

DIE Board Ruling 2014-4

Hearing Details:

Style of Cause: Azimi v CRO

Hearing Date: March 6th, 2015

DIE Board Panel Members: Sean Wallace, Chief Tribune

Lerina Koornhof, Tribune

Nikki Way, Tribune

Issues:

[1] Did the CRO err in Ruling #5 in issuing a \$25 fine for failure to report all access to rooms on campus?

[2] Did the CRO further err in issuing a \$180 punitive fine for time spent in the unauthorized room?

[3] Did the CRO further err in issuing a \$40 punitive fine for the intent of leaving the space uncleaned?

Relevant Legislation:

[4] From Bylaw 2200:

26. Requirements of All Candidates and Plebiscite/Referendum Sides

Each candidate and side manager shall act reasonably and in good faith, and specifically shall

- a) ensure that each volunteer engaging in campaign activities on his/her/its behalf is aware of all bylaws, rules, regulations, and orders;
- b) ensure that each volunteer is in compliance with all bylaws, rules, regulations, and orders while engaging in campaign activities on his/her/its behalf; and

- c) report any contravention of a bylaw, rule, regulation, or order to the C.R.O. immediately.

...

28. No-Use of Non-Universal Resources

No individual candidate or side shall make use of any resource that is not

- a) available to all candidates and sides;
- b) general volunteer labour or expertise; or
- c) accounted for as part of that candidate's or side's campaign expenses.

...

47. Complaints

- . (1) The C.R.O. shall prepare and provide a complaint form which shall require complaints to indicate
 - a) their names and student identification numbers;
 - b) the specific bylaw and section, rule, or regulation that has allegedly been contravened;
 - c) the specific individual or group that is alleged to be in contravention;
 - d) the specific facts which constitute the alleged contravention; and
 - e) the evidence for these facts.

- (2) 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.

...

(4) Where a complaint is received and is found to be complete as set out in Section 47(1), the C.R.O. shall rule on the complaint within twelve (12) working hours of receiving the complaint.

48. Penalties Available

(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 manger who was or whose volunteer was guilty of the contravention.

...

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

Decision:

The Panel was unanimous in their decision:

[5] The Panel agrees with the CRO's assessment of the facts as laid out in CRO Ruling #5. The appellant's campaign manager had special keycard access to 'The Vault', a common student space in HUB residence.

[6] As per section §1.4 (Reporting of Keys) of the *Election Regulations and Guidelines* and under the *Schedule of Fines & Penalties*, the failure to report keys within 24 hours of the nomination deadline results in a \$25 punitive fine.

[7] The appellant argued that (1) she was not made aware that campaign managers also had to report their keycard access, due to a lack of clarity on the nomination package, and (2) that residence common spaces such as 'The Vault' would not fit under the purview of §1.4, similar to how private residence rooms would not be included.

[8] The Panel rejects both of these arguments. Bylaw 2200(26) expressly

states that all volunteers must be aware of all bylaws, rules, regulations and orders. Section §1.4 clearly indicates that campaign managers must also report their campus access, and this is also included as a footnote under 'Candidate Information' in the Nomination Package.

[9] The Panel agrees that while the campus space terminology used in section §1.4 is broad, it is reasonable for the 'The Vault' to be included under this definition. 'The Vault' is a common space on campus that not all students have equal access to. It is considered separately from private residence rooms.

[10] The appellant also argued that all complaints must follow the procedure outlined under Bylaw 2200(47), which includes a limitations period clause that requires the CRO to "rule on a complaint within twelve (12) working hours of receiving the complaint."

[11] Since the CRO was made aware of the access to 'The Vault' on March 2 (though she did not know the extent of the violation at this point), and the ruling was issued on March 6, the appellant argued that the ruling should be voided for taking longer than twelve working hours.

[12] The complaint-in-question that led to Ruling #5 did not follow the procedure outlined in Bylaw 2200(47)(1). The CRO argued that only 'official' complaints are required to follow this procedure, and that complainants may instead choose to submit unofficially. Under this logic, since the complainant did not follow this procedure, Bylaw 2200(47) did not apply and thus she was not required to rule within twelve working hours.

[13] The Panel agrees that the wording in Bylaw 2200(47) is vague. Specifically, the Panel finds that the phrase "...which shall require complaints to indicate" [subsection (47)(1)] is silent with respect to including all forms of complaints. Where rules are silent, discretion lies with DIE Board.

[14] Although the appellant claims that all complaints must follow the procedure outlined in Bylaw 2200(47), the Panel finds that this would limit complainants to students, as under subsection (1)(a), complainant forms require student identification numbers. This would mean that complaints could not be issued by professors, non-student staff, or through

anonymous tips. The CRO also expressed an obligation to follow through with all reasonable complaints, regardless of whether they follow the outlined procedure.

[15] While the appellant argued that twelve working hour limitation periods for CRO rulings exist in Bylaw as a matter of fairness, the Panel finds that the delay in its release did not unfairly prejudice the appellant to due process and appeal mechanisms. The CRO was reasonable in taking time to investigate the matter and was prompt in email communications throughout.

[16] Therefore, the Panel agrees that the \$25 punitive fine for failure to report keys should be upheld.

[17] With respect to both the \$180 and \$40 punitive fines, Ruling #5 stated that the “The Chief Returning Officer does not believe that use of this space provided the Shakiba Azimi campaign an advantage, and no counterbalancing fine will be assessed.” The CRO issued punitive fines on the basis of an “intent to use the space knowing that it was not universally accessible,” as per Bylaw 2200(48)(1)(b).

[18] The Panel finds this reasoning inconsistent with Bylaw 2200(48) governing ‘Penalties Available’. The CRO shall assign a penalty if two requirements are met (1) a candidate, side manager, or volunteer has contravened a bylaw, rule, or regulation, and (2) ***that contravention has provided an unfair advantage to a candidate.***

[19] Thus, the ‘unfair advantage’ provision is not simply a basis for assessing counterbalancing fines, but is a prerequisite for assigning penalties in general (with certain exceptions, including explicit fines under the *Election Regulations and Guidelines*, and disqualifications under subsection (49)).

[20] Since the CRO clearly stated that the candidate did not gain an unfair advantage through the use of ‘The Vault’, and the Panel agrees with this statement of facts, then no punitive or counter-balancing fines may be assessed.

[21] It is important to note that this is separate from the \$25 punitive fine, which is specifically outlined as a mandatory fine under the *Schedule of*

Fines & Penalties and the Election Regulations and Guidelines.

[22] Therefore, the Panel overturns the \$180 and \$40 punitive fines issued for use of the unauthorized space.

Recommendation:

[23] The Panel agrees that the wording of Bylaw 2200(47) [Complaints] is unclear with respect to its inclusiveness over all forms of complaints, and whether its outlined procedure is a mandatory requirement. A definition for 'complaint' is not included under Bylaw 2200. There are compelling policy reasons to both having a transparent complaint system, and providing the CRO some degree of latitude in upholding a fair election.

[24] While the DIE Board has broad plenary jurisdiction over these issues, it is best left to Bylaw Committee and Students' Council to develop appropriate election policies.