



The

## **FIVB TRIBUNAL**

herewith issues the following

### **DECISION**

on the Request for Review of CF 59/2016 filed by

**Al Ahly Sporting Club Tripoli (“Claimant”)**  
represented by Mr. Seyfullah Saleem,  
Manager, Al Ahly Sporting Club Tripoli  
2542 Tripoli, Libya

vs.

**Mr. Rachid Chebahi (“Respondent”)**  
represented by himself

## 1. The Parties

1. The Claimant is a professional volleyball club with its legal seat in Tripoli, Libya.
2. The Respondent is a professional volleyball coach from Algeria.

## 2. The FIVB Tribunal FIVB Tribunal Judge

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. Because the amount in dispute in the present case does not exceed CHF 200,000, this Request for Review will be heard by the Chairperson as a single judge. Dr. Karsten Hofmann from Germany, is the current Chairperson of the FIVB Tribunal and, thus, is appointed as the single judge in the present case (hereinafter "FIVB Tribunal Judge").

## 3. Facts and Proceedings

### 3.1 Background Facts

5. On 1 September 2012, the Claimant and the Respondent entered into a contract in which the Respondent agreed to coach the Claimant's team for the 2012/2013 season (and the possibility for renewal for the 2013/2014 season) in exchange for a monthly salary of USD 6,000 net, amongst other benefits (hereinafter the "Contract").
6. The Contract contained the following relevant provisions:

*" Article (3)*

*The present contract comes into effect as from 01/09/2012 on 31/05/2013 and will betacitly [sic] renewed for the sport season 2013/2014 as from 01/06/2013 unless one of the parts wishes to end the contract.*

Article (4)

*The first party shall pay to the second a monthly salary of \$ 6.000 (six thousand dollars).*

Article (5)

*Additionally to the monthly salary, the first party shall give the second, the following:*

[...]

*3- One month of paid annual leave, which will be determined by mutual agreement of both parties.*

[...]

Article (7)

**Obligations of the second party**

[...]

*7/ It will abstain to conclude any employment contract or a similar agreement with any other party during the duration of the validity of the present contract; in some specific cases, it can do that by written authorization of the Club.*

[...]

Article (10)

*The present contract can be amicably cancelled between both parties before the end of its duration fixed in the third article, without damage or compensations of either party.*

[...]

Article (12)

*If one of the two parties cancels one-sidedly the present contract, except the deadlines of the present and except the planned cases, without the agreement of the other party, the latter has the right to a compensation amounting to two months of salary.*

Article (13)

*The first party can end the present contract without prior notice and compensation in the following cases:*

[...]

*2/ If it goes away of its work place without valid reason accepted by the first party, for more than fourteen intermittent days or seven consecutive days.*

[...]

Article (15)

*In case of the termination of the present contract by one of the parties, it is necessary to inform the other party about it in writing by registered or express letter via the address of the Club.*

[...]"

7. During the 2012/13 season, the Respondent performed his duties.
8. On 30 May 2013, the Claimant's team played its final match of the 2012/13 season in the Libyan Cup Final against Al Ittihad Mosrata.
9. During or after the 2012/13 season, neither party sent a notice to the other party informing it that it wished to terminate the Contract.
10. After the 2012/13 season, the Respondent attempted to contact the Claimant's President regarding his annual leave despite the fact that the Claimant's President indicated that he would address the issue.
11. The Claimant did not make any payments after 31 May 2013. Additionally, the Claimant did not provide the Respondent with flight tickets or new visas for him and his family to return to Libya for the 2013/14 season.
12. On 13 October 2013, the Claimant hired a new Tunisian coach to coach its youth teams.
13. On 29 October 2013, the Claimant hired a new Tunisian coach to coach its first team.
14. On 17 November 2013, the Respondent signed a contract with a new club.

### **3.2 The Proceedings before the FIVB Tribunal**

15. On 13 September 2016, the FIVB General Director issued a decision in the present manner (hereinafter the "Decision") ruling that the Claimant owed the Respondent the amounts of USD 36,000 net and CHF 250, which the Claimant was ordered to pay by 13 October 2016. The Claimant was notified of the Decision on the same day that the decision was issued.
16. On 26 September 2016, the Claimant filed its Request for Review, which included its "Reasons for Appeal", a copy of the Decision, a copy of the Contract, a copy of its contract with its new coach and proof of payment of the handling fee.
17. On 29 September 2016, the FIVB Tribunal Secretariat acknowledged receipt of the Request for Review and invited the Respondent to submit his Answer by no later than 20 October 2016 (typo in email of FIVB Tribunal Secretariat).

18. On 19 October 2016, the Respondent submitted his Answer.
19. On 20 January 2017, the FIVB Tribunal Judge requested additional documentation from the Parties in accordance with Article 20.6.2 of the Regulations by no later than 3 February 2017.
20. On 3 February 2017, the Claimant provided the additional documentation requested, i.e. legible copies of pages 21-25 and 28-29 of its Request for Review, the contracts of two Tunisian coaches, including the new head coach of its first team, and the date of the 2013 Libyan Cup Final.
21. On 6 February 2017, the FIVB Tribunal Secretariat acknowledged receipt of the Claimant's submission and noted that the Respondent had failed to file his submission within the given deadline. The FIVB Tribunal Secretariat set a final deadline of 13 February 2017 for the Respondent to provide the documentation requested by the FIVB Tribunal Judge.
22. On 12 February 2017, the Respondent provided the following additional documentation requested, i.e. a written statement from his new club regarding its negotiations with the Respondent and an explanation about his date of departure from Libya as well as his discussions about his annual leave and the 2013/14 season with the Claimant's officials prior to his departure from Libya. The Respondent failed to provide a copy of his contract with the new club as requested by the FIVB Tribunal Judge.
23. On 14 February 2017, the FIVB Tribunal Secretariat acknowledged receipt of the Respondent's submission and informed the Parties that its responses would be sent to the FIVB Tribunal Judge for his review. Additionally, it stated that no further submissions would be accepted unless otherwise requested by the FIVB Tribunal Judge.

#### **4. The Parties' Submissions**

24. 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 Claimant's Request for Review**

25. First, the Claimant should not be liable for the leave wage because the Parties never met to discuss when the Coach could take his leave. The Respondent claimed that he tried to meet with the Claimant's President who was on holiday during that time. Additionally, there was no evidence, such as SMS messages, demonstrating that the Respondent tried to meet with the Claimant's President at his office.
26. Second, the Claimant cannot be held liable for the two additional salaries under Article 12 of the Contract because the Claimant never terminated the Contract by providing written notice in accordance with Article 15 of the Contract.
27. Third, the Claimant should not be liable for the USD 18,000 in outstanding salaries because the Respondent did not provide services during that time.
28. Fourth, the Respondent in fact terminated the Contract based on Article 13(2) because he failed to show up for the start of the 2013/14 season. He cannot use the lack of visa as an excuse as he had obtained a multiple entry visa covering the period from April 2013 to mid-July 2013.
29. Fifth, the Claimant is entitled to compensation and legal fees based on the Respondent's recent actions and the fact that the Decision should be overturned.
30. Sixth, the Claimant never intended to terminate the Contract with the Respondent as evidenced by the fact that the Lease Contract for the Respondent's apartment was paid until mid-October 2013, i.e. the time when the Claimant found out that the Respondent was negotiating with another club.
31. Seventh, the FIVB should give great consideration to the importance of the Contract and its provisions binding the parties.
32. Finally, the Claimant reiterated that it was not its intention to terminate the Contract because, had it wished to do so, it would have terminated the Contract pursuant to Article 13(2) of the Contract without any further costs. Because of the Respondent's sudden departure, the Claimant had to hire two coaches from Tunisia.

33. In addition to overturning the Decision in full, the Claimant requests the following relief:

*“As a result of Mr. Chebahi’s recent actions against us, we would like to claim the USD 12,000 under Article (7-7) of the contract agreement.”*

#### **4.2 The Respondent's Answer**

34. The Respondent first stated that he was surprised by the Claimant’s attempt to remove any kind of liability to him.
35. Regarding the Claimant’s assertions, the Respondent had never received the Lease Contract for his apartment and was told that he would receive a new one upon his return to Libya. Moreover, the Respondent rejected the first offer from his new club because he stated that he was under contract but only signed with them after it was clear that the Claimant had broken the Contract because he could not stay unemployed.
36. The Respondent attempted to take his case to the Libyan Volleyball Federation but it refused to hear his case. The Claimant could have very easily raised this case while the Respondent was still in Libya and could have sought compensation before the Libyan Volleyball Federation
37. The Respondent concluded in his Answer as follows:

*“I categorically refuse to negotiate any sort of deal. The Ahly club is only seeking for loopholes. I thank the FIVB that understood this case and I stand by its decision.”*

### **5. Jurisdiction**

#### **5.1 In general**

38. 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.
39. Article 19.2.1 of the Regulations, in relevant part, 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...”*

40. 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”*

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

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

43. The present dispute involves a claim for damages by an Algerian Coach against a Libyan club. The FIVB Tribunal finds that this dispute clearly qualifies as a financial dispute of an international dimension between a coach and a club in accordance with Articles 19.2.1 and 19.2.2.1.

44. Furthermore, the Request for Review at hand is made against the Decision, which was rendered by the FIVB General Director. Therefore, the present Request for Review stems from a decision of the FIVB, and the FIVB Tribunal Judge holds that Article 19.2.2.2 is also satisfied.

45. Based on the above, the conditions of Articles 19.2.1 and 19.2.2 are satisfied. Additionally, the Claimant’s Request for Review was filed on 26 September 2016, i.e. within the 14-day period described in Article 18.2 of the Regulations. 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**

46. Under the heading “Law Applicable to the Merits”, Article 20.8 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).”*

47. 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 FIVB Tribunal Judge will decide the issues submitted to it in this proceeding *ex aequo et bono*.
48. 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*”.<sup>1</sup>
49. In light of the foregoing matters, the FIVB Tribunal Judge makes the following findings.

## **6.2 Findings**

50. Having reviewed the evidence before him, the FIVB Tribunal Judge finds that there are, in essence, five issues for him to decide: 1) when the Contract was terminated and whether either party was responsible for its termination; 2) whether the Respondent is entitled to leave wage; 3) whether the Respondent is entitled to salaries until the termination of the Contract; 4) whether the Respondent is entitled to two additional salaries in accordance with Article 12 of the Contract and 5) whether the Claimant is entitled to receive damages in the amount of two salaries from the Respondent in accordance with Article 12 of the Contract based on Article 7(7) of the Contract. The FIVB Tribunal Judge will discuss each of these issues in turn.

### 6.2.1 Termination of the Contract

51. The first issue to be addressed by the FIVB Tribunal Judge is when the Contract was in fact terminated. The FIVB Tribunal Judge has examined the Decision and finds that he agrees with the FIVB’s findings that the Contract was not terminated at the end of the 2012/13 season and was, therefore, still valid at the beginning of the 2013/14 season. In particular, pages 7 and 8 of the Decision provide a very good explanation as to why the Contract was still valid at the start of the 2013/14 season. Additionally, both Parties in their submissions made it clear that they thought the Contract was still valid at the start of the 2013/14 season. The Claimant stated that it had not terminated the Contract and had no interest to do so but intended to maintain the relationship between the Parties while the Respondent stated that he initially did not accept his new club’s offer because he was under the impression that the Contract was still in effect.

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

52. Regarding the alleged evidence related to the Respondent's visa, the Claimant contended that the Respondent could have entered Libya based on a multiple entry visa that was valid until mid-July 2013; however, as the party responsible for obtaining work visas for its employees, the Claimant failed to provide the Respondent with a new visa for the 2013/14 season, i.e. the time after mid-July 2013. Turning to the lease contract for the Respondent's apartment, the fact that the Claimant claimed that it was paid through October 2013 is of limited value because the apartment could have been used for someone else.
53. Taking into account the actions of the Parties at the start of the 2013/14 season, the FIVB Tribunal Judge disagrees with the Decision about the nature of termination. In particular, he notes that both Parties appear to both move on at the beginning of November 2013 based on the fact that the Claimant signed a new first team coach on 29 October 2013 and the Respondent joined a new club at the beginning of November 2013. Consequently, the FIVB Tribunal Judge finds that, through their conduct, both Parties manifested a mutual intent to terminate the Contract in accordance with Article 10 of the Contract at the beginning of November 2013. The Contract does not stipulate any formal requirements for such a mutual termination as Article 15 of the Contract does for a unilateral termination.
54. For the sake of completeness, the FIVB Tribunal Judge would like to emphasize that the language of Article 7(7), i.e. "*without damage or compensation of either party*", is understood to only refer to any future payments owed but does not act as a waiver for any outstanding salaries or other payments due. Therefore, the FIVB Tribunal Judge must still examine the impact that this mutual termination had on any of the claims brought by the Parties.

#### 6.2.2 Respondent's claim for leave wage

55. Regarding the claim for leave wage, the FIVB Tribunal Judge notes that the leave wage sought was from after the 2012/13 season and, thus, before the mutual termination by the Parties. The FIVB Tribunal Judge notes that the Claimant has contended that the leave wage is not payable to the Respondent because the Parties never met to agree upon the leave wage.
56. The FIVB Tribunal Judge finds that he agrees with the interpretation of Article 5(3) provided by the FIVB in Section 3.3(a) of the Decision. The language of the Contract does not condition the payment of the leave wage upon an agreement by the Parties but, rather, merely provides that the time when the leave would be taken would be agreed upon by the Parties. Thus, regardless of whether or not an agreement was reached as to when the Respondent could

take his leave, the FIVB Tribunal Judge finds that the Respondent was entitled to the leave wage under the Contract. Consequently, the FIVB Tribunal Judge awards the amount of USD 6,000 to the Respondent.

#### 6.2.3 Respondent's outstanding salaries until the Termination date

57. In light of the fact that the FIVB Tribunal Judge determined that the Parties mutually terminated the Contract at the beginning of November 2013, the FIVB Tribunal Judge finds that the employment relationship was still in effect until that date. Consequently, the Respondent was still entitled to receive salaries until 31 October 2013. Thus, in principle, he is entitled to four additional monthly salaries covering this period, i.e. for July to October 2013 while the salary for June 2013 is covered by the leave wage already awarded.
58. However, the FIVB Tribunal Judge also notes the reasons provided in the Decision regarding the Respondent's duty to mitigate his damages. Generally speaking, the principle of mitigation of damages is applied post-termination. However, the FIVB Tribunal Judge highlights the fact that, on the one hand, the Respondent was prevented from entering into a contract with another club according to Article 7(7) of the Contract but, on the other hand, the Respondent did not seem to make much of an effort to clarify his status with the Claimant as described in Section 3.3(b), last paragraph of the Decision. Moreover, the effect of this is that the Respondent is collecting salaries for months that he did not actually provide any services due, at least in part, to his inaction to clarify his employment status with the Claimant.
59. Taking the above into account and based on *ex aequo et bono* principles, the FIVB Tribunal Judge finds that a 25 percent deduction from the four monthly salaries fair. Consequently, the FIVB Tribunal Judge awards the amount of USD 18,000 in outstanding salaries to the Respondent, which is the same as the FIVB awarded in the first instance and in line with the fact that the Respondent stated that he stood by the Decision.

#### 6.2.4 Respondent's claim for two additional salaries pursuant to Article 12

60. The Respondent's claim in the first instance for two additional salaries is based on his assertion that the Claimant unilaterally terminated the Contract and, thus, Article 12 of the Contract is applicable. As the FIVB Tribunal Judge has found that the Parties mutually terminated the Contract at the beginning of November 2013, he finds that this claim must be dismissed in full because Article 10, not Article 12, is applicable in the present case.

61. Consequently, the FIVB Tribunal Judge finds – in contrast to the FIVB General Director in the first instance – that the Respondent is not entitled to two additional salaries pursuant to Article 12.

#### 6.2.5 Claimant's claim for damages based on the Respondent's alleged breach of Article 7(7)

62. Additionally, the Claimant contends that it is entitled to damages of two salaries based on the Respondent's alleged breach of Article 7(7), which caused a *de facto* termination under Article 12 of the Contract.

63. Procedurally, the FIVB Tribunal Judge notes that Claimant did not raise this claim in the first instance except in an unsolicited submission well into the proceedings. It did not file this claim in the first instance as a counterclaim in its Reply nor did it pay a handling fee to have this claim heard by the FIVB.

64. Article 20.9.1 of the Regulations grants the FIVB Tribunal Judge the "*full power to review the facts and the law of the dispute*". In essence, this provision means that the FIVB Tribunal Judge can conduct a *de novo* review of the proceedings in the first instance. Whether a claim that could have been raised in the first instance (and subject to the same handling fee paid by the Respondent when he filed his claim) but was not can be raised in the second instance does not need to be addressed by the FIVB Tribunal Judge more thoroughly as he, in any event, must dismiss the Claimant's claim on the merits.

65. As the FIVB Tribunal Judge found that the termination was mutual, Article 12 of the Contract is not applicable to the Claimant's claim for the same reasons that it is not applicable to the Respondent's claim for two additional salaries. Moreover, Article 7(7) of the Contract does not grant the Claimant any right to two salaries on its own but only in conjunction with Article 12 of the Contract. Regardless, Article 7(7) of the Contract only prevented the Respondent from entering into a contract with another club, not entering into talks with it. Consequently, the Respondent did not breach Article 7(7) of the Contract because he did not enter into a contract with his new club until after the mutual termination of the Contract.

66. Thus, the Claimant's claim for two salaries is dismissed in full.

#### 6.2.6 Summary

67. Based on the above determinations, the FIVB Tribunal Judge holds that the Claimant's Request for Review is partially upheld. The Claimant must pay the amount of USD 24,000 to the Respondent.
68. For the sake of completeness, the FIVB Tribunal Judge finds that the Respondent's claim for moral damages in the first instance was not raised in the Claimant's Request for Review or a counterclaim by the Respondent and, thus, the first instance decision related to this issue is upheld in full.

#### **6.4 Costs**

69. Article 20.10.2 of the Regulations allows the prevailing party to be granted a contribution towards legal fees and expenses (including the applicable handling fee) in the proceedings before it. However, legal fees must be reasonable and are limited to fees related to the proceedings before the FIVB Tribunal. When determining the contribution, the FIVB Tribunal Judge must take into account the outcome of the proceedings as well as the conduct and financial resources of the Parties.
70. The Claimant paid a handling fee of CHF 2,000 and prevailed on 25 percent of its claim, i.e. it sought the annulment of USD 36,000 awarded in the first instance and the payment of USD 12,000 (total value in dispute USD 48,000) but the amount awarded in the first instance was reduced by the FIVB Tribunal Judge only by USD 12,000 (from USD 36,000 to USD 24,000). Additionally, neither party has demonstrated that it has been represented by counsel or provided any evidence of legal fees incurred. Considering that the Respondent also paid a handling fee of CHF 500 in the first instance, the FIVB Tribunal Judge finds that no contribution shall be paid to either Party and each Party must bear its own costs. Thus, the Respondent must bear the entire handling fee in the first instance and the Claimant must bear the entire handling fee in the present proceedings.

## DECISION

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

1. **The Request for Review filed by Al Ahly Sporting Club Tripoli is partially upheld.**
2. **The first bullet point of the decision rendered by the FIVB in CF 59/2016 dated 13 September 2016 is amended as follows:**
  - **Al Ahly Sporting Club Tripoli shall pay the amount of USD 24,000 to Mr. Rachid Chebahi.**
3. **Each party shall bear its own legal fees and expenses.**
4. **Any other requests for relief are dismissed.**

Lausanne, seat of the proceedings, 27 April 2017.

Dr. Karsten Hofmann  
FIVB Tribunal Chairperson