

THE FIVB DISCIPLINARY PANEL

composed by

Mrs. Margaret Ann Fleming (SCO)	Chair
Ms. Sabinah Clement (IVB)	Member
Mr. Mounir Ben Slimane (TUN)	Member
Mr. Tomohiro Tohyama (JPN)	Member
Mr. Juan Antonio Gutierrez (ARG)	Member

I. FACTUAL BACKGROUND

1. From 30 August 2014 to 21 September 2014, the FIVB Volleyball Men's World Championship was held in Poland.
2. After playing the first two rounds but before the start of the Third Round, the FIVB and the local organizing committee informed the teams on page 9 of Bulletin No. 12 dated 13 September 2014 that the pool that included Poland would *"play their games in Lodz as previously advised."* The Brazilian team was relocated to Lodz due to the fact that it was in the same pool as Poland.
3. On 15 September 2014, the FIVB held a briefing meeting. At the meeting, the management of the Brazilian team complained about the *"sudden change in the Competition Rules"*.
4. On 16 September 2014, the Brazilian team played the Polish team in the Third Round of the competition. In the 5th set, while the Polish team led the score 16-15, the referee decided the point for the following rally should be granted to the Brazilian team. The Polish coach challenged the decision of the referee. Based on video evidence, the referee overturned his previous decision granting the point to the Polish team, which thus won the set by 17-15 and the match by 3 sets to 2.
5. Immediately after the final decision of the referee and the end of the match, the Brazilian coach Mr. Bernardo Rezende ("Coach"), several players and other members of the Brazilian team delegation reacted, *inter alia* by rushing to the Jury Table and confronting the FIVB Officials about the referee's last decision.
6. Neither the Coach nor the Brazilian team captain, Mr. Bruno Rezende (hereinafter "Captain") appeared at the post-match press conference.
7. On 17 September 2014, the event Press Director, Mr. Tomasz Wolfke, emailed the following to Mr. Richard Baker of the FIVB:

“It has been quite a night in Lodz and unfortunately I am writing to you on a negative note as I have to inform you about a scandalous behavior of the Brazilian team, especially the head coach Mr Bernardo Rezende.

First of all, after the last action coach Rezende showed the middle finger to a completely innocent radio commentator sitting by the court.

Secondly despite me and my assistant Filip Gradek trying to get the team to go through the Mixed Zone they all refused. They simply went over the barrier and went straight to the changing room. Only one came back – Wallace – when he was forced by their team manager. But still, he talked only to the Brazilian media.

NOBODY came to the press conference, neither Bruno nor Bernardo Rezende. I have been working as the Press Director of various international sports events, in volleyball for ten years and it had NEVER happened to me, especially to be physically pushed aside by the players, twice my size and half my age. The local Press Officer, Zelislaw Zyzynski, went to the changing room to ask coach Rezende to come to the press conference but he refused saying he had to prepare his team for the next match and he has little time because we ‘had changed the rules with a negative effect for the Brazilian team’ (sic!).

It is especially sad for us, because we as a nation have always had a lot of respect and admiration for the National Team of Brazil and mostly for coach Rezende.

Nevertheless, we cannot let rude behavior of the professional athletes go unpunished and I hope the International Federation of Volleyball will draw consequences.”

8. On the same day, the Game Jury President, Mr. Phillip Berben (“Mr. Berben”) filed his Official Report for the match between Brazil and Poland which stated the following:

“At the end of the match heavy incidents occurred.

The trigger, among others, was the wrong idea of the whole Brazilian team that the final point of the match was wrongly assigned to Poland, finishing the match in favor of Poland.

For information can be said that the video challenge asked by the Brazilian team showed the referee was completely right.

Immediately after the decision of the referee and thus after the end of the match incidents started to occur.

Players and staff people were shouting not only to the referees but some of them came to the jury table and with a high voice they were speaking to me, expressing disagreement with the decision of the referees. They wanted a new challenge.

In the mean time it was necessary to ask for more assistance of the security and the local organiser.

They tried to protect the neutral zone, not fully successful in the beginning.

Furthermore (part) of the Brazilian delegation was very impolite and rude.

Among them i could see the team manager of Brasil, the assistant coach, some players but specially Mr. Andres Murillo who was insulting me as an incapable person.

He came to my table and immediately after my reaction that he has to leave the area of the jurytable, looking again to the other side trying to see what happended there, I received ful in my face a very wet white towel¹ thrown by the concerned player, as confirmed by people around me.

Among others, the FIVB photographer took a picture of the action. The towel was used by the Brasilean team, having a clear tag of the hotel where the teams are staying (Hilton).

The towel is in my possession.

I consider these facts as affecting my personal physical and moral integrity the more that I am, as a neutral person, organ of the FIVB, serving the general intrests of world wide volleyball.

At the same time, other incidents ocured but they are subject to other reports sent to the President of the Control Committee and being a part of the full file.

This report was made in good faith and neutrality with the only goal to keep the sport of volleyball clear and fair [sic].”

9. Later that day, the Coach was sanctioned by the FIVB Appeal Sub-Committee with a fine of USD 1,000 because he failed to appear at the press conference after the Poland-Brazil match held on the day before.
10. After Brazil’s match with Russia on 17 September 2014, both the Coach and the Captain failed to appear at the post-match press conference.
11. On 18 September 2014, the FIVB Control Committee President, Mr. Aleksander Boricic, informed the Brazilian team and individual members of its delegation that the FIVB had opened a disciplinary procedure based on the conduct of the Brazilian team after the Poland-Brazil match. The FIVB invited the Brazilian team and its individual members to submit their position by midnight local time.
12. Before midnight that night, Ms. Mariana d’ Aragona as representative of the Brazilian team submitted the following position with the FIVB:

“First of all, Mr. Berben is right, when he said that the officials of the team were impolite and rude. Before the next match, BRA: RUS, I, Mariana, myself, personally apologized under my name and in the name of the whole Brazilian Team to Mr. Berben. I told him I was very sorry for what happened on the day before.

¹ Panel’s note: the incident was also reported in a “World of Volley” news blog: http://www.worldofvolley.com/News/Latest_news/Brazil/39847/wch-m-who-threw-the-towel-photo.html.

Second, regarding the accusations that Mr. Endres called him incapable, I am really sorry, but it was a calorous [sic] moment, very intense, where there were 12,000 Polish people screaming for their victory, and I could not hear everything. To be very honest, I am not able to reproduce everything that was said, 48 hours ago. If [he] called him incapable, was based to the fact that right after the team briefing held in Lodz, me and my head coach approached his desk, and asked 2 questions:

- *Why did the local organizing committee asked us to leave the city of Katowice at 11:00 if we had to wait for 2 hours to get in our rooms, in Lodz. Our players, and the Russians, were standing at the hotel lobby, with no where to go because the rooms were not ready. He could not answer. We were really worried because we would have a very hard match on the day after.*
- *Why are we in group with second places, after the drawing of lots. Sorry, but we have never seen a group being made with one first place and two second places. He told us he did not know because he had just arrived.*

I am sorry, but I expected to receive an answer from the Local Supervisor.

Third, regarding the accusation that Mr. Endres thrown 'a very wet white towel' in his face, as you can see on the attached picture, I was facing backwards, and unfortunately I could not see who did it. However, I saw the towel on his face and immediately asked the accused player if he had done that, and the answer was no. So I thought how could he do it if he did not play that match, if he did not have any towel since they were all used for those who played. In his report, he said that people around him confirmed that. Did they really see it? I am not a lawyer, I do not understand about international laws, but in my country, if you accuse someone without any proof, the accused person can sue back the accuser for false accusation and moral damage. If he can prove it, I will understand any penalty. However, on the picture sent, all I can see is a white towel flying. By the way, the hotel is charging me for that.

Last, but not least, Mr. Berben wrote that who asked for a video check was Brazil. Unfortunately, he is mistaken because the referee had given the point to Brazil, the match was not over according to them, and who asked for the video check was the Polish head coach, Mr. Antigar. After seeing the video check, the referees gave the final point to Poland, and we lost the match. Therefore, we reacted. As I said before, it was a very intense match, with even a red card to a Polish player. We did not see the replay at the main screen as usual, so we asked to see it. We did not ask for a new challenge, we asked to see the video challenge that gave the victory to Poland.

We are a hard worker team. We are away from our houses for over a month, struggling against injuries, trying to understand a changed match calendar, trying to get to one more World Championship Finals. We have an image to keep it clean.

One more time, I would like to apologise for this episode. We are not proud of what happened, but we must be fair.

I am at your total dispose for whatever is necessary to repair this situation. We will probably arrive in Katowice tomorrow around 14:00. If you need to meet me, I will see you at anytime [sic].”

13. On 21 September 2014, after Brazil lost to Poland in the Final of the World Championship, the Coach gave a TV interview to a Brazilian broadcaster² stating the following: [translation from Portuguese into English which has not been challenged by any party]:

*“**Journalist:** Do you leave the game annoyed by anything in particular regarding the match?*

***Coach:** No, we lost many chances. Unfortunately, we did not play very well there. We had our calls, but it had to finish.*

However, there is so much ugliness that is complicated. The FIVB plays dirty.

I saw things happening here...referee’s lineup chosen to destabilize the Brazilian team.

Nevertheless, nothing of this has influenced the match. We lost because they played more than us. Played in an intelligent way. We lost the lucidity at times. The played well.

Unfortunately, there is a lot of low blows.

I think we built something...

***Journalist:** let me just interrupt you... As you are talking about this, I would like to ask you to be more specific so people, who are at home watching us right now, can understand.*

***Coach:** It is simple, the referee’s lineup: The FIVB put two referees who they know that are the only referees with whom we had serious problems in World League. The FIVB put them here (in the final) deliberately.*

The FIVB put a reporter, who is the greatest enemy of the Brazilian Volleyball, sitting on the bench close to the players, looking at them and doing this [a gesture that does not show up on the camera] all the time. We ‘fell down’ [lost because did not play as well as Poland].

This game was equal... They [Poland] played well there. We had our chances.

However, the ‘dirty game’ that has been permanently really worries me about the future of Volleyball because we do not have...

As an institution, we [CBV] are somehow unprotected in this sense.

The FIVB is doing whatever they want with us [emphasis added].”

II. COMPETENCE

² Available online at <https://www.youtube.com/watch?v=29dTrerY9x4>.

14. The Panel is competent to hear this case as per Articles 17.5 and 17.6 of the 2014 FIVB Disciplinary Regulations (hereinafter "FIVB DR"). This fact was acknowledged by the Respondents.

III. APPLICABLE LAW

15. The Panel notes that the FIVB Constitution and Regulations apply to this case. Since FIVB has its seat in Switzerland, Swiss law may apply subsidiarily. The rules which are relevant for the resolution of this dispute are quoted in this section.

16. Article 11.1 of the FIVB DR provides as follows:

"Any action, attitude or public statement displaying an improper use of physical or emotional force in order to injure, intimidate or defame the FIVB, its guests or any of the persons listed in Article 1 herein is considered a violent conduct which shall be sanctioned in accordance with the seriousness of the violation."

17. Article 11.4 of the FIVB DR provides as follows:

"Harassment, insult, verbal or physical abuse by a coach, player, team delegation member, official to or against a player or any other team member or official present, shall be sanctioned by the Appeal Sub-Committee with suspension for one or more matches or exclusion from the competition depending on the seriousness of the violation."

18. Article 11.5 of the FIVB DR provides as follows:

"The NFs and their Organising Committee of a Competition must deal courteously and considerately with the FIVB, its officials and the members of the Control Committee, referees, participating team delegations and guests. Any commentary or remark expressed publicly through the media, detrimental to the image or the reputation of the FIVB and its institutions or any of its officials is considered violent conduct."

19. Article 85.5.1 of the FIVB Sports Regulations (hereinafter "FIVB SR") provides as follows:

"Official FIVB press conferences have to be organized in cooperation with the FIVB press delegate in order to help media representatives meet their deadlines in the countries concerned. Each official FIVB press conference must be attended by at least the head coach of the team plus the captain unless a specific player is requested by the media instead of the captain."

20. Article 15 of the Specific Competition Regulations for the FIVB Volleyball Men's World Championship Poland 2014 (hereinafter "SCR") provides *inter alia* as follows:

"15.2. The coach and captain (and/or any player requested by the media as approved by the FIVB) must be available in the Mixed Zone (and for the press conference if any) immediately after each match."

15.3. The coach and team captain must be available for the press conferences immediately after the General Technical Meeting and Team Briefings.”

21. Article 7.3.3 of the FIVB SR provides as follows:

“7.3.3 Concerning the order of matches and daily match schedule the organizer has the following rights:

- a) to choose one match in one day for every group of four teams;*
- b) to choose two matches in two days for every group of five or more teams;*
- c) to submit to the FIVB for approval the daily order of matches as stipulated by the FIVB Regulations;*
- d) to request last-minute changes in the order of matches established in the daily timetable and obtain approval from the Control Committee if such changes can be communicated to the teams involved no less than 24 hours before the first matches in question.*
- e) in a group of five or more teams, the team playing the last match of the day cannot play the first match of the following competition day. [emphasis added]”*

22. Article 53.2.3 of the FIVB SR provides as follows:

“53.2.3 The Control Committee may agree to last-minute timetable changes requested by the organizer if:

- a) The request is due to financial or broadcasting problems;*
- b) Coaches of all teams involved are informed at least 24 hours prior to the match. [emphasis added]”*

23. Article 8.4 of the SCR provides as follows:

“8.4 The Organiser has the right to change the timetable and order of matches for TV broadcasting reasons subject to the approval of the FIVB Control Committee. Each team must be informed of the timetable changes at least 24 hours before the match. [emphasis added]”

24. Article 6 of the FIVB DR provides as follows:

“Disciplinary offences are classified as follows:

- a) Simple offences: offences entailing a sanction under Article 7.1 below;*
- b) Major offences: offences entailing a sanction under Article 7.2 below;*
- c) Institutional offences: offences committed by NFs, Confederations, Zonal Associations, and their officers, entailing a sanction under Article 7.3 below;*
- d) Anti-doping rule violations: offences entailing a sanction under the FIVB Medical Regulations.*

In case the FIVB Constitution, Regulations and decisions do not stipulate a specific sanction for the violation of a rule contained therein, such violation shall be treated as a major offence. However, in these cases the Disciplinary Panel is not bound by the minimum sanctions provided for in Article 7.”

25. Article 7.1 of the FIVB DR provides as follows:

“The following sanctions may be imposed for a simple offence,

- a) Warning;*
- b) Reprimand;*
- c) Monetary fine of up to CHF 10,000;*
- d) Repeal of a right (for example a suspension, i.e. prohibition from participation, for a given period of time, in any official activity within the sphere of the FIVB) up to six (6) months;*
- e) A combination of the above sanctions.”*

26. Article 7.2 of the FIVB DR provides as follows:

“The following sanctions may be imposed for a major offence,

- a) Monetary fine of more than CHF 10,000;;*
- b) Repeal of a right (for example a suspension, i.e. prohibition from participation, for a given period of time, in any official activity within the sphere of the FIVB) of more than six (6) months;*
- c) Disqualification;*
- d) Forfeit of match(es);*
- e) Deduction of point(s);*
- f) A combination of the above sanctions.”*

27. Article 5.9 of the FIVB DR provides as follows:

“The otherwise applicable sanction may be increased (up to double) in case of a recurrence of the offence. Recurrence occurs if a sanction has to be imposed again within five (5) years of a previous offence of a similar nature.”

28. Article 7.4 of the FIVB DR provides as follows:

“Sanctions may be limited to a geographical area or to one or more specific categories of matches or Competitions.”

29. Article 8.5 of the FIVB DR provides as follows:

“Disqualification of players and coaches

8.5.1 Disqualification must be applied to the FIVB and/or other competitions (as applicable) immediately following notification.

8.5.2 If a coach or player participates in a match while he is suspended or disqualified, his team shall forfeit the match and the sanction will be doubled or restart, as decided by the body which imposed it.”

IV. PROCEDURE

30. Article 19.1 of the FIVB DR provides as follows:

“Except for urgent matters, a sanction may not be imposed before the person concerned has had the opportunity to be heard and to present his/her case. The competent FIVB body is free to decide whether the right to be heard may be exercised solely in writing (ordinary mail, facsimile, email), or also orally. It may authorize the use of telephone or video conference.”

31. On 22 October 2014, this case was forwarded to the FIVB Disciplinary Panel, and the FIVB Disciplinary Panel informed the Respondents that the FIVB Disciplinary Panel would adjudicate this case. The FIVB Disciplinary Panel provided the Respondents with the opportunity to submit an Answer by no later than 31 October 2014.
32. On 31 October 2014, Respondents Confederação Brasileira de Voleibol (hereinafter “CBV”), the Coach and the Captain submitted their Answer. No other member of the Brazilian delegation filed any comments, despite having been invited by FIVB to do so. In their Answer, the CBV, the Coach and the Captain argued *inter alia* that:
 - The FIVB failed to meet its burden of proof as it related to the towel incident involving Mr. Berben;
 - The FIVB’s procedural flaw prevents it from implementing a sanction against the Captain because it failed to immediately notify of and react to his violation for not attending the post-match press conference;
 - The FIVB failed to meet its burden of proof as it related to the Coach’s inappropriate gesture and, even if it had, the Coach’s gesture was directed toward a media member which would not fall within the FIVB DR;
 - The FIVB’s procedural flaw prevents it from implementing a sanction against the Coach because it failed to immediately notify of and react to his violation for not attending the post-match press conference; and
 - The FIVB cannot sanction the Coach for his statements made to the Brazilian press because they are constitutionally protected speech under the Federal Constitution of the Swiss Confederation.
33. On 17 November 2014, the FIVB informed the CBV that it had obtained further video evidence (which it provided to the CBV) regarding the “towel incident” involving Mr. Berben and provided Mr. Endrés and Mr. Pedreira Junior with the opportunity to submit an Answer by no later than 21 November 2014.
34. On 21 November 2014, the Respondents Mr. Endrés and Mr. Pedreira Junior submitted their Answer. In their Answer, they argued *inter alia* that the FIVB failed to meet its burden of proof against the two additional Respondents as it related to the towel incident involving Mr. Berben because the photographic, video evidence and the respective Respondents’

movements shown in the video failed to prove that the two Respondents were the ones who threw the towel.

35. Therefore, the Panel finds that the Players were provided with an opportunity to be heard and present their case before this Panel.

V. LEGAL CONSIDERATIONS

(a) Violations

(1) Violent Conduct against Mr. Berben after the match of 16 September 2014

36. The FIVB Disciplinary Panel notes that there are two issues related to the conduct towards Mr. Berben after the match on 16 September 2014. The first is based on the alleged insult directed toward him by Mr. Endrés in which he went up to Mr. Berben's table, shouted at him and called him an "incapable person". The second issue is the towel incident in which Mr. Pedreira Junior allegedly threw a towel that hit Mr. Berben in the face. The FIVB Disciplinary Panel will address each of these issues in turn.

37. Article 11.4 of the FIVB DR prohibits any insult, verbal or physical abuse by a player against an FIVB official while Article 11.5 additionally requires a courteous and considerate behaviour towards, among others, members of the Control Committee such as Mr. Berben.

38. The FIVB Disciplinary Panel finds that there is sufficient evidence to show that Mr. Endrés insulted Mr. Berben after the match. Mr. Berben's Official Report to the FIVB explicitly mentions the insult. Moreover, even if the specific wording of the insult cannot be verified by another party, the veracity of his account is confirmed by other parties. Ms. d'Aragona explicitly acknowledged that members of the Brazilian team were "impolite and rude" towards Mr. Berben. The video of the incident confirms that Mr. Endrés was amongst those who rushed to Mr. Berben's table and were shouting in an impolite manner towards him. Based on this evidence, the FIVB Disciplinary Panel is comfortably satisfied that Mr. Endrés did not behave courteously to and insulted Mr. Berben in violation of Articles 11.4 and 11.5 of the FIVB DR.

39. Turning to the towel incident, the Panel also holds that the video evidence sufficiently demonstrates that Mr. Pedreira Junior was the person who threw the towel that struck Mr. Berben in the face despite Mr. Pedreira Junior's claim that he threw it on the floor. The Panel analysed the video and the pictures on file closely, where one can see Mr. Pedreira Junior approach the table and throw the towel at the 23:03:20 mark when using either the 2X or 4X zoom on the security camera video. The camera that was placed behind the Jury Table

confirms Mr. Pedreira Junior's position in the security camera footage. Thus, the FIVB Disciplinary Panel finds that this evidence was sufficient for the FIVB to meet its burden of proof. Throwing a towel in the face of an FIVB official is a violation of both Articles 11.4 and 11.5 of the FIVB DR because it constitutes both physical abuse and discourteous behaviour towards an FIVB official.

40. The defense notes that the Brazilian players were quick-tempered and tense given the result of the match. First of all, this argument does not apply to Mr. Endrés, who was not on the score sheet for that particular match and thus did not play. While the Panel acknowledges that players can be emotional after difficult and crucial matches, especially when a call goes against them, those emotions do not give players the right to act in a violent or discourteous manner. The Panel finds that a player's emotional state immediately after a game does not excuse them to act in such an unacceptable manner. This is all the more true for very experienced players, such as Mr. Endrés and Mr. Pedreira Junior. Therefore, both Players shall be sanctioned for their behaviour.

(2) Violent Conduct against Mr. Wolfke after the match of 16 September 2014

41. In an email to the FIVB after the match, Mr. Wolfke stated that he was pushed aside by several Brazilian players after the match. This accusation could potentially be brought against two parties: 1) the individual players who pushed Mr. Wolfke and 2) the CBV as the entity responsible for its players' conduct.

42. The Panel notes that Mr. Wolfke failed to mention which players pushed him. Therefore, the accusation and the evidence provided are insufficient for the FIVB to meet its burden of proof regarding the violent conduct by any Brazilian player towards Mr. Wolfke.

43. Turning to the potential liability of the CBV for the actions of its players, the Panel finds that there is no sufficient evidence to indicate that the CBV has responsibility for this incident. Mr. Wolfke failed to record what exactly happened to him. Thus, his allegation, without more specifics, is insufficient to hold the CBV liable for the alleged actions of its players.

44. Accordingly, the Panel finds that neither any Brazilian players nor the CBV can be held liable for the alleged violent conduct towards Mr. Wolfke.

(3) The Coach's gesture at the end of the match of 16 September 2014

45. The FIVB Disciplinary Panel finds that the FIVB has demonstrated sufficient evidence to meet its burden of proof. The FIVB provided two witness statements attesting to the event. It also provided an article from the press reporting that the Coach showed his middle finger to the radio commentator.

46. Turning now to whether the Coach's gesture was a violation of the FIVB DR, under Article 11.1 of the FIVB DR, the FIVB can sanction any "action" or "public statement" that improperly "injures, intimidates or defames" the FIVB or its guests.
47. The Panel holds that the Coach's gesture of showing his middle finger was an action that improperly intimidated or defamed the radio commentator. Members of the media, such as the radio commentator in question who was positioned behind the Brazilian bench, are guests of the FIVB. Thus, the Coach's conduct constituted a violation of Article 11.1 of the FIVB DR. In any event, making a middle finger gesture while on the playing field is certainly an action that injures and defames FIVB, especially when it comes from such a highly recognizable personality of the sport of volleyball.
48. The Coach argues that his conduct could not be considered a violation of the FIVB DR because it did not involve an insult against a player, team member or team official. For the reasons stated above, the Panel finds that Article 11.1 of the FIVB DR does not have such a restriction but explicitly provides that such conduct directed at a guest can be sanctioned. Also, as mentioned above, performing such a gesture on the playing field (whether addressed to someone or not) is injuring and defaming the FIVB itself. Therefore, the Coach's defense that the FIVB DR has not been violated fails and he shall be sanctioned for his action.

(4) The Captain's failure to participate in the post-match press conference on 16 September 2014

49. The Captain failed to participate in the post-match press conference on 16 September 2014. The Captain does not dispute this.
50. Article 85.5.1 of the FIVB SR requires the captain of the team to attend a post-match press conference unless the media requests another specific player. Likewise, the captain of a team must appear at the post-match press conference during the FIVB Men's World Championship according to Articles 15.2 and 15.3 of the SCR.
51. The Panel finds that the Captain violated these provisions by not appearing at the press conference after the match on 16 September 2014. It is undisputed that he did not appear at this press conference. The Captain's frustration over decisions of the organisers and the fact that the Brazilian team lost due to the referee's decision, is not a valid legal reason for his nonappearance.
52. The Captain argues that he cannot be punished for his nonappearance because the FIVB failed to act immediately by notifying him and reacting immediately to his nonappearance. He cites how the FIVB immediately notified and made a determination regarding the Coach's

- nonappearance at that same press conference. He also highlighted the practice of the CAS Ad Hoc Division at major competitions as another example of proper expedited proceedings.
53. The FIVB Disciplinary Panel finds that the Captain's argument is meritless. It notes that in the same submission, the Captain's attorneys question the validity of the expedited proceedings against the Coach arguing that it did not properly respect the Coach's right to be heard. Thus, the submission argues that the Captain was not subjected to expedited proceedings but was subject to proceedings that provided him with the opportunity to file a full response on the one hand but argues that the Coach was subject to expedited proceedings that did not allegedly provide him with the same opportunity to respond the allegations. These arguments are inconsistent. By being subject to the proceedings before the FIVB Disciplinary Panel, the Captain has been allowed to file his defense. The FIVB DR provide for the circumstances under which the FIVB Disciplinary Panel can take up a disciplinary process following a report by the Appeal Sub-Committee (see Article 11.6) and such provisions have been applied to the case at hand. This fact has been acknowledged by all Respondents, including the Captain. Thus, the Panel finds that there was no procedural flaw by referring this case to the FIVB Disciplinary Panel rather than have the FIVB Appeal Sub-Committee rule on this immediately.
54. Therefore, the FIVB Disciplinary Panel finds that the Captain can be sanctioned for his nonappearance at post-match press conference.
55. At this point, the FIVB Disciplinary Panel would like to address the CBV's protestations regarding the changes to the scheduling and location of matches. A lot of the CBV, players' and the Coach's frustration are said to stem from the Brazilian team's relocation to Lodź for the match with Poland and the determination of the competition schedule. This frustration was manifested by the Captain and Coach's nonappearance at the post-match press conference against Poland. Articles 7.3.3 d) and 53.2.3 of the FIVB SR and Article 8.4 of the SCR clearly state that the organizer can request schedule changes so long as the team(s) involved are informed more than 24 hours before the start of the match. Page 9 of Bulletin No. 12 provides the requisite notice to teams because it was distributed to the teams by 14 September 2014, when the match against Poland was on 16 September 2014. Moreover, the language of this Bulletin explicitly states that the teams had been previously advised that the pool with Poland would play in Lodź. Therefore, the Control Committee did not commit a violation of the applicable rules. In any event, the Panel finds that even if the Control Committee decisions were not in compliance with the applicable rules, the Brazilian team's

frustration does not in any way justify the subsequent behavior of certain members of the Brazilian delegation as evidenced in this decision.

(5) The Coach's failure to participate in the post-match press conference on 18 September 2014

56. The Coach failed to participate in the post-match press conference on 18 September 2014. The Coach does not dispute this fact.
57. Article 85.5.1 of the FIVB SR requires the coach of the team to attend a post-match press conference. Likewise, the coach of a team must appear at the post-match press conference during the FIVB Volleyball Men's World Championship according to Articles 15.2 and 15.3 of the SCR.
58. The FIVB Disciplinary Panel finds that the Coach violated these provisions by not appearing at the press conference after the match on 18 September 2014. As mentioned before, the Coach's frustration over the Control Committee's decisions is not a valid legal reason for his nonappearance. For the same reasons provided in Section V(a)(4) above, the FIVB Disciplinary Panel finds that the Coach's arguments regarding procedural flaws are meritless. Therefore, the Panel also finds that the Coach shall be sanctioned for his nonappearance at post-match press conference.

(6) The Coach's comments to the Brazilian media on 21 September 2014

59. The Coach made several comments about the FIVB to Brazilian media after the end of the Final, arguing in essence that the FIVB intentionally made decisions to prevent Brazil from winning the World Championship. In other words, the Coach was essentially stating that the FIVB was (at least intending) to influence the result of the competition.
60. Article 11.5 of the FIVB DR prohibits any remarks made publicly through the media that are "detrimental to the image or reputation of the FIVB." Any such remarks are considered violent conduct under Article 11.5 of the FIVB DR. The same applies under Article 11.1, which prohibits public statements with a view to injure, intimidate or defame the FIVB and its officials.
61. It is undisputed that the Coach made the comments in question. These comments impugn the impartiality of the FIVB and of the referees appointed to officiate the Final. The Coach stated that the FIVB purposely picked the referees in the Final in order to influence the result against Brazil. In an event such as the World Championship, which is the most important event in international volleyball outside of the Olympics, it is imperative that matches be determined on the court. Any insinuations or statements otherwise, especially if unfounded

like the Coach's statements, would undermine the competition. Consequently, there is no doubt that the Coach's comments are detrimental to the FIVB's reputation. The FIVB Disciplinary Panel recognizes the fact that the Coach made these comments almost immediately after his team had lost the World Championship Final; however, that does not justify the content of the Coach's comments.

62. The Coach argues that he cannot be sanctioned for his comments because his comments are protected by freedom of speech under Article 16 the Federal Constitution of the Swiss Confederation and cannot be censored based on Article 17 of the Federal Constitution of the Swiss Confederation. Thus, any sanction under Article 11.5 of the FIVB DR would violate the Federal Constitution of the Swiss Confederation.
63. As a private association, the FIVB is not a governmental entity. Article 35(3) of the Federal Constitution of the Swiss Confederation states that the fundamental rights, such as those found in Articles 16 and 17 of the Federal Constitution of the Swiss Confederation, can apply in relationships between private parties if an authority provides so.
64. The Coach did not specifically invoke any kind of authority that demonstrates the fundamental rights of freedom of speech and freedom from censorship apply in relationships between private parties under the Federal Constitution of the Swiss Confederation. The FIVB Disciplinary Panel notes that some scholars support this proposition but it is up to the Coach to sufficiently prove that freedom of speech and freedom from censorship applies to statements made by an individual about a private association.
65. Moreover, even if he could demonstrate that these fundamental rights apply to his statements, that does not necessarily mean that any sanctions under Article 11.5 of the FIVB DR for the Coach's statements are unconstitutional. The limitation involved in the present case is not to speech generally but rather to the content of the speech. The limitations found in the relevant provision of the FIVB DR related to speech that is "detrimental to the reputation of the FIVB" or "injure, intimidate or defame the FIVB". Thus, it merely prevents a person from making public comments about the FIVB that damage its reputation. In this way, it is analogous to a private civil action for libel or slander, which is universally recognized within the parameters of freedom of speech. In countries that recognize freedom of speech, a private individual has the ability to seek financial remuneration through a private civil action for disparaging statements made by another private individual in public. Similarly, a private association has the ability to seek disciplinary action through a private civil action (disciplinary proceedings are recognized as civil, not criminal, in nature under CAS

jurisprudence; see CAS 2006/A/1102-1146, no. 52) for disparaging statements made by another private individual in public. The focus is not whether the private individual making the defamatory statements has the right to do so but whether or not he can be punished for the content of his speech. The FIVB Disciplinary Panel finds that this restriction is legitimate and is in compliance with the FIVB's objectives and the Federal Constitution of the Swiss Confederation. Therefore, it holds that the Coach shall be sanctioned for his comments and said sanctions would not violate the Federal Constitution of the Swiss Confederation.

(b) Sanctions

66. When determining the applicable sanctions, the FIVB Disciplinary Panel must look at Article 7.1 of the FIVB DR for minor offenses, Article 7.2 of the FIVB DR for major offenses, and Article 11.5 of the FIVB DR for recurrence of previous offenses.

(1) The Coach

67. First, the FIVB Disciplinary Panel found that the Coach violated Articles 11.1 and 11.5 of the FIVB DR for his comments. Article 6 of the FIVB DR states that if the FIVB DR do not contain a specific sanction for the violation of the rule then said violation will be treated as a major offense. The Coach's public statements constituted a serious violation of Articles 11.1 and 11.5 of the FIVB DR. His comments harm the very integrity, image and reputation of the FIVB and violated the principle of sportsmanship. Such public comments by one of the most well-known and successful volleyball coaches in the world, right after the end of the FIVB Men's World Championship final, must entail a severe sanction. Accordingly, the FIVB Disciplinary Panel decides that the Coach shall be suspended for the next seven (7) matches.

68. Additionally, the FIVB Disciplinary Panel has found that the Coach committed a violation of Article 11.1 of the FIVB DR for his inappropriate gesture. This is a serious deviation from the acceptable standard of behavior by a coach at the FIVB World Championship. Accordingly, the FIVB Disciplinary Panel decides that the Coach shall be suspended for the next three (3) matches for his inappropriate gesture.

69. Moreover, the FIVB Disciplinary Panel found that the Coach violated Article 85.5.1 of the FIVB SR and Articles 15.2 and 15.3 of the SCR by failing to appear at the post-match press conference on 18 September 2014. Because the Coach had previously been found guilty of violating the same provisions by failing to attend the post-match press conference on 16 September 2014, any sanction for the Coach's nonappearance is subject to the recurrence provisions of Article 5.9 of the FIVB DR. Consequently, the FIVB Disciplinary Panel decides

that the Coach shall be fined USD 2,000, which is double the fine for his first offense, for his nonappearance at the post-match press conference on 18 September 2014. For the sake of completeness, the Panel notes that the Coach received the first sanction on 17 September 2014, i.e. one day before committing the second violation.

70. Overall, therefore, the Coach shall be suspended for the next ten (10) matches and be fined USD 2,000.

(2) Mr. Pedreira Junior

71. The FIVB Disciplinary Panel found that Mr. Pedreira Junior violated Article 11.4 of the FIVB DR by throwing a towel in the face of Mr. Berben. This is a particularly serious offense because he physically assaulted an FIVB official. Therefore, the FIVB Disciplinary Panel decides that the Mr. Pedreira Junior shall be suspended for the next six (6) matches.

(3) Mr. Endrés

72. The FIVB Disciplinary Panel found that Mr. Endrés violated Articles 11.4 and 11.5 of the FIVB DR by behaving discourteously to and insulting Mr. Berben. Based on the circumstances of the case, including the fact that Mr. Endrés is an “FIVB hero” whose image has a particular appeal on the youth (e.g. he is the only male volleyball player in the world with a personal 3m. statue used for the promotion of volleyball globally), the FIVB Disciplinary Panel decides that Mr. Endrés shall be suspended for the next one (1) match.

(4) The Captain

73. The FIVB Disciplinary Panel found that the Captain violated Article 85.5.1 of the FIVB SR and Articles 15.2 and 15.3 of the SCR by failing to appear at the post-match press conference on 16 September 2014. The FIVB Disciplinary Panel decides that the Captain shall be fined USD 1,000, which is the same amount as the Coach’s first offense, for his nonappearance at the post-match press conference on 16 September 2014.

(5) CBV

74. The FIVB Disciplinary Panel did not find that the CBV committed any violations. Consequently, it is not subject to any sanctions.

(6) Applicability and enforcement of sanctions

75. Article 7.4 of the FIVB DR allows for the FIVB Disciplinary Panel to limit sanctions to certain types of matches. Because these incidents occurred during an FIVB volleyball competition for senior national teams, the FIVB Disciplinary Panel finds that it is appropriate to limit accordingly the scope of these sanctions. Thus, the match suspensions imposed in this decision apply to FIVB volleyball competitions for senior national teams.

76. Additionally, Article 8.5 of the FIVB DR applies to these sanctions as well. Thus, these sanctions are applicable immediately upon notification of this decision. If either the Coach or the players suspended participate in an FIVB volleyball competition for senior national teams before the expiry of their respective suspensions, then their national team shall forfeit the respective match(es) and the suspension will restart.

* * *

Taking all the above into consideration

THE FIVB DISCIPLINARY PANEL

Concludes and Decides

1. A suspension of ten (10) matches and a fine of USD 2,000 are imposed on Mr. Bernardo Rezende.
2. A suspension of six (6) matches is imposed on Mr. Mario Da Silva Pedreira Junior.
3. A suspension of one (1) match is imposed on Mr. Murilo Endrés.
4. A fine of USD 1,000 is imposed on Mr. Bruno Rezende.

Lausanne, 12 December 2014

For the FIVB DISCIPLINARY PANEL

A handwritten signature in black ink that reads "Margaret Ann Fleming". The signature is written in a cursive, flowing style.

Ms. Margaret Ann Fleming
Chair

NOTICE OF APPEALS

1. Parties who are affected by a decision of a FIVB body (e.g. the President, the Board of Administration, the Disciplinary Panel etc.) can file an appeal to the FIVB Appeals Panel unless otherwise provided in the FIVB Constitution and Regulations.
2. Appeals must be made in writing and must be received by the FIVB Secretariat within fourteen (14) days from notification of the decision, failing which the appeal will be considered inadmissible.
3. Appeals shall be accompanied by a copy of the decision appealed against and a bank certificate confirming payment of the administrative fee of CHF 2,000 into the following account:

Bank: UBS AG, CH-1002 Lausanne, Switzerland

Account beneficiary: Federation Internationale de Volleyball

Account number: 0243-146146.60U

Swift: UBSWCHZH80A

IBAN: CH660024324314614660U

4. Failure to pay the administrative fee within the deadline fixed by the FIVB Secretariat will result in considering the appeal withdrawn. The FIVB Appeals Panel may decide that the administrative fee be reimbursed in the event that the appeal is successful.
5. The appeal can be filed by a proxy if he/she presents a written power of attorney.
6. For details of the appeals procedure please refer to Section III of the FIVB Disciplinary Regulations (<http://www.fivb.org/EN/FIVB/Legal.asp>).
7. A further appeal against the decision by the FIVB Appeals Panel can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within twenty-one (21) days following receipt of the decision.