was not properly issued, it should have stated so to the Agent instead of causing him to believe that it would pay the invoice.

81. Based on that understanding, the Agent accepted to wait until the end of [month].⁴⁴ It was only after the Agent filed his complaint before the FIVB that the Club argued for the first time that it would not pay an invoice issued by the Agency.⁴⁵
82. The Club also argues that it cannot pay a 23% VAT to a person other than the person that issued the VAT invoice, as such a situation may lead to serious tax and criminal consequences.⁴⁶ This argument is also not compelling, as the Club has neither explained nor proved the alleged impediment to paying VAT and the alleged consequences of doing so. Again, had the Club considered that it was prevented from paying the invoice sent by the Agent, it should have stated so instead of causing the Agent to believe that it would pay the invoice.
83. The Club finally contends that the Decision does not indicate which entity is authorized to receive the commission from the Club.⁴⁷ The FIVB decided that the Club “shall pay to [the Agent] EUR 20,910”. Considering the reasoning underlying that determination, the FIVB Tribunal Judge concludes that the FIVB’s Decision is a direct response to the Agent’s request for relief in the previous proceeding (“*The claimant requests a total of 20,910 euro (17,000 euro plus VAT, as in the invoice attached).*”), meaning that the Agent, as the right holder and creditor of the Club, is entitled to receive the agency fee under the Agreement as per the Agency’s issued invoice.
84. Article 15.2.1.f) of the FIVB Sports Regulations foresees the possibility of an agent operating through a legal entity. The Court of Arbitration for Sports has also considered the issuance of invoices through legal entities to constitute a standard practice in other sports.⁴⁸ Therefore, the Club must pay the Agent by paying the invoice issued by the Agency.

9.3. Did the FIVB fail to consider the impact of the pandemic and the [Continental Federation]’s

⁴⁴ Agent’s submission dated [date].

⁴⁵ Answer, Exhibit 9.

⁴⁶ RFR, p. 3.

⁴⁷ RFR, p. 3.

⁴⁸ CAS 2014/A/3669.

decision?

85. The Club argues that the FIVB failed to consider the impact of the pandemic and the [Continental Federation]'s decision. According to the Club, the agency fee is expressed as a percentage of the Player's remuneration. Therefore, the fee should be "pro rata" decreased by 20% because the [Continental Federation]'s decision acknowledges that pandemic-related losses should be equally attributed to both parties.⁴⁹
86. The Club's last objection is also not compelling. In the previous instance, the Club stated before the FIVB that it suffered significant losses during the pandemic and concluded agreements with its staff to reduce their remuneration by 15%. It also stated that the Agent's claim referred to the performance of the Player, which was not the expected due to the pandemic. These were just statements. The Club did not request the FIVB to reduce the agency fee, as it is doing in this instance. It only requested the FIVB to dismiss the Agent's claim in its entirety. Therefore, the FIVB had no obligation, and thus did not fail, to consider the impact of the pandemic and the [Continental Federation]'s decision.
87. In addition, the Claim failed to meet the burden of proof, as it did not prove in the previous instance and this proceeding the losses allegedly suffered due to the pandemic and the alleged relation between the agency fee and the Player's performance. Clause 8 of the Agreement states that the agency fee equals 10% *"of the Player's contractual amount+ VAT to be paid after presentation of an invoice to [the Agent] once the Player's transfer is complete (upon issued ITC)."*⁵⁰ Clause 8 contains no reference to the Player's performance. On the contrary, it conditions the payment of the agency fee to the Player's transfer and the presentation of an invoice, both of which occurred in this case.
88. Based on the above considerations, the FIVB Tribunal Judge dismisses the Club's RFR and confirms the Decision.

10. Costs

89. In its Decision, the FIVB ordered the Club to pay CHF 500 as reimbursement of the handling fee.

⁴⁹ RFR, p. 4.

⁵⁰ Answer, Exhibit 3.

The Club requested the FIVB Tribunal Judge to reverse the Decision without making any statement regarding the reimbursement of the handling fee. On [date], the Club also claimed reimbursement of EUR 2,000 in legal fees. Considering that the Club has not provided any explanation as to why the Agent would not be entitled to a reimbursement of the handling fee, as well as the outcome of the previous instance proceedings, the FIVB Tribunal Judge finds the FIVB's decision on costs to be fair and reasonable and rejects the Club's claim for reimbursement.

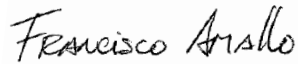
90. The Club paid the handling fee corresponding to its RFR (CHF 1,500). On [date], the Club quantified its legal expenses at EUR 2,000. On [date], the Agent quantified his legal expenses at EUR 4,125 plus VAT.
91. Article 20.11.2 of the FIVB Sports Regulations states that, as a general rule, the decision 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.
92. In the case at hand, the parties behaved appropriately during the proceedings and made no submissions concerning their financial resources. In this regard, the Agent only mentioned that the Club participates in the first division of one of the most developed volleyball competitions in the world but made no specific statement nor provided evidence regarding his and the Club's financial resources. Thus, the FIVB Tribunal Judge will decide upon the distribution of the costs according to the outcome of the proceedings.
93. Considering that (i) the Decision has been fully upheld, (ii) the Agent's admissibility objection was rejected, (iii) both parties failed to provide supporting documentation of their legal costs as well as information on the applicability of VAT, (iv) CHF 2,500 is the maximum contribution under Article 18.1(e) of the FIVB Sports for first instance proceedings, and (v) this proceeding was more extensive than the first instance proceeding as it required the parties to make multiple submissions, the FIVB Tribunal Judge determines, in accordance with article 20.11.2 of the FIVB Sports Regulations, the reasonable contribution to be EUR 2,500. Thus, the Club shall pay the Agent's legal costs in the amount of EUR 2,500 and bear its own legal costs as well as the handling fee.

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

1. The admissibility objection raised by [the Agent] is dismissed. The Request for Review filed by [the Club] is dismissed.
2. The decision rendered by the FIVB dated [date] is upheld.
4. [The Club] shall pay [the Agent] EUR 2,500 as a contribution towards legal fees and expenses. [The Club] shall bear its own legal costs and 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