

COURT OF FIRST INSTANCE

Action brought on 18 March 2004 by Railion Deutschland AG against the Commission of the European Communities

(Case T-109/04)

(2004/C 146/06)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 March 2004 by Raillion Deutschland AG, Mainz (Germany), represented by H. Johlen, lawyer.

The applicant claims that the Court should:

- annul Commission Decision of 12 December 2003 C(2993)4660/F noting that a remission of import duties was not justified in a particular case;
- order the defendant to pay the costs.

Pleas in law and main arguments:

The applicant is an undertaking engaged in the transport of goods by rail. The complaint is against the Commission decision refusing an application by the Federal Republic of Germany for authority to allow a remission of customs debt in favour of the applicant. The liability to pay the customs debt arose because the applicant was alleged to have transported alcohol declared as paint from the Bremen free zone to the Hamburg free zone by rail. There was nothing to indicate to the applicant that the declaration was false. After the goods reached Hamburg, they were properly transported to their final destination in the Czech Republic.

The applicant claims *inter alia* that the decision failed to satisfy the essential procedural requirement of the right to be heard. It is true that the applicant was given a formal opportunity to state its position. However the right to be heard also requires that the arguments of the parties be considered; in its decision refusing the application the defendant did not deal with the arguments submitted. The Commission failed to have regard to the points made in relation to the different risks incurred by a rail freight company and a shipping company in a free zone. The Commission's decision was based on the premise that as a rail freight company the applicant would be dealt with in exactly the same way as a shipping company.

The applicant also claims that the decision infringes Article 239 of the Community Customs Code. The decision denies the existence of 'special circumstances' on grounds that are irrelevant or are based on facts that are not fully established. Because of the simplification of rail transport procedures, the applicant was exposed to greater risk of deception by fraud in relation to the goods transported. It could not eliminate or control that risk on its own. In particular, it was impossible in practice to inspect the container.

Lastly, the applicant claims that when making an equitable decision under Article 239 of the Community Customs Code it was necessary to take into account the fact that no financial loss was incurred by the European Communities and that at no stage was this threatened, as the alcohol was destined for the Czech market and was also delivered there.

Action brought on 1 April 2004 by KM Europa Metal AG, Tréfinmétaux S.A. and Europa Metalli S.p.A. against the Commission of the European Communities

(Case T-127/04)

(2004/C 146/07)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 1 April 2004 by KM Europa Metal AG, Osnabruck (Germany), Tréfinmétaux S.A., Courbevoie Cedex (France), and Europa Metalli S.p.A., Florence (Italy), represented by M. Siragusa, A. Winckler, G. Cesare Rizza, T. Graf and M. Piergiovanni, lawyers.

The applicants claim that the Court should:

- substantially reduce the fine imposed on the applicants by the decision of the Commission of the European Communities adopted on 16 December 2003 in Case COMP/E-1/38.240
- order the Commission to pay the Applicants' legal fees and expenses as well as the costs incurred by the Applicants in providing a bank guarantee in lieu of payment of KME's Fine pending judgment

Pleas in law and main arguments:

By the contested decision the Commission found that the applicants, among others, infringed Articles 81 EC and 53(1) EEA by participating in a complex of agreements and concerted practices which affected the EEA market for industrial copper tubes supplied in level wound coils. On these grounds, the Commission imposed a fine of 18.990.000 Euros on the applicants, jointly and severally.

The applicants do not contest the Decision's findings with respect to their infringement of the EC and EEA competition rules, but contend that the Commission committed a number of factual and legal errors in calculating the amount of the fine. Firstly, they submit that in establishing the basic amount of the fine and in its calculation of the duration element, the Commission violated the principles of proportionality and equal treatment by not taking the statistically insignificant market impact of the agreements in question and the variations in the cartel's activities into account.

The applicants further claim that in the context of its assessment of the gravity of the infringement, the Commission grossly overstated the economic impact of the agreements in question, by taking the size of the market for the semi-finished products (copper industrial tubes) into account rather than the market for conversion services.

The applicants also contend that the Commission wrongly failed to take several attenuating circumstances into account, namely: the limited implementation of the agreements in question by the applicants, their immediate and voluntary termination of the infringement; the structural crisis of the industrial tube industry; and the applicants' cooperation with the Commission. They claim that the 30 % fine reduction they were granted was based on erroneous factual premises, and was inconsistent with the Commission's practice and the case law. They further submit that the Commission unlawfully discriminated between them and another company, by applying certain attenuating circumstance only to the latter and by according a much more lenient treatment to it without any objective reason.

Action brought on 8 April 2004 by Giuseppe Caló against Commission of the European Communities

(Case T-134/04)

(2004/C 146/08)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8 April 2004 by Giuseppe Caló, residing in Luxembourg, represented by S. Orlandi, A. Coolen,

J.-N. Louis and E. Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court of First Instance should:

- annul the Commission decision of 30 March 2004 to fill the Grade A2 post of Director of the Agriculture, fisheries, structural funds and environment statistics directorate of the DG EUROSTAT and that rejecting the applicant's candidature for that post;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, an official of the defendant assigned to EUROSTAT as Director of the Agriculture, environment, food and regions statistics directorate, had been reassigned, with his post, to the duties of Principal Adviser to the Director-General of the Directorate-General to which he was assigned. The Commission had also decided to fill his former post.

The applicant has challenged those decisions before the Court of First Instance in another case (T-118/04 Caló v Commission).

In the present action, the applicant challenges the decision to appoint another official to his former post, relying, first, on the same pleas in law as those invoked in Case T-118/04. He claims moreover that the candidate appointed does not have the qualifications required by the vacancy notice in question. He also contends that that candidate participated in a meeting of the Commissioners' Chefs de cabinet at which the filling of the post for which he was himself a candidate was decided. The applicant, on that basis, alleges infringement of the principles of transparency, fairness and impartiality and infringement of the rights of the defence. Finally, the applicant alleges a complete failure to state reasons.

Action brought on 13 April 2004 by K.M. Mayer, Tilly Forstbetriebe GesmbH, A. Volpini de Maestri and J. Volpini de Maestri against the Commission of the European Communities

(Case T-137/04)

(2004/C 146/09)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 April 2004 by K.M. Mayer, Eisentratten (Austria), Tilly Forstbetriebe GesmbH, Treibach (Austria), A. Volpini de Maestri, Spittal/Drau (Austria), and J. Volpini de Maestri, Seeboden (Austria), represented by M. Schaffgotsch, lawyer.