

JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(Second Chamber)
24 April 2008

Case F-61/05

Raffaele Dalmasso
v
Commission of the European Communities

(Civil service — Contract staff — Recruitment — Grading in function group —
Application for review of grade and remuneration set on recruitment —
Former auxiliary staff member employed as contract staff member —
Article 3a and Article 80(2) and (3) of the CEOS — Duties falling under
different function groups — Equal treatment — Action unfounded)

Full text in the language of the case (French) II-A-1 - 625

Application: brought under Articles 236 EC and 152 EA, in which Mr Dalmasso seeks, first, annulment of the decision of the authority responsible for concluding contracts of employment of 21 March 2005 dismissing his application of 7 December 2004, reclassified as a claim, against the decision fixing his grade and remuneration upon his engagement as contract staff and, in so far as necessary, annulment of the original decision by which the same grade and remuneration were fixed under the terms of the contract signed on 16 September 2004, and second, damages which he assesses at EUR 25 000.

Held: The action is dismissed. Each party is to bear its own costs.

Summary

1. Officials — Contract staff — Grading

(Conditions of Employment of Other Servants, Arts 53, third para., and 80(2))

2. Officials — Conditions of Employment of Other Servants of the European Communities — Application of Title IV, concerning contract staff, not subject to the prior adoption of the description of functions and responsibilities covering each type of duty characterising the various function groups for those staff

(Conditions of Employment of Other Servants, Arts 52 and 80(3); Council Regulation No 723/2004)

3. Officials — Conditions of Employment of Other Servants of the European Communities — Equal treatment — Differences between the financial rules for auxiliary staff and those for contract staff — No discrimination

4. Officials — Equal treatment — Different treatment for various categories of staff as regards guarantees under the Staff Regulations and social security benefits — No discrimination

1. The administration does not commit a manifest error of assessment by classifying in function group I a member of the contract staff who has been allocated duties which involve moving partitions and doors, organising removals, ordering new furniture or repairs, the logistical management of archives, establishing contact with building managers for issues relating to caretaking, parking, maintenance and cleaning, the regular and adequate provision of office supplies services, monitoring the use of appropriations, organising meetings and reserving rooms, and monitoring the demand for supplies of drinks and snacks. Such duties cover manual tasks and clerical work which do not exceed in intensity the level of administrative support activity provided for in Article 80(2) of the Conditions of Employment of Other Servants for function group I. Furthermore, the degree of initiative and independence which the contract staff member is allowed in order to complete those tasks successfully is not such as to call into question their description as 'manual and administrative support service tasks' within the meaning of the above-mentioned provision, and does not prevent the performance of supervision by officials or temporary staff.

Moreover, even if the contract staff member previously performed those same duties as a member of the auxiliary staff falling under Category C, group VII, the functions typical of that category, such as those of secretary, typist or telephonist or office worker, as specified in the third paragraph of Article 53 of

the Conditions of Employment of Other Servants, correspond to those described in Article 80(2) of those Conditions relating to function group I.

(see paras 52-54, 56-57)

2. The Conditions of Employment of Other Servants and Regulation No 723/2004 amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities do not contain any provision which makes the application of Title IV of those Conditions of Employment, concerning contract staff, and of its provisions on their engagement in particular, subject to the adoption of the description of functions and responsibilities covered by each type of duty characterising each of the function groups to which contract staff may belong, set out in Article 80(3) of those Conditions of Employment. On the contrary, Article 52 of the Conditions of Employment, which provides that the actual period of employment of auxiliary staff, intended to be eventually replaced by contract staff, as is apparent from recital 36 of Regulation No 723/2004, must not extend beyond 31 December 2007 and that no new auxiliary staff may be engaged after 31 December 2006, confirms that Title IV applies immediately, since that article makes no mention of the prior implementation of Article 80(3) of the Conditions of Employment.

(see para. 59)

See:

T-415/06 P *De Smedt v Commission* [2007] ECR-SC I-B-1-7 and II-B-1-41, para. 40

F-59/05 *De Smedt v Commission* [2006] ECR-SC I-A-1-109 and II-A-1-409, para. 52

3. The Community legislature is free to make at any time such amendments to the rules of the Staff Regulations as it considers to be consistent with the interests of the service, and to adopt for the future provisions of the Staff Regulations which are less favourable for the officials or other staff concerned, provided, however, that the rights duly acquired by the officials or other staff are safeguarded and that those specifically affected by the new rules are treated in exactly the same way. It cannot therefore be objected that it created a new category of staff, contract staff, who are subject to different financial rules from those of auxiliary staff, and who are intended eventually to replace auxiliary staff and category D officials, if the rights acquired by officials or staff recruited under the previous Staff Regulations have not been unlawfully affected and if the staff in the new category have been treated in an identical manner. Furthermore, information circulated on the Commission's intranet concerning a certain rate of reduction in remuneration as a result of the conversion of auxiliary staff contracts into contract staff contracts cannot give anyone affected a legitimate expectation that he is entitled to a specific reduction, since the rate is an average to be applied to the various individual cases.

(see paras 78, 79, 81)

See:

28/74 *Gillet v Commission* [1975] ECR 463, paras 5 and 6

T-121/97 *Ryan v Court of Auditors* [1998] ECR II-3885, paras 98 and 104;
T-135/05 *Campoli v Commission* [2006] ECR-SC I-A-2-297 and II-A-2-1527,
para. 85

F-59/05 *De Smedt v Commission*, para. 71

4. It is not possible to question the differences in status between the various categories of persons employed by the Communities, whether as officials properly so called or in the various categories of staff covered by the Conditions of Employment of Other Servants. Each of those categories is defined in accordance with the legitimate requirements of the Community administration and the nature of the permanent or temporary tasks which it has to perform. The fact that some categories of persons employed by the Communities may enjoy guarantees under the Staff Regulations and social security benefits which are not given to other categories cannot, therefore, be regarded as discrimination. In particular a general feature of the position of staff covered by the Conditions of Employment of Other Servants is the contractual nature of the employment relationship, whereas the legal relationship between an official and the administration is governed by the Staff Regulations. Objective legal differences exist between the various categories of persons employed by the Communities, so that the principle of equal treatment cannot be applied in that respect.

(see para. 82)

See:

118/82 and 123/82 *Celant and Others v Commission* [1983] ECR 2995, para. 22

T-415/06 P *De Smedt v Commission*, paras 54 and 55

F-59/05 *De Smedt v Commission*, para. 76