



EXAMINATION APPEALS BOARD

Decision of the Examination Appeals Board (CBE) of Tilburg University

in the case between

X, appellant

and

the Examination Committee of Tilburg School of Economics and Management, appellee

1. Course of the proceedings

On April 30, 2017, the appellant submitted an application to the appellee for an additional examination opportunity for the course Financial Statements Analysis.

In a decision of May 16, 2017, the appellee rejected the application (hereinafter: "contested decision").

The appellant filed a notice of appeal on against this decision on June 28, 2017, therefore in good time.

The Examination Appeals Board of Tilburg University (hereinafter: "the Board") invited the appellee to consult with the appellant to see whether an amicable settlement of the case is possible. Settlement consultations were held on July 6, 2017. The parties did not reach an amicable settlement.

The appellee submitted a written defense on July 18, 2017.

On behalf of the appellant, Y, submitted an additional document on July 28, 2017 as an addition to the notice of appeal.

The Board handled the appeal at the hearing on August 10, 2017. The appellant was present there in person and represented by her attorney, Y. Z and A appeared on behalf of the appellee.

2. Facts and circumstances

- 2.1 The Board will proceed on the basis of the following facts and circumstances.
- 2.2 The appellant has been enrolled in the Master's Degree Program Accountancy since February 1, 2016, and has obtained 54 ECTS to date. The course Financial Statements Analysis (6 ECTS) is the last component of the appellant's program.

3. The appellant's position

- 3.1 On appeal, the appellant put forth the following. First of all, the contested decision is unlawful, or was at any rate formulated unlawfully, owing to noncompliance with the rule that at least one member of the Examination Committee must not be employed at TiSEM. As evident from the website of Tilburg University, the Examination Committee is composed exclusively of members of TiSEM. At the hearing, the appellant took note of the assertion by the appellee that one of the members of the Examination Committee is indeed not employed at TiSEM, but this member was not involved in the decision-making process regarding the contested decision. The appellant questions the value of an external member if this person is not involved in the present case.
- 3.2 Secondly, the contested decision is unlawful because it not properly substantiated. For example, it is not substantiated why no special circumstances are involved, nor specified in more detail in which other cases the same ruling was given. The fact that the appellee gives further substantiation in its written defense does not suddenly make the contested decision lawful.
- 3.3 Thirdly, the course Financial Statements Analysis is the last course in the appellant's program. Other faculties, such as Tilburg Law School, apply a last-course arrangement. Not offering TiSEM students a last-course arrangement constitutes unequal treatment of TiSEM students.
- 3.4 In the fourth case, there are special circumstances having a causal connection with not completing the course Financial Statements Analysis. Consequently, the appellee should have offered an additional examination opportunity. Students assume that they get two examination possibilities per year. If special circumstances exist, the appellee can give an additional examination opportunity pursuant to Article 15, paragraph 4 under a. of the Rules and Guidelines for the Examination Committee of the Tilburg School of Economics and Management 2016/2017 (hereinafter: 'R&R'). It is not clear what policy the appellee pursues in this regard. Although two examination opportunities were offered, the appellant was 'deprived' of the second opportunity because of her illness. The appellant deliberately did not make use of the first examination opportunity. Not by simply staying home or just letting the opportunity slip, or by undertaking something else 'pointless', but because she decided to concentrate on her work placement, with a view to her societal life after the study. Doing work placement is advised by TiSEM. The appellant blames the appellee for the fact that her work placement started later than planned, because she had to obtain a 'sign-out' from TiSEM in connection with the procedure for international, non-EU students, and had to wait a long time for this 'sign-out' from TiSEM. In view of the foregoing, unlike the contested decision asserts, there is indeed a causal connection between the special circumstances and inability to complete the course.
- 3.5 In the fifth case, the appellee should have applied the hardship clause. In addition to the aforementioned special circumstances, it should be taken into account that the course Financial Statements Analysis is the last course for the appellant of her program, and not offering the appellant an additional examination opportunity results in huge costs for the appellant. This does not only concern the institutional rate for a semester of € 7,000, but also € 6,125 in visa-related costs and costs of living. The appellee's reasoning that the hardship clause is only applied in exceptional cases in which there is an accumulation of special personal circumstances cannot

be found in the R&R, nor in the Teaching and Examination Regulations 2016/2017 for the Master's Degree Programs (hereinafter: 'TER'). The appellee fleshes out and interprets the guidelines in its own way, to the detriment of the appellant.

- 3.6 In the sixth place, there was no amicable settlement. A meeting may well have taken place, but it felt as if the outcome had already been determined beforehand.
- 3.7 At the hearing, the appellant requested compensation of her legal costs, should her appeal be declared fully or partially well-founded.

4. The appellee's position

- 4.1 The appellee puts forth the following. The appellee asserts first of all that the Examination Committee does indeed have an external member. The information on the website is incorrect. C has actually been a member of the Examination Committee of TiSEM since July 1, 2016. She is employed at Fontys Eindhoven and, on the Examination Committee of TiSEM, has duties including in relation to the general testing policy and, as a testing expert, C was not involved in the decision-making on the contested decision, but it is obvious that not every member of the Examination Committee is involved in each decision.
- 4.2 According to the appellee, although the contested decision is sketchy, it is sufficiently substantiated. The appellee notes in addition that if the contested decision should be reversed merely because of too sketchy substantiation, a new decision would be made that, although provided with more extensive substantiation, would have the same substantive outcome. Moreover, the contested decision was explained in more detail during the settlement consultations, in the written defense and at the hearing.
- 4.3 The appellee states that, pursuant to Article 15 paragraph 2 of the R&R, all students are given the opportunity to complete a course twice each academic year. One of the reasons for this is to give students the possibility to complete a course even in the event that they miss an examination opportunity because of sickness or other special circumstances. This does not mean that students individually have a right to two separate examination opportunities, but only that two examination opportunities are offered. In accordance with Article 3.9, paragraph 1 of the TER in conjunction with Article 15, paragraph 1 R&R, the appellant was offered two examination opportunities.
- 4.4 Under Article 15 paragraph 4 R&R, the appellee can allow an additional examination opportunity in case of special circumstances. According to established policy, the appellee grants such an additional examination opportunity owing to special circumstances only if, firstly, the student counselor has recognized the special circumstances, and, secondly, if there is a causal connection between the special circumstances on the one hand, and not having passed the course in question on the other. This policy was also dealt with in the Board's decision of June 29, 2017 (*uitspraak 2017.11 website CBE [in Dutch]*). In that decision, the Board did not consider this policy unreasonable.
- 4.5 The appellee sees no reason to deny that the appellant was sick during the second examination opportunity on January 24, 2017. The appellant, however, did not participate in the first examination opportunity on December 19, 2016. It is correct that TiSEM advises students to do

work placement, but work placement is not a required component of the program. The appellant does indeed assert that her work placement started later than planned in connection with a 'sign-out' the appellant had to obtain from TiSEM, but that delay was to blame on the work placement provider, Philips. Moreover, it is not relevant that her work placement started later, because it is at the appellant's risk that she made her own choice not to make use of the first examination opportunity on December 19, 2016.

This means that no causal connection exists between the appellant's illness on January 24, 2017 and not completing the course Financial Statements Analysis. That is why the appellant's application for an additional examination opportunity was rejected.

- 4.6 It is not relevant that the course Financial Statements Analysis is the last course in the appellant's program. The appellee applies a last-course arrangement only in the event of special, personal circumstances having a causal connection with a student's inability to complete a course. It is irrelevant as well that students of a different faculty do have a right to an additional examination opportunity in the context of a last-course arrangement, because the appellant is a student at TiSEM, and consequently the rules and guidelines of TiSEM are applicable.
- 4.7 The hardship clause as referred to in Article 27 R&R is not applicable. This is applicable only in exceptional cases in which there is an accumulation of special personal circumstances. Financial consequences are not taken into account in this regard. In particular, the amount of the institutional rate cannot play a role, because this would mean that students who have to pay a higher rate would be treated differently than students who pay a lower rate.

5. Findings of the Board

- 5.1 Section 7.61 subsection 2 of the Higher Education and Research Act (hereinafter: WHW) provides that appeal can be brought against a decision that is in conflict with the law. It ensues from this that review by the Board must remain limited to lawfulness criteria, such as the question whether the appellee acted with due care, or the question whether it would have to be said that the appellee could not reasonably have arrived at the contested decision
- 5.2 Pursuant to Section 7.12a, first lines and subsection 3 under b., of the WHW, when appointing the members of the Examination Committee, the university board must ensure that at least one member comes from outside the relevant program or outside one of the programs belonging to the group of programs. At the hearing, the appellee submitted the letter of appointment of C, showing that C was appointed on July 1, 2016. With that, it has been established that the composition of the appellee complies with the requirement as referred to in Section 7.12a, subsection 3 under b., of the WHW. The appellee was, therefore, entitled to make the contested decision. Not every member of the Examination Committee has to be involved in each decision.
- 5.3 The Board finds that contested decision is summarily substantiated. With the explanation given at the hearing and in the written defense, the Board is of the opinion that, in any case, the

requirement of substantiation has still been met, on which ground the Board will not proceed to declare the appeal well-founded. .

- 5.4 Under Article 3.9, subsection 1 of the TER in conjunction with Section 7.13, subsection 2 under h., of the WHW, a student of a program of the Tilburg School of Economics and Management is in principle given the opportunity twice a year to complete a course. As the appellant acknowledges, the appellee offered her two examination opportunities, namely on December 19, 2016, and on January 24, 2017. With that, Article 3.9, paragraph 1 of the TER has been complied with.

Under Article 15, paragraph 4, under a., of the R&R, the appellee can decide to allow an alternatively scheduled (individual) test or examination opportunity in case of special circumstances, and after assessment of these special circumstances by the student counselor. This is a discretionary power of the appellee. With respect to this power, the appellee pursues the policy referred to in finding 4.4, which policy the Board does not consider unreasonable.

The applicability of this policy in this case does not appear unreasonable either to the Board, as the appellant has acknowledged that she deliberately had not made use of the examination opportunity on December 19, 2016. For that reason, it is not relevant whether or not the appellee could be blamed for the fact that the optional work placement of the appellant started later than planned.

- 5.5 In the event of an exceptional case of extreme unfairness, under Article 27 paragraph 1 R&R, the appellee is entitled to make an exception to the Rules and Guidelines to the student's advantage. This is also a discretionary power of the appellee. It is at the appellee's discretion to determine whether there is indeed an exceptional case of extreme unfairness.

The Board establishes that although the appellee took all (special) circumstances of the appellant into account in its decision-making, it nevertheless decided not to apply the hardship clause. In the opinion of the Board, no special circumstances have occurred on the basis of which it must be found that the appellee should not have rejected the request for application of the hardship clause. The Board can concur in particular with the appellee's reasoning that the amount of the tuition cannot play a part in assessing the question whether the hardship clause should be applied, because this could result in students who pay more tuition receiving preferential treatment with respect to students who pay less tuition.

- 5.6 The Board emphasizes that the legislature prescribes the settlement procedure as mandatory. Although settlement consultations are not logical in all cases, settlement consultations can be meaningful precisely to explain the contested decision. This is all the more so if the contested decision is summarily substantiated. The Board establishes that settlement consultations took place on July 6, 2017. The fact that the appellant did not experience this as settlement consultations does not affect this.
- 5.7 In view of the above, the Board is of the opinion that it cannot be said that the appellee could not reasonably have decided to reject the appellant's application. For that reason alone, no cause exists for compensating the appellant's costs of the proceedings.
- 5.8 Notwithstanding the foregoing, and therefore completely unnecessarily, the Board notes in addition that it would be useful to make it clear in the R&R or in some other way that one of the

reasons why two examination opportunities are offered each academic year is to give students the possibility to complete a course, also in the event that they miss an examination opportunity because of illness or other special circumstances.

6. Decision

The Examination Appeals Board declares the appeal unfounded.

Decided on August 10, 2017 by the Examination Appeals Board.

You can file an appeal against this decision within six weeks after publication of this decision at the Appeals Tribunal for Higher Education (CvBHO), P.O. Box 16137, 2500 BC The Hague. For more information, see www.cbho.nl.