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Date of decision	29 Juni 2000	Case number	D 0004/99 - DBA
Application number			
IPC		Procedure Language	EN
Title of the application			
Applicant name	N.N.	Opponent name	
Headnote		Articles and Rules	
Keywords		Cited Decisions	
Catchwords:			

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- *Le texte complet suivant de la décision ne comprend pas les images*

Summary of Facts and Submissions ▲

I. The Appellant resat paper D of the European Qualifying Examination in 1998. In the decision under appeal, dated 23 September 1998, he was informed that his paper D had been marked: 5 and that the Examination Board had decided that he had not been successful in the examination 1998.

II. By letter received on 30 October 1998, the Appellant appealed against that decision and filed grounds of appeal. The appeal fee was paid on 28 October 1998.

III. The Appellant submitted that he should have been awarded a grade 4 instead of grade 5 for his paper D. He pointed to the fact that the two examiners had marked the paper differently. Whereas the total of the marks awarded by the examiners for part I appeared to be substantially uniform, the single marks awarded for each answer were very often in disagreement with each other. In part II also the two totals appeared to be in disagreement. He concluded therefrom that the marking infringed Article 16 REE according to which the Examination Board should give the members of the Examination Committees the necessary instructions to ensure that candidates' answers were marked in a uniform manner. In the case of non-uniform marks for the same answer, he considered it equitable that the higher mark should be considered as the correct one. As an alternative, the higher mark should be awarded at least for those answers where the difference between the marks was greater than 5%. As a further alternative, he proposed that the more striking and evident non-uniform marks awarded for answer 1 of part I and for answer B of part II should be completely disregarded.

IV. In a communication of the Board, the Appellant was informed that the Board was not empowered to reopen examination. In an examination procedure it was completely normal that for the same answer one examiner arrived at a different result than another examiner. There was no principle that in the case of two different markings for the same answer the higher mark be considered as the only correct one. In respect of the Appellant's allegation that the examiner having rewarded the lower marks had misjudged the answers, these submissions were directed towards a reopening of the examination. The appeal was, therefore, likely to be rejected.

V. In his reply, the Appellant submitted that any discretionary margin for the examiners had been exceeded by the marking of his papers. A quite evident example of the lack of uniformity was answer 1 of part I where 1.5 and zero marks had been awarded in case of a maximum possible of 3. Where two judgments were so different, they were clearly contradictory and the inevitable conclusion was that at least one of them was wrong. Such mistake could be detected without any consideration of merits of the answers. Without reopening the examination it was possible to discard the lower mark. This seemed to be logical and fair because it was likely that the examiner awarding the higher mark had identified correctly in the answer the substantiation for that mark.

VI. The Appellant requested that the decision under appeal be set aside, that paper D be recognised to be 4 (pass) and that he be declared as having passed the European Qualifying Examination 1998.

VII. The President of the EPO and the President of epi were consulted and have not made any comment.

Reasons for the Decision ▲

1. The appeal is admissible.

2. In essence, the Appellant's complaint concerns the fact that the two examiners have awarded different marks for different questions of paper D. Actually, marks were to be given for the nine questions of part I of the paper and for the five questions in part II. For four of those questions the marks awarded were identical, for six questions the difference was 0.5 marks, for two questions the difference was 1 mark and for the remaining two questions the difference was 1.5 and 2.5 points.

3. The Appellant's starting point that in case of non- identical marks only one value can be the correct one is irreconcilable with the fact that marking is an individual assessment of the candidate's work. Rather, more or less strict standards are possible and different aspects may be considered essential or less important even within the general instructions to the examiners for marking the papers contained in the implementing provisions to the REE (OJ EPO 1994, 595). Therefore, examiners must have a latitude of evaluation when awarding marks and individual examiners may arrive at different marks, both results being justifiable. Therefore, differences in marking do not violate the REE and its implementing regulations (cf. D 5/94 of 15. November 1995, Reasons, point 1 and D 6/98 of 20. April 1999, Reasons point 5, both not published).

4. In order to safeguard the principle of equal treatment, harmonisation of marking is foreseen in the marking sheets (in the present case form EC-III/D98). If the marking is different, the two examiners may revise their marks on the basis of a discussion among themselves, or papers may be marked by further examiners before the Examination Committee as a whole recommends a grade for the paper to the Examination Board. This means that the recommendation of the grade by the Committee and its determination by the Board is made in knowledge of the different marks awarded by the two examiners. It has been accepted under the established case law that this system ensures uniformity of marking as required

by Article 16 REE (D 12/82, OJ EPO 1983, 233).

5. Apparently, a revision of marks or a marking by further examiners was not considered necessary as far as it can be seen from the marking sheet which is without entries in the respective columns. This is hardly surprising under the circumstances of the case. Both examiners came to the clear result that the marking corresponded to grade 5 (fail) with 53.5 and 50.5 marks, respectively, 55.5 marks being necessary for grade 4 (pass). None of the examiners had to revise his result considering the other examiner's result. The differences in the individual marks emphasized by the Appellant may appear significant in the calculations of percentages produced by the Appellant. As a matter of fact, however, a difference of 0.5 is the smallest difference in the practice of the Examination Committees, and also a difference of 1 mark is more than usual. The difference of 2.5 for question B of paper II has to be seen in relation to the maximum marks (ie 17) possible for this question and lies also within the usual latitude of evaluation which is necessary because uniformity of marking does not mean a mechanical system producing absolute equality of marks (above point 3; see in more detail D 12/82, Reasons, point 3). The only marking which may be considered unusual is the marking of question 1 of part I. Here, one examiner awarded 0 marks whereas the other gave 1.5 marks of a maximum possible of 3. This difference was, however, not decisive for the resulting grade. Even if 3 marks had been awarded by both examiners, the Appellant would not have obtained marks sufficient for grade 4 (pass) by one examiner. The purpose of the harmonisation of marks is to avoid that candidates fail in consequence of non-uniform marking. Where differences in marking are minor or where significant differences cannot influence the result of the examination, it cannot be criticized that harmonization does not take place.

6. In summary, the Board cannot recognize the alleged violation of the principle of uniformity of marking.

ORDER ▲

For these reasons it is decided that:

The appeal is dismissed.

Remarks:

O.J. EPO issue: