AHMED V EGC

Judgment Date: March 30, 2016

Panel: Andrew Tam (Panel Chair), Aaron Meng, Jenny Ryu, Sukhbir Thind, and Tamara Kljakic

Reasons for Judgment: The Board

Judgment and Reasons

I. Overview

1. This appeal arises out of a decision by the Election Governance Committee [EGC] sanctioning the Petitioner, Yousuf Ahmed, with three demerit points for violating Section 11.1 of By-Law #2 during Ahmed's campaign for USC Science Councillor.
2. Section 11.1 of By-Law #2: Elections By-Law [the "fair play doctrine"] reads as follows:
    a. **11.1 Fair Play**
    b. *Candidates shall campaign in accordance with the rules of fair play. Breaking the rules of fair play include, but are not limited to, libel, slander, general sabotage of the campaigns of other candidates, misrepresentation of fact, and malicious or intentional breach of this By-law or applicable regulations.*
3. The Petitioner argues that his conduct did not constitute an "unfair advantage" that would be caught within the ambit of this section. In the alternative, even if an unfair advantage was created, the Petitioner argues that the concept of unfair advantage is highly ambiguous and the application of the fair play doctrine to the circumstance at hand should be limited.
4. The Respondent counters that s.11.1 and the EGC's jurisdiction enable it to find instances of conduct unaligned with the rules of fair play. In this case, the Petitioner's conduct was an unfair advantage triggering the fair play doctrine because it is a normative provision that a candidate cannot offer valuable consideration to induce voter support.

5. This Board cannot adopt the Petitioner's argument to find the decision unreasonable. It is within the EGC's power to interpret By-Law #2, and to sanction candidates for misconduct under By-Law #2.
6. For the following reasons, the appeal is dismissed.

II. The EGC Decision

7. On January 30, 2016, a complaint was drawn against Yousuf Ahmed for posting in a public Facebook group, "Official Biology 1001/1002 2015-2016", which comprises approximately 1200 students. The post contained Ahmed's personal resources for the course including class notes and past quizzes, accompanied with a message soliciting votes for his USC Science Councillor campaign.
8. The EGC believed an unfair advantage was created when Ahmed used his personal class notes to induce voter support from his peers, considering also the size of the group and the fact that the student members comprise Ahmed's direct voter group.
9. In a hearing conducted by the EGC on January 31, 2016, Ahmed conceded the post was intended to solicit votes for his campaign and was not to simply distribute notes. He was, however, genuinely unaware that the post violated any By-Laws and was fully cooperative in removing the post.
10. The EGC proceeded with their decision according to s.11.1 of By-Law #2. The EGC agreed via simple majority that the reasonable classification for this violation be minor, carrying the penalty of three demerit points.

III. Standard of Review

11. The applicable standard of review is either one of reasonableness or one of correctness. There is a presumption that the standard of reasonableness will apply when an administrative decision maker interprets its home statute. Section 3 of By-Law #2 reads:
    a. ***3.1*** *It will be the duty of the CRO and the Committee to administer this By-law, and to uphold its Visions and Principles.*
    b. ***3.2*** *The CRO and the Committee shall have the sole authority to enforce the provisions of this Bylaw.*

12. Given this statutory mandate, this is an instance of the CRO and the Committee (collectively the EGC) interpreting its home statute. Accordingly, the standard of reasonableness will apply.
13. The sole issue is, therefore, whether the EGC's decision was reasonable.

IV. Was the EGC's decision reasonable?

Unfair Advantage

14. The Petitioner argues that the EGC decision is unreasonable for two reasons. The first reason is that the alleged conduct does not reach the level of unfair advantage.
15. The Respondent posits that using personalized notes to solicit votes confers an unfair advantage to the campaigner. The notes are intrinsically valuable and Ahmed is, in essence, offering items of valuable consideration to induce voter support.
16. The Board agrees with the Respondent. While an "unfair advantage" is not expressly defined in the statute, it is reasonable to believe that an unfair advantage could be created by Ahmed when he offered items of valuable consideration to a specific subset of the voter population. Other candidates may not have the same resources to offer this specific subset of voters. By providing a certain advantage through his use of personal resources, Ahmed gained an unfair advantage over other candidates. Melding items of valuable consideration with a solicitation for votes blurs the line of whether a voter elects a candidate based on merit or based on such consideration.

Doctrine of Fair Play

17. In the alternative, the Petitioner argues that even if an unfair advantage was created, it is unreasonable to use the doctrine of fair play in this case, as an unfair advantage is not specifically caught under the doctrine. To clarify, Ahmed's conduct did not fall under any of the grounds in s.11.1 that exemplify breaking the rules of fair play.
18. The Respondent argues that while certain behaviours are listed and expected under the doctrine of fair play, the list is non-exhaustive. The Respondent posits that it is within the authority of the EGC to sanction any misconduct that is outside the rules of fair play as they see fit, as it is unreasonable to expect a statutory provision to encompass every conceivable type of behaviour. Discretion must be given to the EGC.

19. The Board agrees with the Respondent. Pursuant to s.3.2, the EGC has broad authority to interpret the By-Law in order to fulfill the Visions and Principles. These Visions and Principles include “[ensuring] fairness and democracy” and “[protecting] the reputation of the University and the USC in the city and elsewhere.”
20. In making the determination that the Petitioner's conduct contravened the fair play doctrine, the EGC applied its specialized expertise and experience as overseer of the elections process in order to weigh and adjudicate on behaviours during the elections process. Accordingly, their interpretation and application of the fair play doctrine with respect to Ahmed's conduct is reasonable. Where the decision has been found to be reasonable, the Board will not substitute its own interpretation and application of the fair play doctrine. Doing so would undermine and usurp the authority of the EGC, which is already in the best position to enforce By-Law #2.

V. Conclusion and Disposition

21. The Board finds that the Election Governance Committee decision to sanction Ahmed was both reasonable and in accordance with the By-Law #2, the Elections Procedures of the University Students’ Council.
22. For these reasons, the Board upholds the three demerit points given to Mr. Yousef Ahmed.

DISPOSITION SUMMARY:

The appeal is dismissed.