



Beschwerdekammer in Disziplinarangelegenheiten

Disciplinary Board of Appeal

Chambre de recours statuant en matière disciplinaire

Boards of Appeal of the
European Patent Office
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Case Number: D 0012/21

D E C I S I O N
of the Disciplinary Board of Appeal
of 16 February 2022

Appellant: N.N.

Decision under appeal: **Decision of the Examination Board dated
21 June 2021 concerning the European Qualifying
Examination 2021.**

Composition of the Board:

Chairman: W. Sekretaruk
Members: L. Bühler
P. H. Gendraud

Summary of Facts and Submissions

- I. The appeal lies from the decision of the Examination Board for the European qualifying examination dated 21 June 2021 which held that the appellant's answer paper to the European qualifying examination (EQE) 2021, Paper B, had been awarded 45 marks and therefore the grade "COMPENSABLE FAIL".
- II. By letter dated 20 July 2021 and received at the EPO on 22 July 2021, the appellant filed notice of appeal including the statement of grounds for appeal against the Examination Board's decision dated 21 June 2021. She paid the prescribed appeal fee.
- III. The Examination Secretariat remitted the appeal to the Disciplinary Board of Appeal (Appeal Board) by letter of 10 August 2021, stating that the Examination Board had decided not to rectify its decision.
- IV. The appellant requests that her answer paper to the European qualifying examination 2021, Paper B, be awarded a compensation of 10 marks, alternatively 6-9 marks.
- V. The appellant submits that she encountered technical issues during the examination. She was locked out from the browser for considerable time. The browser froze and could not be reactivated. The appellant was therefore unable to reach Zendesk online. The instructions did not provide for a phone number for technical assistance. The appellant looked for the phone number of Zendesk but could not find it. She wrote an email to the helpdesk in a desperate attempt to get help. She then re-started the computer

considering the examination a lost cause. The appellant was thereupon able to contact Zendesk online and was given the Invigilator password to re-enter her electronic copy. The keyboard was however not responding. The appellant had to change the computer and use her laptop. In spite of these difficulties, the appellant continued the examination. After the examination, the appellant sent a complaint by email to helpdesk but did not receive any confirmation or comment.

Reasons for the Decision

1. It is clear from the subject and contents of the appellant's second email filed on Thursday, 4 March 2021, at 13:43 hrs (attachment 2(2) to the appeal) that she intended this email as a complaint concerning the conduct of the examination. When sending the email to the helpdesk, the appellant conformed with points 11 and 39 of the instructions to candidates concerning the conduct of the European qualifying examination 2021 which read as follows:

"11. If a candidate wants to file a complaint concerning the conduct of the pre-examination or the main examination, they must do so as soon as possible (at the latest by the end of the day on which the examination was taken) by emailing it together with a written statement of the facts to the Examination Secretariat (helpdesk@eqe.org)."

"39. Any disruptions during the examination for which candidates are not responsible or which are beyond their control must be reported to the Examination

Secretariat within 24 hours of the end of the relevant examination (via email to helpdesk@eqe.org)."

2. In the appeal Board's judgement, the appellant's email should have been considered to be a formal complaint under Rule 19(3) IPREE and should have been dealt with accordingly, that is, the complaint should have been submitted to the Examination Board for consideration. The Examination Board was then supposed to determine the exact circumstances involved and to deal with the allegations of the complainant (now appellant) in a reasoned decision or in its decision on the result of the examination under Article 6(5) REE at the very least (D 3/04, point 3).

3. In a notice of 10 March 2021, the Examination Secretariat informed candidates that it had received a number of emails from candidates describing their circumstances and individual experience in relation to the pre-examination or the papers of the main examination, and that that their emails would be forwarded to the Examination Board. However, the Examination Board's letter dated 20 July 2021, informing the appellant of the decision that the appellant had not been successful in the European qualifying examination, only contains the results of the marks awarded by the Examination Board to the papers sat by the appellant. There is no mention of the appellant's complaint, neither that it was actually taken into consideration nor what the result of any such consideration was. Similarly, the marking sheets of the examination committees, enclosed with the said letter only show the number of marks allocated by the two markers respectively. Again, no indication whatsoever can be derived from the schedule of marks that the appellant's complaint was considered in the

marking procedure. Since the appealed decision did not show that the appellant's complaint was taken into consideration, Rule 19(4) IPREE was not complied with.

4. In the absence of a reasoned decision pursuant to Rule 19(4) IPREE, it is not for the Board to evaluate the merits of the appellant's complaint, but it will be for the Examination Board to decide - again - on the appellant's paper B considering the appellant's complaint. Therefore the decision under appeal has to be set aside and the case remitted to the Examination Board for a new decision.
5. Reimbursement of the appeal fee paid appears equitable in the circumstances of the case (Article 24(4) REE).

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.
2. The case is remitted to the Examination Board for a new decision to be taken.
3. The reimbursement of the appeal is ordered.

The Registrar:

The Chairman:



N. Michaleczek

W. Sekretaruk

Decision electronically authenticated