

DIE Board Ruling 2014-07

Hearing Details:

Style of Cause: Hudson (Appellant) v. CRO

Hearing Date: March 13th, 2015

DIE Board Panel Members:

Sam N. Alzaman, Associate Chief Tribune (Chair)

Lerina Koornhof, Tribune

Asmaa Mohamed, Tribune

Issues:

[1] Did the CRO err in not accepting Ms. Hudson's written proxy when provided after the meeting?

[2] (a) Did the CRO err in Ruling #1 by failing to consider Ms. Hudson's situation as an emergency pursuant *Bylaw 2300 s.10 (4)(b)*?

(b) Should issues regarding the exercise of CRO discretion be reviewable by the DIE Board?

Relevant Legislation:

[3] From *Bylaw 2300*:

10. Candidate Registration Meeting

(1) The C.R.O. shall hold a meeting for all candidates following the nomination deadline but prior to the commencement of the campaign.

(2) All candidates shall either attend the candidates meeting in its entirety or designate, in writing, an agent who will do so.

(3) Where a candidate contravenes Section 10(2), that candidate shall be disqualified.

(4) The C.R.O. may, at his/her discretion, grant exemptions to Section 10(3) to candidates, but shall do so only where

(a) the candidate requesting the exemption does so in writing at least forty-eight (48) hours prior to the commencement of the candidates meeting; or

(b) the candidate informs and provides satisfactory evidence to the C.R.O. of an emergency for which no notice could be given.

11. Content of the Candidate and Registration Meeting

At the candidate and registration meeting, the C.R.O. shall, at minimum

(a) review all relevant bylaws, rules, and regulations, including this bylaw, and respond to questions about same;

(b) announce the time and date of any forums scheduled;

(c) determine and announce which candidates are joke candidates as set out in Section 2 (i);

(d) where two (2) or more candidates have asked to appear on the ballot under names that are either identical or so similar as to be effectively indistinguishable, determine and announce under what names each of the two (2) or more candidates shall appear on the ballot;

(e) announce any methods that will be regularly used to communicate with candidates;

(f) take attendance for the purpose of verifying compliance with Sections 9 and 10.

Judgment and reasons delivered by

Associate Chief Tribune S. N. Alzaman:

Facts:

[4] Ms. Hudson was unable to attend a mandatory meeting for candidates in its entirety. *Bylaw 2300* section 10(2) allows the candidate to attend in person or send an agent on their behalf. Ms. Hudson had a lab that ran late

and she was not able to attend the meeting on time. Ms. Hudson testified that the class had run late only one other time and she thought there was no reason to think differently on the day of the meeting. The CRO (Jessica Nguyen) disagrees with this position. She takes particular issue with nothing in writing being given before the meeting.

[5] Ms. Hudson also states that two people attended on her behalf in case she was late. However, one of them was running for office and could not be both an agent and a candidate attending the meeting. The other friend did attend the meeting in its entirety. When the CRO called for attendance, she called for Jamie Hudson and there was no response. Only when she called the next name did Ms. Hudson's agent actually step forward and say she was there. The CRO points to this as providing evidence that she was not meant to be an agent attending for Ms. Hudson and only stepped forward to attempt to cover for her.

[6] The CRO tentatively allowed the agent to appear on her behalf. After the meeting the CRO checked her email to see if the candidate had emailed her; as this would constitute the "in writing" portion of *Bylaw 2300* section 10(2). No such email existed. Ms. Hudson provided a note detailing her friend as her agent for the candidate meeting at the DIE Board appeal. This letter was admitted to being written after the meeting and was accompanied with the position that section 10(2) does not require the 'in writing' section to be provided before the meeting.

Decision:

[7] The Tribunal is unanimous in its reasons and decisions.

Issue 1- Did the CRO err in not accepting Ms. Hudson's written proxy when provided after the meeting?

[8] Ms. Hudson did not provide anything in writing before the meeting. At the appeal Ms. Hudson brought a written proxy with both her and her designated agent's signature. She admits that this 'written' document was made after the meeting and not given to the CRO. She states that *Bylaw 2300* is silent on to whom the written document must be given, and when the document has to be 'written' and submitted.

[9] When the rule is silent, discretion lies with DIE Board. Respectfully, we

disagree with Ms. Hudson. *Bylaw 2300* section 10(2) reads as follow: “*All candidates shall either attend the candidates meeting in its entirety or designate, in writing, an agent who will do so.*” The Tribunal finds that this essentially means two things. The bylaw properly deconstructed means the following:

(1) *All candidates shall attend the candidates meeting in its entirety; or*

(2) *All candidates shall designate, in writing, an agent who will attend the candidates meeting in its entirety.*

[10] By splitting section 10(2) into its two halves it is clear that only, as we have labelled it, (2) applies. The Tribunal finds that **an agent cannot be designated without having the designation in writing**. The CRO stated that she tentatively accepted Ms. Hudson’s agent so she could check her email. The CRO stated that if she had received an email at anytime before the meeting Ms. Hudson’s agent would have been accepted. The CRO is correct on this point; had Ms. Hudson provided notice, in writing, even 1 minute before the meeting then she would have met the section 10(2) requirements. As such, it was impossible for the “agent” to attend meeting in its entirety as an agent for Ms. Hudson. We would find that **Ms. Hudson failed to have an agent for the entirety of the meeting**.

[11] For further clarification, this panel will suggest that written notice could be emailed anytime before the beginning of the meeting. A hand written notice, or typed and printed, would be provided to the chair of the meeting during the attendance roll call. The CRO chairs that meeting for the candidates, so contrary to Ms. Hudson’s position it only makes sense that the CRO be provided with the written notice.

Issue 2- (a) Did the CRO err in Ruling #1 by failing to consider Ms. Hudson’s situation as an emergency pursuant *Bylaw 2300* s.10 (4)(b)? (b) Should issues regarding the exercise of CRO discretion be reviewable by the DIE Board?

[12] *Bylaw 2300* section 10(4) provides “[t]he C.R.O. may, at his/her discretion, grant exemptions to Section 10(3) to candidates, but shall do so” only in certain circumstances. Ms. Hudson and the CRO both disagreed on the meaning of the term emergency in section 10(4)(b). The CRO

emphasized that even if the class ended on time, at 4:50 PM, Ms. Hudson would have had only 10 minutes to get to the meeting at 5:00 PM. As such, the CRO submitted that anyone should foresee the possibility of an out of town trip running late. Ms. Hudson contends that it was out of her control and since she was unable to provide written notice, this should constitute an emergency.

[13] This panel finds that the dispute over the term ‘emergency’ is irrelevant. There is no requirement for the CRO to accept a candidate’s reasons. The CRO is specifically granted the ability to make this decision based on his/her discretion. The Tribunal has come to the determination that **it is not for the DIE Board to consider whether the CRO exercised his/her discretion appropriately**. In extreme cases it may be possible to overrule the CRO’s discretion; however, we find that this is not one of those cases.

[14] Accordingly, the CRO’s discretion in this case is not reviewable and no written notice was provided pursuant *Bylaw 2300* requirements. The appeal is dismissed.

Appeal dismissed, disqualification upheld

A. Mohamed (Tribune)..... I Concur

L. Koornhof (Tribune)..... I Concur