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EXAMINATION APPEALS BOARD

No. 2018/19/810

THE EXAMINATION APPEALS BOARD

Rendering a decision on the appeal by Ms [name], the Appellant, residing in Amsterdam, the Netherlands, directed against the decision by the Examination Board of VU Amsterdam's Amsterdam University College (AUC), the Respondent, to impose a sanction because of plagiarism.

I. Course of the proceedings

On 28 March 2018, the Appellant lodged an appeal against the Respondent's decision dated 19 March 2018. The notice of appeal was received on 3 April 2018 and was thus timely. The other conditions have likewise been satisfied. The appeal is therefore allowable.

On 6 April 2018, the Respondent was notified on the Board's behalf that the required procedure mandated that the Respondent consult with the Appellant to see whether the dispute could be settled amicably. The Respondent timely invited the Appellant to consult with it. An amicable settlement was not reached, however.

The Respondent filed a written defence on 24 April 2018. The appeal was heard at the Board's session on 19 June 2018.

The Appellant appeared personally. The Respondent was represented by C. Zonneveld, Vice-Chair of the Examination Board. The parties explained their positions orally.

II. Facts and dispute

Based on the documents and the hearing, the Board will assume the following facts.

The Appellant is accused of having committed plagiarism in one of her papers. As a sanction, the Respondent gave the Appellant a failing grade.

The Appellant maintains that the software program Turnitin, which checks whether students have committed plagiarism, listed a large number of sources for her paper which she could not have consulted. As an example, she mentions papers which were written by students in Asian countries. In addition, the Appellant supposedly used a series of internet sources, which she denies.

The Appellant believes that she correctly made reference in her paper to the sources for the publications which she used for her paper.

Finally, the Appellant experienced the attempt to reach an amicable settlement as unpleasant. She felt that she was not being listened to. Moreover, the Appellant could not properly defend herself during the hearing, because her tutor, who was well informed about her situation, could not be present. While there was another tutor present, this tutor was not familiar with the Appellant's situation.

The Respondent stated that this was the second time that the Appellant had committed plagiarism. What was relevant to the Respondent's judgment was not the entire Turnitin report, but merely that portion in which the program revealed that the Appellant had cited or paraphrased texts without referring to academic sources. The Appellant *did* reference those sources elsewhere in the paper. This shows that the Appellant was aware of the sources and knew how she needed to cite them with correct references.

Adding a bibliography to the paper did not relieve the Appellant of the obligation to refer to the sources utilized in using quotes in the text.

A final, new argument which the Appellant raised during the hearing was that the subject which she wrote about was limited in scope and that similarities in vocabulary were therefore unavoidable. Given the degree of overlap, the Respondent deems this unlikely.

The Respondent contends that the hearing to see if an amicable settlement was possible went in accordance with the provisions in the Academic and Examination Regulations (AER). The student's tutor was not required to be present during the hearing.

III. The parties' positions

The Appellant complains that she was not informed immediately of the accusation that she had plagiarized, as mandated in the AER. The Appellant also casts doubt on the method used to determine that she had committed plagiarism. This indicated that she had supposedly plagiarized by utilizing sources which the Appellant was not familiar with at all. The fact that there were chunks of text which corresponded with others' texts had to do, the Appellant says, with the academic area which she delved into; this area represents a small domain.

The Appellant explains that she could not defend herself properly during the attempt to achieve an amicable settlement, because she was seized by panic. She had counted on her tutor's being present, but the tutor was unable to be there. Another tutor attended the hearing, but this tutor did not know her.

The Respondent indicated that this was the first time that it had heard that the Appellant was not informed of the finding of plagiarism immediately after this finding had been made. That is indeed the rule.

The software to determine whether there was plagiarism was new for the Respondent. Accordingly, an expert was asked about the significance of the overlap which Turnitin had identified. Not all of the similarities which Turnitin pointed to resulted from plagiarism. The Respondent looked only at striking similarities and the absence of sources. This revealed that the Appellant did not always mention her sources or did so in the wrong way. All of the sources were correctly mentioned in the bibliography, however.

By receiving a failing grade for the paper, the Appellant was given a severe punishment. That was because of the intensive nature of the programme at AUC. This programme is geared to successfully completing the programme components all at once – without the possibility of a resit – and graduating within the nominal duration of study. If a student gets a failing grade, graduation within the nominal study duration becomes problematic.

The Respondent explains that it is not necessary for the tutor to be present while attempts are made to reach an amicable settlement. Nonetheless, the Respondent encourages the tutor to be there, so the student will feel supported during the hearing.

IV. Findings by the Board

Article 3.2.8 of AUC's AER provides that plagiarism can result in sanctions. Appendix 2 of the AUC defines what is meant by 'plagiarism' and which sanctions may be imposed. Plagiarism occurs by the student's "making use of or, as the case may be, taking over another person's texts, data or ideas without complete and correct acknowledgement of sources" (1.3.2) and "[f]ailing to clearly indicate in the text, for instance by means of quotation marks ... that literal or near-literal quotations have been included in the work, even if a correct reference to sources has been included" (1.3.3). Under Article 3.1 of Appendix 2, the examiner must inform the student immediately if he/she believes that the student has plagiarized.

With regard to these proceedings, the Board concludes along with the Appellant and Respondent that the proper procedure was not followed in this case. Specifically, the examiner did not inform the Appellant immediately of his findings. In the Board's view, this was not in keeping with the procedural due care to be exercised.

As for the content of the disputed decision, the Respondent has not sufficiently demonstrated that plagiarism actually occurred here within the meaning of Article 1.3 of Appendix 2 of the AER. The Respondent emphasized at the hearing that it interprets this provision, in particular, Article 1.3.1, in a very stringent way. The Board does not deem such a stringent interpretation appropriate. First of all, it is not warranted, because, as in every programme, there has to be some latitude for the student's learning process. Secondly, it is uncalled for – and this is crucial in the Board's opinion – because all of the sanctions which may be imposed for plagiarism are severe in nature. Even the lightest sanction (a 'fail' (or 'F')) has extraordinarily severe repercussions for students in this programme, as the Respondent also expressly pointed out at the hearing.

The Board finds with respect to the disputed decision that the text which the Appellant turned in certainly did not do justice to the conditions stated for references and quotes. Yet the question is the extent to which the Appellant intended to use others' texts without correctly referencing them. The texts considered plagiarism by the Respondent partly included a source reference, but not at the right location or with insufficient information. The texts which did not have source references, but apparently did come from external sources, were limited in number. Further, Turnitin does not take into account the content of the quote. Sometimes, quotes pertain to facts, terms or definitions which are generally known and for which a clear intellectual owner cannot be named.

The Board shares the Respondent's view that any recidivism should not affect the question whether the rules have been violated, but only the severity of the punishment.

All in all, the Board concludes that the Respondent has not sufficiently demonstrated that the Appellant committed plagiarism within the meaning of Article 1.3 of Appendix 2 of the AER.

V. Decision

The Board hereby declares the appeal to be well founded and reverses the disputed decision. The Board hereby orders the Respondent to take a decision again with due observance of the Appeals Board's findings, and, specifically, within two weeks after this decision is announced.

Thus rendered in Amsterdam on 30 July 2018 by Prof. F. J. van Ommeren (Chair), Prof. J. J. Beishuizen, Prof. L. H. Hoek, Ms T. Mekking and Mr F. M. Öksüz (Members), in the presence of J. G. Bekker (Secretary).

Prof. F. J. van Ommeren
Chair

J. G. Bekker
Secretary

An interested party may, providing a proper statement of reasons, lodge an appeal against a decision by the Examination Appeals Board with the Higher Education Appeals Tribunal, P.O. Box 16137, 2500 BC The Hague, the Netherlands. The notice of appeal must be filed within six weeks. The filing fees are €46.