



**DECISION**      21 - 368

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of the Examination Appeals Board of Leiden University

in the matter of the appeal of

[name] from [place], appellant

against

The Board of the Institute of [X] of the Faculty of [X] and [names] in the capacity of Examiners of the bachelor's thesis, respondents.

**The course of the proceedings**

On 15 June 2021, the bachelor's thesis of the appellant was awarded a grade 5 on a scale of 10.

The appellant adapted the thesis and re-submitted it.

On 15 July 2021, the re-submitted bachelor's thesis was again awarded a grade 5.

The appellant sent a letter on 4 August 2021 to lodge an administrative appeal against this decision.

The respondent informed the Examination Appeals Board that it had not investigated whether an amicable settlement could be reached between the parties.

The respondent submitted a letter of defence on 10 August 2021.



## Decision

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The appeal was considered on 18 August 2021 during an online hearing. The appellant attended the hearing. [name], Chair of the Board of Examiners, and [name], examiner, attended the hearing on behalf of the respondent.

On 18 August 2021, the Examination Appeals Board requested the Chair of the Board of Examiners to forward all assessment forms of the first and second readers of the thesis and the re-submitted thesis.

On 19 August 2021, the Chair of the Board of Examiners forwarded the following assessment forms to the Examination Appeals Board:

- the [X] Bachelor's Project Assessment Form – second reader signed on 3 June 2021
- the [X] Bachelor's Project Assessment Form – supervisor signed on 14 June 2021
- the [X] Bachelor's Project Assessment Form – supervisor signed on 6 July 2021
- the [X] Bachelor's Project Assessment Form – second reader signed on 15 July 2021

The appellant responded to this on 23 August 2021.

The Chair then concluded the investigation.

## Considerations

1 – Facts and circumstances

The appellant attends the Bachelor's Programme in [X], with the specialisation in "[X]".

The bachelor's project of 20 ECTS at level 400, is part of the third year of the programme. In this course unit, the appellant wrote a thesis on the topic "[X]".

The Board of Examiners appointed the thesis supervisor, [name], as first reader and [name] as second reader.



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On 15 June 2021, the thesis was awarded a grade of 5. This is the joint assessment of the first and second reader (“Grade Form and Final Assessment”). The assessment was signed on 14 June 2021 by the first reader (“Thesis assessment form”). A document with the title “[X]” was appended to the assessment form. The second reader signed the assessment form for the second reader on 3 June 2021.

The First reader graded the thesis as follows:

- for the component “research question” 6
- for the component “theoretical scope” 5
- for the component “methodology and analysis” 5
- for the component “conclusion and reflection” 5
- for the component “references and bibliography” 4
- for the component “readability and presentation” 6
- for the component “work performance” (supervisor only) 5

The second reader graded the thesis as follows:

- for the component “research question” 5
- for the component “theoretical scope” 5
- for the component “methodology and analysis” 5
- for the component “conclusion and reflection” 5.5
- for the component “references and bibliography” 5
- for the component “readability and presentation” 6

The appellant subsequently submitted an amended version of the thesis.

On 15 July 2021, the amended thesis was awarded a grade of 5. The assessment form was signed by the first reader on 6 July 2021. The second reader signed the assessment form for the second reader on 15 July 2021. A document entitled “[X]” was appended to the assessment form.

The first reader graded the amended thesis as follows:

- for the component “research question” 6
- for the component “theoretical scope” 5
- for the component “methodology and analysis” 5.5
- for the component “conclusion and reflection” 5



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	- for the component “readability and presentation”	6
	- for the component “work performance” (supervisor only)	6

The second reader graded the amended thesis as follows:

- for the component “research question”	5
- for the component “theoretical scope”	5.5
- for the component “methodology and analysis”	5
- for the component “conclusion and reflection”	5
- for the component “references and bibliography”	6
- for the component “readability and presentation”	6

## 2 – The grounds for the appeal

The appellant does not agree with the assessment of his thesis. He holds that the thesis supervisor awarded a grade to the thesis that is too low. He does not agree with the feedback he received from the thesis supervisor.

With regard to the “theoretical scope”, the appellant does not understand that he was originally awarded a grade 6 for this component, but after processing the remarks of the thesis supervisor this became a grade 5. The thesis supervisor holds the theoretical scope to be “tokenistic” rather than theoretical. The appellant does agree with this comment. This also applies to the comments on methodology and analysis. The appellant holds that the thesis supervisor has incorrectly assessed the discussion on [name] to be irrelevant. He believes this to be incorrect; in this respect he does not agree with the assessment of this component by both the thesis supervisor and the second reader. The examples he presented link directly to the research question and do not merely constitute a listing. With regard to the conclusion and the reflection, the appellant holds that the thesis supervisor incorrectly indicated that the thesis does not contain academic implications and that the research question has been answered insufficiently.

The appellant does admit that the thesis was insufficiently clear at some points with regard to the analysis. However, he believes that it was sufficiently related to the research question. He believes that the thesis supervisor was offended by the



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manner in which the appellant responded to the feedback. He believes that the thesis supervisor is biased. The appellant defended his thesis in a passionate manner, which is his usual style. He also believes that the grade was affected by the manner in which he prepared his thesis and attended consultations. For he cannot understand how the theoretical scope would first be graded to be satisfactory, and in the resit unsatisfactory, when he had incorporated all the feedback he received and the proposed improvements.

At the hearing, the appellant argued that he wants to have a third chance to be awarded a satisfactory grade for his thesis. He believes that the assessment procedure is incorrect, since it is an inconsistent assessment.

In his further response, the appellant also stated that he believes there should be three assessment forms: one by the first reader, one by the second reader and one joint form. Since there is no third form, he cannot exclude the possibility that the assessment by the second reader may have been affected to some extent by the assessment of the thesis supervisor. It seems to him - in view of the data on the assessment forms - that the second reader merely confirmed the assessment by the first reader. Consequently, the appellant holds that the assessment procedure is not transparent. The assessment form of the second reader hardly contains any comments. The appellant insists that the thesis supervisor is biased and he suspects that the second reader had already seen the comments by the first reader when she assessed the thesis. Consequently, the appointment of the second reader cannot be correct for possible bias by the thesis supervisor/first reader.

**3 – The position of the respondent**

The respondent adopted the position that the assessment of the thesis was arrived at in the proper manner and that the assessment of the thesis is correct. Students in the bachelor's project receive structural support in writing their thesis and receive input prior to submitting their thesis. This also applies to the appellant. His thesis was assessed by two examiners and both decided that the thesis does not deserve a satisfactory grade.

The appellant was then given the opportunity to submit an amended version of his thesis, with specific suggestions on how he was to improve the thesis. The



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examiners read the thesis once again and they held that the thesis had not been improved sufficiently to be able to award it a satisfactory grade. They even held that the theoretical component had deteriorated.

The appellant wrongly accuses the thesis supervisor of bias, without providing any evidence at all to this effect. At the request of the respondent, the examiners reviewed the thesis again, and they maintain their assessment.

The assessment procedure is designated such that the thesis will be assessed independently by two readers and that the student will be allowed a resit so that he can still try to complete the course unit. The respondent holds that the appellant should have contacted the thesis supervisor or second reader to discuss with them why the thesis was awarded an unsatisfactory grade.

At the hearing, it was argued on behalf of the respondent that the procedure was applied correctly. Awarding a grade to a thesis is a power vested exclusively in the examiners. Both of the examiners awarded an unsatisfactory grade. The appellant does not qualify for a third chance and will have to attend the course unit again in the following study year.

The thesis supervisor/first reader stated at the hearing that he is not biased against the appellant. On 17 July 2021 he provided feedback to him. He also discussed “work performance” with him. He indicated that it is normal to plan 3 to 4 sessions. The appellant failed to attend once without notice, and once with notice. He gave the impression of not being sufficiently serious. The appellant was also spoken to about the way in which he processes feedback. The thesis was written by the appellant in a rather individual manner. The thesis supervisor/first reader completed the assessment forms for the thesis of the appellant in a similar manner to the way in which this is done for other students. The feedback was processed by the appellant in an inadequate way, the theoretical scope component was already too tokenistic and deteriorated rather than improved after the feedback. That is why the grade for that component altered from 6 to 5. Ultimately, the overall assessment is relevant, rather than the division of the grades per component and the comments on each component. What matters is the substance and the comprehensive feedback.



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The respondent indicated in its further response on 24 August 2021 that all three forms in the procedure have now been submitted. Normally, students only receive the summary of the final assessment. The respondent holds that the second reader is not required to comment on the substance in his/her assessment, although this is permitted.

4 – The consideration of the dispute

In accordance with article 7.61, paragraph two, of the Dutch Higher Education and Academic Research Act (*Wet op het hoger onderwijs en wetenschappelijk onderzoek*), the Examination Appeals Board must consider whether the contested decision contravenes the law.

All regulations relevant to the consideration of the administrative appeal are included in an appendix to this decision.

The Examination Appeals Board states first and foremost that the appellant has expressed serious accusations of bias against the thesis supervisor. It is up to him to provide prima facie evidence thereof, or at least to make his allegations plausible. He did not succeed in this. Based on the documents and the discussion at the hearing, the Examination Appeals Board has not been persuaded of any bias by the thesis supervisor against the appellant.

The Examination Appeals Board adheres to the principle that assessment of the substance of a thesis grade is a power vested exclusively in the examiners appointed by the Board of Examiners in respect of the relevant course unit. This does not alter the fact that such assessment must be effected in accordance with the requirements set by or pursuant to the WHW and General Administrative Law Act (*Algemene wet bestuursrecht*, “Awb”) and that the examiners must observe the general principles of good governance in doing so. This can readily be verified by the Examination Appeals Board.

This means – as far as relevant now – that the assessment must take place in accordance with the requirements set by or pursuant to the WHW and must be accompanied by a substantiation that suffices to support the decision. This substantiation serves the purpose of providing the student with insight into the assessment (as well as insight into the procedure of the assessment) and making it



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verifiable by the Examination Appeals Board and the Appeals Tribunal for Higher Education (*College van Beroep voor het Hoger Onderwijs*, CBHO).

Article 4.8a.1 of the Rules and Guidelines (*Regels en Richtlijnen*, R&R) of the Board of Examiners of the programmes provided by the Institute of [X] stipulate that a thesis must always be assessed by two examiners independently. This means that both examiners must complete and sign an assessment form, in which the thesis is assessed by means of the prescribed criteria set out. Both examiners must express their assessment of each of the criteria by means of a grade on a scale of 1 to 10. Furthermore - contrary to what the respondent apparently holds - *both* examiners must provide substantiation for their assessment. This substantiation must suffice to support the grade awarded, provide the student with insight into the assessment and enable the Examination Appeals Board and the CBHO to verify the execution of the procedure. It is acceptable, and, moreover, perhaps even logical, that the substantiation of the first reader-thesis supervisor is more elaborate with a view to providing feedback than the substantiation of the second reader. However, the substantiation of the second Reader must be such that it is clear and transparent for each of the assessment criteria how the second reader has reached her decision. This is even more relevant when the assessment of one of the criteria and/or the thesis in general is unsatisfactory.

When substantiation is lacking on one of the forms or on both forms, the assessment contravenes Article 3:46 of the Awb and consequently can be annulled on these grounds alone. When both forms have been provided with a substantiation, the Examination Appeals Board must evaluate by means of what was argued in the administrative appeal whether that substantiation suffices to support the assessment. Since the WHW does not include any ruling that derogates from the Awb, it is impossible to diverge from these by or pursuant to the Course and Examination Regulations (*Onderwijs en examenregeling*, “OER”), let alone by means of instructions for the assessment form.

The examiners must arrive at their assessment independently of one another. This means they are not allowed to contact each other about the assessment of the thesis or to consult each other before they have and signed their assessment





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forms. However, this also follows from the instructions that are part of the assessment form.

After the first and second reader have completed and signed the assessment forms completely independently, they discuss the final grade to be awarded. In accordance with the instructions for the assessment form they then complete the *final assessment form* next. It has not become clear to the Examination Appeals Board whether the *final assessment form* is “merely” the grade slip, or rather a form in which the assessments of the first and second readers are combined. When the first and second reader have different opinions about the assessment and cannot agree on the grade to be awarded, it is up to the Board of Examiners to provide a solution, which may mean appointing a third reader.

Consequently, the ultimate assessment of the thesis comprises the completed and signed assessment forms of the first and second reader and the *final assessment form*. The various parts cannot be considered separately. Contrary to what the respondent apparently believes, all three of the completed and signed forms must be provided to the student on request. Obviously, this is different when the individual assessments of both examiners are clearly demonstrated from the *final assessment form*. In this case, too, it is not possible to derogate from this by means of or pursuant to the OER, as in this case, in which the student was provided only with the assessment form completed by the First Reader and the *final assessment form*.

The documents submitted by the respondent, including the assessment forms submitted after the hearing, do not demonstrate that the assessment was executed in accordance with the procedure as described above, in the opinion of the Examination Appeals Board. This applies to both the first attempt and the resit.

First of all, the assessment forms completed by the second reader list only substantiations in respect of the *Theoretical Scope* and *Methodology and Analysis* assessment criteria. Moreover, this substantiation is so brief that it does not permit the assessments to be transparent and verifiable. At the hearing, it was determined furthermore that the assessment forms of the second reader were not sent to the appellant.



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Furthermore, the *final assessment form* as completed by the first and second reader jointly is missing from the file. At the hearing, the appellant stated that he only received the [X] *Bachelor's Project Assessment Form* as signed by the first reader on 6 July 2021 and this was not refuted. Although the Examination Appeals Board requested the respondent after the hearing to submit *all* assessment forms, both from the first attempt and the resit, this did not include the *final assessment forms*. In as far as the Board of Examiners takes the position that the assessment form as completed and signed by the first reader must be considered as the *final assessment form*, which combines the assessments of the first and second reader in one substantiation, the Examination Appeals Board does not second this position. This is because this form was completed before the second reader drew up her assessment, in view of the date of signing (6 July 2021). If the assessment form as signed by the first reader is indeed the *final assessment form*, the substantiated assessment by the first reader is missing and for this reason alone the assessment was executed contrary to the law.

Setting aside the above-mentioned procedural defects in the assessment, the Examination Appeals Board must assume that the appellant was not aware of the substantiated assessment of his thesis by the second reader and the joint final assessment by the first and second reader when he worked on the resit. This means that the appellant may have received insufficient feedback on the shortcomings that have contributed to the unsatisfactory grade when he was rewriting his thesis. Consequently, the Examination Appeals Board holds that it cannot be excluded that the appellant did not stand a reasonable chance of a resit in this respect.

The above considerations entail that the contested decision cannot be supported by the substantiation on which it was based and was not arrived at with due care. The decision was thus taken contrary to Articles 3:46 and 3:2 of the General Administrative Law Act.

This means that the appeal is founded and the contested decision must be annulled. The Examination Appeals Board does not proceed to a review of the substance of the thesis assessment. The respondent must allow the appellant within the term that applies to a resit to resit his thesis once again by means of the written assessments by the first reader. Since a substantiated assessment of the



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second reader with regard to both the first attempt and the resit is missing, it stands to reason that the second reader will still provide a clarification of her assessment of the first attempt and the resit either orally or in writing. The Examination Appeals Board sees no grounds to instruct the Board of Examiners to appoint a different first and/or second reader for this resit. Obviously, the Board of Examiners is free to do so if it sees reason to do so itself.

The Examination Appeals Board urgently requests the Board of Examiners to ensure that assessment of theses will be executed in a procedurally correct manner in future. Furthermore, the Examination Appeals Board finds it important to remark that this decision has no consequences for assessments against which no administrative appeal has been lodged. These assessments have become inviolable in law due to the expiry of the appeal term and are, consequently, deemed lawful in respect of their substance and the way they were arrived at.



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**The decision**

The Examination Appeals Board of Leiden University,

- I holds the appeal founded;
- II quashes the decision of 15 July 2021;
- III determines that the respondent must allow the appellant to resit the thesis once again, with due regard for the considerations of this decision,

in view of article 7.61 of the Higher Education and Academic Research Act.

Established by a chamber of the Examination Appeals Board, comprised of: O. van Loon, LL.M., (Chair), Dr A.M. Rademaker, Dr C.V. Weeda, M.C. Klink MJur (Oxon.) BA, and E.L. Mendez Correa, LL.B. (members), in the presence of the Secretary of the Examination Appeals Board, I.L. Schretlen, LL.M.

O. van Loon, LL.M.,  
Chair

I.L. Schretlen, LL.M.,  
Secretary

Certified true copy,

Sent on:



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ANNEX

Relevant legislation

As far as relevant, the Course and Examination Regulations (“OER”) of the Master's Programme in [X] state the following:

Article 3.3.1 For each component, the Prospectus specifies which practical assignments are included, the nature and scope of the student’s workload for these practical assignments and whether participation in these is a condition of entry to the (other parts of) examination for the component. The Board of Examiners may exempt students from a practical assignments, in which case the Board can choose to apply alternative conditions.

Article 3.3.2 The Prospectus specifies the scope and study load of the thesis/final paper/final report, and the requirements that the thesis/final paper/final report must meet.

Article 4.5.1 In accordance with Article 7.12b (3) of the Act, the Board of Examiners establishes rules concerning the performance of its tasks and responsibilities and the measures it can take in the event of fraud.

The Rules and Regulations of the Board of Examiners of the programmes offered by the Institute of [X] (R&R) stipulate the following, as far as relevant:

Article 1.2 Definitions

Practical assignments: a practical assignment as an interim examination or examination or part thereof as referred to in Article 7.13, second paragraph, under d of the Act, in one of the following formats: creating a thesis/final paper/final report.

Article 4.8a.1 The Board of Examiners adopts the criteria for assessment of final papers (or, alternatively, theses (MSc) and the concluding thesis of the bachelor’s project), the procedure for appointment of a first and second reader, the assessment form, and the allocation of responsibilities between the first and second reader. The final paper will always be assessed by two examiners and the



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grade will be established in consultation. If the first and second reader fail to reach agreement, the Board of Examiners will appoint a third examiner as a third reader.

The document [X] *Bachelor's Project Assessment Form: Instructions* states the following:

- Each bachelor's thesis is assessed by two examiners: the thesis supervisor and the second reader.
- These assessments are carried out independently.
- Various criteria are used to assess the thesis. For each criterion, both examiners express their verdict on the quality of the thesis in the form of a numerical mark. The supervisor supplements the mark with an explanation. The second reader may do so, but this is not a requirement.
- Only the thesis supervisor fills in the 'work performance' criterion.
- Final grades are given on a numerical scale ranging from 1 to 10 in half-grade increments (0,5), with the exception of the grade 5.5 which cannot be given as a final grade.
- After both examiners have assessed the thesis, they compare their assessments and fill in and sign the grade form and fill in the final assessment form ('final assessment', on the back of the grade form).
- In case of irreconcilable differences between the two examiners, the Board of Examiners may appoint a third examiner.
- The two assessment forms are sent together with the grade form and the repository form to the OSC for processing and archiving.
- The thesis supervisor sends the student:
  - a copy of the assessment form filled out by the supervisor;
  - a copy of the final assessment.