



The

FIVB TRIBUNAL

herewith issues the following

DECISION

on the Request for Review of CF 26/2015 filed by

Lokomotiv Baku Volleyball Club (“Applicant”)
represented by Mr. Orkhan Huseynzade,
Manager, Lokomotiv Baku Volleyball Club
Balajary settlement, M.Huseynzada str. 2, Baku, Azerbaijan AZ1117

vs.

Ms. Valeria Rosso (“Respondent”)
represented by his Counsel, Avv. Gianfranco Cecchini,
Via per Piatto, 12 Quaregna (BI), 13854 Italy

1. The Parties

1. The Applicant is a professional volleyball club with its legal seat in Baku, Azerbaijan.
2. The Respondent is a professional volleyball player from Italy.

2. The FIVB Tribunal Panel

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

“1.5 Cases before the FIVB Tribunal shall be heard by the Chairperson and two (2) other members, appointed by the Chairperson. If one or more of the members is unavailable or ineligible due to reasons of conflict (see Article 9) the Chairperson shall appoint another member. 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 a three (3)-member FIVB Tribunal is requested by one of the parties. If that member has the same nationality as one of the parties, is unavailable or ineligible due to reasons of conflict (see Article 9) 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 the parties come from the same Confederation, this Request for Review will be heard by a single judge from the same Confederation. As of 5 March 2014, Mr. Erhard Rubert, the regular member of the FIVB Tribunal from Europe, is no longer a member of the FIVB Tribunal. Given that the Parties are from the Confédération Européenne de Volleyball (hereinafter “CEV”), the substitute member of the FIVB Tribunal from CEV, Mr. Piotr Stolarski from Poland, was appointed as the single judge in the present case (hereinafter “FIVB Tribunal Judge”).

3. Facts and Proceedings

3.1 Background Facts

5. On 11 May 2015, the Applicant and the Respondent entered into a contract in which the Respondent agreed to play for the Applicant’s team for the 2014/2015 season in exchange for a salary of EUR 130,000 net, amongst other benefits (hereinafter the “Contract”).
6. The Contract contained the following relevant provisions:

“1.1 The Player is being transferred to the Club for the volleyball season of 2014-15 and shall play in the team “Lokomotiv Volleyball Club.” The Player undertakes to attend all training sessions and play all matches upon the request of the Club’s management for the above mentioned obligations.

1.2 The Player has to pass an orientation program of the Club, has to obey the principles of the Club, must take care about keeping his normal weight and sport form and sign a Disciplinary Act of the Club.

2.2 The Player begins to train and play in the Club from her arrival and up to the very last match of the League i.e. to 30 of April 2015.

[...]

4.1 The Club will pay a total amount of 130,000 EURO (one hundred and thirty thousand euro) to the Player due to this contract, following the below mentioned conditions, without bonuses reimbursement

The payments rates must be pay like these conditions:

<i>15 09 2014</i>	<i>15 000 EUR</i>
<i>15 10 2014</i>	<i>15 000 EUR</i>
<i>15 11 2014</i>	<i>15 000 EUR</i>
<i>15 12 2014</i>	<i>15 000 EUR</i>
<i>15 01 2015</i>	<i>15 000 EUR</i>
<i>15 02 2015</i>	<i>15 000 EUR</i>
<i>15 03 2015</i>	<i>15 000 EUR</i>
<i>15 04 2015</i>	<i>25 000 EUR</i>

Total: 130.000 – (one hundred thirty thousand) EURO Net.

[...]

6.1 The Player is obliged to fulfil the sport law, sport ethics, good will rules, the Club’s principles, work regulations, rules and decisions taken by the Club’s Board of Directors, Executive Committee, Directors, Manager and Coach.

6.5 In case of non-fulfillment of these obligations, the contract between player and the Club may be subject for termination without material obligation.

[...]

7.2 The Player will have health insurance supplied by the Club (except dentist). In case of injury, that requires surgery, the club will pay for the player’s medical expenses accordingly with player at one of the top medical centre of Azerbaijan or, if necessary, abroad.

7.3 If the player cannot play till the end of the season cause the injury that occurred because of professional activities during this contract the Club has right to pay %50 of remaining salary of the contract immediately and send the player-back to her country.

7.4 *The player has full responsibility for medical and other expenses in case of illness or injury occurred because of her fault and irrelevant to her professional activities within the Club.*

7.5 *Pregnancy is the gross violation of the Contract's terms. If the player insists on continuation of pregnancy, the Contract will count by the Club as cancelled through player's fault.*

[...]” (sic)

7. Subsequently, the Player signed the Club's disciplinary regulations. *Inter alia*, these disciplinary regulations provide the following:

“This regulation hereby was prepared and issued for the purpose of providing the volleyball players, who are employed in the Club and continue their volleyball activities in accordance with a “contract” to behave in accordance with sport ethics, disciplinary and carry their activities in conformity with fair play principles during their service in the Club and it was arranged in order to define and determine their actions may constitute a disciplinary action and disciplinary punishments to be applied on these actions.

Providing that in case the current Volleyball player contracts made between the club and players are in force, the Volleyball players are obliged to behave in accordance with sport ethics, sport disciplinary and fair play principles and in conformity with honour, esteem, name and grandness of Club coming from its history, which are defined in DISCIPLINARY REGULATION OF AZERBAIJAN VOLLEYBALL FEDERATION and not performing actions and statements including racism.

[...]

9.1 *With the aim to ensure to continuity of their volleyball activity at the maximum physical level throughout the duration of contract with the club, Volleyball players are obligated to; protect themselves against any kind of illness and/or injury; and to take any kind of precautions, show attention and take care, strive in his life outside of volleyball to prevent illness and/or injury that may impede/stop his volleyball activity and that may accordingly effect his sportive performance negatively*

9.2 *Volleyball players, in cases of an injury and/or illness, have to comply precisely with the treatment program prescribed and follows by the club doctor and to take maximum care and attention in this regard, in order to return to the volleyball activity as soon as possible.*

9.3 [...] *Volleyball players, in case they claim, also have the right to be treated by medical institutions and doctors that they will choose domestic or abroad, with the condition that they are provided an explicit written approval from the club doctor. In both cases, volleyball players are responsible for both any kind of medical intervention, diagnosis and treatment done by the medical institutions to be chosen either by the club or themselves, and all of the costs related with these.*

In return for their actions that are included in this regulation and regarded as disciplinary action, the volleyball players are imposed punishments of written admonition, fine and being left out of the team, depending on the degree of the action.

[...]

A copy of the management board decisions with regards to the punishments of fine and leaving out of the team is noticed to the volleyball player in compliance with the legal procedure and another copy is sent to the Azerbaijan Volleyball Federation.

Although they are not regulated in this regulation clearly, actions that are contrary to the aim and principle specified in the ARTICLE 5 of this regulation and to the basic principles of disciplinary law and penal code, may also be punished by the management board.

With regards to the actions written in ARTICLE 9, punishment of admonition or punishment of fine of minimum \$1.500 maximum 50 % of the amount of the net annual receivable, and together with these punishments, an additional punishment of leaving out of the team.

[...]" (sic)

8. On 6 April 2015, during a match of the national championship, the Player (injury). The Player was taken to the MediClub clinic in Baku, Azerbaijan, where she received an ultrasound on (body part). According to the medical report, the Player suffered a (diagnosis). During her treatment, the Club alleged that the Player explained that she was pregnant. The Player denied this allegation. The Player also refused to take a blood test.

9. On 7 April 2015, the Club signed a document titled "Act of Contract termination". *Inter alia*, the document contains the following provisions:

"The contract No 23/2014 made between "Lokomotiv Volleyball Club" Baku Azerbaijan and Mrs. Valeria Rosso is being terminated under the condition of mutual agreement.

The sides agree on followings:

- 1. Given contract loses its juridical power from 07th April 2015;*
- 2. This Act makes both sides free from any kind of mutual material obligation both for future and past*
- 3. An article "7. Sickness, Injury and Pregnancy" of the contract declares:*
 - a. "7.5 Pregnancy is gross violation of the Contract terms. If the Player insists on continuation of pregnancy, the contract will count by the Club as cancelled through the player's fault.*
 - b. As duration of pregnancy was for 1 and more months and player knew about it nevertheless player had not informed the club. The Club accepts this duration of silence as an insistence in pregnancy and terminates the contract of player by not paying salary of last month in the amount of 25000 Euros." (sic)*

10. The Club alleged that it held several meetings with the Player and her husband to work out a mutual termination; however, no agreement was reached and the Player refused to sign the "Act of Contract termination".

11. After the Applicant's final match of the season on 12 April 2015, the Respondent participated

in the medal ceremony for the Applicant.

12. On 14 April 2015, the Player received treatment for her injury at the MediClub clinic in Baku, Azerbaijan.
13. On 17 April 2015, the Player flew back to Italy.
14. Upon her return to Italy, the Player continued receiving treatment for her injury, which she paid out-of-pocket.
15. On 6 December 2015, the Player announced the birth of her child on her Twitter account.

3.2 The Proceedings before the FIVB Tribunal

16. On 23 December 2015, the CEV issued a decision in the present manner in accordance with Article 45.11 of the FIVB Sports Regulations (hereinafter the “Decision”) ruling that the Applicant owed the Respondent the amounts of EUR 12,500 net and EUR 400, which the Applicant was ordered to pay by 20 January 2016. The Applicant was notified of the Decision on 4 January 2016.
17. On 11 January 2015, the Applicant filed its Request for Review, which included its “Reasons for Appeal”, copies of both of the Applicant’s submissions as well as the Respondent’s comments from the proceedings before the CEV, and proof of payment of the handling fee.
18. On the same day, the FIVB Tribunal acknowledged receipt of the Request for Review and invited the Respondent to submit her Answer by no later than 1 February 2016.
19. On 1 February 2016, the Respondent submitted his Answer with accompanying documentation.

4. The Parties’ Submissions

20. The following section provides a brief summary of the Parties’ submissions and does not purport to include every contention put forth by the Parties. However, the FIVB Tribunal Judge has thoroughly considered all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in this section.

4.1 The Applicant's Request for Review

21. First, the Applicant contested the CEV's determination that the Player flew back to Italy to receive treatment on her (injury) before returning back to Azerbaijan before the end of the season. Instead, it contended that the Player received treatment in Azerbaijan until the end of the season.
22. Second, based on the Player's announcement that she was pregnant, the Club's management met with the Player and her husband several times to find a mutual termination agreement but the sides could not reach an agreement. After the parties were unable to reach a mutual agreement, the Club prepared the "Act of Contract Termination" dated 7 April 2016, which the Player refused to sign. The Club had informed the Player that it was ready to send her home on 7 April 2015, and, at that point, she was no longer a member of the Club. However, the Club purchased the airfare for the Player on 17 April 2015 because the Club was required to under the Contract and the Player had wanted to stay in Azerbaijan until that date.
23. The Applicant requests the following relief:

"Taking into consideration the above mentioned, as a club, we kindly ask You to review the decision of CEV." (sic)

4.2 The Respondent's Answer

24. The Respondent first noted that the Applicant continued to refer to facts and circumstances without providing any supporting evidence.
25. Regarding the Applicant's first point raised in its Reasons for Appeal, the Respondent first emphasised that whether the Respondent went back to Italy was irrelevant in the final decision made by CEV. Regardless, the Respondent never contended and the evidence did not ever show that the Respondent went back to Italy and then returned to Baku. It merely showed that the Respondent received treatment in Italy upon her return on 17 April 2016.
26. Regarding the Applicant's second point, the Respondent argued that the Applicant failed to prove that there were multiple meetings between the Applicant's officials and the Respondent and her husband. Additionally, the Applicant did not provide any evidence that the contract was indeed terminated unilaterally. Furthermore, photographic evidence showed that the Respondent took part in the Applicant's final championship award ceremony, which occurred after 7 April 2016. This evidence demonstrated that the Respondent was still part of the team

after the Respondent's alleged termination.

27. In her request for relief, the Respondent requested that:

*“In **total** the money that player has the right to receive are **25.495 euro** (25.000 euro of remaining salary + 495 euro of medical expenses already incurred and the future medical costs if needed), or better, like established by the decision of the CEV of 23 December 2015, 12,500, plus reimbursement of expenses incurred by Valeria Rosso for handling fees and legal expenses of which is attached plot.” (sic)*

5. Jurisdiction

5.1 In general

28. The FIVB Tribunal must first examine whether it has jurisdiction to hear the present dispute. In order to do so, it must first look at the relevant provisions of the Regulations.

29. 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”.

30. 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”

31. Article 2.3 of the Regulations grants the FIVB Tribunal the power to rule on its own jurisdiction.

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

33. The present dispute involves a claim for damages by an Italian player against an Azerbaijani club. The FIVB Tribunal 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.

34. Furthermore, the Request for Review at hand is made against the Decision, which was rendered by the CEV. Indeed, the CEV was competent and decided the case in the first instance on the basis of a delegation of the FIVB's competence under Article 45.11 of the FIVB Sports Regulations for cases involving parties within the CEV. Therefore, the present Request for Review stems from a decision of the Confederation, and the Panel holds that Article 2.2.2 is also satisfied.
35. Based on the above, the conditions of Articles 2.1 and 2.2 are satisfied. Additionally, neither party contested the FIVB Tribunal's jurisdiction to hear this case. Therefore, the FIVB Tribunal has jurisdiction over the present Request for Review pursuant to the Regulations.

6. Discussion

6.1 Applicable Law

36. 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)."

37. Neither of the parties has contested the applicability of *ex aequo et bono* to the present dispute nor based their arguments on any national law. In light of the above, the Panel will decide the issues submitted to it in this proceeding *ex aequo et bono*.
38. 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
39. In light of the foregoing matters, the Panel makes the following findings.

6.2 Findings

40. In its Request for Review, the Applicant raises two points: 1) that the Respondent did not leave Baku to seek treatment on (injury) in Italy before her final departure from Baku and

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

2) that the Applicant validly terminated the Contract on 7 April 2015 through the “Act of Contract Termination”. In examining the evidence before him, the FIVB Tribunal Judge finds that the first point is proven by the evidence before him but does not have any bearing on the final decision because it does not impact the central issue of this case, whether the Club had manifested a clear intent to terminate the Contract on 7 April 2015 and, in the event that the Applicant manifested a clear intent to terminate the Contract, whether it did so with just cause.

41. Turning to the issue of whether the Applicant manifested a clear intent to terminate the Contract, it is imperative that a party seeking to terminate a contract must do so clearly and unequivocally. A manifestation of clear intent is necessary in order to allow both parties to understand that the contractual relationship has reached a definitive end and prevent confusion as to the status of said contractual relationship. This clear manifestation of intent to terminate an agreement can be either in writing or through actions so long as the intent of the terminating party is unambiguous to both parties.

42. Applying the above the fact of this dispute, the Applicant argued that it was ready to send to terminate the Contract and send the Respondent back to Italy on 7 April 2015 based on the “Act of Contract Termination”. In examining the language of the “Act of Contract Termination”, the FIVB Tribunal Judge notes that the “Act of Contract Termination” starts by stating *“The contract No 23/2014 made between “Lokomotiv Volleyball Club” Baku Azerbaijan and Mrs. Valeria Rosso is being terminated under the condition of mutual agreement (emphasis added).”* Moreover, it follows by stating that *“The sides agree on followings (emphasis added).”* Furthermore, Article 2 of the “Act of Contract Termination” states that *“This Act makes both sides free from any kind of mutual material obligation both for future and past (emphasis added).”* Finally, the “Act of Contract Termination” included a signature line for the Respondent. Thus, the plain language of the “Act of Contract Termination” clearly demonstrates that this document is designed to be an agreement to mutually terminate the Contract rather than a unilateral termination declared by the Applicant. The Respondent never signed this document and, thus, no mutual termination was agreed upon.

43. Additionally, the Applicant’s actions after 7 April 2015 also demonstrate that the Applicant acted as if the Contract were still in effect. First, the FIVB Tribunal Judge notes that photographic evidence demonstrates that the Player took part in the medal ceremony after the Applicant’s last match, which took place on 12 April 2015. Also, the Respondent received treatment for her (injury) on 14 April 2015 at the MediClub clinic in Baku,

Azerbaijan. Based on the fact that the Respondent sought out-of-pocket medical expenses for her treatment in Italy before the CEV but did not claim expenses related to the 14 April 2015, the FIVB Tribunal Judge finds that it is reasonable to infer that the Respondent's expenses for this visit were borne by the Applicant. Based on these facts, the FIVB Tribunal Judge finds that the Applicant's actions after 7 April 2016 also demonstrate that the Applicant acted as if the Contract were still in effect due to the fact that the Respondent refused to sign the "Act of Contract Termination." Hence, the FIVB Tribunal Judge holds that the Applicant did not demonstrate a clear intent to terminate the Contract because both the plain language of the "Act of Contract Termination" and its actions after 7 April 2015 appeared to demonstrate that it thought the contract was still in effect despite its wish to terminate the Contract.

44. Therefore, the FIVB Tribunal Judge finds that the Applicant did not manifest a clear intention to terminate the contract. Based on this determination, the FIVB Tribunal Judge does not have to decide whether the validity of Article 7.5 of the Contract, which is at least doubtful. Consequently, the Applicant's appeal must be denied.
45. For the sake of completeness, the FIVB Tribunal Judge also noted that the Respondent requested its initial request for relief before the CEV in its Answer. However, the CEV awarded the Respondent less than its initial request, and the Respondent did not file a Request for Review. Therefore, the FIVB Tribunal Judge could not award more than the amount awarded in the Decision because the Respondent failed to file a Request for Review. Consequently, the FIVB Tribunal Judge upholds the Decision and awards the Respondent EUR 12,500 net.

6.4 Costs

46. In its Decision, the CEV ordered the Applicant to pay the full amount of costs of EUR 400 for the proceedings before the CEV. Given that the Decision was upheld in full on the merits and the Applicant's Request for Review failed, the FIVB Tribunal orders that the Respondent is entitled to the EUR 400 awarded in the Decision.
47. Regarding the Respondent's request for legal fees in the present proceedings, the Panel notes that Article 15.2 of the FIVB Tribunal Regulations allows for the Panel to award a contribution towards reasonable legal fees and expenses in connection with a proceeding before it. Thus, legal fees must be reasonable and are limited to fees related to the proceedings before the FIVB Tribunal. When determining the contribution, the Panel must take into account the outcome of the proceedings as well as the conduct and financial resources of the Parties.

48. In its Answer, the Respondent requests EUR 6,493.08 in fees for “*legal expenses*”. The Panel notes that the Respondent was represented by an attorney in the present proceedings. The Respondent submitted an invoice from its attorney on the attorney’s letterhead. In the present case, the attorney had to prepare only one brief submission refuting mainly factual arguments. Thus, the submission did not require extensive research. Consequently, based on the record before it, the Panel finds that the requested legal fees are excessive and must be reduced. Hence, the FIVB Tribunal orders that the Applicant pay EUR 2,000 in legal fees to the Respondent.

DECISION

49. For the reasons set forth above, the Panel decides as follows:

- 1. The Request for Review filed by Lokomotiv Baku Volleyball Club is dismissed in its entirety.**
- 2. The decision rendered by the CEV on 23 December 2015 is upheld in full.**
- 3. Lokomotiv Baku Volleyball Club shall pay EUR 2,000 to Ms. Valeria Rosso as a contribution toward her legal fees and expenses.**
- 4. Any other requests for relief are dismissed.**

Lausanne, seat of the proceedings, 16 September 2016.

Piotr Stolarski

Single Judge