

REPORT NUMBER 257 OF THE ACADEMIC APPEALS COMMITTEE

October 15, 2001

To the Academic Board,
University of Toronto

Your Committee reports that it held a meeting on Tuesday, October 15, 2001, at which the following members were present:

Professor Emeritus Ralph Scane (Acting Chair)
Professor Clare Beghtol
Ms Susan Scace
Professor Donna Wells
Ms Geeta Yadav

Mr. Paul Holmes, Judicial Affairs Officer, Secretary to the Academic Appeals
Committee

In Attendance:

Mr. G.M., the Appellant
Mr. Daniel Wigdor, for the Appellant

Associate Dean William Michelson, for the University of Toronto, Faculty of
Arts and Science
Professor John Carson
Ms Elaine Ishibashi, University of Toronto, Faculty of Arts and Science

This is an appeal from a decision of the Academic Appeals Board of the Faculty of Arts and Science, dated April 5, 2001, dismissing an appeal from a decision of the Committee on Standing of that Faculty. The latter decision denied a petition to substitute a grade of CR for the assigned grade of D- in the course POL208Y1, taken in the 1999 - 2000 academic year. The Student had sought this relief pursuant to a memorandum issued by the Office of the Registrar of the Faculty, dealing with special academic relief which might be afforded to students following upon the strike of teaching assistants in the University which took place throughout roughly the first month of the Winter Term in 2000.

The relevant portion of the memorandum from the Registrar's Office read:

1. *A student who considers that the disruption unreasonably affected his or her grade may submit a petition to the Committee on Standing.... requesting that his/her original grade be replaced by one of the following:*

- *an amended grade*
- *a grade of CR (credit), or*
- *a grade of NCR (no credit)*

From the submissions made to your Committee on behalf of the Faculty, and from the decision of the Academic Appeals Board itself, your Committee understands that both the Board and the Committee on Standing interpreted this memorandum as requiring that *only* the effect of the strike itself could be considered in deciding whether the special grades referred to in the memorandum could be awarded to a petitioning student. Thus, the cumulative effect of the strike and any other factor that may have adversely affected the performance of a student could not give rise to this special relief. In such cases, some other form of relief, if any, would have to be sought. The Student did not seek any other form of relief.

As the correctness of this strict interpretation is relevant on the facts of this appeal, your Committee has considered and rejected that interpretation. The memorandum was intended to relieve against academic difficulties arising out of the strike, and, as a remedial provision, should be given an expansive reading. Students seeking relief from academic harm which they allege flowed from the strike should not have to engage in an exercise in statutory interpretation to select the precise form of remedy they should seek, at peril of receiving no remedy at all if they guess wrongly. Your Committee considers that the special remedies afforded by the memorandum should be available when the effects of the strike are a significant factor among a number of factors which cumulatively justify academic relief to a student.

Even if the memorandum were to be read restrictively, as the tribunals below thought proper, the effect of the strike would have to be considered with respect to the individual student who is petitioning, not with respect to some "typical" student. If a student's performance has been adversely affected by other factors than the strike, the effect of the strike alone should be judged as it impacts that student as so affected. On either approach, the result would be the same. The cumulative effect of all adverse conditions, including the strike, affecting a student's performance, may be considered in weighing whether the special relief should be afforded.

In this case, the TA assigned to the seminar section in which the Student was enrolled appears to have been ill and unable to give all the scheduled seminars in the course which were scheduled. In addition to the four seminars lost due to the strike, four more were lost due to the TA's inability to meet the group to which the Student belonged. Between the strike and the lost seminars due to the TA's illness, eight of twenty-six scheduled seminars were lost. In addition, the TA was unable to attend at

many of her scheduled office hours, and the Student gave evidence that on a number of occasions when he attended at the TA's office during scheduled hours to obtain assistance, she was absent. The Student admitted that he was aware that he could attend seminars led by other assistants assigned to the course. However, he had a part time job, and could not find one that did not conflict with his other courses or his employment.

The Faculty presented a breakdown of his term and final marks in the course, and argued that they were consistently low, and did not drop significantly after the strike. However, it was argued on behalf of the Student that he was prejudiced by missed seminars in the Fall Term, as well as by the strike. The fact of Student's low overall performance in the course cuts both ways. While it might be consistent with lack of ability, it also might indicate that this was a student who needed all the help from his seminars in this course that he could get, and missed a significant proportion of what was intended to be available through no fault of his own.

Your Committee also felt unease over the lack of evidence that the University had taken any substantial proactive role in dealing with the problem of missed seminars and office hours caused by the TA's illness. Professor Carson, the course instructor, advised us that he was not made aware by the University of the problems for this TA's group of students until sometime after the strike. He stated that if he had been made aware of them, he would have tried to intervene in some way to assist the students affected. As mentioned, students were apparently told that they could attend other TA's seminars. It may be that this was all that was feasible in the circumstances. However, as mentioned, this was not helpful to the Student in his particular situation.

In all the circumstances, your Committee found that, on the balance of probabilities, the Student was sufficiently adversely affected by the missed seminars and office hours resulting from the combination of the strike and the problems arising from the TA's illness that the relief sought should be granted.

The appeal is allowed. The grade of D- presently assigned as the final mark in POL208Y1 shall be vacated, and a grade of CR substituted for it.

November 6th, 2001