

Trial decision
missing

IN THE UNIVERSITY TRIBUNAL OF THE
UNIVERSITY OF TORONTO

BETWEEN:

Mr. K.

Appellant

- and -

The University of Toronto

Respondent

BEFORE:

Donald Affleck, Q.C.
John Browne
Fred Budnik

Appeals Board

APPEARANCES:

Stephen Labow

Counsel for the Appellant

Linda Rothstein

Counsel for the Respondent

REASONS FOR DECISION

The Tribunal Appeals Board finds no grounds for setting aside the decision of the University Tribunal or for overturning the jury's findings of guilt.

1. We find that the jury was properly instructed about the onus and standard of proof required in order that Mr. K. be found guilty of the charges against him (Transcript, p.126). We also find that the jury was properly instructed about the need to apply this onus and standard to each key element of the charges against Mr. K.

Specifically, we find that the jury was properly instructed about the need to find, beyond a reasonable doubt, that Mr. K. used, used intentionally, used in a substantial way, used for purposes other than that for which privileges had been granted, and used without proper authorization, a computer and network system (Transcript, pp.127-128).

2. We find no grounds for accepting the argument that the offences as charged are not offences under the Code of Behaviour on Academic Matters.

The Code of Behaviour on Academic Matters concerns itself with matters affecting the teaching learning relationship (Code, Preamble). The University established the computer facilities and accounts in the Engineering Computing Facility to be used by students for course work and for thesis preparation (exhibit 5, p.2). These facilities and accounts are clearly intended, therefore, to support and enable the teaching learning relationship. The Code states that the use, actual or potential, of these facilities contrary to their purpose can adversely affect that relationship (Code, section 4(a)).

3. We find no grounds for accepting the argument that the use of the term "pornography" was prejudicial to Mr. K.

The jury was properly instructed to limit its deliberations strictly to the specific charges brought against Mr. K. and not to consider whether the evidence supported any wider conclusions about him or his character (Transcript, p.127). The jury had in its possession prints of some of the digitized images stored in the files in question. In view of this fact and in view of the charge to the jury just cited and of the cautionary comments made about the images in the opening statement by Mr. K.'s Counsel (transcript, p.18), we find no reason to accept the argument that the application of the word "pornographic" to these images prejudiced the jury about the nature of the charges against Mr.

K.

July 26th, 1993

Donald Affleck

John Browne

Fred Budnik