

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Style of Cause: Interpretation

Ruling # 3

Date heard: February 28, 2008

Appearing for the D.I.E. Board:

Presiding Chair: Guillaume Laroche, Chief Tribune

Tribunes: Sharon Riley and Alexander Witt

Appearing for the Applicant: Christopher Samuel
(The listed Applicant, Bobby Samuel, was absent)

Interveners present: Brock Richardson, Craig Turner (CRO).

Case summary:

Three Issues were before the DIE Board.

#1 Bobby Samuel brought an application for interpretation in advance of a hearing a complaint by Brock Richardson, to determine if Mr. Richardson brought the application to the correct Students' Union body using the correct procedure. The DIE Board finds that Mr. Richardson's complaint was correctly made and that it will be heard at the next available possibility.

#2 Mr. Richardson asked that the request for interpretation be dismissed because Mr. Samuel has no standing before the DIE Board. However, because of the pressing issue at hand (#3), the DIE Board decided to not dismiss the application and instead render an appropriate interpretation of the circumstances and apply an appropriate remedy.

#3 Mr. Samuel requested that a hearing as to whether or not the materials were in violation of DIE Board Ruling # 2, initially scheduled for February 28th, be held at a later date. The election campaign is very short. The DIE Board has not seen the pamphlet at the centre of the complaint nor heard the nature of the complaint. Accordingly, Mr. Samuel is requested to place those campaign materials that are the subject of Mr. Richardson's complaint in the safe keeping of the CRO and produce no more, until a time when the DIE Board may make a judgement on whether or not it violates Ruling #2.

SUMMARY OF ALLEGATIONS

Chris Samuel, for the Applicant Bobby Samuel (who was not present), alleges that the remedy in Ruling #2 had two distinct parts: remedies unrelated to the SU election and remedies related to the SU election. In the case of the latter, he argued that all matters which are related to the election should be governed by bylaw 2000 and not bylaw 1500. Correct procedure for raising a complaint under Bylaw 2000 is to seek judgement of the Chief Returning Officer (CRO). In this case, Mr. Richardson's complaint would be invalid because it was raised with the DIE Board.

FACTS

1. Brock Richardson alleges that the Samuel campaign violated the remedy of DIE Board Ruling #2. It said:

"The Board further places an injunction on Mr. Samuel against using the design of the pamphlet, including the slogan and textual contents, or any portion or derivative thereof, for the purpose of any future political campaign."

2. Mr. Richardson submitted a complaint to the DIE Board under SU bylaw 1500.

3. This complaint has not been heard by the DIE Board at the time of this ruling.

4. Bobby Samuel, candidate for the position of President of the Students' Union, raised a complaint alleging that Mr. Richardson did not proceed according to SU bylaws and the DIE Board should not hear the complaint. He has asked for the DIE Board to interpret the SU bylaws and decide the procedure under which bylaw Mr. Richardson's complaint should properly be made; either under bylaw 1500 or bylaw 2000.

RELEVANT LEGAL PROVISIONS

Bylaw 1500 S. 2,4,29. Bylaw 2000 S.3,65,68.

RULING ON PROCEDURAL MATTERS FOR THE HEARING

The Board finds that the application received is in fact not a complaint, but a request for interpretation. Brock Richardson, as an intervener in this application for interpretation argued that as Mr. Samuel is on leave from Students' Council, and that therefore he has no grounds on which to request an interpretation under bylaw 1500 S.4(b). Section 4.(b) states:

"The following have standing to request an interpretation of the Students' Union legislation from the Board:

(i) Council,

(ii) members of Council, and

(iii) the Chief Returning Officer of the Students' Union."

DECISION ON PROCEDURAL MATTERS FOR THE HEARING

The DIE Board sees some merit in the argument presented by Mr. Richardson, but rejects it on the basis that the issues promoted raise substantial concerns about interpretation of the bylaws and the DIE Board's mandate, despite the recognition that S.4.(b) may otherwise prevent the hearing from being valid. The Board exercises its authority from bylaw 1500, S.29, "General Powers of Enforcement," to overrule S.4.(b), because it finds that the application requires an action by the Board on the issues the application presents.

ANALYSIS

Christopher Samuel grounds his assertion in the mandate of Bylaw 2000 S.3, which says: "This bylaw shall govern the conduct of all elections, plebiscites and referenda conducted by the Students' Union." When questioned as to his precise interpretation, he affirmed the statement that the mandate in S.3 in essence instructs that all elections-related matters should be treated by default by Bylaw 2000. Under his interpretation only, the Board understood that Mr. Samuel believes S.3 should read as follows: "This bylaw shall exclusively govern the conduct of all elections, plebiscites and referenda conducted by the Students' Union." In statutory interpretation, the "literal" rule to which judges may resort to can aid in the interpretation of an ambiguous statute. Accordingly, if words are plain and unambiguous, the Board is bound to understand them in their ordinary sense; contrary to Mr. Samuel's claims, the Board is not to infer omissions. The Board feels that there is no ambiguity whatsoever in this circumstance. The word "exclusively" is not written in at S.3 of the bylaw and the DIE Board will not infer it. Accordingly, we do not agree that Mr. Richardson should have filed his complaint with the CRO, in accordance with bylaw 2000.

Christopher Samuel alleged further that everything which pertains to candidates in an election should be found only in bylaw 2000. This argument runs contrary to the breadth of power given to the DIE Board in S.2 of Bylaw 1500:

"The Board is the organ of the Students' Union responsible for the interpretation and enforcement of Students' Union legislation."

The Board rejects the argument that the mandate of Bylaw 2000 (S.3) would somehow limit the mandate of the Board, on the basis that the Board's mandate includes all Students' Union legislation, whereas Bylaw 2000's mandate is limited to that of electoral matters. Therefore, it is not contrary to the Board's mandate to investigate electoral matters; furthermore, while electoral matters may be present in a case that disputes whether or not the Board's previous orders were followed, this consideration is secondary to the Board's duty to uphold its own previous rulings, and does not justify the exclusive use of bylaw 2000.

DECISION

The Board rules that the procedure in bylaw 1500 shall apply in complaints brought to the Board alleging violations of the remedies of the DIE Board.

FURTHER CONSIDERATIONS BY THE BOARD

The submissions made to the board established the following.

Mr. Richardson brought his complaint before the DIE Board at approximately 2.45 pm on Tuesday, February 25th. This complaint was to be heard on the evening of Thursday, February 28th. In intervention, Mr. Samuel raised his application for interpretation to determine which bylaw should apply to the procedure of raising a complaint. On Bobby Samuel's behalf, Christopher Samuel submitted in a communication to the Chief Tribune that it would not be appropriate for the Board to consider both matters at once. He argued that Mr. Richardson's complaint must be deferred until the DIE Board made a ruling on which bylaw should apply and he could raise an appropriate appeal in the circumstances. Out of courtesy for Mr. Samuel's right to a hearing, the Board decided to defer hearing of Mr. Richardson's complaint and, implicitly, the judgement until next week. However, Students' Union elections are short affairs of only two weeks' duration. Time is of the essence and fairness for all candidates involved in the election is of our particular concern. We shall return to these issues later.

Several inexplicable inconsistencies in Mr. Samuel's case trouble the Board. First, the intervention by the CRO, not contested by the Applicant, suggested that Mr. Samuel was fully aware of the fact that the CRO would *not* be evaluating his campaign materials in relation to the requirements of DIE Board Ruling #2, but *only* the requirements of Bylaw 2000. Mr. Samuel was made aware of this prior to Tuesday, February 19, 2008. However, Mr. Samuel's submission to the Board on this issue suggests otherwise, noting that his party "assumed that we were fully compliant with all of the DIE Board's election related remedies" from Ruling #2 following the approval of their campaign materials. In the absence of the applicant contesting these facts, the Board is obliged to accept them. In accepting these facts, it is troubling to note that Mr. Samuel's written submission appears to deliberately mislead the Board as to the agreement in place between Mr. Samuel and the CRO following the interpretation of Ruling #2.

Second, the Board is concerned by Mr. Samuel's submission of S.59(2) (actually S.65(2)) of bylaw 2000. His incomplete quotation ("Where a complaint is received within 12 working hours of the alleged contravention...") alleges that there is a 12 hour time window in which complaints about campaign activities may be raised, after which no complaint may be raised. Based on the incomplete quotation of the section, this appears plausible. However, in the actual bylaw when written out in full, section 65(2) reads:

"Where a complaint is received within twelve (12) working hours of the alleged contravention, and where the original complaint form is provided to the C.R.O., the C.R.O. shall rule on that complaint."

When read in full, it is evident that this section does not refer to any time limits for submitting complaints, but rather describes the actions the C.R.O must undertake when s/he receives a complaint about an alleged violation that has taken place in the previous 12 hours. It does not remove from the CRO the discretionary power to hear complaints after this time. The wording of S. 65(2) stands clearly in contrast to that of S. 68(4), which clearly limits such considerations in a similar scenario:

“(4) No appeal shall be considered by the D.I.E. Board unless it is received within twelve (12) working hours of the C.R.O.’s ruling being posted.”

The incomplete submission of the quotation of the bylaw by Mr. Samuel appears to be a second attempt to mislead the Board. This attempt is an effort to construct, based on false premises, a second reason for which Mr. Richardson’s action should be halted by the Board.

It is essential that all complaints heard by the Board be handled in a timely manner. It is equally essential that the DIE Board does not hear supplementary allegations that a reasonable person would find superfluous to the issue of contention. This is important when matters are brought forth with what we have now judged to be an express intention to delay further ruling on the issue. In this case, a reasonable person would acknowledge that, during a hearing regarding the initial complaint made in this case, the Board’s jurisdiction to rule on the matter would be established by the Board as per Bylaw 1500 and the Board’s own regulatory protocols, eliminating the necessity of the complaint brought forth by Mr. Samuel. It is particularly troubling that what the complaint brought forth would be based on arguments that misconstrue facts and bylaws.

Furthermore, it is absurd to posture that the Board’s jurisdiction to rule on the matter would not be maintained by the Board. Only a deliberately inventive rewriting of the bylaws would construe it to be read otherwise. Hence, there was no real necessity for the counter complaint brought forth on the hearing of February 28th. Given these incidents, the Board concludes that the presumed goal of the counter complaint was to further delay proceedings, given the timely nature of the Students’ Union elections. It troubles the Board that the application to the Board by Mr. Samuel was a gratuitous use of the DIE Board's time and an opportunity to continue the dissemination of the pamphlets whilst the judgement would be delayed until nearly the end of the campaign.

REMEDY IMPOSED:

For the reasons stated above, the Board dismisses the interpretation brought forth by Mr. Samuel. The Board is convinced that this application for interpretation was a gratuitous use of the Board’s time as a tactical delay to further political gain for the Samuel campaign; the Board believes this unacceptable conduct must be actively discouraged. Consequently, the Board requires that Mr. Samuel turn in all campaign materials (as defined by Bylaw 2000) currently in existence to the CRO by noon on Friday, February 29th 2008. The CRO will preserve these materials for safekeeping until a further order is issued by the Board. The Board further instructs Mr. Samuel not to produce any

replacement campaign materials during the period of this injunction. This injunction shall remain in place until a time when the Board issues a ruling on whether or not the campaign materials violate Ruling #2. Further instructions concerning Mr. Samuel's campaign materials will be contained in this ruling.

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 Chief Tribune, Guillaume Laroche, at ea@su.ualberta.ca .