



The

FIVB TRIBUNAL

Mr. Piotr Stolarski, Single Judge

herewith issues the following

DECISION

on the Request for Review – RfR 2014-02 - CC035/2014

filed by

Volleyball Club Omichka (“Applicant”)

Dekabristov 91, Omsk, Russia 644010

represented by its General Director, Mr. Andrey Georgievich Ivanov,

vs.

Natalya Mammadova (“Respondent”)

..... (Respondent’s address)

Represented by lic. iur. Vassilios Koutsogiannakis ,

For Athletes GmbH, Im Stalderen 5, 8182 Hochfelden, Switzerland

1. The Parties

1. The Applicant is a professional volleyball club in Omsk, Russia.
2. The Respondent is a professional volleyball player from Azerbaijan.

2. The FIVB Tribunal Judge

3. Article 1.5 of the FIVB Tribunal Regulations (“Regulations”) provides as follows:

“1.5 Cases before the FIVB Tribunal shall be heard by all five (5) members, unless one or more of the members is unavailable or ineligible due to reasons of conflict (see Article 9) and, thus, replaced by a substitute judge from the same Confederation. However, in the event that a case only involves parties from the same Confederation, that case shall be heard by the judge from that Confederation as a single judge unless a hearing by the full FIVB Tribunal is requested by one of the parties. If that member has the same nationality as one of the parties, he/she shall be replaced by the substitute member from the same Confederation. If both the member and the substitute member from the Confederation in question have the nationality of one of the parties, the FIVB President shall appoint ad-hoc a neutral judge from the same Confederation provided that he/she possesses the qualifications set out in Article 1.3 above”.

4. Because both parties come from Europe and none of the parties requested a hearing by the full FIVB Tribunal, this Request for Review will be heard by a judge of the FIVB Tribunal from Europe, acting as a single judge.
5. Mr. Erhard Rubert, the regular member of the FIVB Tribunal from Europe, was unavailable to judge on this case. He was replaced by the substitute member, Mr. Piotr Stolarski (hereinafter the “Judge”). The Judge does not have the same nationality as any of the parties, and the parties did not challenge his appointment.

3. Facts and Proceedings

3.1 Background Facts

6. On 22 January 2013, the Applicant and the Respondent entered into a contract whereby the Respondent agreed to play for the Applicant’s A team for the 2013/2014 and 2014/15 seasons (hereinafter the “Contract”).
7. On 31 May 2014, the Applicant and the Respondent mutually terminated the Contract with

immediate effect by signing a termination agreement (hereinafter the "Termination Agreement"

8. The Termination Agreement contained, among others, the following provisions:

"2. The CLUB recognizes that the PLAYER fully complied with its obligations under the Contract during 2013/14 Season.

3. The CLUB has no claims towards the PLAYER about the duties performed by the PLAYER in the Contract.

4. The CLUB confirms and acknowledges indebtedness to the PLAYER in the amount of 109,987 (one hundred and nine thousand nine hundred eighty-seven euros net) on the salary in accordance with Article 2.14 of the Contract and 3 000 000 (three million) rubles net bonus paid for the 3rd place in the championship of Russia according to Article 2.7 of the Contract.

5. The CLUB agrees to pay the debt to the PLAYER no later than July 15th, 2014."

9. The Applicant failed to render payment of the undisputed debt on 15 July 2014.
10. On 4 September 2014, the Respondent filed a Complaint with the CEV for the outstanding amounts owed under the Termination Agreement in the amount of EUR 109,987 and RUB 3,000,000.
11. On 3 October 2014, the Applicant filed its Reply with the CEV stating that it owed the amount of EUR 95,910 due to a difference in the currency exchange rate between the Euros and Rubles and an outstanding bonus payment of RUB 3,000,000.
12. In her second submission to the CEV, the Respondent accepted the Applicant's amount and reduced her claim to EUR 170,910 net plus interest of 5 percent per annum as of 16 July 2014.
13. The Applicant did not make a second submission to the CEV and failed to inform the CEV of payments that it made to the Respondent of RUB 5,240,357 on 31 October 2014 and RUB 2,999,935 on 6 November 2014.

3.2 The Proceedings before the FIVB Tribunal

14. On 6 November 2014, which is the same day as the Applicant's last payment to the Respondent, the CEV Mediation Chamber issued a decision in the present manner in accordance with Article 45.11 of the FIVB Sports Regulations (hereinafter the "Decision") ruling

that the Respondent owed the Applicant the amount of EUR 170,910 net plus 5 percent interest per annum as of 16 July 2014 and a reimbursement of the CEV handling fee in the amount of EUR 400.

15. On 19 November 2014, the Applicant filed a Request for Review of the Decision with accompanying exhibits.
16. On 8 January 2015, the FIVB Tribunal acknowledged receipt of the Applicant's Request for Review and invited the Respondent to file an Answer by no later than 23 January 2015.
17. On 22 January 2015, the Respondent filed its Answer with accompanying exhibits.
18. On 26 January 2015, the FIVB Tribunal acknowledged receipt of the Respondent's Answer and stated that no additional submissions would be accepted unless otherwise prompted by the FIVB Tribunal pursuant to Article 11.1 of the FIVB Tribunal Regulations.
19. On 2 February 2015, the Applicant emailed the FIVB Tribunal and asked whether it needed to make a further submission in response to the Respondent's Answer.
20. On 3 February 2015, the FIVB Tribunal replied that no further submission was necessary.

4. The Parties' Submissions

4.1 The Applicant's Request for Review

21. The Applicant submits that the Decision was not valid because the outstanding amount had already been paid before the Decision was rendered.
22. The Applicant argues that it paid the amount owed for outstanding salaries, EUR 95,910.85, on 31 October 2014 and the amount owed for the bonus, EUR 75,000, on 6 November 2014. In support of its argument, the Applicant attached payment order slips demonstrating that it made a payment of RUB 5,240,357.84 on 31 October 2014, which the Applicant claimed amounted to EUR 95,910.85 at an exchange rate of RUB 54.6378 to EUR 1, and a payment of RUB 3,000,000 on 6 November 2014, which the Applicant claimed amounted to EUR 75,000 at an exchange rate of RUB 40 to EUR 1.
23. The Applicant requests the following relief:

“We don’t agree with the made decision as for a moment when the decision was issued, the debt of outstanding salary in the amount of 95.910,85 EURO (the exchange rate of RUB 54,6378 = EURO 1) on 31 October 2014 and bonus payments in amount of 3.000.000 RUB (in accordance with the employment agreement of the Player) on 6 November 2014 was already paid.”

4.2 The Respondent's Answer

24. The Respondent contends that the Applicant has not fully paid the debt owed based on the Decision.
25. The Decision ordered the Applicant to pay the amount of EUR 170,910 net with interest of 5 percent per annum as of 16 July 2014 to the Respondent. The Respondent contends that she is still owed EUR 24,849 based on the following calculation:

<u>Total Outstanding Amount Owed under the Decision</u>	
Salary and bonus payment	EUR 170'910
5% interest from 16 July 2014 to 31 October 2014	EUR 2'506
5% interest from of 1 November 2014 to 6 November 2014	EUR 50
Handling fee	EUR 400
Total amount owed	EUR 173'866
<u>Payments</u>	
Payment of RUB 5'240'357 on 31 October 2014 (exchange rate on 31 October 2014 = EUR : RUB = 1 : 53.88)	EUR 97'259
Payment of RUB 2'999'935 on 6 November 2014 (exchange rate on 6 November 2014 = EUR : RUB = 1 : 57.96)	EUR 51'758
Total outstanding amount on 22 January 2015	EUR 24'849

26. The Respondent requests the following relief:

*“a) an order declaring that the Request for Review must be dismissed as unfounded;
b) an order and award that Respondent pay Claimant the amount of EUR 24,849 net within 10 days from the date of the decision of the FIVB Tribunal; in case of failure additional sanctions may be imposed by the FIVB;
c) an order and award that Respondent shall pay the legal and other costs for this proceeding;
d) an order and award that Respondent compensate Claimant for attorney’s fees and other expenses incurred in connection with this proceeding.”*

5. Jurisdiction

5.1 In general

27. Article 2.1 of the Regulations reads as follows:

“[t]he FIVB Tribunal is competent to decide financial disputes of an

international dimension between clubs, players and coaches from within the world of volleyball”.

28. Article 2.2 of the Regulations stipulates that the FIVB Tribunal can only resolve disputes:

“2.2.1 arising between the natural and legal persons/entities mentioned in Article 2.1;

and

2.2.2 decided previously by the FIVB/ a Confederation or referred by the FIVB/ a Confederation to the FIVB Tribunal”

29. Article 2.3 of the Regulations grants the Judge the power to rule on his own jurisdiction.

30. Thus, in order for the FIVB Tribunal to have jurisdiction over the dispute, the Judge shall examine whether the conditions of both Articles 2.1 and 2.2 are satisfied.

31. The present dispute involves a claim for unpaid salaries and bonuses by an Azerbaijani player against a Russian club. The Judge finds that this dispute clearly qualifies as a financial dispute of an international dimension between a player and a club in accordance with Articles 2.1 and 2.2.1.

32. Furthermore, the Request for Review at hand is directed against the Decision, which was rendered by the CEV Mediation Chamber. The CEV Mediation Chamber was created to adjudicate – among others – financial disputes within the Confédération Européenne de Volleyball (“CEV”), a confederation of the FIVB. Indeed, the CEV Mediation Chamber was competent and decided the case in the first instance on the basis of Article 45.11 of the FIVB Sports Regulations following the FIVB’s delegation to the CEV of the respective power to decide financial disputes among European parties. Therefore, the present Request for Review stems from a decision of a confederation, and the Judge holds that Article 2.2.2 is also satisfied.

33. Based on the above, the conditions of Articles 2.1 and 2.2 are satisfied. Moreover, neither party contested the FIVB Tribunal’s jurisdiction over the present dispute. Therefore, the FIVB Tribunal has jurisdiction over the present Request for Review pursuant to the Regulations.

6. Discussion

6.1 Applicable Law

34. Under the heading “Law Applicable to the Merits”, Article 13 of the 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).”

35. Neither of the parties has suggested that there was an agreement as to the law applicable to the merits in the present dispute nor have they based their arguments on any national law. In light of the above, the Judge will decide the issues submitted to him in this proceeding *ex aequo et bono*.

36. In substance, it is generally considered that an arbitrator deciding *ex aequo et bono* receives “a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case”.¹

37. In light of the foregoing matters, the Judge makes the following findings.

6.2 Findings

38. Generally speaking, the Judge finds that the Parties agree on the following facts, which are, therefore, uncontested:

1) the conclusion of the Contract on 22 January 2013 and the contractual content and obligations for both the Applicant and the Respondent arising from the Contract;

2) the Respondent fulfilled her duty all of her duties under the Contract;

3) the conclusion of the Termination Agreement on 31 May 2014 which required the Appellant to pay the amounts of EUR 109,987 and RUB 300,000 by no later than 15 July 2014;

4) in her Reply before the CEV, the Respondent accepted the Applicant’s position that, due to a difference in the exchange rate, the Applicant owed EUR 95,910.85 instead of the EUR 109,987 agreed to in the Termination Agreement but also requested that the bonus amount of RUB 3,000,000 be converted to Euros (EUR 75,000) at the same exchange rate of RUB 40 to EUR 1, which was provided in the Contract;

¹ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.

6) the Applicant did not respond to the Respondent's reply and did not question the request about the bonus being converted at the same exchange rate before the CEV;

7) the CEV decided that the Applicant owed EUR 170,910.85;

8) on 31 October 2014, the Applicant paid the amount of RUB 5,240,537, which converts to an amount of EUR 97,259 based on an exchange rate of RUB 53.88 to 1 EUR;

9) on 6 November 2014, the Applicant paid the amount of RUB 2,999,935, which converts to an amount of EUR 51,758 based on an exchange rate of RUB 57.96 to EUR 1;

10) consequently, to date, the Applicant has paid EUR 149,017 to the Respondent.

39. Thus, the crux of the present dispute is based on whether the Applicant's payments have sufficiently covered the amount owed under the Termination Agreement due to a fluctuation in the exchange rate based on the application of *ex aequo et bono* principles.

40. As will be described in further detail *infra*, the Judge finds that the Applicant's argument that it has fully paid the amount owed shall fail.

41. The Termination Agreement between the Applicant and the Respondent dated 31 May 2014 determined that two amounts were owed. The First amount was a payment in Euros covering the outstanding salary owed to the Respondent, which was eventually agreed to be EUR 95,910.85. The second amount was a payment in Rubles covering the bonus owed to the Respondent, which was determined to be RUB 3,000,000. The Termination Agreement specified that these payments had to be rendered by 15 July 2014.

42. However, the Applicant failed to render payment on the Termination Agreement by 15 July 2014. If the Applicant had paid on time, its position in the present appeal would likely succeed.

43. It is indisputable that the Applicant did not meet its obligations on time. The Applicant only rendered payment on the bonus of RUB 3,000,000 as a result of the Respondent's decision to file the claim on 4 August 2014 and the subsequent decision rendered by the CEV on 6 November 2014.

44. Furthermore, the Applicant did not question the Respondent's request to apply the contractual agreed-upon exchange rate of RUB 40 to EUR 1 (*see* Article 2.14 of the Contract) to

the bonus. The Applicant received a benefit in the same submission because the Respondent lowered her request for the outstanding salary payment from EUR 109,987 that she was owed under the Termination Agreement to EUR 95,910.85 provided by the Applicant in its Answer before the CEV. The Applicant had the opportunity to respond to this arrangement and chose not to do so. The Applicant also failed to inform the CEV of the payments that it made on 31 October 2014 and 6 November 2014 even though it knew that the CEV was in the process of rendering the Decision before 6 November 2014 and had rendered the Decision on 6 November 2014.

45. Consequently, based on the Applicant's late payment of uncontested debts, the Applicant's passiveness during the proceedings before the CEV, and the significant change in the exchange rate of the RUB to EUR exchange rate from the time of conclusion of the Contract to the date of the Decision, the Judge finds that the total amount owed by the Applicant for the bonus payment in Euros to the Respondent should be calculated based on an exchange rate of RUB 40 to EUR 1 as provided in the Contract, and the payments already rendered by the Applicant shall be calculated based on the relevant exchange rate on the day that the payment was made, i.e. 31 October 2014 for the first payment and 6 November 2014 for the second payment. The Judge finds that this approach is taken in keeping with the general considerations of justice and fairness under *ex aequo et bono* principles.
46. The costs for the present dispute shall be adjudicated according the FIVB Tribunal Regulations. The Respondent requested fees but failed to provide an accounting of those fees. Given the fact that these proceedings involved merely one submission, the Judge finds that each party shall bear its own costs.
47. Therefore, based on the record, the Judge rules that the amount awarded in the Decision is upheld in its entirety and the Decision is revised so as to reflect the previous payments made by the Applicant.

DECISION

48. For the reasons set forth above, the Judge decides as follows:
 1. **The decision rendered by the CEV Mediation Chamber dated 6 November 2014 is modified as follows:**

a) Volleyball Club Omichka shall pay the amount of EUR 21,893.85 to Ms. Natalya Mammadova plus statutory interest of five percent per annum as of 16 July 2014 until payment is made;

b) Volleyball Club Omichka shall pay the amount of EUR 2,556.00 to Ms. Natalya Mammadova as statutory interest of five percent per annum owed as of 16 July 2014 to 31 October 2015 on the amount of EUR 170,910 and statutory interest of five percent per annum owed as of 1 November 2014 to 6 November 2014 on the amount of EUR 73,651.

c) Volleyball Club Omichka shall still pay the amount of EUR 400 to Ms. Natalya Mammadova for the handling fee as ordered by the decision rendered by the CEV Mediation Chamber dated 6 November 2014.

- 2. Each party shall bear its own costs.**
- 3. Any other or further-reaching requests for relief are dismissed.**

Lausanne, legal seat of the proceedings, 13 March 2015.

Piotr Stolarski
Single Judge