

DIE BOARD RULING 2014-2015 – 03

HEARING DETAILS:

Style of Cause: Knox vs CRO

Hearing Date: March 4th, 2015

Hearing Number: Ruling #03 2014/2015

DIE Board Panel Members: Harvir Mann, Associate Chief Tribune, Chair
Catherine Fan, Tribune
Ritika Banerjee, Tribune

Appearing for the Applicant: Blue Knox, candidate for VP External

Appearing for the Respondent: Jessica Nguyen, Chief Returning Officer

Intervener(s): None

BACKGROUND:

Mr. Adam Pinkoski, the campaign manager for Blue Knox, candidate in the race for Students' Union Vice President External, submitted an appeal of CRO Ruling 3. In Ruling 3, the CRO ruled that Miss Knox was in contravention of Bylaw 2200 Section 36 subsection 1 wherein no candidate should have more than one banner in any given building at any given moment. Bylaw 2200 section 36 subsection 2 and section 48 subsection 1 were used as the justification for the CRO ordering a counterbalancing penalty to counter any advantage gained. Miss Knox's campaign team appealed the CRO decision to the D.I.E. Board.

The activities in question can be found in CRO Ruling 3. On Monday February 23rd, Adam Pinkoski, campaign manager for Miss Blue Knox's campaign, sent an email to the CRO asking for permission to modify an already approved banner posted in the Chemistry East building by cutting it in half (the intended location of the banner had a barrier running down in its middle). That same day, the CRO responded to Mr. Pinkoski's request by approving the use of only half of the banner with the understanding that Miss Knox's campaign only intended to use one half while discarding the other. The following day, Mr. Dylan Hanwell, candidate for Students' Union Vice President External, sent an email to the CRO of Miss Knox's campaign violating bylaw by posting both banner halves separately and simultaneously. Mr. Hanwell noted said campaign was in violation of Bylaw 2200 section 36 subsection 1 which clearly states a candidate is limited to only one banner in a single building at any given point. The same day the CRO notified the Blue Knox campaign team of the contravention of Bylaw 2200 and requested the correction of the problem; either the removal of one banner or the rejoining of both into a single banner within an hour. Within the hour on Tuesday February 24th, the banner in question was fixed and photo evidence was provided to the CRO.

The Blue Knox campaign team informed the CRO that the banner in two halves was on display for approximately three hours before they received notification from the CRO that it was in contravention of bylaw. The CRO noted in Ruling #3 that bylaw stipulates no more than one banner may be on display and candidates are responsible for informing their campaign volunteers of elections rules. The banner in its original wholesome form was previously approved by the CRO but its usage in two halves was not, and thus, constituted an unapproved campaign material. While noting the Blue Knox campaign team's contravention of bylaw was unintentional and they had responded in an efficient manner to correct the problem, the CRO levied a penalty as per Bylaw 2200 section 48 subsection 1. Bylaw states that where a contravention provides an unfair advantage, the CRO shall assign a penalty counterbalancing the advantage gained. Subsection 2 in the same clause permits penalties to take the form of fines, destruction of campaign items and/or restrictions on certain campaign activities. As per the Schedule of Fines and Penalties provided by Bylaw 2200, unapproved campaign materials would be dealt with through the removal of the unapproved items in question along with an equal number of materials. The CRO asked the Knox campaign to remove the banner in Chemistry East along with two additional banners (from the buildings of their choice) for a total of four hours, three for the contravention and one hour for the time taken to correct the issue, during the hours of 12:30 and 16:30 on the following Tuesday March 3rd.

Mr. Pinkoski argued that the CRO had explicitly approved the banner for use in its halved state. The banner in its whole state was approved for hanging along with the banner in its halved state. Mr. Pinkoski stated that the banner in question was a single banner and his communication with the CRO was done with the understanding that the banner would not be hung in its single half state. At the hearing, Miss Blue Knox said the cutting of the banner in half and its displaying in its halved state was a honest lapse in communication between the CRO and Mr. Pinkoski. A volunteer in her campaign, neither her nor Mr. Pinkoski, had changed the whole banner to two separate forms. As soon as she became aware of a contravention she had the problem corrected within the hour. Miss Knox also noted that one half of the banner did not even have her full name on it while the other part did. There was no intent on her campaign's part to contravene bylaw. Mr. Pinkoski requested CRO Ruling #3 be overturned and the penalty which had been levied to be removed.

ISSUES:

- [1] Should the CRO's decision in Ruling #3 be upheld?
- [2] If the CRO's decision is upheld, how and when should the penalty be enforced?

RELEVANT BYLAWS:

- [3] **From Bylaw 2200 Section 36:**
 - (1) No candidate or side shall have more than one (1) banner on display in any given building at any given time.

(2) Where a candidate or side contravenes Section 36(1), the offending banners shall be destroyed and the C.R.O. may assess an additional penalty to that candidate or side as set out in Section 48.

[4] **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 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.

(2) Penalties available to the C.R.O. shall include

- a. a fine, to be counted against the candidate's campaign expenses;
- b. the confiscation or destruction of campaign materials;
- c. limits, restrictions, and prohibitions on any type of campaign activities for any period of time up to the commencement of voting; and
- d. disqualification of the candidate or side manager.

(3) The C.R.O. shall draft a schedule of fines and penalties as an appendix to the rules and regulations concerning this bylaw

[5] **From Schedule of Fines and Penalties (Section F: General Election Regulations and Guidelines):**

Violation: Unapproved campaign materials

Counterbalancing Fine: Removal of said campaign materials plus equal number of materials

Punitive Fine: \$3.00 per material with additional possibility of discretionary fines

DECISION:

The following is the unanimous decision of the panel:

[6] Bylaw 2200 section 36 states that candidates may affix no more than one banner on display per building at any given moment in time and where such activities violate subsection 1, the CRO shall order the offending banners to be removed and may assess additional penalties. Miss Knox and her campaign team were aware of these regulations based on attendance at mandatory candidates' meetings.

[7] The CRO approved the banner in its original vertical form. When Mr. Pinkoski contacted the CRO about modifying the banner, the CRO allowed the modification with the understanding that cutting it in half would mean only one half would be displayed. The board is satisfied by the CRO's justification that only one half of the banner was approved for hanging and not both. Hence, the halved state of the banner constitutes an unapproved campaign material.

[8] Bylaw 2200 section 48 and the Schedule of Fines and Penalties allow the CRO to issue a counterbalancing fine, in this case, leading to the removal of the banner in question along with two others for the duration of the hours it was up. The CRO noted that the space between the banner halves was minimal compared to a whole banner. The CRO determined the counterbalancing fine should not be in place for the entirety of the campaign period. The panel agrees with the CRO's interpretation of bylaw and the fairness of the penalty.

[9] The panel determined, as stated by the CRO, there was no intent on the part of Miss Knox's campaign to intentionally contravene bylaw. The fast timing of banner correction following notification was noted by the CRO. The panel concurs with the decision not to issue a punitive fine in addition to the counterbalancing fine.

[10] The CRO and Miss Knox both mutually agreed there was a problem with communication and each side arrived at a different understanding of Mr. Pinkoski's original request to modify a pre-approved poster.

[11] For the reasons discussed above, the panel finds the CRO's penalty against Miss Knox' campaign to be reasonable. The ruling of the CRO is upheld.

[12] In regards to the restriction on campaign activities levied by the CRO to take place on Tuesday March 4th between 12:30 and 16:30, the panel recommends the CRO move the counterbalancing fine to Thursday March 5th at the same time.