

THE UNIVERSITY TRIBUNAL OF THE
UNIVERSITY OF TORONTO

TRIBUNAL APPEALS BOARD

BETWEEN: University of Toronto

Complainant
(Respondent),

-and-

Mr. T.

Accused
(Appellant),

BEFORE: D. S. Affleck, Q. C. (Senior Chair)
Mr. Brian Procter
Professor John Slater

Appeals Board

APPEARANCES: Jill Fraser, for the Appellant

Linda Rothstein, for the University

DATE: October 19th, 1992

This is an appeal by Mr. T. to the Appeals Board of the University Tribunal from the sanctions imposed by the jury in the Trial Division of the University Tribunal on May 14th, 1992 immediately following the jury's acceptance of a guilty plea to the following offence:

That on or about March 19, 1991 he did forge or falsify an academic record or make use of such a forged, altered, or falsified record, contrary to Section E.1.(c) of the University of Toronto Code of Behaviour on Academic Matters, 1985. In particular, he submitted a petition dated March 8, 1991, alleging that he was sick on the day the term test in ECOB12S was returned. In support of this statement he submitted a medical certificate purportedly signed by Dr. Irwin Goldstein, which in fact was a forged, altered or falsified document. He then presented this medical certificate in support of his petition to withdraw from the course after the deadline.

The Trial Division jury ordered the following sanctions: a grade of zero in the course ECOB12S; suspension from the University for a period of one year, from June 1st, 1992 to May 31st, 1993; that the suspension and reason for it be recorded on the Appellant's academic transcript for a period of five years; and that the sanctions imposed be reported to the Vice-President and Provost for publication, without identification of the Appellant, in the University newspapers.

The Appellant asks that the starting date of the suspension be moved back from June 1st, 1992 to May 14th, 1992, and that the recording of the suspension on the Appellant's academic transcript be reduced from five years to one year.

Counsel for the Appellant pointed out that moving the suspension date back to May 14th, 1992, the date of the trial hearing, would give the appellant the opportunity to resume his studies in the first term of the 1993 summer session. The appellant had four credits remaining to complete his degree. If he were able to attend the entire summer session, he could enrol in two credits, finish the final two credits in the fall session and graduate by December 1993.

Counsel for the Appellant said that she did not understand why there had been a waiting period of two weeks after the hearing for the suspension to begin. The appellant had derived no benefit from these two weeks, in fact, the suspension began after the start of the second summer term. The Appellant had effectively been banned, then, from the entire summer session because he had not been enrolled in any courses which ended at the end of the first summer term. She submitted, therefore that the entire summer term should count toward his suspension.

Counsel for the Appellant remarked that moving back the date of the suspension would not change the severity of the sanction as the suspension would remain one year in length. She noted that this would only be a small change to the suspension but would give the Appellant the opportunity to complete his degree as quickly as possible.

Counsel for the appellant submitted that when the jury had ordered the recording of the suspension on the Appellant's academic transcript for five years, it had not taken into consideration the fact that this was a first offence on

the part of the Appellant and that he had pleaded guilty at the trial hearing. In addition, she believed that the jury should have taken the age and emotional state of the Appellant into consideration. Also, his illness during the time of the offence should have been considered. She noted that the jury had given as its reason for the term of the recording of the suspension "to inform both the University of Toronto and other universities in the future." She believed that five years was too severe for the offence committed. She read Mr. John Sopinka's decision in 1976/77-03 in which he had underscored the importance of imposing similar sentences for similar offences. She cited a similar case which had come before the Tribunal, that of 1991/92-02, who had received a one-year suspension, recorded on his academic transcript for the period of the suspension.

Counsel for the Appellant remarked that the recording of the suspension would effectively prevent the Appellant from pursuing graduate work at another university for five years because he would not be admitted anywhere on his transcript.

Counsel for the Respondent noted that the decision of the jury had been unanimous as to the appropriate sanctions. Because the jury was composed of faculty and students of the University, the fairest and broadest review of the evidence and the assessment of sanctions were possible. She said that notwithstanding Mr. Sopinka's remarks, which had been read by Counsel for the Appellant, it was not intended that the Appeals Board would interfere lightly with a jury's findings.

Counsel for the Respondent addressed the point made by Counsel for the Appellant concerning the reasons given by the jury for the length of the recording of the suspension. She drew the Board's attention to page 78 of the trial transcript where, in addition to informing both the University of Toronto and other universities, the jury had also said that the reasons for the combination of the one-year suspension and the five-year recording of it was "that this be a just, fair and firm penalty, because of the forged medical certificate, where the accused did, indeed, plead guilty to that forgery." She submitted, therefore, that the jury had seen the two penalties as being linked, having a combined effect and being balanced. The jury had taken the fact that the Appellant had plead

guilty into account and had said that they had "decided not to recommend a two-year suspension in recognition of the fact that this was a first offence, that the accused pleaded guilty and we do not wish to damage the opportunity for a university education of the accused irrevocably". She remarked that she had, at the trial hearing, recommended that the appropriate penalty under the circumstances would be a two-year suspension but the jury had decided to balance the sanctions. She urged the Board not to tamper with that balance.

Counsel for the Respondent listed some of the key points which she believed not only justified the jury's decision but also a two-year suspension. First of all, a one-year suspension for this student would not have constituted a penalty for his misconduct. She drew attention to pages 11 and 12 of the trial transcript. If the Subcommittee, which had heard the Appellant's original petition for late withdrawal from the course, had not granted the petition, the Appellant would have remained in the course, and he would have failed, in fact would have received an F, given his performance in the course. This would have resulted in an academic suspension for one year. Therefore, giving him a one-year suspension placed him the same position he would have been in if he had not forged the medical certificate. She had put this argument to the jury. Secondly, the extenuating circumstances in this case did not fall in favour of this student. His demeanor, she believed, had caused grave doubts. He had misled the jury and he had changed his explanations as the facts had come out at the trial hearing. He had not been remorseful. In short, there had not been mitigating factors which the jury could have taken into account to reduce the penalty, indeed, these factors could have had just the opposite effect.

Counsel for the Respondent agreed with Counsel for the Appellant that similar cases should have similar penalties but noted that every case had to be decided on its own merits. The ^{1991/92-02} case could not be seen as identical to this one because there was no evidence that that student would be on academic suspension or that there was not a real medical situation or that there was no remorse, etc. She noted that the jury had had this case in their deliberations as well as the 1988/89-04 in which the jury had given a more severe sanction. Two other cases had been presented to the Jury. In the 1991/92-04, the student's illness had been genuine and if the student had provided a genuine note, he would have been granted his

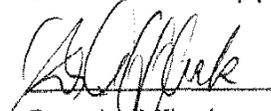
petition. In the 1984/85-01 it had been a second offence and she had been expelled from the University so it was not appropriate to consider this case for similar circumstances but it had been used to show the jury the range of sanctions in like offences. She submitted, therefore, that a two-year suspension was justified in this case.

In conclusion, Counsel for the Respondent remarked that the Board should not interfere lightly with the Jury's decision which was justified on the merits of the case, that it was well within the range of other cases and not unique, that the jury had had all the facts and all the evidence and had understood fully all the competing factors which they were to assess.

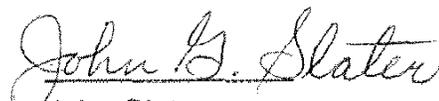
In answer to a question, Counsel for the Respondent noted that the jury had been quite deliberate in its decision concerning the June 1st, 1992 starting date of the suspension. The jury was made up of faculty and students who would be well aware of the ramifications of specifying that particular date. There had been no submissions made concerning a date; the jury had made the decision itself. While the jury had indicated a one-year suspension, it was actually a little longer than that because it ended after the first summer term began.

Reasons for Decision of the Tribunal Appeals Board (Delivered orally by D. S. Affleck):

We would like to thank both counsel. We have considered the two grounds of appeal advanced by Ms Fraser on behalf of Mr. T. and are unanimously of the view that there was no perceptible defect in the rationale expressed by the jury in setting those two sanctions, namely the date the suspension was to commence and the recording of the suspension on the student's transcript. So we dismiss the appeal. Thank you.


Donald Affleck


Brian Procter


John Slater

November 5th, 1992