FÉDÉRATION INTERNATIONALE
DE VOLLEYBALL

The

FIVB TRIBUNAL

herewith issues the following

DECISION

on the Requests for Review of CC085/2016,

being filed by

Lukasz Zygadlo ("Claimant")
represented by himself

vs.

Volley Club Zenit-Kazan ("Respondent")
represented by Mr. Oleg Bryzgalov,
Club Director, VC Zenit-Kazan,
Volleyball Centre of Saint Petersburg,
Kazan, 420138, Midhat Bulatov, 1

1. The Parties

1. The Claimant (hereinafter the "Player") is a professional volleyball player from Poland.

2. The Respondent (hereinafter the "Club") is a professional volleyball club with its legal seat in Kazan, Russia.

2. The FIVB Tribunal Panel

3. Article 19.1.5. of the FIVB Sports Regulations (hereinafter the "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). All other cases shall be heard by the Chairperson and two (2) other members of the FIVB Tribunal, appointed by the Chairperson. If one or more of the members is unavailable or ineligible due to reasons of conflict (see Article 20.4), the Chairperson shall appoint another member of the FIVB Tribunal. 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."

4. As the present dispute involves a claim for payment of EUR 130,000.00, the FIVB Tribunal's Chairperson shall decide the case pursuant to Article 19.1.5. of the Regulations. Because the Chairperson of the FIVB Tribunal was no longer sitting on the FIVB Tribunal when this case was initiated, the Vice-Chairperson of the FIVB Tribunal, Mr. Liu Chi from China, is acting Chairperson (hereinafter "Chairperson") on the present case.

5. Accordingly, on 31 August 2016, Mr. Liu Chi was appointed by the FIVB Tribunal as the single judge (hereinafter "FIVB Tribunal Judge") in the present case.

3. Facts and Proceedings

3.1 Background Facts

6. The following facts are undisputed by the Parties:

7. On 2 June 2013, the Player and the Club signed a labour contract (hereinafter the "Contract"), pursuant to which the Player was to play for the Club during the 2013/14 and 2014/15 seasons. The term of the Contract ran from 1 September 2013 to 31 May 2015.

8. The Contract contained *inter alia* the following provisions:

> ***"5. GROUNDS FOR CANCELLATION OF THE CONTRACT***
>
> *5.1. Grounds for cancellation of the contract are the following:*
>
> *1) Agreement of the parties;*
>
> *2) Termination of the contract;*
>
> *[…]*
>
> *6) Inability to perform Sportsman's obligations under the contract due to insufficient physical condition and/or health;*
>
> *[…]*
>
> *13) Upon termination of a sports season of 2013/2014, the Club has the right to terminate unilaterally the contract for a season of 2014/2015, having in writing notified on it Sportsman in time not later 15.05.2014. In this case the Club is obliged to make in favor of Sportsman payment at a rate of 50.000 (fifty thousand) euro. Payment should be made not later 31.05.2014. Thus points 6.7. and 6.8. the present contract won't be valid. In case the Club didn't notify Sportsman on contract cancellation till 15.05.2014, the contract is considered valid till its termination.*

6. SPECIAL CONDITIONS OF THE CONTRACT

[…]

6.5. In the case of illness or injury deriving from the performance of sporting activities on behalf of THE CLUB, the Sportsman will continue to receive the compensations specified herein during 6 (Six) months until the case of illness or injury.

[…]

6.8 The Club cannot quit with the Sportsman during the contract period with the exception of reasons indicated in the item 5.1 of this contract. If not, THE CLUB is obliged to pay all contract-money."

9. Pursuant to Article 4 of the player contract, the Player was to receive – among other financial benefits – fixed salaries as follows:
    - EUR 40,000.00 net per month for the period from September to December 2013;
    - EUR 60,000.00 net for each January and February 2014;
    - EUR 40,000.00 net per month for the period from March to May 2014;
    - EUR 45,000.00 net per month for the period from September to December 2014;
    - EUR 65,000.00 net for January 2015;
    - EUR 45,000.00 net for each February and March 2015;
    - EUR 70,000.00 net for April 2015; and
    - EUR 45,000.00 net for May 2015.

    In total, the Club undertook, therefore, to pay EUR 850,000.00. Each instalment was to be paid by the 30th day of the respective month (with the exception of the two February instalments, where the due date was the 28th).

10. On 24 July 2013, the Club signed the Claimant's ITC Certificate. On the following day, the Russian Volleyball Federation signed it, as well.

11. Based on an employment order issued by the Club's director, the Player was officially registered in the employee booklet on 2 October 2013.

12. On 6 October 2013, the Player suffered …….. (injury) during a training session of the Club.

13. During the period form 6 October 2013 until the end of March 2014, the player underwent ……. (treatment) in Russia and Italy.

14. The Club paid the owed instalments at least from October 2013 up to and including 31 March 2014. While it is unclear from the file whether payment was made for September 2013, this needs not be investigated further because the Player did not request payment of this particular instalment.

15. On 22 March 2014, at the occasion of the Volleyball Champions League Final Four in Ankara, the Player joined the Club's team for the first time after his rehabilitation. The Player did not play for the Club at the Final Four.

16. After returning to Kazan from the Final Four, the Player started to attend the Club's training sessions.

17. On 18 April 2014, the Player and the Club signed an "agreement on the termination of the employment contract" bearing the date of 10 April 2013 (the "Termination Agreement"). The Termination Agreement reads as follows in the English translation provided by the Club in the previous instance:

"*The parties came to an agreement on termination of the employment contract #17-13 date "02" of October 2013 on the following conditions:*

1 Contract terminated from "18" of April 2014 in accordance with paragraph 1 of Section 77 of the Labour Code of the Russian Federation (agreement of the sides)

2 At the moment of the signing of agreement, the parties confirm that they have no claims to each other.

3 This Agreement shall enter into force upon signature by the parties, has two copies having equal legal force, one copy for the each parties."

18. In August 2014, the Claimant signed another contract with the Italian club Trentino Volley.

3.2 The proceedings before the FIVB Tribunal

19. On 25 May 2016, the CEV Mediation Chamber issued a decision in the present manner in accordance with Article 18.1.g. of the FIVB Sports Regulations (hereinafter the "Decision"), ruling that the contractual relationship between the Player and the Club was mutually terminated on 18 April 2014. Thus, the Player's claims, which amounted to EUR 130,000.00, were dismissed (such claims consisting of outstanding instalments for April and May 2014 of EUR 80,000.00 in total, and EUR 50,000.00 as financial compensation for termination according to Article 5.1. para 13 of the labour agreement). The Player and the Club were notified of the Decision on 30 May 2016.

20. On 13 June 2016, the Player filed his Request for Review with the FIVB and paid the requisite handling fee.

21. On 12 July 2016, the Club filed its Answer to the Request for Review.

22. On 19 August 2016, the FIVB Tribunal acknowledged receipt of the Club's Answer and stated that no further submissions would be accepted unless otherwise requested by the FIVB Tribunal.

4. The Parties' submissions

23. The following section provides a brief 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 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 Claimant's Request for Review

24. The Player argues that it is important to strictly separate and distinguish the Labour Agreement dated 2 June 2013 from the employee booklet entry dated 02 October 2013, which was required for employee registration purposes due to regulations of the Russian Volleyball Federation in order to obtain working visa, etc.

25. The Player contends that the CEV Mediation Chamber falsely considered the document signed on 18 April 2014 as affecting the Contract. In his view, the Termination Agreement refers to the Player's employee booklet registration only. Thus, the Player argues that the Contract was not mutually terminated.

26. The Player admits that he signed the Termination Agreement. However, the Player asserts that the purpose of this document was only to cancel his registration in the employee booklet. He considered this procedure to be essential for obtaining an exit visa in order to allow him to leave Russia. The Player claims that refusing to sign the Termination Agreement would have caused serious formal problems such as difficulties concerning possible re-employments by other Russian clubs or problems in obtaining an exit-visa to leave Russia.

27. Moreover, the Player states that the Termination Agreement was available only in Russian language, even though he does not speak or understand Russian.

28. Even though he attended team training sessions after returning from the Final Four, the Player asserts that the Club was not interested in a further cooperation for the following season of 2014/15. In this connection, the Player also claims that the Club had already wanted him to sign a document terminating their contract in early April, which the Player refused to do.

29. The Player's Request for Relief reads as follows:

> *"As is apparent from point 4.1 of my sport contract with the club Zenit Kazan, the club did not pay me:*
> *- 40.000 euro within April 30th 2014;*
> *- 40.000 euro within May 30th 2014;*
>
> *As is apparent from point 5.1 of my sport contract with the club Zenit Kazan, the club did not pay required:*
> *from sport contract:*
> *13) Upon termination of a sports season of 2013/2014, the Club has the right to terminate unilaterally the contract for a season of 2014/2015, having in writing notified on it Sportsman in time not later 15.05.2014. In this case the Club is obliged to make in favour of Sportsman payment at a rate of 50.000 (fifty thousand) euro. Payment should be made not later 31.05.2014. Thus points 6.7. and 6.8. the present contract won't be*

valid. In case the Club didn't notify Sportsman on contract cancellation till 15.05.2014, the contract is considered valid till its termination.
TOTAL AMOUNT: 130 000 EUR"

4.2. The Club's Answer

30. In essence, the Club argues that both parties terminated the employment agreement mutually on 18 April 2014.

31. First of all, the Club states that employment relations between the Club and the Player had been established by an employment order issued by the Club's Director on 02 October 2013.

32. As to the Player's trip to Ankara, the Respondent argued before the CEV that the Player was not part of the official club's team delegation at this tournament.

33. In addition, the Club contends that it was interested in extending the player's Contract after the Champions League Final Four. This was why the Club invited the Player to participate in its training sessions again from the end of March 2014 onwards. However, the team doctor found that the Player was not in the requested physical condition to exercise and play for the team anymore.

34. As a result, the Parties mutually agreed to terminate the employment contract as well as to waive any mutual rights.

35. Furthermore, the Club submits that it has fulfilled all its contractual obligations (instalments, cover of …… (treatment) costs, etc.), even though the Player did not play a single match for the Club during the entire term of the Contract.

36. As its Request for Relief, the Club submits the following:

"We suppose that the club fulfilled all contractual obligations to L. Zygadlo. We consider the claim submitted by the player groundless."

5. Jurisdiction

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

38. Article 19.2.1. of the Regulations reads, in relevant part, 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* […]*".*

39. Article 19.2.2. of the Regulations stipulates that the FIVB Tribunal can only resolve disputes:

> *"19.2.2.1. arising between the natural and legal persons/entities mentioned in Article 19.2.1.;*
>
> *and*
>
> *19.2.2.2 decided previously by the FIVB/ a Confederation or referred by the FIVB/ a Confederation to the FIVB Tribunal"*

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

41. Thus, in order for the FIVB Tribunal Judge to have jurisdiction over the dispute, he shall examine whether the conditions of both Articles 19.2.1. and 19.2.2. are satisfied.

42. The present dispute involves a claim for payment by a Polish volleyball player against his former Russian 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 the abovementioned Articles 19.2.1. and 19.2.2.1. of the FIVB Tribunal regulations.

43. Furthermore, the Request for Review at hand is made against the Decision, which was rendered by the Confédération Européenne de Volleyball (CEV). Indeed, the CEV decided the case in the first instance under Article 18.1.g. of the FIVB Sports Regulations. Therefore, the present Request for Review stems from a decision of a Confederation, and the Panel holds that Article

19.2.2.2. of the FIVB Tribunal regulations is also satisfied.

44. Based on the above, the conditions of Articles 19.2.1. and 19.2.2. are satisfied. Moreover, 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

45. Under the heading "Law Applicable to the Merits", Article 20.8 of the FIVB Sports Regulations reads as follows:

> *"Unless otherwise agreed by the parties, the Tribunal shall apply general considerations of justice and fairness without reference to any particular national or international law (ex aequo et bono)."*

46. 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*.

47. 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]

48. In light of the foregoing matters, the Panel makes the following findings.

6.2 Admissibility

49. Pursuant to Article 18.2 of the Regulations, any appeal against a decision of a Confederation must be filed within 14 days from notification of such decision. The Decision was notified to both parties on 30 May 2016. Hence, the time limit for appeal expired on 13 June 2016. Consequently,

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

the Player's Request for Review was timely filed, on 13 June 2016.

6.3 Findings

50. Having examined the evidence, the FIVB Tribunal Judge notes that neither party has contested that they validly concluded the Contract, and that they both signed the Termination Agreement. Consequently, there are essentially two legal issues to be resolved in the present case: First, whether the Termination Agreement validly terminated the contract and resulted in a waiver of any outstanding claims (in which case the Player would have no right to claim salaries for April and May 2014). Second, whether Article 5.1., para 13) of the Contract gives the Player the right to claim for compensation of EUR 50,000. The FIVB Tribunal Judge will address each of these issues in turn.

6.3.1 Agreement on cancellation

51. As noted above, it is uncontested that the Parties signed the Termination Agreement. However, there are two legal issues that need to be decided: First, what are the consequences, if any, of the Termination Agreement having been signed in Russian. Second, what is the material scope of the Termination Agreement – from the Player's point of view, said agreement affected exclusively his "employment form" (i.e. the subscription in the employment booklet and potentially other formalities), but not the Contract.

52. As to the language issue, it is undisputed that at the time of its signing, the Termination Agreement was available in Russian language only. A translation was provided by the Club only in the course of the CEV proceeding. It is, likewise, undisputed that the Player does not read or understand Russian.

53. Taking into account that the Contract was in English, and that the Player has been playing for several international volleyball clubs, the FIVB Tribunal Judge considers that it would have been for the Player to insist on a translated version before signing the Termination Agreement, in order to be fully aware of any possible legal effects that the agreement could have. The Player admitted that he knew he was signing an agreement "*to terminate* [his] *employment form*", which would lead to him being "*unsubscribed*" from the employee booklet. Hence, the Player was aware that he was signing an agreement pertaining to a rather important matter, even based on his own understanding of what he was signing, given that he believed that, without

signing the Termination Agreement, he could not leave Russia. As a consequence, the Player had reason to insist on a translation given the importance of the matter.

54. Moreover, as submitted by the Player himself, the Club had already informed him earlier about its intention to end the employment relationship for the following 2014/15 season, which should have made the Claimant at least question the legal significance and material scope of the Termination Agreement.

55. Signing a document without being able to read it creates an inherent risk, which is regularly to be borne by the person signing. There can be an exception to this risk allocation if the person signing was led to believe by the other party that the content of the document was different. However, the latter exception to the rule must be understood narrowly, i.e. the party signing must show particularly serious and wilful misrepresentations by the other party. This follows from the fact that signing a document without being able to read it usually shows a high level of negligence on the part of the signatory, meaning that the normal consequence of treating the signature as binding can only be avoided in exceptional circumstances. Otherwise, the value of a signature would be unduly undermined, which in turn would result in too much legal uncertainty.

56. While the player claims that the secretary of the Club told him that he needed to sign the Termination Agreement, he did not expressly submit that she misled him about the content of the agreement. In addition, it is at least doubtful that the Player would be able to rely only on the statement of a secretary to avoid being bound by his signature.

57. Therefore, the Player must be deemed to have been aware of what he was signing because his failure to ask for a translation cannot go to his benefit.

58. On the basis of the Termination Agreement's translation provided to the CEV Mediation Chamber, the accuracy of which has not been called into question by the Player, it can be concluded that the mutual parties' intention was to terminate the Contract.

59. While the Termination Agreement refers to an "*employment contract #17-13 date "02" of October 2013"* (emphasis added), the FIVB Tribunal Judge is satisfied that this is to be understood as a reference to the Contract of 2 June 2013. In fact, as per Article 3 of the Contract, *"the employment of the Sportsman to the Club […] is performed by the Order of the Director of*

the Club […]." Irrespective of whether one qualifies the Director's order as a condition precedent for the validity of the Contract, one can understand why the Termination Agreement refers to the date of the Director's order, i.e. 2 October 2013. In fact, there is no mention of any other employment contract between the Parties on the file. Hence, there is no other contract to which the Termination Agreement could have referred.

60. The Termination Agreement goes on to terminate the Contract "*from "18" of April 2014*", i.e. as of the day of signature, and states unequivocally that the Parties confirm that they have no claims against each other at the moment of signing the Termination Agreement.

61. On the basis of the plain wording of the Termination Agreement, the FIVB Tribunal Judge finds that the Parties mutually terminated the Contract as of 18 April 2014. Accordingly, no salaries are due for the time after 18 April 2014. This is also confirmed by Article 6.8 read in conjunction with Article 5.1.1 of the Contract, from which it follows that the Club is not obliged to pay further salaries under the Contract in case of mutual termination.

62. Furthermore, and again based on the plain wording of the Termination Agreement, the FIVB Tribunal Judge finds that the Player waived any right to outstanding salaries that he might have had. For this reason, it can be left open whether the player's physical condition was such that the Club needed to continue paying his salaries 6 months after the injury, i.e. as from 6 April 2014. Even if the Club was initially obliged to make further payments (for the time between 1 April 2014 and termination, i.e. 18 April 2014), such duty was revoked by means of the waiver signed by the Player.

63. Accordingly, the Player's claim for salaries for April and May 2014 must be dismissed.

6.3.2 Claimed compensation for termination of EUR 50,000.00 pursuant to Article 5.1, para 13

64. Turning to the Claimant's claim regarding Article 5.1.13 of the Contract, said provision stipulates a right of the Club to unilaterally terminate the Contract after the end of the 2013/14 season, by written notification to the player until no later than 15 May 2014. In exchange for exercising this option, the Club is obliged to pay EUR 50,000.00 to the Player until 31 May 2014.

65. Conversely, for the Player to be entitled to payment under Article 5.1.13 of the Contract, the Club must have unilaterally terminated the Contract under said provision. However, this is not

the case here. As ruled above, the parties mutually terminated the Contract. This is a different scenario, as foreseen in Article 5.1.1 of the Contract, to which the consequences provided for in Article 5.1.13 of the Contract do not apply. Hence, the Player is not entitled to payment of EUR 50,000.00 under said provision.

6.4 Costs

66. In its decision, the CEV Mediation Chamber did not award any costs. Given that the Decision was upheld in full on the merits and the Player's Requests for Review failed, the FIVB Panel finds that the Player must bear the costs of the present proceeding. Accordingly, the Player shall not receive any reimbursement of the handling fee of EUR 3,000.00 that he has paid.

67. Furthermore, neither of the parties requested a reimbursement of fees or expenses. Consequently, the Panel finds that the parties must bear their own fees and expenses, if any.

DECISION

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

1. **The Request for Review filed by Mr Lukasz Zygadlo is dismissed.**
2. **Mr Lukasz Zygadlo bears the costs of the proceedings before the FIVB Tribunal.**
3. **Any other requests for relief are dismissed.**

Lausanne, seat of the proceedings, 28 July 2017.

Liu Chi

FIVB Tribunal Vice-Chairperson