



Case Number: D 0002/03

D E C I S I O N
of the Disciplinary Board of Appeal
of 17 December 2003

Appellant: N.N.

Decision under appeal: Decision of the Examination Board for the
European Qualifying Examination dated
18 September 2002.

Composition of the Board:

Chairman: B. Schachenmann
Members: J.-P. Seitz
Ch. Bertschinger

Summary of Facts and Submissions

I. By a notice of appeal dated 24 October 2002 and received at the EPO on 28 October 2002, the Appellant appealed against the decision posted by registered letter on 25 September 2002 of the Examination Board that he had been unsuccessful in paper D of the 2002 "EQE".

- The written statement of grounds of the appeal was received on 28 October 2002 together with the notice of appeal.

- The appeal fee was paid on the same date.

II. The Appellant's submissions in his grounds of appeal consist of an assertion that the mark he was given for paper D is too low due to the fact that said paper set vague questions, which therefore would produce a wide range of possible answers all of which could be considered correct.

Moreover the fact that the candidate has no indication whatsoever at his disposal in respect of the marks possible for each question, leaves him, having regard to the general vagueness of said question, unable to appreciate neither the time he has to spend on each part of the paper, nor the depth required for each section.

The indefinite and vague questions, in particular in part II of the paper question 3, can produce correct answers, which the Examiners may not have foreseen. Therefore the corresponding marking could probably not reflect the inner worth of the answers given.

III. The requests are the following:

- that the decision of the Examination Board be rectified (sic) and that the Appellant be declared having passed the D Exam paper of 2002 and,
- that the appeal fee be reimbursed.

IV. In a communication dated 31 March 2003 the Board expressed its provisional opinion that in fact the Appellant's submissions consist of no more, than his opinion that he should have been awarded higher marks if the examiner had duly taken into consideration the substantive merit of his work with regard to the wide diversity of the answers resulting from indefinite and open ended questions.

According to the constant and well established jurisprudence of this Board, its jurisdiction in "EQE" matters is strictly limited to examining whether or not the Examination Board (i.e. the first instance in this matter) has violated the REE or any provision implementing it (see Article 27(1) REE).

Therefore it cannot be within the competence of the Board to reconsider the examination procedure on its merits, i.e. the quality of a candidate's work, unless obvious and serious mistakes can be established without reopening the whole marking procedure.

In the present case no such errors are even alleged.

Since on the other hand there is no provision whatsoever in the REE, that the candidate should be in advance informed of the marks possible for each section of the paper he sits, no violation of the REE has been assessed by the Appellant.

Hence the Board stated that the Appellant's statements consist of his own opinion as to the merits of his work, and that such a value judgement, being essentially subjective, cannot establish an infringement of the REE open to judicial review.

- V. In his answer dated 24 April 2003 and received at the EPO on the 29 April 2003 the Appellant puts forward that according to a general principle of law it is the duty of the Board of Appeal to be equitable, and therefore that the REE does not have to specify every criteria it has to act upon.

He then stated that the exam system of the EPO could be improved in that a candidate should be in advance informed of the marks possible for each section of the paper.

Having regard to the examiner's report in the Compendium of the 2002 EQE concerning paper D he failed to pass, he still remains confused at why his work received such low marks.

He then referred to several passages of his paper he considered being correct in view of said report.

He concluded that for the sake of equity the Board should reconsider its provisional opinion and allow the appeal.

Reasons for the Decision

1. The appeal is admissible.

2. As stated above, the Appellant's submissions consist of no more than his opinion that he should have been awarded a higher mark if the examiners had correctly evaluated the quality and the merits of his answers.

It is however a constant and very well established jurisprudence of this Board that its jurisdiction in EQE matters is limited to examining whether or not the Examination Board has violated the REE or any provision implementing it (see Article 27(1) REE).

In particular, there are no such provisions in the REE providing for a further control by the Board of the merits of the marking by the two examiners.

It cannot therefore be within the competence of this Board, let alone its capability to do it, to reconsider the examination procedure as to its merits, i.e. the quality of a candidate's answer paper, unless obvious or serious mistakes can be *prima facie* established without reopening the whole marking procedure.

In the present case the Appellant in his answer to the communication has referred to several passages of his

paper allegedly corresponding to what the Examiner's report considered as the main points to cover.

However, none of these references can show in any manner an error amounting to a violation of the REE.

There is no reason for the Board to substitute its assessment for that of the Examination Board, and to reopen the marking procedure.

In the case in suit in fact the Appellant's statements, since the very beginning of this appeal procedure, are based entirely on his own opinion as to the merits of his work.

Such a value judgment is *per se* subjective and does not allow, even when relying on the general principle of equity, any judicial review.

3. Accordingly, the Disciplinary Board of Appeal has no alternative but to dismiss the appeal. The condition for the reimbursement of the appeal fee under Article 27(4) REE is therefore not fulfilled.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

M. Beer

B. Schachenmann