

DIE BOARD RULING 2013-07

HEARING DETAILS:

Style of Cause: Hanwell vs CRO

Hearing Date: March 6th, 2014

Hearing Number: Ruling #07 2013/2014

DIE Board Panel Members: Cian Hackett, Associate Chief Tribune, Chair
Nicholas Trofimuk, Tribune
Taylor Wong, Tribune

Appearing for the Applicant: Dylan Hanwell, applicant and candidate for VP External
Kelsey Mills, witness
Erin Borden, witness
Dawson Zeng, witness

Appearing for the Respondent: Navneet Khinda, respondent and candidate for VP External
Avril Fisher, witness
Sangram Hansra, witness
Dongwoo Kim, witness

Intervener(s): None

BACKGROUND:

Mr. Dylan Hanwell, candidate in the race for Students' Union VP Academic, submitted an appeal of CRO Ruling 14. In Ruling 14, the CRO ruled that the actions in question did not reach the standard of maliciousness or substantial prejudice against Mr. Hanwell's campaign required for disqualification under Bylaw 2200 section 49 subsection 1b.

Hanwell's complaint was against Ms. Navneet Khinda's campaign. Hanwell alleged the activities of Mr. Dongwoo Kim, a volunteer for Khinda's campaign, fit the criteria of Bylaw 2200 section 49 subsection 1b. Hanwell believed these activities were malicious, attacking Hanwell's work ethic, character, and professionalism as well as Zeng's ethnicity and country of origin.

Hanwell cited several pieces of evidence for consideration:

1. An exchange between Kim and Mr. Dawson Zeng, a volunteer for Hanwell's campaign, on Facebook. Zeng had edited one of his own Facebook post supporting Hanwell, to which Kim replied "is this the Chinese firewall?". The conversation continued in private messages in which both individuals apologized and Kim's comment was removed.
2. Twitter posts by Kim referencing Hanwell's campaign, many of which were deleted after prompting.
 - a. During the Myer Horowitz Forum, the following tweets were made while Hanwell was speaking:
 - i. "@dylanhanwell emphasizes his 'hard work' but he has yet to show anything for it #uasuvote"
 - ii. "@dylanhanwell saying other candidates didn't work hard? #uasuvote"
 - iii. "@dylanhanwell 2-page platforms doesn't count as hard work to me #uasuvote"
 - b. "Shortness ≠ 'conciseness' or 'clarify'; it's more so a reflection of unprofessionalism and condescension votenavneet.com/2014/03/su-ele...#uasuvote"
 - c. "Fun fact #2, just because it's short, it doesn't mean that it's concise. Let us not confuse conciseness with laziness #uasuvote"
 - d. "Fun fact: putting together a bunch of clichés doesn't count as a "policy brief" #uasuvote #ualberta #pols101"

Khinda argued that this was not malicious, that this was an election and this was fair and appropriate to criticize an individual. She argued there is a very high standard to prove an activity malicious and that these activities were not malicious. Khinda stated that she had always intended to run a clean campaign that she was sorry that any activity had hurt Hanwell. She stated that all candidates should be able to handle this level of criticism and critique during a campaign.

Zeng, when questioned, stated he did not accept Kim's apology for the Facebook comments.

Kim has 816 followers on Twitter. "Tym", a Twitter user asserted as a volunteer for Khinda's campaign, retweeted tweets (c) and (d) above, with a reach of 291 followers.

Hanwell asked for disqualification of Khinda, or as an alternate remedy should the panel decide the activity did reach a sufficient standard, for a fine against Khinda's campaign of \$0.10 per person that the messages reached. Hanwell stated he believed the panel should decide either that all the comments were malicious, that at least one of the comments were malicious, and that the behaviour in general was malicious behaviour.

Khinda's side also challenged the DIE Board's jurisdiction to rule on the interaction between Zeng and Kim, as an issue between two individuals rather than campaigns or candidates.

ISSUES:

- [1] Should the CRO's decision in Ruling #14 be upheld?

RELEVANT BYLAWS:

[2] From Bylaw 2200 Section 49:

- (1) A candidate shall be disqualified where he/she/it is guilty of a contravention that
- a. cannot be counter-balanced by a lesser penalty;
 - b. is malicious or substantially prejudicial to another candidate or slate; or
 - c. involves tampering with ballots, voting procedures, or counting procedures.

[3] From Bylaw 2200 Section 48:

- (1) Where a candidate, side manager or volunteer has contravened a bylaw, rule, or regulation, regardless of the cause or the intent of the parties involved, and that contravention has provided an unfair advantage to a candidate, the C.R.O. shall assign a penalty that
- a. fully counter-balances any advantage gained; and
 - b. where the contravention was intentional, penalizes the candidate or campaign manager who was or whose volunteer was guilty of the contravention.

DECISION:

The following is the decision of Tribune Nicholas Trofimuk:

[4] The applicant contended that the respondent violated section 49 of Bylaw 2200. The applicant submitted that a penalty should be imposed under sections 48 and 49. This panel finds that both of these sections describe penalties that can be imposed for contraventions of the rules. They are not rules that can be contravened in and of themselves. The applicant did not provide evidence of any independent rule that was contravened. Therefore there is nothing for section 49 to apply to. As there was no breach of any Bylaw, it is not necessary to address any of the other issues that the parties raised. This panel upholds the CRO's decision in Ruling #14 that there was no contravention. Therefore no penalty can be imposed.

The following is the decision of Associate Chief Tribune Hackett:

I concur.

The following is the decision of Tribune Wong:

I concur.