



Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL
(Second Chamber)
19 June 2014

Case F-157/12

BN
v
European Parliament

(Civil service — Officials — Action for annulment — Official of grade AD 14 temporarily filling a post as adviser to a Director — Allegation of psychological harassment against the Director-General — Long-term sick leave — Decision to appoint the applicant to a post as adviser in another Directorate-General — Duty to have regard for the welfare of officials — Principle of sound administration — Interests of the service — Rule that the grade must correspond with the post — Application for damages — Harm arising from a failure to take a decision)

Application: under Article 270 TFEU, applicable to the EAEC Treaty pursuant to Article 106a thereof, in which BN seeks, first, annulment of the decision of the European Parliament of 20 March 2012 terminating his duties as advisor to the Director of the Resources Directorate of the Directorate-General (DG) for Personnel, and reassigning him, from 15 March 2012, to a post as advisor in the ‘Eco-Management and Audit Scheme’ Service of the General Coordination Unit of the Resources Directorate of the DG for Infrastructure and Logistics (‘the EMAS Service’), and of the decision of 21 September 2012 rejecting his complaint against the decision of 20 March 2012, and, secondly, compensation for the harm suffered as a result of harassment and maladministration by his superiors, assessed on an equitable basis at EUR 400 000.

Held: The action is dismissed. The European Parliament is to bear its own costs and is ordered to pay the costs incurred by BN.

Summary

- 1. Officials — Transfer — Reassignment — Difference — Common conditions*
(Staff Regulations, Arts 4, 7(1) and 29)
- 2. Officials — Organisation of departments — Assignment of staff — Reassignment — Compliance with the rule on correspondence between grade and post — Scope*
(Staff Regulations, Art. 7(1))
- 3. Officials — Psychological harassment — Burden of proof — Obligation for the official concerned to provide prima facie evidence*
(Staff Regulations, Art. 12a(2))

4. *Actions brought by officials — Pleas in law — Misuse of powers — Concept — Decision in the interest of the service — No misuse of powers*

5. *Officials — Organisation of departments — Assignment of staff — Reassignment in the interest of the service — Right of the person concerned to be heard — None*
(Charter of Fundamental Rights of the European Union, Art. 41(2)(a); Staff Regulations, Art. 7(1))

6. *Officials — Administration's duty to have regard for the welfare of officials — Scope — Enhanced obligation where the health of the official is affected — Limits*
(Staff Regulations, Art. 24)

7. *Officials — Protection of health and safety — Obligations of the institutions — Scope — Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work — Effect — Limits*
(Charter of Fundamental Rights of the European Union, Art. 31(1); Staff Regulations, Art. 1e(2); Council Directive 89/391)

1. Even where a decision appears, because it is based in particular on Article 7(1) of the Staff Regulations, to be a decision transferring an official, it must be regarded as a reassignment if the person concerned has not been transferred to a vacant post pursuant to Articles 4 and 29 of the Staff Regulations.

However, decisions to reassign are subject, like transfers, as regards the protection of the rights and legitimate interests of the official concerned, to the rules of Article 7(1) of the Staff Regulations inasmuch as, inter alia, the reassignment of officials may take place only in the interests of the service and in conformity with the principle of equivalence of posts.

(see paras 44-46)

See:

judgment in *de Albuquerque v Commission*, F-55/06, EU:F:2007:15, para. 55 and the case-law cited therein

2. In the event of a change in an official's duties upon reassignment, the principle that the post to which an official is assigned should correspond to his grade, set out in Article 7 of the Staff Regulations in particular, calls for a comparison, not between his present and previous duties, but between his present duties and his grade. Accordingly, the rule that the post should correspond to the grade does not preclude a decision from entailing the assignment of new duties which, although they are different from those previously carried out and are perceived by the person concerned as bringing about a reduction of his responsibilities, are none the less consistent with a post corresponding to his grade. Thus, an effective diminution of an official's responsibilities infringes the rule that the post to which an official is assigned should correspond to his grade only if, taken together, his new duties clearly fall short of those corresponding to his grade and post, taking account of their character, their importance and their scope. Lastly, the Staff Regulations do not grant officials any right to a specific post, but, on the contrary, leave to the appointing authority the power to assign officials, in the interests of the service, to the various posts corresponding to their grade. Furthermore, while it cannot be denied that the administration has every interest in assigning its officials to posts which accord with their particular aptitudes and their personal preferences, officials cannot be recognised as having a right to perform or to retain specific duties or to refuse any other duties relating to their basic post. Consequently, the reassignment of an official from a post of head of unit to a post of advisor, keeping the same grade AD 14, complies with the rule that his post should correspond to his grade in so far as, as is apparent from the descriptive table of basic posts in Annex I, section A, of the Staff Regulations, grade AD 14 corresponds to an administrator working for example as director, head of unit or advisor.

(see paras 55-58)

See:

judgment in *Bermejo Garde v EESC*, F-41/10, EU:F:2012:135, paras 162 to 164 and the case-law cited therein, on appeal before the General Court of the European Union, Case T-530/12 P

3. In order for Article 12a(2) of the Staff Regulations, concerning protection for officials who consider themselves to be the victims of harassment, to be applicable in support of claims for annulment of a decision of the administration, the person concerned must adduce at least prima facie evidence that the contested decision constitutes, entirely or in part, a retaliatory measure against him.

In that regard, the fact that an official requested to be appointed to a post of head of unit and that the appointing authority did not accede to that request, but reassigned the official from a post of advisor to another advisor post, is not in itself enough to classify the contested decision as a retaliatory measure against the official concerned.

(see paras 67, 70)

4. The concept of misuse of powers, of which abuse of process is an expression, has a very precise meaning and encompasses the use by an administrative authority of its powers for a purpose other than that for which they were conferred upon it. A decision is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent factors, to have been taken with the purpose of achieving ends other than those stated.

In the case of a reassignment, provided that it has not been judged to be contrary to the interests of the service, there can be no question of a misuse of powers.

(see paras 76, 77)

See:

judgment in *BY v EASA*, F-81/11, EU:F:2013:82, paras 69 and 70 and the case-law cited therein

5. The rights of the defence, while being more extensive, certainly cover the right of every person to be heard before an individual measure which would affect him adversely is taken, as set out in Article 41(2)(a) of the Charter of Fundamental Rights of the European Union. The right for every official to be heard applies especially before the adoption of a measure likely to entail appreciable consequences for his career development.

The appointing authority is not under any obligation to inform the official concerned, prior to its adoption, of the elements on which a decision to reassign him is based in order to enable him effectively to make known his views on the subject, where that decision is not likely to entail appreciable consequences for his career development, where it conforms with the equivalence of posts, where it accedes to the official's wish to cease performing duties in his area of specialisation or in the immediate environment of the directorate-general in which he has worked, and where it does not involve any change in the official's place of employment.

(see paras 84, 85)

See:

judgment in *Clotuche v Commission*, T-339/03, EU:T:2007:36, para. 147

judgment in *Z v Court of Justice*, F-88/09 and F-48/10, EU:F:2012:171, para. 146 and the case-law cited therein

6. The obligations arising for the administration from the duty to have regard for the welfare of officials are substantially enhanced where the situation of an official whose physical or mental health is shown to be affected is involved. In such circumstances, the administration must consider that official's requests with a particularly open mind. Moreover, it is generally incumbent on the medical service of an institution, especially where its attention is drawn, either by the official concerned himself or by the administration, to the allegedly harmful consequences that an administrative decision might have for the health of the person to whom it is addressed, to ascertain the reality and the extent of the risks referred to and to inform the appointing authority of the result of its examination.

However, it may not be complained that the appointing authority infringed its duty to have regard for the welfare of officials or the principle of sound administration by adopting a decision to reassign an official if, by that decision, it acceded to the wishes expressed by the official no longer to work in his area of specialisation and no longer to be assigned to a particular directorate-general. Even if it is true that the official also wished to be appointed to a post of head of unit rather than a post of advisor, the fact remains that, in the light of the broad discretion enjoyed by every institution in the organisation of its departments, provided that a reassignment is in the interest of the service and complies with the rule requiring correspondence between grade and post, it is not for the Courts of the European Union to determine whether other measures would have been more appropriate.

(see paras 92, 93, 96-98)

See:

judgment in *Esders v Commission*, F-62/10, EU:F:2011:141, paras 80 and 82 and the case-law cited therein

7. The institutions of the Union are required to respect the right of workers, enshrined in Article 31(1) of the Charter of Fundamental Rights of the European Union, to working conditions which protect, inter alia, their health. According to the explanations relating to Article 31 of the Charter, which must be taken into account for its interpretation pursuant to the third paragraph of Article 6(1) TEU and Article 52(7) of the Charter, Article 31(1) of the Charter is based on Directive 89/391 on the introduction of measures to encourage improvements in the safety and health of workers at work.

The wording of Article 1e(2) of the Staff Regulations, in so far as it refers to the minimum requirements applicable under measures adopted pursuant to the Treaties in the areas of health and safety and relating to working conditions, envisages rules such as those in Directive 89/391, since that directive itself aims, as stated in Article 1(1), to introduce measures to encourage improvements in the safety and health of workers at work.

However, the duty of the institutions, however wide it may be, to ensure the safety and health of their staff when they act as employers cannot go as far as to place an absolute duty on the institution concerned to achieve the desired result.

(see paras 104-106, 109, 110)

See:

judgment in *Réexamen Commission v Strack*, C-579/12 RX-II, EU:C:2013:570, paras 39 and 43

judgment in *Missir Mamachi di Lusignano v Commission*, F-50/09, EU:F:2011:55, para. 130, on appeal before the General Court of the European Union, Case T-401/11 P