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EXAMINATION APPEALS BOARD

No. 2021/26/993

THE EXAMINATION APPEALS BOARD

Ruling on the appeal of [Name], residing in [Residence], the Appellant, directed against the decision by the Examination Board of VU Amsterdam's Faculty of Law, the Respondent, to impose a penalty because of academic misconduct during an examination.

I. Course of the proceedings

On 5 March 2021, the Appellant lodged an appeal against the Respondent's decision dated 28 January 2021. The notice of appeal was received within the statutory period. The other conditions governing the appeal were also met. The appeal is therefore allowable.

On 15 March 2021, the Respondent was notified on the Board's behalf that the required procedure mandates that the Respondent should consult with the Appellant to see whether the dispute can be settled amicably. The Respondent invited the Appellant to consult on the matter in good time. An amicable settlement was not reached, however.

The Respondent filed a written defence on 13 April 2021. The appeal was heard in a session of the Appeals Board on 18 May 2021.

The appellant failed to appear at the hearing although she had been properly summoned. The Respondent was represented by Prof. A.R. Neerhof, chair. The Respondent explained her position orally. On request, the Respondent supplied the additional information after the hearing regarding the three other students involved who deny having committed misconduct. The Appellant was given the opportunity to respond, but she failed to do so.

II. The facts and the dispute

Based on the documents and the matters presented at the hearing, the Board has taken the following facts into consideration.

The Appellant took the open book exam on Migration Control on 15 December 2020. The Respondent established that the Appellant had committed misconduct as defined in Article 20(1) and (2) opening words and under (b) of the Rules and Guidelines of the Examination Board of the Faculty of Law by answering the exam questions together with three other students, contrary to the regulations. The Respondent therefore imposed a penalty on her. The Appellant had previously committed plagiarism, which is why this penalty was more severe than would have been the case for a first violation. The penalty is that the Appellant's exam has been declared invalid, that the Appellant may not resit the exam in the current academic year and that she may not sit any other exams from 1 February to 31 May 2021.

The Appellant denies having collaborated with other students during the exam and thus having committed academic misconduct. During the exam she used a summary that she and several other students had drawn up in preparation for the examination. Her fellow students used the same summary, which was permitted. This is why the Appellant's answers coincide with those of the three other students.

The Appellant committed plagiarism in her first academic year. She understands only too well that she can expect a severe penalty if she commits plagiarism or academic misconduct again.

The Appellant considers the penalty imposed disproportionately severe. The consequence of the penalty is that she is not permitted to sit any exams this academic year for subjects she is taking up to June 2021. The Appellant does not expect she will be able to handle the workload to sit these exams next academic year, in addition to the exams for the subjects she will take at that time. Moreover, the coronavirus measures, including online education, are having a major impact on the Appellant's mental state and motivation. All in all the Appellant expects the penalty to result in a study delay. She also foresees financial stress for the coming academic year, as she will have to be enrolled for longer than planned. In so far as a penalty has to be imposed, the Appellant requests that the penalty be made less severe to avoid a delay in her studies.

The Respondent stated that the use of a summary in preparation for the examination is permitted. This can explain the consistency in the answers by the Appellant and her three fellow students for one examination question (question 2c). However, it does not explain the similarities in the answers to two other examination questions (questions 1 and 4). All four students use a particular sentence in their answer to question 1, but that sentence does not appear in the same context in the summary. In their answer to question 4, the four students again use an identical passage, including typos and missing words. This passage does not appear in the summary.

The Respondent sees no reason to meet the Appellant in her request to reduce the duration of the penalty to 30 May 2021.

III. Positions at the hearing

The Respondent explained that the answers to questions 1, 2c and 4 by the four students who sat the Migration Control exam showed striking similarities. The students involved were heard. The hearing revealed that the answers to question 2c matches the text of the summary which the students made in preparation for the exam and which could be used during the exam. However the Respondent feels that the similarities in the answers to the other two questions could not be explained in a satisfactory way.

The similarities are typos and a turn of phrase that was odd in the context of the question. These peculiarities do not appear in the summary used by the students. This was reason for the Respondent to conclude that the students involved, which includes the Appellant, committed academic misconduct. The Respondent has no cause to assume that the joint preparation for the exam resulted in similarities in the students' work, as this is not the nature of the similarities discovered.

The Respondent further stated that the Appellant had committed plagiarism in the past. A more severe penalty was therefore imposed on her than on the other students, who committed plagiarism for the first time. The Appellant is the only one to lodge an appeal against the penalty decision.

IV. Considerations of the Board

Under Section 7.12b(2) of the Higher Education and Research Act (WHW) it is up to the Examination Board to impose a penalty on a student who commits academic misconduct. That type of penalty may entail that the Examination Board withholds the student's right to sit one or more exams for the maximum period of a year. The Examination Board lays down rules about the measures it can take. The Respondent laid down these rules in Article 20(1) and (2) of the Rules and Guidelines of the Examination Board of the Faculty of Law (RR). These rules provide a definition of academic misconduct. Article 22 of the RR stipulates which measures may be taken when academic misconduct has been established.

Article 20(1) of the RR defines academic misconduct as "any action or act of negligence by a student making it impossible to accurately assess – partially or completely – his/her knowledge, insight and

skills,....” The second paragraph of the aforementioned article further specifies what constitutes academic misconduct, without being exhaustive.

The Board considers that the Appellant in her notice of appeal denies having committed academic misconduct and that the other three students involved also denied this in their consultation with the Respondent. Furthermore the Board considers that the Respondent failed to demonstrate the Appellant’s alleged academic misconduct sufficiently. Although the answers by the Appellant and her three fellow students to two exam questions undeniably show a degree of overlap that cannot be traced to the joint summary, the Board is of the opinion that the documentary evidence supplied by the Respondent does not show considerable similarities in the answers of the students involved. The documentary evidence supplied by the Respondent contains insufficient concrete indications that the Appellant committed academic misconduct during the exam by collaborating with three fellow students. The Board therefore deems the appeal grounded.

V. Ruling

The Board:

- rules that the appeal is grounded;
- reverses the Respondent’s decision of 28 January 2021;
- determines that the Respondent – if and where necessary – takes measures to restore the Appellant to a situation similar to the one in which she would have been had the decision, now reversed, not been taken.

Delivered in Amsterdam on 3 June 2021, by Dr A.J.G.M. van Montfort, Chairperson, and Professor J. Fidom and Mr L. de Bie BSc, members, in the presence of J.G. Bekker, Secretary.

Dr. A.J.G.M. van Montfort,
Chair

J.G. Bekker
Secretary

An appeal against a ruling by the Examination Appeals Board may, accompanied by the proper justification, be lodged by the relevant party with the Higher Education Appeals Tribunal, PO Box 16137, 2500 BC The Hague. The period for lodging a notice of appeal is six weeks. The filing fee is €49.