Action brought on 9 November 2009 — Escola Superior Agrária de Coimbra v Commission

(Case T-446/09)

(2010/C 37/54)

Language of the case: Portuguese

Parties

Applicant: Escola Superior Agrária de Coimbra (Bencanta, Portugal) (represented by: J. Pais do Amaral, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of Commission Decision D(2009)224268 of 9 September 2009;

— Order the Commission to pay the costs.

Pleas in law and main arguments

Lack of reasoning in relation to the requirement of reimbursement of the amount stipulated in point 8 of the letter of 12 August 2009.

Infringement of points 21.2 and 22 of the administrative framework provisions in relation to the other amounts, since a system was in place to record the time dedicated by each of the participants to the project, which indicated the name of the person and the time, in real time, which that person dedicated to the project.

Error of fact since the administration can act only if sure that the facts are correct. Mere doubt on the part of the administration as to whether the time recorded on the timesheets was actually dedicated to the project or not is not sufficient since the burden of proof is on the Commission.

Misassumption on the part of the Commission since there is no written obligation to adopt a specific type of system to record the duration of work carried out which is more rigorous than the recording of information on timesheets. Thus, while the contract is being executed and when it is no longer possible to alter the previous legitimate procedure for registering time dedicated to the project, namely by means of timesheets, the Commission cannot legitimately require more than what was originally stated and set out in the contract. In addition, it is inappropriate to make such an onerous demand that time dedicated to the project be recorded photographically.

The contested act infringes the principles of good faith, legitimate expectations, transparency, proportionality, and good and reasonable administration since the rules in place for recording time dedicated to the project are new, which is corroborated by the fact that those rules feature explicitly and clearly in subsequent versions of the program at issue.

Error in the assessment of the facts in so far as the size and the content of the refund ordered by the Commission is disproportionate to the content and nature of the alleged irregularities, given that it was not possible to attain the results reflected in being classed in tenth position out of 200 projects, without dedicating significantly more time to the project than actually paid for (once the refund ordered has been deducted).

Appeal brought on 9 November 2009 by Rinse van Arum against the judgment of the Civil Service Tribunal delivered on 10 September 2009 in Case F-139/07 van Arum v Parliament

(Case T-454/09 P)

(2010/C 37/55)

Language of the case: Dutch

Parties

Appellant: Rinse van Arum (Winksele, Belgium) (represented by W. van den Muijsenbergh, lawyer)

Other party to the proceedings: European Parliament

Form of order sought by the appellant

The appellant claims that the General Court should:

— declare the appeal and the pleas in law and complaints set out therein admissible; and

— set aside the judgment of the Civil Service Tribunal (Second Chamber) of 10 September 2009 in Case F-139/07; and

— rule itself on the case and set aside the decision establishing the appellant's staff report; and

— order the Parliament to pay the costs of the proceedings that the appellant had to incur at first and second instance.

Pleas in law and main arguments

The appellant puts forward the following pleas in support of his appeal:

— Breach of Articles 1 and 9 of the general rules for implementing Article 43 of the Staff Regulations and of Article 15(2) and 87(1) of the Conditions of employment of other servants of the European Communities and the provisions of the Guide to Staff Reports;

— Breach of Article 19 of the general implementing provisions and the duty to state reasons;

— Breach of the principle that the parties should be heard, of the equality of the parties and the rights of the defence;

— Breach of law in relation to the connection between the appraisal and the award of points, the rights of the defence and the principle of sound administration;

— Breach of Article 90 of the Staff Regulations of the European Communities ('the Staff Regulations') by the use of documents which were not in the case-file and breach of the principle that the parties should be heard, as well reversal of the burden of proof to the detriment of the appellant and breach of the duty to state reasons;

— Breach of the duty to have regard to the welfare of officials, owing to the fact that the final assessor negligently took into account incorrect elements, and breach of legal principles as regards the burden of proof;

— Incorrect application of the law, case-law and legal principles as regards Article 90 of the Staff Regulations, the duty to have regard to the welfare of officials, due care, sound administration and legal principles concerning evidence;

— Breach of law as a result of unintelligible findings by the Civil Service Tribunal and incorrect classification of facts, as well as breach of the duty to state reasons and the rules of sound administration;

— Incorrect assessment of facts.

Action brought on 27 November 2009 — McLoughney v OHIM — Kern (Powerball)

(Case T-484/09)

(2010/C 37/56)

Language in which the application was lodged: English

Parties

Applicant: Rory McLoughney (Thurles, Ireland) (represented by: J. M. Stratford-Lysandrides, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Ernst Kern (Zahling, Germany)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 September 2009 in case R 1547/2006-4;

— Allow the opposition to the Community trade mark application No 3 164 779; and

— In the alternative, remit the opposition to the defendant for further consideration in accordance with the judgment of the Court.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The word mark 'Powerball', for goods in classes 10, 25 and 28

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: Non-registered mark 'POWERBALL', used in the course of trade in Ireland and the United Kingdom