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File Number: D 6/92

DECISION  
of 13 May 1992

Appellant: N.N.

Headword: Powers of Examination Board and Disciplinary Board of Appeal  
Articles 10(2) and 12(2) of the Regulation on the European  
Qualifying Examination (REE)

Keyword: Extent of power of investigation and decision of Disciplinary Board  
of Appeal

Headnote

1. When a candidate has scored in his papers 4, 6, 4 and 4 and thus failed with a total of awarded grades of 18, there is no legal basis under Article 12 of REE to declare him as being successful (point 4 of the Reasons for the Decision).
2. The Disciplinary Board of Appeal is empowered to examine whether the examination procedure conformed to the relevant regulations and instructions but not to reconsider the entire examination procedure on its merits. Only alleged serious and obvious mistakes by the Examination Board can be considered under this heading. These mistakes must be, (a) "relevant" to the appealed decision, in the sense that the decision would have been different if the mistakes had not been made, and, (b) fundamental, in the sense that they can be verified by application of legal principles (point 5 of the Reasons for the Decision).



Case Number : D 6/92

**D E C I S I O N**  
**of the Disciplinary Board of Appeal**  
**of 13 May 1992**

**Appellant :** N. N.

**Decision under appeal :** Decision of the Examination Board for the  
European Qualifying Examination dated  
11 October 1991.

**Composition of the Board :**

**Chairman :** P. Gori  
**Members :** L. Mancini  
J. Stephens-Ofner  
C. Bertschinger  
E. Bokelmann

## Summary of Facts and Submissions

- I. The Appellant sat for the European Qualifying Examination for Professional Representatives held before the EPO in April 1991.
- II. By registered letter dated 11 October 1991 the Chairman of the Examination Board (hereafter "the Board") for the European Qualifying Examination notified the Appellant of his performance in the four papers, in accordance with the implementing provisions under Article 12 REE (published in OJ EPO 1991, 88 and 226).

The grades obtained by the Appellant for a total of 18, were the following:

Paper A: 4 (pass)  
Paper B: 6 (very inadequate)  
Paper C: 4 (pass)  
Paper D: 4 (pass)

The Appellant was, therefore, informed of his not having been successful in the European Qualifying Examination, as well as of the possibility to apply for enrolment for a future qualifying examination.

- III. By letter dated 8 December 1991 the candidate appealed against this decision, without making any specific requests, but generally referring to his grounds of appeal. According to the candidate

"The grounds on which this appeal is being filed is that under Articles 10(2)(a) and (b), 12(2) and Implementing Provisions under Article 12 REE, namely parts III to IX:

1. Paper A should have been awarded at least grade 3;

2. Paper B should have been awarded grade 4, or at least grade 5; and/or
3. Papers C and D should have been awarded grades higher than 4."

Then said arguments 1. and 2. were again submitted in the Statement of Grounds, dated 11 January 1992.

Some factual details on the performance in Papers A and B were also given whilst argument 3. as well as Papers C and D were not elaborated on nor even referred to in the Statement of Grounds.

- IV. On 11 February 1992 the Board decided not to rectify its decision, and forwarded the case to the Disciplinary Board of Appeal.
- V. The President of the Council of the Institute of Professional Representatives before the EPO and the President of the EPO were consulted under Article 12 of the Regulation on discipline for Professional Representatives in conjunction with Article 23(4) REE and have not presented any comment.
- VI. In setting out his grounds of appeal, the Appellant based his request for review of marking on his personal interpretation of the contents of the papers, but without actually proving however, an infringement of the applicable regulations based on legal arguments.

#### Reasons for the Decision

1. The appeal complies with Article 23(2) REE and is therefore admissible.

2. The several submissions by the Appellant can be reduced to the question of whether the Board's decision (a) infringes the REE (Article 10(2)(a) and in particular (b), and 12(2)). The question for the Disciplinary Board of Appeal is therefore whether: (a) any decision by the Board, in a case like the present one (in which only one mark was 6 (very inadequate), and the other marks were 4 (pass), and the total of grades awarded was more than 17 (namely 18), infringes the above Articles of the REE.
  
3. The Disciplinary Board of Appeal in reviewing the legality of the contested decision, must refer to the basic and generally accepted principle that, in matters connected with examinations, the Disciplinary Board of Appeal is only empowered to investigate whether the appealed decision constitutes, or is based on, an infringement of the REE, since the responsibility for the conduct of the examination lies with the Examination Board and in no circumstances can the Disciplinary Board of Appeal observe that responsibility.
  
4. For the proper evaluation of the instant case, one has to consider that the Implementing provisions under Article 12 REE and related provisions clearly state that:

"VII. ...A candidate is successful if he ...

(b) has failed only one paper, which has been awarded a grade 6, and

(i) if that grade is in paper A or B, it is offset by a grade 3 or better in paper B or A and in at least one other paper ...

VIII. A candidate is unsuccessful if he has failed one or two papers and does not qualify under point VII.

IX. An unsuccessful candidate is entitled under Article 12(3) REE to resit the examination on one of the next two occasions on which it is held if he

- (a) has failed only one paper, which has been awarded a grade 5 or 6, and the total of grades awarded is no more than 17;..."

Given the clarity and requirement of such implementing provisions, which were public, known and effective at the time of the European Qualifying Examination and the nature and character of the Board's decision, it is not possible for a candidate obtaining a grade 6 and three grades 4, with a total of awarded grades more than 17 (namely 18), to pass the examination as a whole or in part with the possibility to resit certain papers only.

- 5. As stated in several decisions of the Disciplinary Board of Appeal, the competence of the Disciplinary Board of Appeal in cases concerning the European Qualifying Examination for professional representatives before the EPO, is restricted to examining decisions by the Board in order to establish whether or not the REE, its implementing regulations or higher-ranking law have been correctly applied.

The Disciplinary Board of Appeal, therefore, is only empowered to examine whether the examination procedure conforms to the relevant regulations and instructions. As it is not the task of the Disciplinary Board of Appeal to reconsider the entire examination procedure on its merits, only alleged serious and obvious mistakes by the Board can be considered. These mistakes must be 'relevant' to the appealed decision, in the sense that the decision would have been different if the mistakes had not been made; furthermore the mistakes must be fundamental, in the sense

that they can be verified by application of legal principles based on the regulations and provisions related thereto. Other allegations that candidates' papers should have been evaluated by the examiners more favourably do not therefore fall within the jurisdiction of the Disciplinary Board of Appeal, for value judgments are not, in principle, subject to judicial review.

6. Consequently, on account of the above basic principle, that in examination matters the powers of the Disciplinary Board of Appeal are limited to reviewing Examination Committee and Board decisions for possible infringements of the REE or of any provision relating to its implementation, (Art. 23(1)), the Disciplinary Board of Appeal, in the instant case, finds that the legal validity of the appealed decision, cannot be disputed in as much as it does not constitute an infringement of the REE but a correct application of both the REE and the implementing provisions, and therefore the candidates' submissions cannot be legally accepted, inasmuch as it is not juridically feasible for the disciplinary Board of Appeal, in said factual situation, to award or allot different (higher or lower) grades in the examinations papers.

Order

For these reasons, it is decided that:


1. The appeal against the decision of the Examination Board for the European Qualifying Examination of the EPO dated 11 October 1991 is dismissed.

The Registrar:

The Chairman:



M. Beer



P. Gori

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