

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Style of Cause: *Prusakowski v. Chief Returning Officer*

Ruling # 15

Date heard: March 9, 2006

Appearing for the D.I.E. Board:

Presiding Chair: Alex Ragan, Chief Tribune

Tribunes: Guillaume Laroche, James Koizumi

Appearing for the Appellant:

John Ross Prusakowski

Appearing for the Respondent:

Rachel Woynorowski, Chief Returning Officer

Interveners present:

Mustafa Hirji – PAC « No » Campaign

Chad Fletcher – PAC « Yes » Campaign

Gregory Harlow – Speaker of Students' Council

Tawana Wardlaw – Vice President (Communications) University Athletics Board

Case summary:

Only one issue is at stake in this appeal: Were the \$193.00 and \$10.00 (totalling \$203.00) fines imposed by the Chief Returning Officer (CRO) against the PAC “Yes” Campaign sufficient to fully counter balance the advantage gained from a Web CT posting encouraging students to vote “yes” on the PAC referendum. The DIE Board finds that the fine imposed by the CRO had a real effect which adequately counterbalanced the advantage gained.

FACTS

On Tuesday, March 7th, 2006 at approximately 12 p.m. Tawana Wardlaw posted on Web CT a message that encouraged students to vote “yes” on the PAC referendum question. The message was only accessible to 381 varsity athletes and, according to the evidence placed before the Board, was only viewed by 11 individuals. The message was detected and brought to the attention of the CRO on Tuesday evening. The message was removed by 3:30 p.m. the following day.

There is agreement among all parties that there was violation of Bylaw 2400 and that an advantage was gained by the PAC “Yes” campaign.

The CRO subsequently fined the PAC “Yes” campaign a total of \$203.00 for the violation (CRO’s Ruling #5 and CRO’s Ruling #6).

ISSUES

The sole issue on this appeal is whether the fine imposed by the CRO fully counterbalanced the advantage gained by the PAC “Yes” side from the Web CT message.

RELEVANT LEGAL PROVISIONS

Bylaw 2400

85. Where a campaign manager or volunteer has contravened a bylaw, rule, or regulation, regardless of the cause or the intent of the parties involved, and where that contravention has provided an unfair advantage to a side, the C.R.O. shall assign a penalty that

- a. fully counter-balances any advantage gained;
- b. where the contravention was intentional, penalizes the side whose campaign manager or volunteer was guilty of the contravention.

ANALYSIS

The Appellant’s sole argument is that the fine imposed by the CRO was insufficient to counterbalance the advantage gained by the PAC “Yes” side. In essence, he argues that because campaigning was already closed by the time the fine was levied, and that the fine did not have the effect of disqualifying the campaign, there was no real counterbalancing effect from the fine. The Appellant urges DIE Board to cancel the PAC plebiscite and declare whatever results have been compiled to be void.

The DIE Board agrees that the PAC “Yes” campaign gained an advantage from the posting of the Web CT message. As that fact has not been contested by any parties to the hearing, it need not be discussed further.

The crux of the case is whether the \$203.00 in fines adequately counterbalances the advantage. The Appellant’s argument that only disqualification is capable of counterbalancing the advantage gained has some force. Indeed, if a fine is levied *after* the close of campaigning and does not result in a disqualification, then it may appear that there has been no counterbalancing as the fine has no tangible effect. After all, as the Appellant suggests, it is hardly a detriment to a campaign to restrict them from using resources that they are already precluded from using by the close of campaigning.

On closer inspection, however, a fine imposed by the CRO does have a real effect. Though it does not affect the ability of a campaign to use its materials or expend resources, it does move the campaign ever closer to the line of disqualification imposed by s. 44 of Bylaw 2400. This is a penalty in a very real sense as it means that other subsequent offences and fines may result more quickly in a disqualification.

In the case at hand, there is no question that the violation was a serious one. The DIE Board believes that a harsh penalty is required to punish and deter offenders in such cases. The fine of \$203.00 is harsh, constituting more than 20% of a campaign’s budget in a plebiscite. Moreover, this fine resulted in the Pac “Yes” side moving much closer to a violation and disqualification of the campaign expense limits rules under s. 44 of Bylaw 2400 thereby imperilling the campaign’s objectives. The punishment of disqualification and nullification of the plebiscite, on the other hand, would be disproportionate to the advantage gained by the PAC “Yes” side in this case.

DISPOSITION AND REMEDY IMPOSED

The appeal is dismissed and the decision of the CRO affirmed.

The Discipline, Interpretation And Enforcement (D.I.E.) Board functions as the judiciary branch of the Student’s Union, and is responsible for interpreting and enforcing all Student’s Union legislation. If anyone has any questions regarding the D.I.E. Board, feel free to contact the Chair, Alex Ragan, at ea@su.ualberta.ca .