

DIE BOARD RULING 2014-2015 – 08

HEARING DETAILS:

Style of Cause: Jamali v. CRO
Hearing Date: March 16th, 2015
Hearing Number: Ruling #08 2014/2015
DIE Board Panel Members: Harvir Mann, Associate Chief Tribune, Chair
Asmaa Mohamed, Tribune
Ritika Banerjee, Tribune
Appearing for the Applicant: Aila Jamali, candidate for Students' Council (Science)
Appearing for the Respondent: Jessica Nguyen, Chief Returning Officer
Interveners(s): None

ISSUES:

- [1] Did the CRO err in Ruling #1 by failing to consider Ms. Jamali's situation as an emergency pursuant to Bylaw 2300(10)(4)(b)?
- [2] Should the CRO's conduct regarding exercise of discretion be reviewable by the D.I.E. Board?

RELEVANT BYLAWS:

- [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.

FACTS:

[4] Ms. Jamali is a candidate for Students' Council from the Faculty of Science. Ms. Jamali was unable to attend a mandatory candidates meeting in its entirety. She arrived a few minutes late due to circumstances in which she had an exam that started late and ended late. By her accounts, her exam was supposed to run from 3:30 to 4:50, giving her ten minutes to make the candidates meeting. However, the exam commenced later than planned and therefore, Ms. Jamali was forced to stay an extra ten minutes to complete it. Ms. Jamali arrived 5 minutes late for the candidates meeting and remained for the rest. At the conclusion of the meeting, Ms. Jamali informed the CRO of her situation and from her standpoint, the CRO assured her she would not be disqualified pending a review of bylaws first. Her professor also emailed the CRO a few hours after the episode corroborating Ms. Jamali's accounts.

[5] In Ruling #01 however, the CRO disagreed with the applicant's position and disqualified her from the race based on the belief she contravened Bylaw 2300(10)(2) for failing to attend the meeting in its entirety. Ms. Jamali's absence from the first 5 minutes of the candidates meeting meant she had missed the attendance taken by the CRO as per Bylaw 2300(11)(f).

[6] Ms. Jamali did not designate a proxy to attend the meeting on her behalf nor did she provide a written account to the CRO prior to the meeting. By her accounts, she had no reason to believe the exam would take longer than the designated timeframe. Ms. Jamali believed this constituted an emergency scenario outside of her control. She appealed her justification on the grounds that Bylaw 2300(10)(4)(b) exempts a candidate from disqualification where a candidate can provide evidence of an emergency for which notice could not be given prior. Ms. Jamali also reasoned that she had continued

planning her election campaign under the assumption the CRO did not disqualify her. By her accounts, she invested significantly in time and resources. She appealed the CRO's decision to the D.I.E. Board to overturn the CRO's ruling and reinstate her back into the race.

DECISION:

[7] The Tribunal is unanimous in its decision.

Issue 1 - Did the CRO err in Ruling #1 by failing to consider Ms. Jamali's situation as an emergency pursuant to Bylaw 2300(10)(4)(b)?

[8] Bylaw 2300(10)(2) reads: *"All candidates shall either attend the candidates meeting in its entirety or designate, in writing, an agent who will do so."* By the applicant's own admission, she did not attend the entirety of the meeting, arriving late and missing the attendance timeframe. Ms. Jamali also did not designate a proxy, as she was unfamiliar with Bylaw 2300. Bylaw 2300(10)(3) reads: *"Where a candidate contravenes Section 10(2), that candidate shall be disqualified."* The panel respectfully agrees with the CRO's decision to disqualify the applicant based on this provision.

[9] Bylaw 2300(10)(4) states: *"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."* In this case, Ms. Jamali did not inform the CRO prior to the meeting about a potential absence; hence only Bylaw 2300(10)(4)(b) applies here.

[10] Ms. Jamali and the CRO both disagreed on the definition of 'emergency' as defined by Bylaw 2300(10)(4)(b). Ms. Jamali reasons that the change in exam times was an unprecedented and unanticipated outcome which was outside of her control. Hence, she believed this constituted an emergency on the part of the instructor for which she, as the applicant, could not provide notice to the CRO. The CRO argued that the exam was known well in advance and the applicant would only have had 10 minutes to leave her exam and attend the candidate's meeting assuming it ended on time. The CRO reasoned the applicant should have foreseen a potential conflict arising out of tardiness and made the effort to designate a proxy.

[11] The panel finds the reasons of the applicant well-intentioned and sympathizes with her plight; however, the issue of defining 'emergency' is considered irrelevant. As stated by Bylaw 2300(10)(4), the CRO may grant exemptions at his/her discretion. The panel agrees with the CRO's opinion that since the exam date and time were known to the applicant, she should have taken the necessary steps to proactively anticipate the probability of being late to the candidate's meeting and making necessary adjustments.

Issue 2 – Should the CRO's conduct regarding exercise of discretion be reviewable by the D.I.E. Board?

[12] Though the D.I.E. Board does not operate on the principle of precedence, we refer this issue to *D.I.E. Ruling 2014-07* which dealt with the same issue. It is not in the D.I.E. Board's interests to decide whether the CRO exercised his/her discretion in an appropriate manner. There is no basis to review the

CRO's discretion and overturn the CRO's ruling. The appeal is dismissed and the disqualification of the applicant is upheld.

Appeal dismissed, disqualification upheld