



Case Number: D 0011/00

D E C I S I O N
of the Disciplinary Board of Appeal
of 9 May 2001

Appellant: N.N.

Decision under appeal: Decision of the Examination Board for the
European Qualifying Examination dated
22 September 1999.

Composition of the Board:

Chairman: B. Schachenmann
Members: Ch. Rennie-Smith
J.-P. Seitz
E. Lyndon-Stanford
H. Lichti

Summary of Facts and Submissions

- I. The Appellant appealed, by a notice of appeal received by fax on 25 November 1999, against the decision, posted by registered letter on 30 September 1999, of the Examination Board that he had been unsuccessful in paper C of the 1999 European Qualifying Examination ("EQE"). A written statement of the grounds of appeal dated 29 December 1999 were received by the Examination Secretariat on that date by fax and a further copy, with several enclosures, was also received by post.
- II. By letters from the Disciplinary Board of 25 April 2000, the President of the European Patent Office and the President of the Institute of Professional Representatives were invited, pursuant to Articles 27(4) REE and 12 RDR, to comment on the case. By a letter dated 23 June 2000, the President of the EPO informed the Board he did not intend to comment. The President of the Institute did not reply.
- III. By a communication dated 25 September 2000, the Board notified the Appellant of its provisional opinion that the appeal would have to be dismissed and invited the Appellant to make any further submissions within the following two months. No reply to that communication has been received.
- IV. The Appellant requests "rectification" of the decision of the Examination Board and "a decision that the appellant fulfills the requirements pursuant to Article 17(1) REE". No request is made for oral proceedings.

Reasons for the Decision

1. The appeal is admissible.
2. The appellant was an unsuccessful candidate in paper C of the European Qualifying Examination ("EQE") held in March 1999. In that paper, the appellant was awarded 49 marks but needed at least 50 marks to achieve a "pass" grade. The appellant considers his answers merited at least 50 marks.
3. The appellant's submissions in his grounds of appeal fall into two categories. First, he says by way of "general remarks" that the time allowed for the examination is short and this affects particularly candidates who, like himself, do not speak any of the official languages as their mother tongue. It is questionable whether the appellant advances this argument independently of his second category of submissions, since he says he "does not wish to stick to the shortage of time as an essential element" of his case but he deems it "nevertheless rather important that this aspect is taken into account when reviewing the answer paper". In view of that possible contradiction, the Board will consider the argument both independently of and in conjunction with the second and, to the appellant, clearly more important line of argument.
4. That second line of argument consists of a detailed analysis by the appellant of his answers to paper C in which he seeks to demonstrate, by reference to most if not all the matters raised in each section of the paper, that his answers were not just correct but correct to a standard meriting a higher mark than 49.

5. It is well established by the jurisprudence of the Disciplinary Board that it only has jurisdiction in EQE matters to establish whether or not the Examination Board has infringed the REE, a provision implementing the REE, or a higher-ranking law. This follows inexorably from Article 27(1) REE which is the basis of the Board's jurisdiction in EQE matters and which reads:

"An appeal shall lie from decisions of the Board and the Secretariat only on grounds of infringement of the Regulation or of any provision relating to its application."

Thus the Disciplinary Board may only review Examination Board decisions for the purposes of establishing that they do not infringe the REE, its implementing provisions or a higher-ranking law. It is not the task of the Disciplinary Board to reconsider the examination procedure on its merits nor can it entertain claims that papers have been marked incorrectly, save to the extent of mistakes which are serious and so obvious that they can be established without re-opening the entire marking procedure (see, for example, D 1/92 (OJ 1993, 357), Reasons points 3 to 5 and D 6/92 (OJ 1993, 361), Reasons, points 5 to 6). The appellant's arguments must be seen in the light of this principle.

6. As regards the time/language argument, this has been the subject of prior decisions of the Board. That insufficient time was, in a candidate's view, allowed goes to the examination conditions. The time allowed is a matter set down by the Examination Board and, unless it can be shown this was done in a manner which infringes the REE or its implementing provisions, the Disciplinary Board cannot intervene. In the present case there is no allegation, let alone any evidence, of any such infringement. The contention advanced by the

appellant, that the time allowed inconveniences candidates whose first language is not one of the official languages, was considered by the Disciplinary Board in D 2/95 (unpublished, see Reasons, point 6) not to be an infringement of the relevant legislation. The inevitably different circumstances of candidates whose native language is not one of the official languages was considered and explained by the Disciplinary Board in D 9/96 (unpublished, see Reasons, points 3.4 to 3.6) as not justifying "any additional bonus to be given to candidates whose mother tongue is not an official language of the EPO".

7. As regards the appellant's analysis of his examination answers, the detailed way he has done this illustrates the very essence of the reason why the Disciplinary Board cannot entertain such submissions. The appellant's arguments in this respect show in the clearest way possible that his opinion and that of the examiners as to his answers are different. The Board cannot review the decisions of the examiners unless, as mentioned above, there is a mistake in the marking which is so obvious that it can be established without re-opening the marking procedure. Otherwise, such differences of opinion are a reflection of value judgments which are not, in principle, subject to judicial review (see D 1/92, supra, paragraph 6). The appellant concludes his analysis by saying he "requests a favourable reconsideration of the present answer paper". Such reconsideration is quite simply not open to the Disciplinary Board.

8. As mentioned in paragraph 3 above, it appears that the appellant asks the Board to consider his two lines of argument, as to time/language on the one hand and the level of marking on the other, as one combined set of

submissions. It must however follow that, if neither of those arguments independently contain matters which it is open to the Board to review, the mere combination thereof can make no difference.

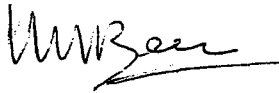
9. Accordingly the Disciplinary Board has no alternative but to dismiss the appeal.

Order

For these reasons it is decided that:

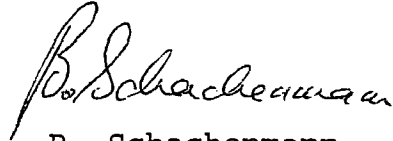
The appeal is dismissed.

The Registrar:



M. Beer

The Chairman:



B. Schachenmann