

Discipline Appeal Committee

[REDACTED]

Appellant

v

Philip Dutton**Respondent**

Appearing for the Appellant: Francesca Provenzano (Community Legal Aid, CLA)

Counsel for the Respondent: self-represented

Discipline Appeal Committee (DAC)

Professor Reem Bahdi (Chair)

Professor Michael Potter

Ed King (Student Member)

DECISION

The parties agree on the basic facts. [REDACTED] was found in possession of a cell phone while writing the final exam in the Differential Equations course on April 13, 2016. The phone was in his pocket and turned off. Dr. [REDACTED], the course instructor, discovered that [REDACTED] had the phone in his pocket when [REDACTED] stood up to retrieve his jacket, after asking permission to do so. At that point, the phone became visible to Dr. [REDACTED].

Dr. [REDACTED] took the phone from [REDACTED] along with his ID card and exam paper. He then gave [REDACTED] a new exam paper so that he could continue writing the exam. Dr. [REDACTED] returned the cell phone to [REDACTED] after the exam was finished and advised him that he needed to meet in his office. During the discussion in Dr. [REDACTED]'s office, [REDACTED] was advised that a report of academic misconduct (AI Form 1) would be filed with the Associate Dean.

[REDACTED] next met with Associate Dean Dutton. During that meeting, [REDACTED] revealed to Associate Dean Dutton that he, [REDACTED], had been sanctioned in the past for another academic misconduct matter involving the misuse of clickers during an exam. Associate Dean Dutton testified that he confirmed the fact of the first finding of misconduct with the University Secretariat.

Associate Dean Dutton stressed that he confirmed that a previous concern about misconduct had been raised solely for the purpose of determining the appropriate sanction and not as a matter of assessing whether a misconduct had in fact taken place in the case at hand.

The parties agree that [REDACTED] did not use the phone or attempt to use the phone during the exam. The question of whether [REDACTED] attempted to gain an advantage on the exam is not at issue and was never at issue. This cannot be stressed enough. The term "cheating" to the extent that it was used in AI Form 1 as submitted by Dr. [REDACTED] was used in a broad sense to mean "misconduct."

The misconduct in question relates to the failure to follow exam rules or instructions. The instructions on the exam in question clearly state: "Calculators, cell phones, other electronic devices are NOT ALLOWED" (emphasis in the original). All agree on this point.

Dr. [REDACTED] testified that he also gave verbal instructions to the effect that students were not to have phones in their pockets. He explained that students were told to put their cell phones in their jackets or bags and that phones were not to be on their person while they were writing the exam. He explained that he gives the same verbal instructions in other courses that he teaches.

Two witnesses, both of whom invigilated the exam, corroborated that they heard Dr. [REDACTED] give such instructions. Though there were some differences in some of the details recalled about the instruction by the witnesses, they all agree that the "no cell phone" instruction was given orally and in writing. One of the witnesses testified that he specifically recalled that Dr. [REDACTED]'s oral instructions included the statement that phones are not to be kept in one's pocket.

We find that it is more likely than not that Dr. [REDACTED] gave the specific instruction that cell phones are not to be kept on one's person while writing the exam. We conclude that it is reasonable to conclude that these instructions meant that phones are not to be kept in one's pocket.

[REDACTED] suggested that he did not understand the instructions about cell phones to mean that he was not allowed to have the phone in his pocket, turned off. [REDACTED] suggested that his English is not good enough to understand the full details of the instructions around cell phones. We note, however, that he has passed English language exams to enter into university, was writing the exam in question in English, and, is not in his first year of study at Windsor. We also note that though he requested and was granted an interpreter during this hearing, [REDACTED] was able to participate in the proceedings without an interpreter at several points. One can reasonably surmise therefore that [REDACTED] had the ability to understand that instructions were being given to the effect that "no cell phones" were allowed and that the oral instructions given meant that students should not have phones on their person.

Having found that: i) specific instructions were given that no cell phones, including cell phones on one's person, were given; and, ii) that [REDACTED] had a cell phone on his person, specifically in his pocket, during the writing of the exam in question, we conclude that [REDACTED] committed an academic offence. He failed to follow the rules established for the writing of the Differential Equations exam.

The parties were asked to make submissions about sanctions. All agreed that the sanctions imposed were too harsh in the circumstances of this case. Associate Dean Dutton stressed that he felt that the sanctions he himself had imposed were too harsh but noted that he felt confined by the Sanctioning Guidelines laid out in Senate Bylaw 31 (Academic Integrity).

Under "Violating Exam/Test Rules," the Sanctioning Guidelines provide that the sanction for a second academic offence "will normally lead to a more severe sanction" and lists the following:

Censure: 1 year up to until graduation (sic)

Mark reduction: zero in the course

Letter of apology/or reflection

All of the above sanctions were imposed in this case.

The Committee agrees with parties that the above sanctions are too harsh having regard for the circumstances of the case and bearing in mind the Sanctions Guidelines. The Committee therefore orders the following:

Admonition

Letter of reflection

The letter or reflection is to be submitted to the Associate Dean before the final grade in the course is released. While the letter need not include a formal apology, it should reflect an understanding of the importance of following exam instructions in general and an understanding of the importance of following the instructions about cell phones given in this particular case.

The mark reduction to zero in the course is not warranted. We note that the parties agreed on this point. The committee therefore orders that the exam be graded, the mark in the course be adjusted to reflect the student's actual performance on the exam, and the transcripts be adjusted to reflect the student's final grade in the course with the marked exam.

Associate Dean Dutton confirmed that the student's original exam remains on file though it has not been released to the student. Although the student was given a grade of "zero" in the course, it is possible to assign a grade in the course in light of the student's actual performance on the exam. Associate Dean Dutton further noted that the student's right to appeal the grade is preserved.

A handwritten signature in black ink, appearing to read 'Reem Bahdi', with a horizontal line drawn underneath it.

Professor Reem Bahdi
Chair, Discipline Appeal Committee

DATED THIS 19th day of July 2016