

Pleas in law and main arguments

By the present appeal, the Commission seeks annulment of the judgment of 22 November 2007 in Case F-109/06 *Dittert v Commission*, by which the Civil Service Tribunal (CST) annulled its decision allocating to the applicant at first instance a number of priority points insufficient for him to be promoted in promotion year 2005 and its decision finalising the list of officials promoted during that promotion year inasmuch as it does not include the applicant's name.

In support of its appeal, the Commission raises three pleas in law seeking annulment.

Firstly, the Commission submits that the CST wrongly applied Article 45 of the Staff Regulations in that it attributed excessive importance to the involvement of the Director General in the procedure for allocating points, thus restricting unduly the discretion of the Appointing Authority following the finding that the lack of such involvement constituted a substantial procedural error.

Secondly, the Commission submits that the CST infringed the jurisdiction of the Appointing Authority in breach of Article 45 of the Regulations and exceeded its powers of judicial control by addressing an instruction to the Appointing Authority.

Thirdly, the Commission alleges that the CST failed to give sufficient reasons for the finding that the allocation to the applicant at first instance of a certain number of priority points by the Promotion Committee did not constitute an adequate remedy for the procedural error classified by the Tribunal as 'substantial' consisting in the lack of involvement of the Director General. Moreover, it claims that the CST based the contested judgment on a distortion of the contents of minutes of a meeting of the Promotion Committee.

Appeal brought on 5 February 2008 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 22 November 2007 in Case F-110/06, *Carpi Badía v Commission*

(Case T-52/08 P)

(2008/C 92/76)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by G. Berscheid and K. Herrmann, acting as Agents)

Other party to the proceedings: José María Carpi Badía (Luxembourg, Grand Duchy of Luxembourg)

Form of order sought by the appellant

- Annul the judgment of the Civil Service Tribunal of 22 November 2007 in Case F-110/06 *Carpi Badía v Commission* and refer the case back to the Civil Service Tribunal;
- order the respondent to pay the costs.

Pleas in law and main arguments

By the present appeal, the Commission seeks annulment of the judgment of 22 November 2007 in Case F-110/06 *Carpi Badía v Commission*, by which the Civil Service Tribunal (CST) annulled its decision allocating to the applicant at first instance a number of priority points insufficient for him to be promoted in promotion year 2005 and its decision finalising the list of officials promoted during that promotion year inasmuch as it does not include the applicant's name.

In support of its appeal, the Commission raises three pleas in law seeking annulment identical to those raised in Case T-51/08 P *Commission v Dittert*.

Appeal brought on 8 February 2008 by Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 27 November 2007 in Case F-122/06, *Roodhuijzen v Commission*

(Case T-58/08 P)

(2008/C 92/77)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by J. Currall and D. Martin, acting as Agents)

Other party to the proceedings: Anton Pieter Roodhuijzen (Luxembourg, Grand Duchy of Luxembourg)

Form of order sought by the appellant

- Annul the judgment of the Civil Service Tribunal of 27 November 2007 in Case F-122/06 *Roodhuijzen v Commission*;
- dismiss the action brought by Mr Roodhuijzen;
- order that each party shall bear its own costs of the present appeal and of the action before the Court of First Instance.

Pleas in law and main arguments

By the present appeal, the Commission seeks annulment of the judgment of the Civil Service Tribunal of 27 November 2007 in Case F-122/06 *Roodhuijzen v Commission*, which annuls the decision of the Commission refusing to recognise the non-marital partnership of the applicant as regards the Joint Sickness Insurance Scheme of the European Communities.

In support of its appeal, the Commission raises three pleas in law seeking annulment.

By its first plea, the Commission submits that the CST ruled *ultra vires* in breach of Article 1(2) of Annex VII to the Staff Regulations and in breach of the principle of non-discrimination, in that it rejected the appellant's argument relating thereto and substituted its own without, however, permitting the Commission to respond thereto, accordingly failing to respect the rights of the defence.

The second plea alleges an error of law in the interpretation of the notion of 'partnership' as contained in Article 1(2) of Annex VII to the Staff Regulations, entitling the partner of an official to be covered by the Joint Sickness Insurance Scheme.

The third plea, raised in the alternative, alleges incorrect interpretation of the principle of non-discrimination.

Action brought on 7 February 2008 — Nute Partecipazione and La Perla v OHIM — Worldgem Brands (NIMEI LA PERLA MODERN CLASSIC)

(Case T-59/08)

(2008/C 92/78)

Language in which the application was lodged: Italian

Parties

Applicants: Nute Partecipazione Spa (Bologna, Italy) and La Perla Srl (Bologna, Italy) (represented by: R. Morresi and A. del Ferro, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal of OHIM: Worldgem Brands Srl (Olmo di Creazzo, Italy)

Form of order sought

- Annul and alter the decision of the Second Board of Appeal of OHIM of 19 November 2007 on the ground of misapplication of Article 8(5) and infringement of Articles 63(6), 73 and 74 of the regulation on the Community trade mark;
- in the alternative, annul the decision of the Second Board of Appeal of OHIM of 19 November 2007 on the ground of misapplication of Article 8(5) and infringement of Articles 63(6), 73 and 74 of the regulation on the Community trade mark;
- in the further alternative, annul and/or alter the decision of the Second Board of Appeal of OHIM of 19 November 2007 on the ground of misapplication of Article 8(1)(b) of the regulation on the Community trade mark and infringement of Articles 63(6), 73 and 74 of the regulation on the Community trade mark;
- in any event, order OHIM and Worldgem Brands Srl, jointly and severally, to pay the costs of all the proceedings, including the costs relating to the proceedings before the Second Board of Appeal of OHIM.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Community word mark 'NIMEI LA PERLA MODERN CLASSIC' (application for registration No 713.446) for goods in Class 14. That trade mark has already been the subject of an earlier application for a declaration of invalidity. The decision rejecting that earlier application by the First Board of Appeal was annulled by judgment of the Court of First Instance in Case T-137/05 *La Perla v OHIM — Worldgem Brands* (1).

Proprietor of the Community trade mark: WORLDGEM BRANDS Srl

Applicant for the declaration of invalidity: the applicant.

Trade mark right of applicant for the declaration: the reputation of a number of 'PERLA' Italian figurative marks for goods in Classes 3, 9, 14, 16, 18, 24, 25 and 35.

Decision of the Cancellation Division: granted the application and declared that the registration of the Community trade mark in question was invalid.

Decision of the Board of Appeal: annulled the contested decision and granted in part the application for a declaration of invalidity.

Pleas in law: infringement of provisions of law and misinterpretation and misapplication of Articles 63, 73 and 74 of Regulation (EC) No 40/94 on the Community trade mark. In the alternative: infringement of provisions of law and misapplication of Article 8(1)(b) of that regulation.

(1) Not yet published in the ECR.